WEST VIRGINIA CODE: §19-11-9

§19-11-9. Powers and duties of commissioner.

The commissioner has the power and duty to:

(a) Adopt, promulgate and enforce rules to carry out the purpose of this article;

(b) Have access to and enter at all reasonable times all places where milk produced in this state is stored, purchased on the basis of weight or measure or component content, transferred, transported, held or used in the state and have access to all places where samples, records, papers or documents relating to these transactions are kept;

(c) Inspect and photograph all places where milk produced in this state is stored, purchased on the basis of weight or measure or component content, transferred, transported, held or used; inspect, audit and copy records and papers relating to these activities and the sampling, testing and purchase of milk; examine measuring and testing apparatus; examine milk and milk samples and examine equipment used in holding and transporting milk, except that inspections performed under authority of the provisions of article seven, chapter sixteen of this code will not be duplicated;

(d) Examine tanks, holding containers, vehicles, and processing equipment holding or intended to hold milk and collect evidence, including samples, from these areas to establish compliance with this article;

(e) Open any tank or other container containing or believed to contain milk or samples of milk, for the purpose of inspecting and sampling;

(f) Issue permits, certificates, waivers and licenses;

(g) Suspend, revoke or deny permits, licenses or certificates;

(h) Collect fees and expend moneys under the terms of this article;

(i) Give examinations for proficiency in the weighing, sampling and testing of milk;

(j) Issue embargoes for any milk which is or is believed to be adulterated or that is not in compliance with this article and to cause the transportation or distribution of the milk to cease. Nothing in this article may be construed as requiring the commissioner to issue embargoes for minor violations of this article when he or she believes that a written notice will serve the public interest.

(1) When an embargo is issued, the commissioner shall affix to such product or holding container in an appropriate manner a tag or other marking giving warning that such product is under embargo.

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(2) The commissioner shall give written notice to the custodian of the product under embargo describing the violation and stating that the product is prohibited from being transported or distributed and is ordered to be held on the premises. This notice shall notify the custodian of the right to request an immediate hearing under the rules that the commissioner shall adopt.

(3) The commissioner may take action to seize and condemn any product that is not brought into compliance with this article and the rules issued under this article within ninety days of the notice to the custodian of the product.

(4) The commissioner has the authority to issue an embargo against a perishable product, even if the practical result is to bring about the involuntary disposal of the product. The commissioner shall exercise this power using all reasonable means to determine if the product is adulterated or otherwise not in compliance with this article 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 article;

(k) Establish, maintain and make provision for milk testing facilities; approve testing facilities; establish reasonable fees for such tests; and incur such expenses as may be necessary to maintain and operate these facilities;

(l) Conduct all sampling and testing using methods set forth in the fifteenth edition of and supplement to the Official Methods of Analysis of the Association of Official Analytical Chemists, published by the Association of Official Analytical Chemists; or the fifteenth edition of the Standard Methods for the Examination of Dairy Products, published by the American Public Health Association, Inc.; or methods approved by the commissioner;

(m) Obtain from any state court an order directing any person to submit to inspection and sampling subsequent to the refusal of any person to allow inspection and sampling;

(n) Investigate complaints, showing good cause, that the weighing and sampling or the testing of the raw bulk milk is incorrect, inaccurate or performed in a deceitful manner;

(o) Conduct hearings as provided by this article; and

(p) Assess civil penalties and refer violations to a court of competent jurisdiction: Provided, That the commissioner is not required to report for prosecution minor violations of the article when he or she believes that the public interest will be best served by a written notice.

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