WEST VIRGINIA CODE: §19-11B-10

§19-11B-10. 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 frozen desserts or imitation frozen desserts are manufactured, stored, held, transported, distributed or used in the state and where records, papers or documents relating to these transactions are kept;

(c) Inspect and photograph all places where frozen desserts or imitation frozen desserts are manufactured, packaged, stored, held, transported or distributed; inspect, audit and copy records and papers relating to the manufacturing, distribution, sampling, testing and sale of frozen desserts or imitation frozen desserts; examine measuring and testing apparatus; and examine equipment used in manufacturing and transportation of frozen desserts or imitation frozen desserts, except that inspections performed under authority of the provisions of article seven, chapter sixteen of this code will not be duplicated;

(d) Sample frozen desserts or imitation frozen desserts, including, but not limited to, ingredients and packages that are used in the manufacture of these products and may open any package containing or believed to contain any frozen dessert or imitation frozen dessert or an ingredient to be used in the manufacture of a frozen dessert or imitation frozen dessert for the purpose of inspecting and sampling;

(e) Issue, suspend, revoke or deny permits;

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

(g) Collect evidence, including samples, of the condition of equipment, holding tanks, storage rooms and vehicles used, or intended to be used, in the processing, packaging, transporting or holding of frozen desserts or imitation frozen desserts;

(h) Examine the labels and labeling of frozen desserts and imitation frozen desserts;

(i) Issue embargoes for any product which is or is believed to be adulterated, misbranded or that is not in compliance with this article and to cause the manufacturing and distributing of same 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 of violation will serve the public interest.

(1) When an embargo is issued, the commissioner shall affix to such product or manufacturing device 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 or process under embargo describing the violation and stating that the product is prohibited from being sold, offered for sale, exposed for sale or distributed and is ordered to be held on the premises and, further, that all manufacturing processes for this product shall cease until the embargo is released. This notice shall notify the custodian of the right to request an immediate hearing under the rules adopted by the commissioner.

(3) The commissioner shall take action to seize and condemn any product that cannot be brought into compliance with this article and the rules issued under same within ninety days of 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;

(j) Establish, maintain and make provision for frozen dessert and imitation frozen dessert testing facilities; to establish reasonable fees for such tests and to incur such expenses as may be necessary to maintain and operate these facilities;

(k) Approve sampling and testing methods, and evaluate and approve official laboratories;

(l) 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;

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

(n) 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 suitable notice in writing.

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