

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

Form #4

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF RULE MODIFICATION OF A PROPOSED RULE**

AGENCY: West Virginia Department of Agriculture TITLE NUMBER: 61

CITE AUTHORITY 19-21-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES  NO

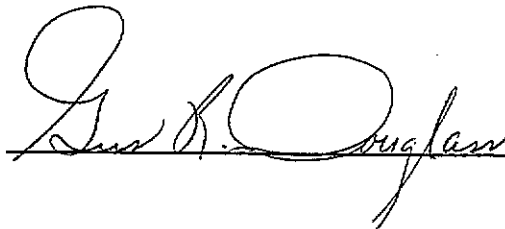
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 23A

TITLE OF RULE BEING AMENDED: West Virginia Fish Processing Rules

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

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

  
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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 19-29-1,3 and 4.

8  
9 1.3 Filing Date -

10  
11 1.4 Effective Date -

12  
13  
14 **§61-23A-2 Incorporated by Reference**

15  
16 2.1 The following documents are adopted in their entirety:

17  
18 2.1.a. 21 CFR parts 123 and 1240.60;

19  
20 2.1.b. The U. S. Food and Drug Administration "Fish and Fishery Products  
21 Hazards and Controls Guide";

22  
23 2.1.c. The U. S. Food and Drug Administration "National Shellfish Sanitation  
24 Program Manual of Operations Part I Sanitation of Shellfish Growing Areas" & " Part II  
25 Sanitation of the Harvesting, Processing and Distribution of Shellfish";

26  
27 2.1.d. 21 CFR part 110 Current Good Manufacturing Practice in Manufacturing,  
28 Packing, or Holding Human Food.

29  
30 2.1.e. The Seafood List, FDA's Guide to Acceptable Market Names for Seafood  
31 Sold In Interstate Commerce

32  
33 **§61-23A-3 Definitions**

35 3.1 "Adulterated" means a fish or fishery product carries or contains any poisonous or  
36 deleterious substance or compound or pathogen in a quantity that may render it injurious to  
37 human health; was produced, processed, transported or held under unsanitary conditions; was  
38 treated with or exposed to chemicals, chemotherapeutics(drugs), heavy metals, pesticides,  
39 temperatures or any conditions in a manner that violates this rule; or was not produced according  
40 to an approved Hazard Analysis Critical Control Point (HACCP) plan.

41  
42 3.2 "Aquaculture" means the commercial production of fish and/or other aquatic life.

43  
44 3.3 "Commissioner" means the Commissioner of Agriculture or his or her designee.

45  
46 3.4 "Establishment number" means an official number assigned by the commissioner to  
47 each fish processing plant and included on the label or container of all fishery products produced  
48 by that plant.

49  
50 ~~3.4 "Fish" means fresh or saltwater fin fish, molluscan shellfish, crustaceans, and~~  
51 ~~other forms of aquatic life other than birds or mammals.~~

52  
53 3.5. "Fish" means fresh or saltwater finfish, crustaceans, and other forms of aquatic life  
54 (including but not limited to, alligators, frogs, aquatic turtles, jellyfishes, and sea urchins and the  
55 roe of those animals) other than birds or mammals, and mollusks, where the animal life is  
56 intended for human consumption.

57  
58 3.6. "Fishery Product" means any human food product in which fish is a characterizing  
59 ingredient.

60  
61 3.7. "Food safety hazard" means any biological, chemical, or physical property that may  
62 cause a food to be unsafe for human consumption.

63  
64 3.8 "Lot number" means a legible and permanently marked number on each container of  
65 cooked ready-to-eat and smoked fishery products which identifies the date the product was  
66 packaged.

67  
68 3.9 "Modified atmosphere-packaging" means the food-packaging technique in which  
69 the air in the package or container is replaced by one or more gases, in various concentrations,  
70 before sealing. The purpose of this type of packaging is to extend the refrigerated shelf life of  
71 the product by limiting microbial growth or detrimental changes in the food.

72  
73 3.10 "Official Sample" means any sample of water, soil, fish, feed, drugs, pesticides,  
74 other ingredients, containers and/or products taken by the commissioner or approved laboratory  
75 in accordance with this rule.

76

77 3.11 "Processing" means handling, storing, heading, gutting, shucking, freezing,  
78 changing into different market forms, manufacturing, preserving, packing, labeling, or holding.  
79 This definition does not apply to the operation of a retail establishment.  
80

81 3.12 "Sanitary Zone" means a separation of operations by location, partition, air flow,  
82 or enclosed systems.  
83

84 3.13 "Risk Assessment Basis" means considering grades from past inspections,  
85 violations, trends, conditions, observations and other information to estimate the likelihood of a  
86 danger or safety hazard occurring and to determine the frequency and priority of future  
87 inspections.  
88

89 ~~3.10 "Safety Hazard" means any biological, chemical, or physical property that may~~  
90 ~~cause, allow, or contribute to an unacceptable human health risk in the final product or food.~~  
91

92 ~~3.11 "Smoked fish" means fish that is prepared by treating material.~~  
93

94 3.14 "Smoked or smoke-flavored fishery products" means the finished food prepared by:  
95 (1) Treating fish with salt (sodium chloride), and (2) Subjecting it to the direct action of smoke  
96 from burning wood, sawdust, or a similar material and/or imparting to it the flavor of smoke by a  
97 means such as immersing it in a solution of wood smoke.  
98

99 3.15 "Vacuum-packaged" means the food-packaging technique in which air in a  
100 package is removed before sealing.  
101

102 3.16 "Water-phase salt content" means the percent salt(sodium chloride)in the finished  
103 product as determined by the method of analysis for water-phase salt content on the "Official  
104 Methods of Analysis of the Association of Official Analytical Chemists," 15th ed.(1990)  
105

106 3.17 "Wholesome" means in sound condition, clean, free from adulteration, and  
107 otherwise suitable for use as human food.  
108

109 ~~3.15 "Fishery Product" means any edible human food product derived in whole or in~~  
110 ~~part from fish, including fish that has been processed in any manner.~~  
111

112  
113  
114 **§61-23A-4 Powers and Duties of the Commissioner**  
115

116 4.1 The commissioner ~~may~~ has the power and authority to:  
117

118 4.1.a. Enter and inspect, during reasonable hours, any location, except fish  
119 hatcheries operated by the State of West Virginia or the United States of America, where fish or  
120 fishery products are processed, sold, stored or transported for human consumption. The  
121 inspection may includes, but is not limited to photographing, video taping, verifying, copying,  
122 and auditing computer files, records and papers relating to the processing of fish for human food  
123 as is necessary to determine compliance with this rule and to investigate consumer complaints.  
124

