WEST VIRGINIA CODE CHAPTER 19 ARTICLE 2B

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§19-2B-1. Purpose and construction.

Subject to the provisions of section seven of this article, the basic purpose of this article is to provide for the inspection, labeling and disposition of animals, poultry, carcasses, meat products and poultry products which are to be sold or offered for sale through commercial outlets for human consumption, the licensing of commercial slaughterers, custom slaughterers and processors, and the inspection of slaughterhouses and processing plants located in the State of West Virginia. This article, being intended to protect the health of the citizens of West Virginia, shall be liberally construed.

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§19-2B-1a.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

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§19-2B-2. Definitions.

Unless the context in which used clearly requires a different meaning, as used in this article:

(a) "Department" means the Department of Agriculture of the State of West Virginia;

(b) "Commissioner" means the commissioner of agriculture of the State of West Virginia and duly authorized representatives;

(c) "Person" means any individual, partnership, corporation, association, or other entity;

(d) "Contract veterinarian" means a graduate of a school of veterinary medicine accredited by the American Veterinary Medical Association who provides services for the department under contract;

(e) "Veterinary supervisor" means a graduate of a school of veterinary medicine accredited by the American Veterinary Medical Association, employed by the department and authorized by the commissioner to perform on his or her behalf any inspection and supervisory functions under this article;

(f) "Inspector" means an individual employed by the department and authorized by the commissioner to perform on his or her behalf any inspection functions under this article;

(g) "State inspection" means inspection services conducted by the department at or in connection with establishments required to be licensed by this article;

(h) "W. Va. condemned," or abbreviation thereof, means the animal or poultry so marked has been inspected and found to be in a dying condition, or to be affected with any other condition or disease that would require condemnation of its carcass;

(i) "W. Va. inspected and condemned," or abbreviation thereof, means that the carcass, meat product or poultry product, so marked or so identified, is adulterated and shall be disposed of in the manner prescribed by the commissioner;

(j) "W. Va. retained" means that the carcass, meat product or poultry product or any ingredient used in processing, or any direct or indirect container used for meat products or poultry products so identified is held for further examination by a veterinary supervisor or contract veterinarian to determine its disposal;

(k) "W. Va. suspect" means that the animal or poultry so marked and identified is suspected of being affected with a disease or condition which may require its condemnation, in whole or in part, when slaughtered, and is subject to further examination by a contract veterinarian or veterinary supervisor to determine its disposal;

(l) "W. Va. inspected and passed," or abbreviation thereof, means that the carcass, meat product or poultry product so marked or so identified, was at the time it was so marked or so

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identified found to be wholesome;

(m) "Country" when used in the name of a meat product or poultry product means that such meat product or poultry product was actually prepared on a farm;

(n) "Federal inspection" means the meat and poultry inspection service conducted by the food safety and inspection service of the United States Department of Agriculture;

(o) "Federal Meat Inspection Act" means the act so entitled, approved March 4, 1907, as amended by the Wholesome Meat Act;

(p) "Federal Poultry Products Inspection Act" means the act of Congress approved August 28,1957, as amended;

(q) "Inspection legend" means a mark or a statement on a carcass, meat product or poultry product indicating the same has been inspected and passed in this state under the provisions of this article;

(r) "Label" means a display of written, printed or graphic matter on a container indicating the carcass, meat product or poultry product contained therein has been inspected and passed in this state under the provisions of this article;

(s) "Official inspection mark" means any symbol prescribed by the commissioner for the purpose of identifying the inspection status of any meat product or poultry product so inspected;

(t) "Establishment number" means an official number assigned by the commissioner to each establishment and included on the inspection legend and label to identify all inspected and passed carcasses, meat product or poultry product handled in that establishment;

(u) "Container" and "package" shall include, but not be limited to, any box, can, tin, cloth, plastic or any other receptacle, wrapper or cover;

(v) "Sell" means offer for sale, expose for sale, have in possession for sale, exchange, barter or trade;

(w) "Animals" mean cattle, swine, sheep and goats;

(x) "Carcass" means all or any part of a slaughtered animal or poultry, including viscera, which is capable of being used for human consumption;

(y) "Meat" means the edible part of the muscle of animals which is skeletal or which is found in the tongue, in the diaphragm, in the heart or in the esophagus, with or without the accompanying or overlying fat, and the portions of bone, skin, sinew nerve and blood vessels which normally accompany the muscle tissue and which are not separated from it in the process of dressing; it does not include the muscle found in the lips, snout or ears;

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(z) "Meat food product" means any article of food for human consumption or any article which enters into the composition of food for human consumption, which is derived or prepared in whole or in part from any portion of any animal except organotherapeutic substances, meat juices, meat extract and the like which are only for medicinal purposes and are advertised only to the medical profession; any edible part of the carcass which has been manufactured, cured, smoked, processed or otherwise treated shall be considered a meat food product;

