WEST VIRGINIA SECRETARY OF STATE
KRIS WARNER
ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Agriculture

RULE TYPE: Legislative TITLE-SERIES: 61-07A

RULE NAME: Marketing of Eggs Rule

CITE AUTHORITY: §19-10A-10

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Amie J Minor -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 61
LEGISLATIVE RULE
DEPARTMENT OF AGRICULTURE

SERIES 7A
MARKETING OF EGGS RULE

§61-7A-1. General.

1.1. Scope. -- This rule establishes standards for internal and external egg quality, size and weight classifications for shell eggs. The intent of this legislative rule is to protect and promote the public health and general welfare and to prevent fraud and deception in the production, processing, sale and distribution of eggs.

1.2. Authority. -- W. Va. Code §19-10A-10.

1.3. Filing Date. ~~-- April 10, 2000~~.

1.4 -- Effective Date. -- ~~June 1, 2000~~.

1.5. Sunset Date. -- This rule shall terminate and have no further force or effect on August 1, 203~~6~~2.

1.6. Incorporation by Reference. -- The following documents are incorporated in this rule by reference in their entirety.

1.6.1. United States Standards for Quality of Individual Shell Eggs and United States Consumer Grades and Weight Classes for Shell Eggs as provided for origin and destination tolerances.

§61-7A-2. Permits and Inspection Fees.

2.1. The Department shall issue an "Egg Distributor Permit" to every person distributing eggs in West Virginia. Permits shall be issued for each place of operation and are not transferable with respect to persons or locations. An inspection fee will be paid by the distributor or producer first delivering eggs into West Virginia or proof will be provided that the inspection fee has been paid. Certificates are renewable and shall be posted in a conspicuous location in holder's place of business. The Commissioner may revoke or suspend the certificate of any person who fails to comply with the provisions of this rule and shall refuse to issue a certificate to willful violators.

2.2. Application for certificates shall be made on forms supplied by the Commissioner and provide any information that is considered necessary by the Commissioner. Permits shall be applied for at least thirty (30) days prior to the expiration of the current permit or within thirty (30) days of the date that the person intends to engage in business. The certificate shall expire on the thirtieth (30th) day of June following date of issue.

2.3. The annual permit fee of ten dollars ($10.00) shall accompany the application for the certificate. A penalty of ten dollars ($10.00) is added to all certificates that are not applied for or renewed within this time limit.

2.4. The Commissioner shall assess an inspection fee of $0.08 per thirty (30) dozen case to any person processing and/or distributing eggs in West Virginia. The processor or distributor shall submit a quarterly (March, June, September, December) report on forms supplied by the Commissioner. Payment of the inspection fee is due by the fifteenth (15th) day of the following respective quarter. The Commissioner shall assess a penalty of ten percent (10%) on inspection fees which are due and payable but which have not been remitted to the Commissioner within thirty (30) days following the due date. Additionally, the Commissioner shall assess a processor or distributor who is not required to pay inspection fees a ten dollar ($10.00) penalty for reports not received within thirty (30) days following the due date.

§61-7A-3. Exemptions For Small Producers.

3.1. A small producer is any person marketing one hundred fifty (150) dozen of eggs or less per week of his or her own production. Any person marketing one hundred fifty (150) dozen or less per week of his or her own production shall register with the West Virginia Department of Agriculture on forms provided by the Commissioner but is exempt from paying permit or inspection fees as set forth in Section 2 of this rule. Small producers will label their cartons with:

3.1.1. The name and address of the responsible person or business producing and selling the eggs;

3.1.2. The date the eggs are packed; and,

3.1.3. The words "Ungraded Eggs" in print of at least five-eighths (5/8) inch .

3.2. Eggs shall be washed in an acceptable and sanitary method prior to packing.

3.3. All eggs being transported, stored or displayed for sale shall be maintained above freezing at forty five degrees Fahrenheit (45ºF) or less ambient temperature; Provided that, refrigeration is not required for transportation of eggs when the period of transport is less than three (3) hours.

3.4. Small producers are permitted to pack in marked cartons when the distributor's name, address, expiration date, size and grade are marked out and replaced with the labeling required for small producers.