125 4.1.a.1. The inspection also may includes, but is not limited to  
126 photographing, video taping, verifying, and observing the premises, vehicles, personnel and  
127 activities;  
128

129 4.1.b. Examine, sample and test water, fish, pesticides, raw materials, other  
130 ingredients, containers, packaging, and/or products used or intended for use in the processing,  
131 storage, sale and/or transportation of fish or fishery products for human consumption;  
132

133 4.1.c. Cooperate with and enter into agreements with governmental agencies of  
134 this state and any other states, agencies of the federal government and foreign governments, and  
135 private associations in order to carry out the purpose and provisions of this rule;  
136

137 4.1.d. Detain, embargo, or quarantine fish or fishery products, processing areas,  
138 holding areas, or transporting vehicles by affixing thereto onto the detained, embargoed or  
139 quarantined item a tag or other appropriate marking, and giving notice ~~thereof of the detention,~~  
140 embargo or quarantine in writing to the processor, holder or transporter. The Commissioner  
141 may 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 the fish or fishery  
150 product and order the fish or fishery product disposed of as necessary to ensure the safety of  
151 consumers;  
152

153 4.1.e. Embargo, detain, or quarantine a perishable product, even if the practical  
154 result is to bring about the involuntary disposal of the product.  
155

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

160  
161 4.1.f. Issue, suspend, revoke or deny licenses in accordance with this rule;  
162

163 4.1.g. Inspect and/or copy all records required by this rule. All requested records  
164 must be made available to the commissioner within 24 hours of his or her request. Records kept  
165 on computer files shall have a backup file on a separate disk, or hardcopy;  
166

167 4.1.h. Develop appropriate inspection, embargo, quarantine, detainment and  
168 other regulatory forms as necessary for the enforcement of this rule; and  
169

170 4.1.i. Assess civil penalties and refer violations to a court of competent  
171 jurisdiction for the violation of this rule. Nothing in this rule shall be construed as requiring the  
172 commissioner to assess a civil penalty, report for prosecution or institute an embargo,  
173 detainment, or quarantine for the violation of this rule when he or she believes that the public  
174 interest may best be served by a written notice.  
175

176 4.2 The Commissioner shall be guided by the analytical test results when determining  
177 whether fish or fishery products conform to this rule and other rules and laws of the State of  
178 West Virginia.  
179

180 4.3 The Commissioner shall provide assistance, education, information, and training  
181 on The Hazard Analysis Critical Control Point system HACCP to improve the safety and quality  
182 of the aquaculture industry in West Virginia.  
183

184  
185 **~~§61-23A 5. Hazard Analysis Critical Control Point Plan~~**  
186

187 ~~5.1 All commercial processors of fish and fishery products for human consumption~~  
188 ~~shall have and implement a written Hazard Analysis Critical Control Point Plan approved by the~~  
189 ~~Commissioner, for each product and processing location using the U. S. Food and Drug~~  
190 ~~Administration Fish and Fishery Products Hazards and Controls Guide.~~  
191

192 ~~5.2 The HACCP plan shall include all seven recognized principles of a HACCP plan.~~  
193 ~~The plan shall:~~  
194

195 ~~5.2.a. Identify the potential safety hazards associated with food production at all~~  
196 ~~stages, from growing, harvesting, processing, manufacturing, and distribution, until the point of~~  
197 ~~consumption. It shall assess the likelihood of the hazards occurring and identify the preventative~~  
198 ~~measures for their control;~~  
199

200 ~~5.2.b. Determine the critical control points, or points, procedures and operational~~  
201 ~~steps, that can be controlled to eliminate or minimize the likelihood of the safety hazards~~  
202 ~~occurring;~~

203  
204 ~~5.2.c. Establish the critical limits, or target levels and tolerances which must be~~  
205 ~~met to ensure the critical control point is under control;~~

206  
207 ~~5.2.d. Establish a monitoring system to ensure control of each critical control~~  
208 ~~point by scheduled testing or observations;~~

209  
210 ~~5.2.e. Establish corrective action to be taken when there is a deviation or loss of~~  
211 ~~control at a critical control point identified by monitoring;~~

212  
213 ~~5.2.f. Establish a system for verification which includes supplementary tests and~~  
214 ~~procedures to affirm that HACCP is working effectively; and~~

215  
216 ~~5.2.g. Establish a record keeping system to document all procedures, monitoring~~  
217 ~~information and the HACCP plan.~~

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

222  
223 ~~5.4. Processors producing their own fish for processing may have one combined~~  
224 ~~HACCP plan addressing both production and processing.~~

225  
226 **§61-23A-5. Hazard Analysis and Hazard Analysis Critical Control Point (HACCP) Plan.**

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

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

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

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

250  
251 5.3. The contents of the HACCP plan. The HACCP plan shall, at a minimum:

252  
253 5.3.a. List the food safety hazards that are reasonably likely to occur, as identified in accordance  
254 with subsection 5.1 of this section, and that thus must be controlled for each fish and fishery  
255 product. The processor shall list food safety hazards that are reasonably likely to occur as a result  
256 of the following:

257  
258 5.3.a.1. Natural toxins;

259  
260 5.3.a.2. Microbiological contamination;

261  
262 5.3.a.3. Chemical contamination;

263  
264 5.3.a.4. Pesticides;

265  
266 5.3.a.5. Drug residues;

267  
268 5.3.a.6. Decomposition in scombroid toxin-forming species or in any other species where a food  
269 safety hazard has been associated with decomposition;

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

275  
276 5.3.a.8. Unapproved use of direct or indirect food or color additives; and

277  
278 5.3.a.9. Physical hazards;

279  
280 5.3.b. List the critical control points for each of the identified food safety hazards, including as  
281 appropriate:

283 5.3.b.1. Critical control points designed to control food safety hazards that could be introduced in  
284 the processing plant environment; and  
285

286 5.3.b.2. Critical control points designed to control food safety hazards introduced outside the  
287 processing plant environment, including food safety hazards that occur before, during, and after  
288 harvest;  
289

290 5.3.c. List the critical limits that must be met at each of the critical control points;  
291

292 5.3.d. List the procedures, and their frequency, that will be used to monitor each of the critical  
293 control points to ensure compliance with the critical limits;  
294

295 5.3.e. Include any corrective action plans that have been developed in accordance with  
296 subsection 6.2. of this rule, to be followed in response to deviations from critical limits at critical  
297 control points;  
298

299 5.3.f. List the verification procedures, and their frequency, that the processor will use in  
300 accordance with subsection 7.1. of this rule;  
301

302 5.3.g. Provide for a recordkeeping system that documents the monitoring of the critical control  
303 points. The records shall contain the actual values and observations obtained during monitoring.  
304

