

**WEST VIRGINIA
SECRETARY OF STATE**

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

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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 West Virginia Code Chapter 19 Article 29 Section 4

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

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

TITLE OF RULE BEING PROPOSED: West Virginia Fish Processing Rules

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

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Title 61
Legislative Rule
West Virginia Department of Agriculture

Series 23A
West Virginia Fish Processing Rules

§61-23A-1 General

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

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

1.3 Filing Date -

1.4 Effective Date -

1.5 This is a new legislative rule

§61-23A-2 Incorporated by Reference

2.1 The following documents are adopted in their entirety:

2.1.a. 21 CFR parts 123 and 1240.60;

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

2.1.c. The U. S. Food and Drug Administration "National Shellfish Sanitation Program Manual of Operations Part II Sanitation of the Harvesting, Processing and Distribution of Shellfish"; and

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

§61-23A-3 Definitions

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

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

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

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

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

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

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

3.8 "Sanitary Zone" means a separation of operations by location, partition, air flow, or enclosed systems.

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

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

3.11 "Smoked fish" means fish that is prepared by treating it with salt(sodium chloride) and then subjecting it to the direct action of smoke from burning wood, sawdust or similar material.

3.12 "Vacuum-packaged" means the food-packaging technique in which air in a package is removed before sealing.

3.13 "Water-phase salt content" means the percent salt(sodium chloride) in the finished product as determined by the method of analysis for water-phase salt content on the "Official

Methods of Analysis of the Association of Official Analytical Chemists," 15th ed.(1990)

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

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

§61-23A-4 Powers and Duties of the Commissioner

4.1 The commissioner has the power and authority to:

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

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

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

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

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

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

4.1.d.2. Infected with a human pathogen that

could present a public health safety hazard.

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

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

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

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.

4.2 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;

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

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

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

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

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

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

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

§61-23A-6. Processor Licensing

6.1 All commercial processors in the state of West Virginia shall:

6.1.a. Apply for a fish processing license from the Commissioner;

6.1.b. Submit a HACCP plan to the Commissioner with the request for licensing;

6.1.b.1. After a review if the HACCP plan is considered adequate, the Commissioner may provisionally approve the HACCP plan. Once the processor has successfully completed all other requirements for licensing and has been issued a license, he/she may operate under the provisionally approved HACCP plan. The commissioner will review the actual operation of the HACCP plan, and may require revisions as necessary to protect the health and safety of consumers.

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

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

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

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

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

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

6.2. Before issuing any license required by the provisions of this rule, the Commissioner shall inspect the applicant's establishment and review the HACCP plan and other license application materials. If the Commissioner is satisfied that the establishment is clean and sanitary, properly equipped, has met

the requirements set forth by this rule and all employées are properly trained and have met requirements set forth in this rule, he or she may issue the license.

6.3. Processors are responsible for having potable water supplies retessed and certified by local or state health authorities:

6.3.a. Annually for approved public water supplies;
and

6.3.b. Every six months for private wells.

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

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

§61-23A-7. Current Good Manufacturing Practices

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

§61-23A-8 Buildings and Facilities

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

8.2 All utensils and surfaces of equipment that contact food during processing shall be cleaned and sanitized with effective cleaning and sanitizing preparations at the following intervals:

8.2.a. Cleaned at the end of the days operations;

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

8.2.c. Sanitized before the beginning of the days operations; and

8.2.d. Cleaned and sanitized after any interruption during which food contact surfaces may have become contaminated.

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

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

8.5. Handwash facilities shall be conveniently located to permit use by all employees in fish preparation and processing areas. Handwashing facilities shall be accessible to these employees at all times.

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

§61-23A-9. Equipment

9.1 All plant equipment and utensils must be properly maintained and designed and of such material and workmanship as to be adequately cleaned, sanitized and corrosion resistant. The design, construction, and use of equipment must prevent the contamination of food with lubricants, fuel, metal, fragments, wood fragments, contaminated water, or any other contaminants. All equipment must be installed and maintained as to facilitate the cleaning and sanitizing of the equipment and all adjacent spaces. Surfaces that contact food must be corrosion resistant when in contact with food. Food contact surfaces must be made of nontoxic materials and designed to withstand the environment of their intended purpose and the action of the food, and cleaning

and sanitizing agents. Food contact surfaces must be maintained to protect the food from being contaminated from any source, including unlawful indirect food additives.

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

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

9.4. Each freezer and cold storage compartment used to store and hold food must be fitted with a thermometer or temperature recording device installed to show the temperature accurately within the compartment.

9.5. Instruments and controls used for measuring, regulating, or recording temperatures must be accurate and maintained on a regular schedule, and adequate in number for their designated uses.