(aa) "Meat by-product" means any edible part of an animal or poultry other than meat or meat food product;

(bb) "Meat product" means any meat, meat food product, and meat by-product capable of use as human food;

(cc) "Poultry" means any domesticated bird which is used or intended to be used for human consumption;

(dd) "Poultry meat" means the carcass or parts of such carcass of any poultry;

(ee) "Poultry food product" means any product of poultry, other than eggs, capable of use as human food which is made wholly or in part from any poultry meat or other portion of the carcass of poultry;

(ff) "Poultry by-product" means any part or parts of poultry, other than eggs, capable of use as human food, other than poultry carcass which have been derived from one or more birds;

(gg) "Poultry product" means any poultry meat, poultry food product, and poultry by-product capable of use as human food;

(hh) "Process" means to cut up, bone, chop, mix, grind, slice, cook, smoke, cure, salt, marinate, dry, can, or otherwise manufacture, or package any meat product or poultry product;

(ii) "Denature" means the uniform application of sufficient quantities of crude carbolic acid, cresylic disinfectant, or any other agent approved by the commissioner upon and into the freely slashed flesh of any carcass or product condemned;

(jj) "Decharacterization" means the uniform application of sufficient quantities of dye, charcoal, malodorous fish oil, or any other agent approved by the commissioner, upon and into the freely slashed flesh of carcasses or meat not being rendered, so as to unequivocally preclude its use for human food;

(kk) "Inedible" means the carcass, meat product or poultry product derived from 4-D or condemned animals or poultry, or meat products or poultry products which have deteriorated or are otherwise unfit for human consumption;

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(ll) "4-D animal or 4-D poultry" means an animal or poultry that is dead, dying, down or diseased on arrival at the slaughterhouse;

(mm) "Commercial slaughterer" means a person engaged for profit in this state in the business of slaughtering animals or poultry for human consumption which are to be sold or offered for sale through a commercial outlet or establishment, and shall include a person who in addition to such commercial slaughtering also engages in the business of a custom slaughterer;

(nn) "Custom slaughterer" means a person engaged for profit in this state in the business of slaughtering animals or poultry for human consumption which are not to be sold or offered for sale through a commercial outlet, commercial establishment, distributor, or to an individual, and shall include the boning or cutting up of carcasses of such animals or poultry and the grinding, chopping and mixing of the carcasses thereof;

(oo) "Slaughterhouse" shall include, but not be limited to, all buildings, structures and facilities used in the slaughtering of animals or poultry for human consumption;

(pp) "Distributor" means a person engaged for profit in this state in the business where carcasses, meat products or poultry products are received from state inspected establishments, or establishments inspected by the United States Department of Agriculture and who stores and distributes to commercial outlets, processors or individuals and who conducts no processing;

(qq) "Processor" means a person who engages for profit in this state in the business of processing carcasses, meat products or poultry products for human consumption;

(rr) "Commercial processor" means a processor for commercial outlets or distributors and shall include the business of custom processing;

(ss) "Custom processor" means a processor in which the carcass, meat products or poultry products derived through processing cannot be sold or offered for sale through a commercial outlet, commercial establishment, distributor, or to an individual;

(tt) "Processing plant" shall include, but not be limited to, all buildings, structures, chill rooms, aging rooms, processing rooms, sanitary facilities, other facilities, and utensils, used by or in connection with the operations of a processor;

(uu) "Establishment" means any slaughterhouse, processing plant or distributor in this state;

(vv) "Related industries" means rendering plants, refrigerated meat warehouses, food lockers, meat and poultry wholesalers, brokers, pet food manufacturers, other animal food manufacturers, animal impoundments whose main source of food supply is derived from the raw meats, transportation firms and private carriers;

(ww) "Commercial outlet" means a place of business in this state and shall include all retail

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stores and public eating places in which carcasses, meat products or poultry products are stored, sold or offered for sale for human consumption by the purchaser or other individual consumers;

(xx) "Commercial dealer" means any person who operates one or more commercial outlets and who sells or offers for sale thereat any carcasses, meat products or poultry products for human consumption, and who does not can, cook, cure, dry, smoke or render any carcass, meat products or poultry products at such outlets and who conducts no slaughtering or preparing of carcasses, meat products or poultry products at such outlets other than boning or cutting up of carcasses, and other than grinding, chopping and mixing operations at such outlets with respect to trim or meat derived only from such boning or cutting up operations;

(yy) "Custom slaughtered carcass, meat or poultry" or "custom processed meat products or poultry products" mean, respectively, carcasses, meat products or poultry products which were slaughtered, or processed by a custom slaughterer;