305 5.3.h. The HACCP plan shall be signed and dated, either by the most responsible individual  
306 onsite at the processing facility or by a higher level official of the processor. This signature  
307 signifies that the HACCP plan has been accepted for implementation by the firm. The HACCP  
308 plan shall be dated and signed;  
309

310 5.3.h.1. Upon initial acceptance;  
311

312 5.3.h.2. Upon any modification; and  
313

314 5.3.h.3. Upon verification of the plan in accordance with subdivision 7.1.a of this rule.  
315

316 5.4. Sanitation controls may be included in the HACCP plan. However, to the extent that they are  
317 monitored in accordance with subsection 10.2 of this rule they need not be included in the  
318 HACCP plan, and vice versa.  
319

320 5.5. A processor which fails to have and implement a HACCP plan that complies with this  
321 section whenever a HACCP plan is necessary or otherwise fail to operate in accordance with the  
322 requirements of this rule, renders the fish or fishery products of that processor adulterated. The  
323 Commissioner or his/her designee shall determine whether a processor's actions are consistent

324 with ensuring the safety of food through an evaluation of the processors overall implementation  
325 of its HACCP plan, if one is required.

326  
327 **§61-23A-6. Corrective actions.**

328  
329 6.1. Whenever a deviation from a critical limit occurs, a processor shall take corrective action  
330 either by:

331  
332 6.1.a. Following a corrective action plan that is appropriate for the particular deviation, or  
333

334 6.1.b. Following the procedures set forth in subsection 6.3 of this section.  
335

336 6.2. A processor may develop written corrective action plans, which become part of the  
337 processor's HACCP plan in accordance with section 5.7 of this rule, by which the processor  
338 predetermines the corrective actions that the processor will take whenever there is a deviation  
339 from a critical limit. A corrective action plan that is appropriate for a particular deviation is one  
340 that describes the steps to be taken and assigns responsibility for taking those steps, to ensure  
341 that:

342  
343 6.2.a. No product enters commerce that is either injurious to health or is otherwise adulterated as  
344 a result of the deviation; and

345  
346 6.2.b. The cause of the deviation is corrected.  
347

348 6.3. When a deviation from a critical limit occurs and the processor does not have a corrective  
349 action plan that is appropriate for that deviation, the processor shall:

350  
351 6.3.a. Segregate and hold the affected product, at least until the requirements of subdivisions  
352 6.3.b. and 6.3.c. of this section are met;

353  
354 6.3.b. Perform or obtain a review to determine the acceptability of the affected product for  
355 distribution. The review shall be performed by an individual or individuals who have adequate  
356 training or experience to perform the review;

357  
358 6.3.c. Take corrective action, when necessary, with respect to the affected product to ensure that  
359 no product enters commerce that is either injurious to health or is otherwise adulterated as a  
360 result of the deviation;

361  
362 6.3.d. Take corrective action, when necessary, to correct the cause of the deviation; and  
363

364 6.3.e. Perform or obtain timely reassessment by an individual or individuals who have been  
365 trained in accordance with section 9 of this rule., to determine whether the HACCP plan needs to

366 be modified to reduce the risk of recurrence of the deviation, and modify the HACCP plan as  
367 necessary.

368  
369 6.4. The processor shall fully document all corrective actions taken in accordance with this  
370 section in records that are subject to verification in accordance with paragraph 7.1.c.2. of this rule  
371 and the recordkeeping requirements of section 8 of this rule.

372  
373 **§61-23A-7. Verification**

374  
375 7.1. Overall verification. Every processor shall verify that its HACCP plan is adequate to control  
376 food safety hazards that are reasonably likely to occur, and that the plan is being effectively  
377 implemented. Verification shall include, at a minimum:

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

388  
389 7.1.b. Ongoing verification activities. Ongoing verification activities include:

390  
391 7.1.b.1. A review of any consumer complaints that have been received by the processor to  
392 determine whether they relate to the performance of critical control points or reveal the existence  
393 of unidentified critical control points;

394  
395 7.1.b.2. The calibration of process-monitoring instruments; and,

396  
397 7.1.b.3. At the option of the processor, the performing of periodic end-product or in-process  
398 testing; and,

399  
400 7.1.c. Records review. A review, including the signing and dating, by an individual who has been  
401 trained in accordance with section 9 of this rule, of the records that document:

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

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

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

417  
418 7.2. Corrective actions. A processor shall immediately follow the procedures in section 6 of this  
419 rule, whenever any verification procedure, including the review of a consumer complaint, reveals  
420 the need to take a corrective action.

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

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

## 435 **§61-23A-8. Records**

436  
437  
438 8.1. General record requirements. All records required by this section shall include:

439  
440 8.1.a. The name and location of the processor or importer;

441  
442 8.1.b. The date and time of the activity that the record reflects;

443  
444 8.1.c. The signature or initials of the person performing the operation; and

445  
446 8.1.d. Where appropriate, the identity of the product and the production code, if any. Processing  
447 and other information shall be entered on records at the time that it is observed.

449 8.2. Record Retention

450  
451 8.2.a. All records required by this section shall be retained at the processing facility or importer's  
452 place of business in the United States for at least 1 year after the date they were prepared in the  
453 case of refrigerated products and for at least 2 years after the date they were prepared in the case  
454 of frozen, preserved, or shelf-stable products.

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

460  
461 8.2.c. A processor may transfer records to a reasonably accessible location other than the packing  
462 site only if the processing facility is closed for a prolonged period between seasonal packs, or if  
463 record storage capacity is limited at a remote processing site; however, a processor is required to  
464 immediately return the records to the packing site for official review by the Commissioner or  
465 his/her designee upon demand.

466  
467 8.3. Official review. All records required by this section and all plans and procedures required by  
468 this section shall be available for review and copying by the Commissioner or his/her designee at  
469 reasonable times.

470  
471 8.4. Records maintained on computers. A processor or importer may maintain its records on  
472 computers, provided that appropriate controls are implemented to ensure the integrity of the  
473 electronic data and signatures.

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

479  
480 ~~11-2-8.6.~~ Fish processing records shall be legibly written, printed or filed on electronic  
481 media in English and shall identify the product processed, identifying lot code, the number of  
482 containers per coding interval, and the year, and day and period when each lot was packaged.

