

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

Form #6

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OFFICE OF THE SECRETARY OF STATE

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

AGENCY: West Virginia Department of Agriculture TITLE NUMBER: 61

AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

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

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


West Virginia Fish Processing Rules

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

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

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

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



AUTHORIZED SIGNATURE

TITLE 61  
LEGISLATIVE RULE  
WEST VIRGINIA DEPARTMENT OF AGRICULTURE

SERIES 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. -- W. Va. Code §19-29-1 et seq.

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

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

§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

space

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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.

NO Hyphens

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)

3.1. "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.

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

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

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

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

5.2.a. Identify the potential safety hazards associated with food production at all stages, from growing, harvesting, processing, manufacturing, and distribution, until the point of consumption. It shall assess the likeli-

hood 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:

*3 columns*

Class	Average Finished Product Pounds 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 employees 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 retested and certified by local or state health authorities:

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

6.3.b. Every six (6) 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:

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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° Fahrenheit and graduations must not exceed 2° Fahrenheit within a range of 10° Fahrenheit 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 Level	Action
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

*Both should be lower case for fish and fishery*

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

*Both should be lower case if fish and fishery*

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 (\$500.00) dollars for a first offense and up to five thousand (\$5,000) 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 (10%), 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 (50) nor more than five hundred (\$500.00) dollars;

16.2.1.b. Shall upon each subsequent offense be fined not less than one hundred (\$100.00) nor more than one thousand (\$1,000.00) dollars; and

16.2.1.c. May be imprisoned in the county or regional jail not more than six (6) 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 (2) 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

*Fish \**

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.

*Fish*

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 (2) years from the effective date of this rule to fully comply with all other sections of this rule.

*\* At one time we were thinking of calling this an "Aquaculture Processing License". Since then we settled on "Fish Processing License"*

TITLE 61  
LEGISLATIVE RULE  
WEST VIRGINIA DEPARTMENT OF AGRICULTURE

SERIES 23  
Proposed West Virginia Aquaculture Farm Rules

§61-23-1. General

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

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

1.3 Filing Date - April 5, 1995

1.4 Effective Date - May 1, 1995

1.5 This is a new legislative rule

61-23-2. Definitions

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

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

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

2.4 "Aquaculture water source" means springs, wells, ponds, streams, lakes, rivers, impoundments and/or any other manmade or natural source of

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 - April 5, 1995

1.4 Effective Date - May 1, 1995

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 employees 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 retested 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, unspoil, 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.

Bill-Agriculture, Fish

61-23A

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H. B. 2139

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

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

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

15 Be it enacted by the Legislature of West Virginia:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 And,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 And,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21  
22 NOTE: The purpose of this bill is to authorize the  
23 Commissioner of Agriculture to promulgate legislative rules  
24 relating to West Virginia fish processing rules.

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

SENATE BILL NO. 84

(By Senators Manchin, Anderson, Boley, Grabb and Macnaughtan)

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

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61-23A

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

15 **Be it enacted by the Legislature of West Virginia:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 And,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 And,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21

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

25

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

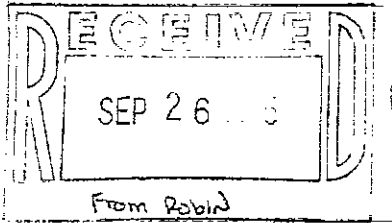
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SECRETARY OF STATE

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(Plus all the volunteer  
help we can get)

TO: Robert G. Morris

AGENCY: Agriculture  
23A

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: September 20, 1995

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

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

SERIES: 61 TITLE: Agriculture  
23A

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

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

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

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

\*\*\*\*\*

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

SIGNED: [Signature]

TITLE OF PERSON SIGNING: Assistant Director of Regulatory Protection Div.

DATE: 10/16/95

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE  
OCT 17 8 42 AM '95  
FILED



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## STATE OF WEST VIRGINIA

### SECRETARY OF STATE

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

March 27, 1995

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

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

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

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

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

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

Thank You  
Administrative Law Division