(zz) "Wholesome" means sound, healthful, clean, and otherwise fit for human consumption;

(aaa) "Adulterated" means and shall apply to any carcass, part thereof, meat product or poultry product under one or more of the following circumstances:

(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such carcass, meat product or poultry product shall not be considered adulterated under this clause if the quantity of such substance in or on such carcass, meat product or poultry product does not ordinarily render it injurious to health;

(2) (A) If it bears or contains (by reason of administration of any substance to the live animal or poultry or otherwise) any added poisonous or added deleterious substance (other than one which is a pesticide chemical in or on a raw agricultural commodity; a food additive; or a color additive) which may, in the judgment of the commissioner make such carcass, meat product or poultry product unfit for human food;

(B) If it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of the federal Food, Drug and Cosmetic Act;

(C) If it bears or contains any food additive which is unsafe within the meaning of the federal Food, Drug and Cosmetic Act;

(D) If it bears or contains any color additive which is unsafe within the meaning of the federal Food, Drug and Cosmetic Act: Provided, That a carcass, meat product or poultry product which is not adulterated under paragraph (B), (C) or (D) of this subsection, shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive in or on such carcass, meat product or poultry product is prohibited by rules in

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establishments at which inspection is maintained;

(3) If it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;

(4) If it has been processed, packed, or held under insanitary conditions whereby it may have become contaminated with filth or pathogenic microorganisms, or whereby it may have been rendered injurious to health;

(5) If it is, in whole or in part, the product of an animal or poultry which has died otherwise than by slaughter;

(6) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(7) If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to the federal Food, Drug and Cosmetic Act;

(8) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is;

(bbb) "Antemortem" means before death;

(ccc) "Postmortem" means after death;

(ddd) "Reinspection" means inspection of the processing of carcass, meat products and poultry products, as well as a reexamination of products previously inspected;

(eee) "Licensee" means any person licensed under the provisions of this article;

(fff) "Misbranded" applies to any carcass, meat product or poultry product under one or more of the following circumstances:

(1) If its labeling is false or misleading in any particular;

(2) If it is offered for sale under the name of another meat product or poultry product;

(3) If it is an imitation of another meat product or poultry product; unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately thereafter, the name of the meat product or poultry product imitated;

(4) If its container is made, formed or filled as to be misleading;

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(5) Unless it bears a label showing: (A) The name and place of business of the establishment; and (B) an accurate statement of the quantity of the contents in terms of weight, measure or numerical count;

(6) If any word, statement or other information required by or under authority of this article to appear on the label or other labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(7) If it purports to be or is represented as a meat product or poultry product for which a definition and standard of identity or composition has been prescribed by rules promulgated by the commissioner unless: (A) It conforms to such definition and standards; and (B) its label bears the name of the meat product or poultry product specified in the definition and standard of identity and the common names of optional ingredients (other than spices, flavoring and coloring) present in such products;

(8) If it is not subject to the provisions of subsection (7), unless its label bears: (A) The common or usual name of the meat product or poultry product, if any there be, and (B) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings and colorings may be designated as such without naming each;

(9) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral and other dietary properties as the commissioner determines to be necessary in order fully to inform purchasers as to its value for such uses;

(10) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; or

(11) If it fails to bear, directly thereon or on its container, as the commissioner may by rules prescribe, the inspection legend and, unrestricted by any of the foregoing, such other information as the commissioner may require in such rules to assure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the meat product or poultry product in a wholesome condition.

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§19-2B-3. Commissioner to enforce article; rules; cooperation with federal agencies, etc.

(a) The commissioner shall administer and enforce the provisions of this article and for this purpose is hereby authorized and empowered to promulgate reasonable rules and to employ or contract with such persons as may be appropriate. All rules shall be promulgated in accordance with the provisions of chapter twenty-nine-a of this code. Such rules shall, insofar as practicable, be in conformity with the rules and regulations issued under the federal Meat Inspection Act and the federal Poultry Products Inspection Act.

(b) The commissioner is hereby authorized and empowered to cooperate with the federal government and any agencies, departments and instrumentalities thereof, the State of West Virginia and any agencies, departments or political subdivisions thereof, and any other state or commonwealth and any agencies, departments or political subdivisions thereof, in order to carry out the effective administration of this article.

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§19-2B-4. License required for commercial slaughterer, custom slaughterer, commercial processor, custom processor or distributor; application for license; fees; refusal, revocation or suspension; suspension of inspection; establishment number or numbers.

(a) No commercial slaughterer, custom slaughterer, commercial processor, custom processor or distributor shall operate an establishment unless he or she shall first have obtained a license from the commissioner, which license remains unsuspended and unrevoked. Application for such license shall be made on forms prescribed by the commissioner and shall be accompanied by the fee required in this section.