483  
484 **§61-23A-9. Training.**

485  
486 9.1. In order to qualify to perform the following functions, an individual shall submit  
487 documentation to the Commissioner that he or she has successfully completed training in the  
488 application of HACCP principles to fish and fishery product processing at least equivalent to that  
489 received under standardized curriculum recognized as adequate by the U.S. Food and Drug  
490 Administration or is otherwise qualified through job experience to perform these functions. The

491 Commissioner may approve job experience to qualify an individual to perform these functions if  
492 it has provided knowledge at least equivalent to that provided through the standardized  
493 curriculum as documented by the individual. A qualified individual may:  
494

495 9.1.a. Develop a HACCP plan, which could include adapting a model or generic-type HACCP  
496 plan, that is appropriate for a specific processor, in order to meet the requirements of subsection  
497 5.2 of this rule;  
498

499 9.1.b. Reassess and modify the HACCP plan in accordance with the corrective action procedures  
500 specified in subdivision 6.3.c. of this rule, the HACCP plan in accordance with the verification  
501 activities specified in subdivision 7.1.a. of this rule, and the hazard analysis in accordance with  
502 the verification activities specified in section 7.3 of this rule; and  
503

504 9.1.c. Perform the record review required by subdivision 7.1.c. of this rule; The qualified  
505 individual need not be an employee of the processor.  
506

507 **§61-23A-10. Sanitation control procedures.**  
508

509 10.1. Sanitation SOP. The Commissioner recommends each processor have and implement a  
510 written sanitation standard operating procedure (SSOP) or similar document that is specific to  
511 each location where fish and fishery products are produced. The Commissioner recommends the  
512 SSOP specify how the processor will meet those sanitation conditions and practices that are to be  
513 monitored in accordance with subsection 10.2 of this section.  
514

515 10.2. Sanitation monitoring. Each processor shall monitor the conditions and practices during  
516 processing with sufficient frequency to ensure, at a minimum, conformance with those conditions  
517 and practices specified in 21 CFR Part 110 adopted by reference in subdivision 2.1.d. of this rule,  
518 that are both appropriate to the plant and the food being processed and relate to the following:  
519

520 10.2.a. The safety of the water that comes into contact with food or food contact surfaces, or is  
521 used in the manufacture of ice;  
522

523 10.2.b. The condition and cleanliness of food contact surfaces, including utensils, gloves, and  
524 outer garments;  
525

526 10.2.c. The prevention of cross-contamination from insanitary objects to food, food packaging  
527 material, and other food contact surfaces, including utensils, gloves, and outer garments, and  
528 from raw product to cooked product;  
529

530 10.2.d. The maintenance of hand washing, hand sanitizing, and toilet facilities;  
531

532 10.2.e. The protection of food, food packaging material, and food contact surfaces from  
533 adulteration with lubricants, fuel, pesticides, cleaning compounds, sanitizing agents, condensate,  
534 and other chemical, physical, and biological contaminants;

535  
536 10.2.f. The proper labeling, storage, and use of toxic compounds;

537  
538 10.2.g. The control of employee health conditions that could result in the microbiological  
539 contamination of food, food packaging materials, and food contact surfaces; and

540  
541 10.2.h. The exclusion of pests from the food plant.

542  
543 10.2.i. The processor shall correct in a timely manner, those sanitation conditions and practices  
544 that are not met.

545  
546 10.3. Sanitation control records. Each processor shall maintain sanitation control records that, at  
547 a minimum, document the monitoring and corrections prescribed by subsection 10.2 of this  
548 section. These records are subject to the requirements of section 8 of this rule.

549  
550 10.4. Relationship to HACCP plan. Sanitation controls may be included in the HACCP plan,  
551 required by subsection 5.3 of this rule; however, to the extent that they are monitored in  
552 accordance with subsection 10.2 of this section they need not be included in the HACCP plan.

553  
554 **§61-23A-611. Processor Licensing**

555  
556 ~~6.1.1.1.~~ All commercial processors in the state of West Virginia shall:

557  
558 ~~6.1.a.11.1.a.~~ Apply for a fish processing license from the Commissioner;

559  
560 ~~6.1.b.11.1.b.~~ Submit a HACCP plan to the Commissioner with the request for  
561 licensing;

562 11.1.b.1. After the review of the HACCP Plan is considered adequate, the  
563 Commissioner may provisionally approve the HACCP Plan. Once the processor has successfully  
564 completed all the other requirements for licensing and has been issued a license, he/she may  
565 operate under the provisionally approved HACCP plan. The Commissioner ~~will~~ shall review the  
566 actual operation of the HACCP plan, and may require revisions as necessary to protect the health  
567 and safety of consumers.

568  
569 ~~6.1.c.11.1.c.~~ Submit for review and approval three(3) complete sets of  
570 blueprints or drawings with specifications that fully and clearly illustrate plans to which the  
571 applicant proposes to have the facility constructed or modified;

573 ~~6.1.d.11.1.d.~~ Submit to the West Virginia Department of Agriculture, with the  
574 request for licensing, a letter from the State or County Health Authorities stating that the plant's  
575 waste sewage system is acceptable;

576  
577 ~~6.1.e.11.1.e.~~ Submit to the West Virginia Department of Agriculture, with the  
578 request for licensing, a letter from the State or County Health Authorities stating that the plant's  
579 potable water supply has been tested and is acceptable;

580  
581 ~~6.1.f.11.1.f.~~ Submit the fee required in this subdivision along with application  
582 for license:

583  
584

Class	Average Finished Product Poundage Processed per Year	Annual Fee
585 Small	1-25,000	\$25.00
586 Medium	25,001 - 50,000	\$50.00
587 Large	over 50,000	\$75.00; and

588  
589  
590  
591

592  
593 ~~6.1.g.11.1.g.~~ Submit required materials for each location of processing  
594 operations on forms prescribed by the Commissioner.

595  
596 ~~6.2.11.2.~~ Before issuing any license required by the provisions of this rule, the  
597 Commissioner shall inspect the applicant's establishment and review the HACCP plan and other  
598 license application materials. If the Commissioner is satisfied that the establishment is clean and  
599 sanitary, properly equipped, has met the requirements set forth by this rule and all employees are  
600 properly trained and have met requirements set forth in this rule, he or she shall ~~may~~ issue the  
601 license which shall designate the establishment number of the plant.

602  
603  
604 ~~6.3.11.3.~~ Processors are responsible for having potable water supplies retested and  
605 certified by local or state health authorities:

606  
607  
608 ~~6.3.a.11.3.a.~~ Annually for approved public water supplies; and

609  
610 ~~6.3.b.11.3.b.~~ Every six months for private wells or springs.

611  
612 ~~6.4.11.4.~~ The Commissioner may deny, revoke or suspend any fish processing  
613 license when he or she concludes that the seriousness of the violations, including irreparable

614 harm to the environment, hazards to the health and safety of the public and economic damages to  
615 the public warrant that action.