9.6. Thermometers or other temperature-measuring devices must have an accuracy of + or - 2° Farenheit and graduations must not exceed 2° Farenheit within a range of 10° Farenheit of the processing temperature. The accuracy of these devices must be maintained.

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

9.8. Each smoking chamber must be equipped with a temperature monitoring device so installed as to accurately indicate at all times the temperature of the air and of the fish within the smoking chamber.

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

§61-23A-10. Product Management

10.1. The evisceration of fish shall be conducted in an

area segregated or separate from other processing operations. The evisceration shall be performed with minimal disturbance of the intestinal tract contents. The fish, including the body cavity, shall be washed thoroughly with a vigorous spray or a continuous water flow system immediately following evisceration.

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

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

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

10.5. Cooked ready-to-eat and smoked fish or fishery products shall be handled only with clean and sanitized hands, gloves or utensils. These products shall be handled with a minimum of manual contact.

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

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

10.8. Fish and fishery products must be protected against contamination including contaminants which may drip, drain, or be drawn into the product before, during and after processing.

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

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

10.11. Each container of cooked ready-to-eat and smoked fishery products shall have an identifying code which shall be legible and permanently marked. This code shall identify the plant where the product was produced and the date the product was packaged.

§61-23A-11. Records

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

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

§61-23A-12. Employees

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

12.2. Effective hair and beard restraints shall be used by employees who process, prepare or handle food to keep exposed hair and beards from food or food contact surfaces.

12.3. No person shall use tobacco, eat, or drink in food receiving, processing, packaging, storage or handling areas.

12.4. Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices during all working periods. Personal cleanliness includes clean clothing.

12.5. Employees shall remove all insecure jewelry, and shall remove from the hands and forearms any jewelry that cannot be properly sanitized.

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

§61-23A-13. Transport

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

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

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

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

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

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

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

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

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

13.5 A written notification of any and all drugs, feed and color additives, pesticides and/or medicated feeds administered

to the fish or fishery product, shall accompany all shipments of human food fish to other producers, wholesalers, retailers and/or processors. The written notification shall include the name, address, and telephone number of the grower; the name and dose of the drug, color additive, feed additive, pesticide or medicated feed; the date administered and the length of required withdraw period; the date of sale; and the lot number of the fish. This notification shall be signed by the grower.

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

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

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

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

§61-23A-14 Laboratory Testing

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

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

§61-23A-15. Prohibited Acts

15.1 It is unlawful to:

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

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

wholesome;

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

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

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

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

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

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

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

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

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

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

Chemical	Action Level
Aldrin plus Dieldrin	0.3 ppm
Chlordane	0.3 ppm
Endrin	0.3 ppm
Heptachlor plus Heptachlor epoxide	0.3 ppm
Chlordecone	0.3 ppm
DDT plus TDE plus DDE	5.0 ppm
Mirex	0.1 ppm

Toxaphene	5.0 ppm
PCB	2.0 ppm
Methyl Mercury	1.0 ppm
Sulfite	100 ppm

15.1.k.b. Table 2 - Action levels for drugs in Fish and Fishery products.

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

15.1.l. Slaughter or process products other than fishery products in a licensed fish processing facility.

§61-23A-16. Penalties

16.1 Civil Penalties

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

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

16.1.c. Nothing in this rule shall be construed as

requiring the Commissioner to assess a civil penalty or to institute an embargo, detainment, quarantine or cease and desist order for violation of this rule when he or she believes that the public interest may best be served by a written notice of violation.

16.2 Criminal Penalties

16.2.1 Any person who violates any provision of this rule is guilty of a misdemeanor, and upon conviction thereof:

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

16.2.1.b. Shall upon each subsequent offense be fined not less than one hundred nor more than one thousand dollars; and

16.2.1.c. May be imprisoned in the county or regional jail not more than six months or both fined and imprisoned.

16.2.2 Magistrates have concurrent jurisdiction with circuit courts to enforce the provisions of this rule.

§61-23A-17. Confidentiality of Trade Secrets

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

§61-23-18. Enforcement Policy

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

18.1.a. A grade of "A" during an inspection will require reinspection at least once three months;

18.1.b. A grade of "B" during an inspection will

require reinspection at least once every two months;

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

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

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

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

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

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



FILED

OCT 11 10 41 AM '94

West Virginia Legislature
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Room M-152, State Capitol
Charleston, West Virginia 25305
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Senator Joe Manchin, III, Co-Chair
Delegate Brian A. Gallagher, Co-Chair

October 4, 1994

Debra A. Graham, Counsel
Marie Nickerson, Admr. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Mr. Robert Morris
Assistant Commissioner
Dept. of Agriculture
State Capitol
Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: West Virginia Fish Processing Rules

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.

cc: John Liggett
Regulatory Protection Division
Barbara Smith