When such a person operates as a commercial slaughterer and also operates as a commercial processor, whether such operations are located on the same or different premises in this state, each such operation shall be licensed. When such a person operates two or more slaughterhouses not on the same premises in this state, or operates two or more processing plants not on the same premises in this state, a separate license shall be required for each such slaughterhouse and each such processing plant. Each license shall expire on June 30 next following its issuance, and the annual fee for each such license shall be based upon the average number of animals slaughtered per year and upon the average finished product poundage processed per year, as set forth in the following table, except that the annual fee for the license of a person who operates solely as a custom slaughterer shall be $10 or as a custom processor shall be $5 or as a distributor shall be $5.

Average Number of Animals Annual

Class Slaughtered Per Year Fee

Small 1-500 $10.00

Medium 501-1000 $25.00

Large 1001-5000 $50.00

Extra Large Over 5000 $75.00

Average Finished Product Annual

Class Poundage Processed Per Year Fee

Small 1-25,000 $10.00

Medium 25,001-250,000 $25.00

Large 250,001-1,000,000 $50.00

Extra Large Over 1,000,000 $75.00

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Before issuing any license required by the provisions of this section, the commissioner shall inspect the applicant's establishment and if the commissioner is satisfied that the establishment is clean and sanitary, is properly equipped, and is in conformity with the provisions of this article and any reasonable rules promulgated by the commissioner, and if he or she is further satisfied that the carcasses, meat products or poultry products to be sold or offered for sale therefrom through commercial outlets will be wholesome and unadulterated, he or she shall issue the license. Each license shall specify the location of the establishment at which the licensee shall carry on his or her operations. The license shall also contain the establishment number assigned by the commissioner.

(b) When a licensee changes the location of his or her establishment, he or she shall not operate at such new location unless and until his or her establishment at such new location has been inspected by the commissioner and a new license has been issued, or when a licensee leases, sells, changes name, incorporates or in any other way changes the status of his or her establishment with relationship to issuance of current license, the new lessee, owner, etc., shall not operate at the location unless and until the establishment at such location has been inspected and approved by the commissioner and a new license has been issued in accordance with the provisions of subsection (a) of this section: Provided, That a fee shall not be charged for such new license during the license year in which the change in location or change in ownership, name or leasing was made.

(c) The commissioner may refuse to grant a license or may suspend or revoke a license issued under the provisions of this section whenever he or she finds that the applicant's or licensee's establishment, as the case may be, is not clean or sanitary, or is not properly equipped, or is not in conformity with the provisions of this article or any reasonable rules promulgated by the commissioner, or if he or she finds that the carcasses, meat products or poultry products to be sold or offered for sale therefrom through commercial outlets are or will be adulterated.

Upon the refusal to grant a license, the commissioner shall furnish a written statement to the applicant specifying the grounds for such refusal. No such revocation or suspension of a license shall be effective until the licensee has received written notice thereof, which notice shall specify the grounds for such revocation or suspension.

Whenever there is sufficient cause for the revocation or suspension of a license as hereinabove specified, the commissioner may in lieu of such revocation or suspension, suspend inspections at the establishment. Immediately upon suspension of such inspections the commissioner shall give the licensee written notice thereof, and such notice shall contain a recitation of the deficiencies which must be fully and completely corrected before inspections shall be resumed.

Upon receipt of a written statement advising that a license has been refused or upon receipt of a written notice of the revocation or suspension of a license, or upon the suspension of inspections at the licensee's establishment, the applicant or licensee, as the case may be, may, in writing, demand a hearing. The commissioner shall hold such a hearing within ten

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days after receipt of such written demand, in accordance with the provisions of section nine of this article.

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§19-2B-5. Access to establishments, records, etc.

The commissioner may at any time enter upon and inspect any establishment, place, premises or conveyance, either private or public, where animals or poultry are slaughtered or carcasses, meat products or poultry products are processed, handled, stored, transported, distributed, sold or offered for sale, for the purpose of examining such animals or poultry, carcasses, meat products or poultry products. Any person engaged in the business of operating an establishment shall maintain such records as the commissioner may require directly pertaining to the movement, storage and distribution or other disposition of animals or poultry, carcasses, meat products and poultry products, and such records shall be open to inspection by the commissioner at any time during the normal working hours at such establishment.

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§19-2B-6. Inspection, marking, labeling, branding, etc.; quarantine; segregation; scheduling of operations; disposition of carcasses, etc.; reinspection; health examination; rejection tags.

(a) The commissioner shall provide antemortem and postmortem inspection of all animals and poultry which are to be sold or offered for sale through a commercial outlet, establishment or distributor.