616  
617 ~~6.5.11.5.~~ The Commissioner shall not issue a "Fish Processing License" until the  
618 applicant has complied with all of the conditions set forth under this section. Once issued, the  
619 "Fish Processing License" remains valid unless voluntarily surrendered, suspended or revoked by  
620 the Commissioner. Once the Fish Processor License is voluntarily surrendered, or revoked, the  
621 processor must reapply and submit all materials required under this section to receive a new  
622 license.

623  
624  
625  
626 **~~§61-23A-712. Current Good Manufacturing Practices~~**

627  
628 ~~7.1.~~ Regulations applicable to Current Good Manufacturing Practices apply in  
629 determining whether the facilities used in the manufacture, processing, packing or holding of fish  
630 and fishery products for human consumption are safe, and whether these products have been  
631 processed under sanitary conditions.

632  
633 **~~§61-23A-812. Buildings and Facilities~~**

634  
635 ~~8.1.12.1.~~ The fish or fishery product must be processed in a manner to prevent  
636 contamination by exposure to areas, utensils, or equipment involved in earlier processing steps,  
637 refuse, or other safety hazards.

638  
639 ~~8.2.12.2.~~ All utensils and surfaces of equipment that contact food during processing  
640 shall be cleaned and sanitized with effective cleaning and sanitizing preparations at the following  
641 intervals:

642  
643 ~~8.2.a.12.2.a.~~ Cleaned at the end of the days operations;

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

647  
648 ~~8.2.c.12.2.b.~~ Sanitized before the beginning of the days operations; and

649  
650 ~~8.2.d.12.2.c.~~ Cleaned and sanitized after any interruptions of the food  
651 processing process during which food contact surfaces may have become contaminated.

652  
653 ~~8.3.12.3.~~ Until properly cleaned and sanitized, employees' hands, gloves and outer  
654 garments and utensils and surfaces of equipment that contact raw product shall not contact 1)

655 The fish or fishery product after it has entered the smoking chamber, 2) cooked product, or 3)  
656 ice.

657  
658 ~~8.4.12.4.~~ Readily understandable signs directing employees handling unprotected  
659 food, unprotected food-packaging materials, or food-contact surfaces to wash and sanitize their  
660 hands before they start work, after each absence from their post of duty, and when their hands  
661 have become soiled or contaminated, shall be conspicuously posted in the processing rooms,  
662 finished product packing rooms, and in all other areas where sanitary conditions are required.

663  
664 ~~8.5.12.5.~~ Handwash facilities shall be conveniently located to permit use by all  
665 employees in fish preparation and processing areas. Handwashing facilities shall be accessible to  
666 these employees at all times.

667  
668 ~~8.6.~~ 12.6. Handwashing facilities shall be located in or immediately adjacent to toilet  
669 rooms or their vestibules, and readily understandable signs directing employees to wash and  
670 sanitize their hands after using toilet facilities and before returning to the processing or packing  
671 areas shall be conspicuously posted.

672  
673  
674 **§61-23A-913. Equipment**

675  
676 ~~9.113.1.~~ All plant equipment and utensils must be properly maintained and  
677 designed and of such material and workmanship as to be adequately cleaned, sanitized and  
678 corrosion resistant. The design, construction, and use of equipment must prevent the  
679 contamination of food with lubricants, fuel, metal, fragments, wood fragments, contaminated  
680 water, or any other contaminants. All equipment must be installed and maintained as to facilitate  
681 the cleaning and sanitizing of the equipment and all adjacent spaces. Surfaces that contact food  
682 must be corrosion resistant when in contact with food. Food contact surfaces must be made of  
683 nontoxic materials and designed to withstand the environment of their intended purpose and the  
684 action of the food, and cleaning and sanitizing agents. Food contact surfaces must be maintained  
685 to protect the food from being contaminated from any source, including unlawful indirect food  
686 additives.

687  
688 ~~9.2.13.2.~~ The containers used to transport, brine or store fish ~~must shall~~ not be  
689 nested while they contain fish or otherwise handled during processing or storage in a manner  
690 conducive to contamination of their contents.

691  
692 ~~9.3.13.3.~~ The cleaning and sanitizing of utensils and portable equipment ~~must shall~~  
693 be conducted in an area set aside for these purposes or in a segregated fashion so as to prevent  
694 contamination of the food.

696 ———9.4.13.4. Each freezer and cold storage compartment used to store and hold food  
697 ~~must shall~~ be fitted with a thermometer or temperature recording device installed to show the  
698 temperature accurately within the compartment.

699 ———9.5.13.5. Instruments and controls used for measuring, regulating, or recording  
701 temperatures ~~must shall~~ be accurate and maintained on a regular schedule, and adequate in  
702 number for their designated uses.

703 ———9.6.13.6. Thermometers or other temperature-measuring devices ~~must shall~~ have an  
704 accuracy of + or - 2° Fahrenheit and graduations ~~shall must~~ not exceed 2° Fahrenheit within a  
705 range of 10° Fahrenheit of the processing temperature. The accuracy of these devices ~~must shall~~  
706 be maintained.

707 ———9.7.13.7. Compressed air or other gases used to clean food-contact surfaces or equipment  
709 ~~must shall~~ be treated or filtered in such a way that food is not contaminated with unlawful  
710 indirect food additives.

711 ———9.8.13.8. Each smoking chamber ~~must shall~~ be equipped with a temperature  
712 monitoring device ~~so installed as to accurately indicate at all times the temperature of the air and~~  
713 ~~of the fish within the smoking chamber.~~

714 ———9.9.13.9. Equipment and utensils ~~must shall~~ be positively marked or segregated in  
715 some way to ensure that equipment and utensils used to handle raw fish or fishery products are  
716 not used to handle fish or fishery products which have entered the smoking chamber or cooked  
717 ready-to-eat fish or fishery products until they are properly cleaned and sanitized.

721  
722  
723 **§61-23A-1014. Product Management**

724  
725 ———10.1.14.1. The evisceration of fish shall be conducted in an area segregated or  
726 separate from other processing operations. The evisceration shall be performed with minimal  
727 disturbance of the fish's intestinal tract contents. The fish, including the body cavity, shall be  
728 washed thoroughly with a vigorous spray or a continuous water flow system immediately  
729 following evisceration.

730  
731 ———10.2.14.2. Sanitary zones shall be established around areas where unpackaged cooked  
732 or smoked product is handled and stored. ~~In such areas,~~ Objects and employees that have come  
733 into contact with waste, raw product, or other insanitary objects shall be excluded from these  
734 areas.

737 ———10.3.14.3. Packaging material, equipment, employees, and in-process materials that  
738 enter a sanitary zone shall be treated in a manner that will minimize the risk of the introduction  
739 of microorganisms.