3.5. Cartons shall be clean and free of odor or debris.

3.6. The term "fresh" may only be used when the eggs meet minimum requirements of Grade A or higher according to the standards set forth by the United States Department of Agriculture.

3.7. Eggs shall not be below "U. S. Consumer Grade B".

§61-7A-4. Prohibited Acts.

4.1. No person, firm or corporation shall sell, traffic in or deliver to the retail or consuming trade any shell eggs that are:

4.1.1. Labeled with descriptive terminology to describe eggs that have not been graded and sized according to the standards set forth by the United States Standards for Quality of Individual Shell Eggs and United States Consumer Grades and Weight Classes for Shell Eggs as provided for origin and destination tolerances.

4.1.2. No person may use descriptive terminology such as "fresh" or

represent eggs to be "fresh" except those eggs that meet the minimum requirements of Grade A or higher according to the standards set forth by the United States Standards for Quality of
Individual Shell Eggs and United States Consumer Grades and Weight Classes for Shell Eggs as provided for origin and destination tolerances.

4.2. No person, retailer or distributor shall be permitted to repack eggs.

§61-7A-5. Embargo Orders.

5.1. An embargo may be issued when eggs offered or intended for sale do not comply with the provisions of this rule. An embargo shall specify the reason for its issuance and shall detail the character of the violation.

5.2. An embargo shall prohibit the sale, use, or transportation of eggs in any manner until the embargo is released by the Commissioner.

5.3. In order to ensure the quality of eggs in the state, the Commissioner may at his or her discretion:

5.3.1. Issue a general embargo to a distributor, processor, packer or retail outlet should eggs being marketed in West Virginia do not comply with the provisions of this rule; and

5.3.2. Order an Administrative Hearing to determine whether or not the "Egg Distributor Permit" should be revoked.

§61-7A-6. Labeling Requirements.

6.1. Any container or sub-container in which eggs are marketed shall label
the exterior portion of the container, at a minimum, as required by W. Va. Code §19-10A-7. The following additional labeling is required:

6.2. A person may distribute, offer for sale, or sell loose eggs only if that person places a placard on or near the eggs that plainly and conspicuously displays their grade, size, name of packer or distributor and their address. The grade and size may not be abbreviated. The placard shall be of legible print in block letters not less than three eighths (3/8) inch in height. The minimum size of this placard shall be four and one half by six (4 ½ x 6) inches.

6.3. Eggs that are packed for breaking plants shall be labeled according to USDA requirements.

6.4. Eggs that are packed in retail breakaway cartons that can be divided by the consumer or retailer into smaller units for the purpose of selling lesser amounts of eggs, each half or portion of the container shall list full information labeling as required in the WV Code §19-10A-7.

6.5. Egg producers who own three thousand birds or less shall denote the expiration date of the eggs on the outside container in which the egg cards are transported or on an invoice provided to the retailer.

§61-7A-7. Advertising.

7.1. All eggs advertised or displayed for sale for human food at a given price shall designate the correct grade and size, and that designation shall also appear on the exterior of the container in which eggs are offered for sale. The grade and size designations may not be abbreviated.

7.2. Restaurants, hotels, delicatessens and other eating places using eggs below "A" quality shall display, in a location where it can easily be seen by the customers a placard on heavy cardboard of not less than eight (8) by eleven (11) inches, stating the quality and weight of the eggs used by the establishment. In lieu of a placard the establishment may place this information on the menu.

7.3. No eggs being advertised or labeled with claims of unusual interior quality or superiority shall be sold until a statement of proof is submitted to the Commissioner and/or an inspection confirms the claim.

§61-7A-8. Egg Handling Facilities, Temperature and Humidity, Sanitation and Cleaning.

8.1. Any person, packer, distributor, wholesaler, retailer, restaurant or institution engaged in the assembling, marketing, transporting or the processing of eggs for marketing shall:

8.1.1. Maintain the eggs above freezing at forty-five (45ºF) degrees Fahrenheit ambient temperature or less;

8.1.2. Maintain a relative humidity that will minimize shrinkage;

8.1.3. Store egg cartons in a clean and sanitary area, free of foreign odor;

8.1.4. Keep cartons clean and free of foreign odor and debris; and

8.1.5. Wash eggs in an acceptable and sanitary method prior to packing.