(b) The commissioner shall provide reinspection of carcasses, meat products and poultry products during further processing which have previously been inspected.

(c) All inspections under the provisions of this article shall be performed in accordance with reasonable rules promulgated by the commissioner.

(d) The commissioner shall inspect all establishments under state inspection to make certain that they are operating in accordance with the provisions of this article and all reasonable rules promulgated by the commissioner.

(e) When one inspector is assigned to make inspections at two or more establishments where few animals or poultry are slaughtered, or where small quantities of carcasses, meat products or poultry products are processed, or where the operations at such establishments are sporadic, and such establishments in any of such cases are in reasonable close proximity to one another, the commissioner, giving full consideration to the convenience of the licensees of such establishments and considering the available inspection work force, may by written notice to such licensees specify a reasonable schedule for such operations: Provided, That the commissioner may not require operations other than during normal working hours.

(f) Every conveyance used by any establishment under state inspection, and, notwithstanding the provisions of section seven of this article, every conveyance used by any slaughterhouse, processing plant or distributor inspected by the United States Department of Agriculture, for the transportation of carcasses, meat products or poultry products shall be maintained in a clean and sanitary condition and may be inspected in accordance with the provisions of this article and reasonable rules promulgated by the commissioner.

(g) The commissioner shall require such quarantine and segregation of animals or poultry, carcasses, meat products or poultry products in establishments as is deemed necessary to effectuate the provisions of this article.

(h) The head, tongue, tail, thymus glands, viscera, blood and other parts of any slaughtered animal shall be retained in such a manner as to preserve their identity until after the postmortem inspection has been completed.

(i) Each licensee shall pay for such devices for the affixing of marks, brands, or stamps and for such labels as may be prescribed for his or her establishment by the commissioner. Such devices and labels shall be under the exclusive control and supervision of the commissioner.

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The label used by any licensee shall be of the form and size prescribed by reasonable rules promulgated by the commissioner.

(j) Each animal carcass that has been inspected and passed in this state by the commissioner shall be marked at the time of inspection with the inspection legend. Any animal or poultry carcass which is not passed shall be marked conspicuously by the commissioner at the time of inspection in the following manner: "W. Va. inspected and condemned," or any abbreviation thereof.

(k) Each primal part of an animal carcass that has been inspected and passed shall be marked with the inspection legend, and each liver, beef heart and beef tongue that has been inspected and passed shall be branded with the inspection legend at the time of final inspection. Meat that has been boned out, cut from primal parts or otherwise changed so that the inspection legend is no longer plainly visible, and meat products and poultry products that are too small to be marked with the inspection legend shall be packed in closed containers to which shall be affixed the label indicating that the meat products or poultry products contained therein have been inspected and passed. Upon removal of the contents of such containers bearing such label, the label shall be defaced to prevent its reuse.

(l) All carcasses, and meat products which have been derived from an animal slaughtered by a custom slaughterer or processed by a custom slaughterer or custom processor shall be marked "W. Va. custom slaughtered" in letters not less than three eighths of an inch in height.

(m) Each official inspection mark shall contain the establishment number of the establishment involved, unless otherwise authorized by rules promulgated by the commissioner.

(n) The commissioner is hereby authorized and empowered to seize and destroy: (1) Any animal or poultry to be slaughtered in this state and thereafter sold or offered for sale through a commercial outlet or distributor which cannot be made fit for human consumption; (2) any animal or poultry, carcass, meat product or poultry product slaughtered or processed in this state in violation of the provisions of this article or any reasonable rules promulgated by the commissioner; (3) any carcass, meat product or poultry product that does not bear an inspection legend or label provided for by this article or which has not been inspected and passed under inspection provided by the United States Department of Agriculture and which is intended to be sold or offered for sale through a commercial outlet or distributor; and (4) any animal or poultry, carcass, meat product or poultry product which is adulterated.

Where appropriate, the commissioner may, in lieu of destruction as aforesaid, denature, decharacterize, mutilate or slash any carcass, meat product or poultry product intended to be sold or offered for sale through a commercial outlet or distributor. The commissioner is also authorized and empowered to seize and retain under a retained tag any animal or

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poultry, carcass, meat product or poultry product until the commissioner determines to destroy, denature, decharacterize, mutilate, slash or release the same. Whenever the commissioner is authorized or empowered to take any of the actions specified in this subsection, he or she may order and direct the person having custody or possession of such animal or poultry, carcass, meat product or poultry product, or the licensee of the establishment in which it is found, to be responsible for the disposition thereof, as well as any necessary storage, handling or other incidentals related thereto. Such disposition shall be carried out only under the direction and supervision of the commissioner.