740 ———10.4.14.4. All operations including receiving, processing, and packaging shall be  
741 conducted utilizing clean and sanitary methods and shall be conducted as rapidly as practical and  
742 at temperatures that will not cause any material increase in bacterial or other microorganic  
743 content or any deterioration or contamination of the processed fish.

744 ———10.5.14.5. Unpackaged cooked ready-to-eat and smoked fish or fishery products shall  
745 be handled only with clean and sanitized hands, gloves or utensils. These products shall be  
746 handled with a minimum of manual contact.

747 ———10.6.14.6. 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 ———10.7.14.7. Refrigeration units used to store fish, fishery products, or raw materials  
752 during any stage before and during processing shall operate at a temperature at or below 40°F  
753 (4.4°C). All processed fish shall be distributed and sold at refrigerated internal temperatures that  
754 do not exceed 40°F (4.4°C) except that processed fish that have a water-phase salt level of at  
755 least 17 percent do not require refrigeration.

756 ———10.8.14.8. Fish and fishery products ~~must~~ shall be protected against contamination  
757 including contaminants which may drip, drain, or be drawn into the product before, during and  
758 after processing.

759 ———10.9. ~~Vacuum packaging or modified atmosphere packaging of processed fish or~~  
760 ~~fishery products shall only be conducted within the facilities of the manufacturer.~~

761 ———10.10.14.10. Shipping containers, retail packages, and shipping records relating to  
762 processed fish shall indicate by appropriate labeling, the perishable nature of the product. Frozen  
763 product shall indicate that the product shall remain frozen until thawed at refrigerated  
764 temperatures and shall not be refrozen. Refrigerated product shall clearly and conspicuously  
765 state "Keep Refrigerated at 40°F or below".

766 ———10.11.14.11. Each container of ~~cooked ready-to-eat and smoked~~ fishery product  
767 processed in accordance with the provisions of this rule shall have an identifying code  
768 establishment number which ~~shall be~~ is legible and permanently marked. This code  
769 establishment number shall identify the plant where the product was produced ~~and the date the~~  
770 ~~product was packaged.~~ Each container of fishery products shall have a lot number which is

779 legible and permanently marked. This lot number shall identify the date the product was  
780 produced.

781  
782 14.12 Brining shall be carried out so the temperature of the brine does not exceed 60° F  
783 at the start of brining. If the brining time exceeds four hours, the brining must take place in a  
784 refrigerated area at 40° F or lower.

785  
786 14.13 Different species of fish shall not be mixed in the same brining tank.

787  
788 14.14 For dry salting, the fish shall be returned to a refrigerated area of 40° F or lower  
789 immediately after the application of salt.

790  
791 14.15 Fish shall be rinsed with potable water after brining.

792  
793 14.16 For hot process smoked fish to be air packaged, a controlled process shall be used  
794 to heat fish to a continuous temperature of at least 145° F through out each fish for a minimum of  
795 30 minutes for fish brined to contain not less than 2.5 percent water phase salt in the loin muscle  
796 of the finished product.

797  
798 14.17 For hot process smoked fish to be vacuum or modified atmosphere packaged, a  
799 controlled process shall be used to heat fish to a continuous temperature of at least 145° F  
800 through out each fish for a minimum of 30 minutes for fish brined to contain not less than 3.5  
801 percent water phase salt in the loin muscle of the finished product.

802  
803 14.18 Cold process smoked fish shall be produced by a control process that utilizes a  
804 temperature monitoring system positioned within the smoking chamber to assure that all  
805 products do not exceed process temperatures in accordance with one of the following methods:

806  
807 14.18.a. The temperature in the smoking chamber does not exceed 90° F  
808 during a drying and smoking period that does not exceed 20 hours; or

809  
810 14.18.b. The temperature in the smoking chamber does not exceed 50° F  
811 during a drying and smoking period that does not exceed 24 hours; or

812  
813 14.18.c. The temperature in the smoking chamber does not exceed 120° F  
814 during a drying and smoking period that does not exceed 6 hours for cold process sablefish.

815  
816 14.19. For cold process fish to be air packaged, only fish that have been brined to contain  
817 not less than 2.5 percent water phase salt in the loin muscle of the finished product may be used.

819 14.20. For cold process fish to be vacuum or modified atmosphere packaged, only fish  
820 that have been brined to contain not less than 3.5 percent water phase salt in the loin muscle of  
821 the finished product may be used.  
822  
823

824 ~~§61-23A-11. Records~~  
825

826 ~~11.1. Every operator of a fish processing plant shall keep a record of every transaction~~  
827 ~~involving the sale and distribution of processed fish and fishery products. The records, in~~  
828 ~~addition to the names and addresses of the persons or firms involved shall contain the code~~  
829 ~~numbers of each lot involved.~~  
830

831 ~~11.2. Fish processing records shall be legibly written, printed or filed on electronic media in~~  
832 ~~English and shall identify the product processed, identifying lot code, the number of containers~~  
833 ~~per coding interval, and the year, and day and period when each lot was packaged.~~  
834  
835

836 **§61-23A-1215. Employees**  
837

838 ~~12.1.15.1.~~ All employees shall thoroughly wash and sanitize their hands and  
839 forearms before starting work. All employees shall wash and sanitize hands during work hours  
840 as often as necessary to remove soil and contamination, after working with raw fish products,  
841 before handling ready-to-eat products, after visiting the toilet room, after using tobacco, or after  
842 eating or drinking.  
843

844 ~~12.2.15.2.~~ Effective hair and beard restraints shall be used by employees who  
845 process, prepare or handle food to keep exposed hair and beards from food or food contact  
846 surfaces.  
847

848 ~~12.3.15.3.~~ No person shall use tobacco, eat, or drink in food receiving, processing,  
849 packaging, storage or handling areas.  
850

851 ~~12.4.15.4.~~ Employees shall maintain a high degree of personal cleanliness and shall  
852 conform to good hygienic practices during all working periods. Personal cleanliness includes  
853 clean clothing.  
854

855 ~~12.5.15.5.~~ Employees shall remove all insecure jewelry, and shall remove from the  
856 hands and forearms any jewelry that cannot be properly sanitized.  
857

858 ~~12.6.15.6.~~ Employees who have an illness, skin infections and/or communicable  
859 forms of infection, including but not limited to cuts, burns, boils, abrasions, wounds, open  
860 lesions or bandages on the hands, face or forearms shall not perform work activities in which

861 there is a likelihood of contaminating food, food packaging or food contact surfaces until the  
862 medical condition is corrected. It is the duty of the supervisor to ask employees about such  
863 medical conditions and the duty of the employee to report them prior to the start of each  
864 workshift.