(o) Whenever practicable, the commissioner shall forego the actions authorized in the immediately preceding subsection and permit reprocessing if such reprocessing will correct or eliminate the conditions which would have justified any of such actions. Any such reprocessing in this state shall be under the supervision of the commissioner.

(p) Whenever the commissioner has good cause to believe that any carcass, meat product or poultry product whether fresh, frozen, or processed, and which is intended to be sold or offered for sale through a commercial outlet or distributor, may be adulterated or otherwise injurious to health, he or she may inspect or reinspect the same under the provisions of this article and any reasonable rules promulgated by him or her, even though such carcass, meat product or poultry product may have been previously inspected and passed.

(q) No licensee shall employ in any establishment any person who has any communicable disease or infected wounds or who is a carrier of any communicable disease. To enforce the provisions of this subsection, the commissioner may require any employee or prospective employee to submit to a health examination by a physician and furnish to the commissioner a certificate from such physician concerning his or her findings. The cost of conducting such examination and furnishing such certificate shall be borne by the licensee concerned.

(r) Whenever the commissioner inspects any room, compartment, equipment or utensil in any establishment subject to state inspection and finds the same not to be clean and sanitary or finds the same to be otherwise unsuitable for the slaughtering or processing operations carried on in such establishment, he or she shall affix thereto a rejection tag or rejection notice. No such rejected room, compartment, equipment or utensil shall be used until the deficiencies requiring such rejection shall have been fully and completely corrected and the rejection tag or rejection notice has been removed. No person other than the commissioner shall remove any such rejection tag or notice.

(s) When any animal or poultry, carcass, meat product or poultry product has been inspected hereunder, the appropriate official inspection mark shall be affixed thereto, and no person shall remove the same unless authorized so to do by the commissioner.

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§19-2B-7. Exclusion of slaughterhouses and processing plants under the supervision of or approved by the United States Department of Agriculture.

The provisions of this article shall not apply to any slaughterhouse or processing plant operating under the federal Meat Inspection Act or the federal Poultry Products Inspection Act, or approved by the United States Department of Agriculture.

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§19-2B-8. Exemptions.

(a) In order to accomplish the objectives of this article, the commissioner may by reasonable rules exempt from inspection:

(1) Any commercial dealer, provided all carcasses, meat products or poultry products sold or offered for sale by such dealer were slaughtered and/or processed in commercial establishments under state inspection or have been inspected and passed by the United States Department of Agriculture and shall be identified, labeled and sold in normal retail quantities as prescribed by reasonable rules promulgated by the commissioner;

(2) The slaughtering by any person of animals of his or her own raising, and the preparation by him or her of the carcasses, meat products or poultry products of such animals exclusively for use by him or her and members of his or her household and his or her nonpaying guests and employees; or custom slaughtered animals, by a custom slaughterer, delivered by the owner thereof for such slaughter and the preparation by such slaughterer or custom processor of the carcasses, meat products or poultry products of such animals, exclusively for use, in the household of such owner, by him or her and members of his or her household and his or her nonpaying guests and employees: Provided, That the custom slaughterer or custom processor is not handling adulterated carcasses, meat products and poultry products; maintains identity of carcasses, meat products and poultry products; and maintains acceptable sanitation and operational controls as prescribed by reasonable rules promulgated by the commissioner;

(3) Antemortem and postmortem inspection of a licensed custom slaughterer;

(4) Any other operations which the commissioner may determine would best be exempted to further the purposes of this article, to the extent such exemptions conform to the federal Meat Inspection Act and the federal Poultry Products Inspection Act as amended from time to time and the regulations thereunder.

(b) Any institution operated by the state requiring inspection under this article shall be exempt from the licensing fee as required by section four of said article.

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§19-2B-9. Hearings; judicial review.

(a) When any person is entitled to a hearing before the commissioner as authorized in this article, the commissioner shall hold such hearing and all of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern such hearing and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of said article five were set forth in extenso in this subsection, except that the hearing shall be held in the county in which the establishment involved is located, or in which the affected person resides or has his or her principal place of business, or in Kanawha county, West Virginia, at the election of the commissioner. Any such hearing shall be held within the time limits hereinbefore specified in this article, unless there is a postponement or a continuance for good cause shown.

(b) For the purpose of any such hearing, the commissioner shall have the power and authority to issue subpoenas and subpoenas duces tecum, in accordance with the provisions of section one, article five, chapter twenty-nine-a of this code. All subpoenas and subpoenas duces tecum shall be issued and served within the time and for the fees and shall be enforced, as specified in section one, article five of said chapter twenty-nine-a, and all of the said section one provisions dealing with subpoenas and subpoenas duces tecum shall apply to subpoenas and subpoenas duces tecum issued for the purpose of a hearing hereunder. At any such hearing, the person who demanded the same may represent or be represented by an attorney-at-law admitted to practice before any circuit court of this state.

(c) After such hearing and consideration of all the testimony, evidence and record in the case, the commissioner shall make and enter an order deciding the matter in question. Such order shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such order and accompanying findings and conclusions shall be served upon all the parties and their attorneys of record, if any, in person or by registered or certified mail. The commissioner shall also cause a notice to be served with a copy of such order, which notice shall advise the parties of their right to judicial review, in accordance with the provisions of subsection (d) of this section. The order of the commissioner shall be final unless vacated or modified upon judicial review thereof in accordance with the provisions of subsection (d) of this section.

(d) Any party adversely affected by a final order made and entered by the commissioner after such hearing, held in accordance with the provisions of subsections (a) through (c) of this section, is entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such review with like effect as if the provisions of said section four were set forth in extenso in this subsection, except that the petition shall be filed in the circuit court of the county in which the hearing before the commissioner was held.

(e) The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the Supreme Court of Appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

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§19-2B-10. Additional prohibitions.

In addition to any other prohibitions contained in this article, it shall be unlawful:

(a) For any person to operate any establishment under state inspection which is not clean and sanitary;

(b) To slaughter any adulterated animal or poultry intended to be sold or offered for sale through a commercial outlet or distributor;

(c) To sell or offer for sale through a commercial outlet or distributor any carcass, meat product or poultry product for human consumption which is adulterated;

(d) To slaughter for human consumption any animal or poultry tagged or permanently identified as "W.Va. condemned," or abbreviation thereof;

(e) To process, sell or offer for sale for human consumption any carcass, meat product or poultry product which is mislabeled with intent to deceive or which is marked "W.Va. inspected and condemned," or abbreviation thereof;

(f) To process in an establishment under state inspection for sale through any commercial outlet or distributor any carcass, meat product or poultry product intended for human consumption and derived, in whole or in part, from any calf, pig, kid, lamb, chicken or turkey which is so immature as to be lacking in nutritional value;

(g) To knowingly or intentionally expose any carcass, meat product and poultry product in any establishment under state inspection to insects, live animals or any contamination;

(h) To add kangaroo meat, horse meat, mule meat or other equine meat to any animal meat, meat product or poultry product to be sold or offered for sale through commercial outlets or distributors for human consumption;

(i) To remove any hide, skin or any other part of an unborn or stillborn animal in the confines of a room in an establishment where any animals or poultry, carcasses, meat products or poultry products are slaughtered or processed, as the case may be, or to be sold or offered for sale through a commercial outlet or distributor;

(j) To process for human consumption in any establishment subject to state inspection any carcass, meat product and poultry product derived from any animal or poultry which died other than by slaughter;

(k) To transport to any commercial outlet or distributor for the purpose of being sold or offered for sale therein, any carcass, meat product or poultry product which is not marked, branded or stamped as having been inspected and passed by the commissioner or by the United States Department of Agriculture;

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(l) For any commercial outlet or distributor to receive, for the purpose of being sold or offered for sale therein, any carcass, meat product or poultry product which is not marked, branded or stamped as having been inspected and passed by the commissioner or by the United States Department of Agriculture;

(m) To slaughter any horse, mule or other equine in any establishment under state inspection in which animals or poultry are slaughtered for human consumption for the purpose of being sold or offered for sale through commercial outlets;

(n) To bring any kangaroo meat, horse meat, mule meat or other equine meat into any establishment under state inspection where animal or poultry carcasses, meat products or poultry products are processed for human consumption for the purpose of being sold or offered for sale through commercial outlets;

(o) To transport, process, sell or offer for sale any kangaroo meat, horse meat, mule meat or other equine meat within this state for human consumption unless it is conspicuously and plainly identified or stamped as such;

(p) For any person to use an establishment number not assigned to him or her or to use an establishment number in connection with operations concerning which a different establishment number was assigned by the commissioner;

(q) To remove from any article any retained tag affixed by the commissioner, unless such removal is authorized by him or her;

(r) To remove from any room, compartment, equipment or utensil any rejection tag or rejection notice affixed by the commissioner, unless such removal is authorized by him or her;

(s) For a licensee to use any container bearing an official inspection mark unless it contains the exact carcass, meat product or poultry product which was in the container at the time such contents were inspected and passed: Provided, That such a container may be otherwise used if such official inspection mark thereon is removed, obliterated or destroyed, and such other use is authorized by reasonable rules promulgated by the commissioner;

(t) For any person, other than the commissioner, to possess, keep or use, except as authorized by the commissioner, any label or device for the affixing of a mark, brand or stamp prescribed for inspection purposes hereunder;