865  
866  
867 **§61-23A-1316. Transport**

868  
869 ~~13.116.1.~~ All fish transported for sale and/or processing for human food in the state  
870 of West Virginia shall be:

871  
872 ~~13.1.a.16.1.a.~~ Alive and in good health when harvested from the water; and

873  
874 ~~13.1.b.16.1.b.~~ Maintained alive; or maintained in a constant iced or mechanically  
875 refrigerated state ensuring an internal body temperature of 40°F (4.4°C) or below; except that:

876  
877 ~~13.1.b.1.16.1.b.1.~~ Shellstock shall be maintained in a constantly iced or  
878 mechanically refrigerated state ensuring an internal body temperature of 50°F (10°C) or below  
879 after harvest;

880  
881 ~~13.1.b.2.16.1.b.2.~~ Shucked shellfish shall be maintained in a constant iced or  
882 mechanically refrigerated state ensuring an internal temperature of 40°F (4.4°C) or below; and

883  
884 ~~13.1.b.3.16.1.b.3.~~ Processed fish that have a water-phase salt level of at least  
885 17 percent do not require refrigeration.

886  
887 ~~13.216.2.~~ All fish intended for human consumption shall be transported or held in  
888 clean non-toxic, ~~pathogen-free~~ containers.

889 ~~13.316.3.~~ Unprotected raw fish and fishery products, cooked ready-to-eat fishery  
890 products, smoked fishery products and molluscan shellfish shall be physically separated to  
891 minimize the possibility of cross contamination during transport.

892  
893 ~~13.416.4.~~ No other cargo shall be placed on or above fish or fishery products unless  
894 all cargo is packed in sealed, crush resistant waterproof containers.

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

903  
904 ~~13.5.a. If no drugs, feed and color additives, pesticides or medicated feeds have~~  
905 ~~been administered, a written statement including the lot number of fish signed by the grower~~  
906 ~~indicating the absence of drugs, feed and color additives, pesticides or medicated feeds shall~~  
907 ~~accompany the shipment.~~

908  
909 ~~13.6.6.~~ Every reasonable effort shall be made to keep fish and fishery products  
910 intended for human consumption wholesome, unspoiled, and unadulterated.

911  
912 ~~13.7.6.7.~~ Ice used for cooling fish and fishery products shall be made from drinking  
913 water certified potable by State or County Health authorities.

914  
915 ~~13.7.a.16.7.a.~~ After use for cooling fish or fishery products, ice shall not be used  
916 as human food.

917  
918  
919 **§61-23A-1417. Laboratory Testing**

920  
921 ~~14.117.1.~~ The Commissioner of Agriculture shall establish and maintain or make  
922 provisions for approved laboratory testing facilities for the purpose of enforcing the analytical  
923 aspects of this rule.

924  
925 ~~14.217.2.~~ The methods used for analyzing samples will be those found in the most  
926 recent editions of the Official Methods of Analysis by the Association of Analytical Chemists,  
927 15th edition 1990; or the United States, Food and Drug Administrations Bacteriological  
928 Analytical Manual, 7th edition, 1992; or The Pesticide Analytical Manual, Volume I, and II,  
929 Foods and Feeds; or other methods as approved by the commissioner.

930  
931  
932 **§61-23A-1518. Prohibited Acts**

933  
934 ~~15.118.1.~~ It is unlawful to:

935  
936 ~~15.1.a.18.1.a.~~ Produce, hold, transport, sell or offer for sale fish, or fishery  
937 products in violation of this rule;

938  
939 ~~15.1.b.18.1.b.~~ Sell or offer for sale any fish or fishery product for human  
940 consumption which is adulterated or not wholesome;

941  
942 ~~15.1.c.18.1.c.~~ Remove any tag or order affixed by the Commissioner unless the  
943 removal is authorized by him or her;

945 \_\_\_\_\_ 15.1.d.18.1.d. Impede, hinder or otherwise prevent, or attempt to prevent the  
946 Commissioner in the performance of his or her duties in connection with the provisions of this  
947 rule;

948  
949 \_\_\_\_\_ 15.1.e.18.1.e. Falsify or falsely log any values on any record or records required  
950 by this rule;

951  
952 \_\_\_\_\_ 15.1.f.18.1.f. Remove or dispose of detained, embargoed, or quarantined fish or  
953 fishery products by sale or otherwise without the permission of the Commissioner or the courts;

954  
955 \_\_\_\_\_ 15.1.g.18.1.g. Continue aquaculture fish processing operations until released  
956 from the embargo or cease and desist order by the Commissioner or the courts;

957  
958 \_\_\_\_\_ 15.1.h.18.1.h. Process, sell or offer for sale to the public any molluscan shellfish  
959 unless it is obtained from a shellfish dealer listed in the most recent monthly publication of the  
960 Interstate Certified Shellfish Shippers List published by the U.S. Food and Drug Administration;

961  
962 \_\_\_\_\_ 15.1.i.18.1.i. Sell or offer for sale fish or fishery products unless the label  
963 displays the acceptable market name or common name specified for the species in the most  
964 recent annual publication of "The Seafood List, FDA's Guide to Acceptable Market Names for  
965 Seafood Sold In Interstate Commerce";

966  
967 \_\_\_\_\_ 15.1.j.18.1.j. Process fish or fishery products for sale unless the processor is  
968 licensed and inspected by the Commissioner;

969  
970 \_\_\_\_\_ 15.1.k.18.1.k. Sell or offer for sale, fish or fishery products for human  
971 consumption which contain levels of chemicals or drugs in excess of the action levels listed in  
972 the tables in this subdivision:

973  
974 \_\_\_\_\_ 15.1.k.a.18.1.k.a. Table 1 - Action levels for chemicals in Fish and  
975 Fishery products.

976

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

986

987 Methyl Mercury 1.0 ppm  
988 Sulfite(Shrimp only) 100 ppm

989  
990  
991 ~~15.1.k.b.~~18.1.k.b. Table 2 - Action levels for drugs in Fish and Fishery  
992 products.