(u) For any person, with intent to deceive, to possess, keep or use any label, mark, brand or stamp similar in character or import to an official label, mark, brand or stamp prescribed by the commissioner hereunder or to an official label, mark, brand or stamp used by the United States Department of Agriculture;

(v) To falsely make, falsely issue, falsely publish, alter, forge, simulate or counterfeit any inspection certificate, memorandum, label, mark, brand, or stamp, or device for making an

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inspection mark, brand or stamp, or to possess, keep or use the same, with intent to deceive;

(w) For any person to refuse to permit the commissioner to enter and inspect at any time, upon presentation of appropriate credentials, an establishment under state inspection, or to interfere with any such lawful entry or inspection;

(x) For any person to refuse to permit the commissioner, upon presentation of appropriate credentials, to examine and copy the records described in section five of this article;

(y) For a person to prevent or fail to decharacterize or denature carcasses, meat products or poultry products as prescribed by reasonable rules promulgated by the commissioner;

(z) For a person to transport offal, blood, or inedible and condemned parts of animal and poultry carcasses from slaughterhouses, processing plants or other related industries: Provided, That such products may be transported if placed in suitable containers with tight covers, or watertight tanks so as not to contaminate the public highways or private roadways while going to or from the points of pickup;

(aa) For a person to store offal, blood, or inedible and condemned parts of animal and poultry carcasses from slaughterhouses, processing plants or other related industries during interim transit movement in refrigerated warehouses, food lockers or other related industries: Provided, That such products may be otherwise stored if properly marked "NOT FOR HUMAN FOOD" "FOR ANIMAL FOOD ONLY" and identified as approved products to be used for animal food;

(bb) For a person knowingly to deliver a dead or dying animal or poultry to an establishment in this state;

(cc) For any person to transport carcasses, meat products and poultry products that are intended for human consumption in a manner which would permit the products to become adulterated;

(dd) For any person to forcibly assault, resist, oppose, impede, intimidate or interfere with the commissioner or his or her representative while engaged in or on account of the performances of his or her official duties;

(ee) For any person to deliver, with intent to deceive, any graded meat product, poultry product or any other agricultural commodity to a state institution that does not meet the grade specifications for that grade when a specified grade is required in a contract;

(ff) To sell any meat product or poultry product for which the processor's expiration date has expired;

(gg) To alter, change or cover-up the expiration date of any meat product or poultry product established by the processor.

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In addition to any other powers conveyed in this article, the commissioner may inspect any meat product, poultry product or any other agricultural commodity sold to a state institution to enforce the provisions of this subdivision.

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§19-2B-11. Criminal penalties; civil penalties.

(a) Criminal penalties.

(1) Any person who violates any of the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall for the first offense be fined not less than two hundred nor more than $1,000 and upon conviction of each subsequent offense shall be fined not less than $400 nor more than $2,000.

(2) If a person knowingly sells, offers for sale or distribution, or attempts to sell, offers for sale or distribution of a carcass, meat product or poultry product that is contaminated with pathogenic microorganisms or otherwise adulterated, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $5,000 nor more than $10,000 upon conviction of each offense.

(b) Civil penalties.

(1) Any slaughterer, processor or distributor who violates any of the provisions of this article or regulations adopted hereunder may be assessed a civil penalty by the commissioner. In determining the amount of any civil penalty, the commissioner shall give due consideration to the history of previous violations; the seriousness of the violation, including any hazards to the health and safety of the public; and the demonstrated good faith efforts by the charged party to ensure that similar violations do not recur.

(2) The commissioner may assess a penalty of not more than $500 for a first violation and not more than $1,000 for each subsequent violation.

(3) The civil penalty is payable to the State of West Virginia and may be collected in any manner for collection of debt to the state. If a person assessed a civil penalty pursuant to this subsection neglects or refuses to pay, the amount of that penalty, together with interest calculated at ten percent per annum, may be filed as a lien in favor of the state upon any and all property of the person, both real and personal. The lien shall be recorded in the records kept in the office of the county clerk in the county wherein the violation occurred. The county clerk in the recording county shall enter the same to record without requiring payment of recording fees as a condition precedent to the recording. A notice of the lien shall be mailed or delivered to the person against whose property the lien has been placed. All penalties, together with any interest, collected by the state, pursuant to this subsection, shall be deposited in the General Revenue Fund.

(4) Notwithstanding any other provision of the law to the contrary, the commissioner may enter into consent agreements or negotiated settlement agreements for the civil penalties assessed pursuant to this subsection.

(5) No state court may allow the recovery of damages for administrative action taken by the commissioner if the court finds, as a matter of law, that there was probable cause for such

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action.

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§19-2B-12. Severability.

If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

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