993

Drug	Action Level
994 Oxytetracycline	0.1 ppm
995 Sulfamerazine	0.0 ppm
996 Sulfadimethoxine plus ormetoprim	0.1 ppm; or

997  
998  
999

000 ~~15.1.l.~~18.1.l. Slaughter or process products other than fishery products in a licensed fish  
001 processing facility.  
002  
003  
004  
005  
006

007 **§61-23A-1619. Penalties**

008  
009 ~~16.119.1.~~ Civil Penalties  
010

011 ~~16.1.a.~~19.1.a. Any person violating any of the provisions of this rule may be  
012 assessed a civil penalty of up to five hundred dollars for a first offense and up to five thousand  
013 dollars for subsequent offenses. In determining the amount of the civil penalty, the  
014 commissioner shall give due consideration to the history of previous violations of any person; the  
015 seriousness of the violation, including any irreparable harm to the environment, any hazards to  
016 the health and safety of the public and any economic damages to the public; and the  
017 demonstrated good faith of any person charged in attempting to achieve compliance with this  
018 rule before and after written notification of the violation.  
019

020 ~~16.1.b.~~19.1.b. The civil penalty is payable to the West Virginia Department of  
021 Agriculture and is collectable in any manner now or hereafter provided for the collection of debt.  
022 If any person liable to pay the civil penalty neglects or refuses to pay the same, the amount of  
023 the civil penalty, together with interest at ten percent, is a lien in favor of the state of West  
024 Virginia upon the property, both real and personal, of that person after the lien has been entered  
025 and docketed to record in the county where such property is situated. The clerk of the county,  
026 upon receipt of the certified copy of the lien, shall enter the lien to record without requiring  
027 payment of costs as a condition precedent to recording.  
028

029 ~~16.1.e.19.1.c.~~ Nothing in this rule shall be construed as requiring the  
030 Commissioner to assess a civil penalty or to institute an embargo, detainment, quarantine or  
031 cease and desist order for violation of this rule when he or she believes that the public interest  
032 may best be served by a written notice of violation.  
033

034 ~~16.2.19.2.~~ Criminal Penalties  
035

036 ~~16.2.19.2.1.~~ Any person who violates any provision of this rule is guilty of a  
037 misdemeanor, and upon conviction thereof:  
038

039 ~~16.2.1.a.19.2.1.a.~~ Shall for the first offense be fined not less than fifty  
040 nor more than five hundred dollars;  
041

042 ~~16.2.1.b.19.2.1.b.~~ Shall upon each subsequent offense be fined not  
043 less than one hundred nor more than one thousand dollars;  
044

045 ~~16.2.1.c.19.2.1.c.~~ May be imprisoned in the county or regional jail not  
046 more than six months or both fined and imprisoned; and  
047

048 19.2.1.d. Shall have his or her Fish Processing License suspended until the  
049 facility is in compliance with the provisions of this rule.  
050

051 ~~16.2.2.19.2.~~ Magistrates have concurrent jurisdiction with circuit courts to  
052 enforce the provisions of this rule.  
053

054  
055 **§61-23A-1720. Confidentiality of Trade Secrets**  
056

057 ~~17.120.1.~~ The commissioner may not make public information which relates to trade  
058 secrets and procedures, commercial or financial information obtained from a person or privileged  
059 or confidential information: Provided that when the information is necessary to carry out the  
060 provisions of this rule, this information may be revealed, subject to protective order, to any  
061 federal, state or local agency consultant or may be revealed, subject to protective order, at a  
062 closed hearing or in findings of fact issued by the commissioner.  
063

064 **§61-23A-1821. Enforcement Policy**  
065

066 ~~18.121.1.~~ The Commissioner ~~will~~ shall inspect fish processors on a risk assessment basis  
067 with the purpose of assuring wholesome, unspoiled and unadulterated fish and fishery products.  
068 All processors inspected will receive a grade of "A", "B", "C", or "Unsatisfactory". ~~Processors~~  
069 ~~will initially be inspected at least once a week for a minimum of a one month period.~~ After this  
070 an initial inspection period processors earning:

071  
072 \_\_\_\_\_18.1.a.21.1.a. A grade of "A" during an inspection will require reinspection at  
073 least once every three months;

074  
075 \_\_\_\_\_18.1.b.21.1.b. A grade of "B" during an inspection will require reinspection at  
076 least once every two months;

077  
078 \_\_\_\_\_18.1.c.21.1.c. A grade of "C" during an inspection will require reinspection at  
079 least once every month;

080  
081 \_\_\_\_\_18.1.d.21.1.d. A grade of "Unsatisfactory" during an inspection shall result in the  
082 suspension of the Fish Processing License. When reinspection of the plant results in a grade of C  
083 or higher the Commissioner may reinstate the Aquaculture Processing License; and

084  
085 \_\_\_\_\_18.1.e.21.1.e. A grade of "Failure" during an inspection shall result in the  
086 revocation of the "Aquaculture Fish Processing License" until the processor successfully  
087 reapplies for and is issued a new license.

088  
089 \_\_\_\_\_18.221.2. In no way is this enforcement policy intended to prohibit the  
090 Commissioner from inspecting a producer's facility more frequently in the event that he or she  
091 believes it is necessary.

092  
093 \_\_\_\_\_18.321.3. All fish and fishery products for sale as human food shall be processed and  
094 transported according to all provisions of this rule. Fish and fishery products transported and/or  
095 processed by private citizens exclusively for the consumption by themselves, their immediate  
096 family, nonpaying guests, and employees, or fish transported in the operation of fish hatcheries  
097 by the state of West Virginia or the United States of America are exempt from this rule.

098  
099 \_\_\_\_\_18.4. Processors have three years from the effective date of this rule to comply with  
100 sections 5 and 6.1.b. and 6.1.b.1. and 6.2 of this rule concerning the implementation of HACCP.  
101 ~~Processors have two years from the effective date of this rule to fully comply with all other~~  
102 ~~sections of this rule.~~

103  
104  
105 **§61-23A-22. Humane Slaughter**

106  
107 22.1. Fish, before being cut, must be rendered insensible to pain by a single blow, or by  
108 electrical, chemical, temperature or other means that is safe, rapid and effective; or

109 22.2. By slaughtering in accordance with any method of humane slaughter approved by  
110 the United States department of agriculture; or

111 22.3. By slaughtering in accordance with any method of humane slaughter approved by  
112 the commissioner.



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WEST VIRGINIA LEGISLATURE  
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

State Capitol - Room MB-49  
Charleston, West Virginia 25305  
(304) 347-4840

Senator: Mike Ross, Co-Chairman  
Delegate: Mark Hunt, Co-Chairman  
Counsel: Debra A. Graham

Joseph A. Altizer, Associate Counsel  
Rita Pauley, Associate Counsel  
Audrey R. Ross, Admin. Assistant

November 5, 1997

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register  
  
TO: Mr. John Liggett, Ast. Director  
of Regulatory Protection  
Department of Agriculture  
1900 Kanawha Boulevard, E  
Charleston, WV 25303-0170  
  
FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: *Fish Processing Rules (61CSR23A)*

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
  - (a) as originally filed \_\_\_\_\_
  - (b) as modified by the agency   X
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. \_\_\_\_\_
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. \_\_\_\_\_
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. \_\_\_\_\_
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. \_\_\_\_\_

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.