

WEST VIRGINIA  
SECRETARY OF STATE  
KEN HECHLER  
ADMINISTRATIVE LAW DIVISION

Form #7

Do not mark in this box  
Filing Date

FILED

SEP 30 3 40 PM '98

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: WV Dept. of Agriculture TITLE NUMBER: 61

CITE AUTHORITY: WV Code 19-10A

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 7A

TITLE OF RULE BEING AMENDED: Marketing of Eggs Regulations


IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: \_\_\_\_\_

TITLE OF RULE BEING FILED AS AN EMERGENCY: \_\_\_\_\_

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS: See Attached.

Use additional sheets if necessary

  
Signature

\$4.60



State of West Virginia  
**DEPARTMENT OF AGRICULTURE**  
Gus R. Douglass, Commissioner

David E. Miller  
Deputy Commissioner

Janet L. Fisher  
Assistant Commissioner

West Virginia Department of Agriculture Marketing of Eggs Regulations

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE  
EMERGENCY AS FOLLOWS:

Our rule has a temperature change for storing and transporting eggs from 60°F to 45°F. The lower temperature can help avoid illness from Salmonella Enteritidis.

The Health Department currently has the 45°F rule. This would make the temperature for holding eggs uniform throughout the state.

Our certificates expire on June 30<sup>th</sup>. Certificates must be applied for 30 days prior to expiration of current permit. Consequently applications need to be mailed in May.

Also, this rule is being filed as a legislative rule and has received Legislative Rule-Making Review Committee approval.

DATE: 9/30/98

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia Department of Agriculture

EMERGENCY RULE TITLE: Marketing of Eggs Regulations

1. Date of Filing 9-30-98
2. Statutory authority for promulgating emergency rule:  
WV Code 19-10A
3. Date of filing of proposed legislative rule: 6-11-98
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?  
Repeals and replaces a legislative rule.
5. Has the same or similar emergency rule previously been filed and expired?  
No.
6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.  
There is a temperature change from 60°F to 45°F. in this rule. The lower  
temperature can help avoid illness from Salmonella Enteritidis.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

§61-7A-3 Certificates shall expire on the 30th day of June.

Certificates must be applied for 30 days prior to expiration date,

consequently applications must be mailed in May.

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

The rule for temperature was changed from 60°F to 45°F. The lower  
temperature can help avoid illness from Salmonella Enteritidis.

Also the Health Department currently has the 45°F rule. This  
would make the temperature for holding this product uniform throughout  
the state.

**APPENDIX B**

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: West Virginia Egg Marketing Law

Type of Rule:  Legislative  Interpretive  Procedural

Agency West Virginia Department of Agriculture

Address 1900 Kanawha Blvd., East  
Charleston, WV 25305-0170

**1. Effect of Proposed Rule**

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<b>ESTIMATED TOTAL COST</b>	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

**2. Explanation of above estimates:**

The WV Department of Agriculture is currently running an egg inspection program.

**3. Objectives of these rules:**

To bring the current law up to new industry standards.

Rule Title: West Virginia Egg Marketing Law

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

Increase revenues to cover egg inspection expenses by an estimated \$64,259 annually.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

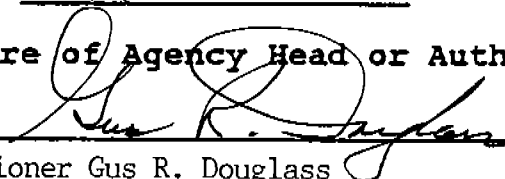
An increase of an inspection fee from 0 to 8¢ per case or 3/10 of 1 cent per dozen.

C. Economic Impact on Citizens/Public at Large.

None

Date: 6/4/98

Signature of Agency Head or Authorized Representative

  
\_\_\_\_\_  
Commissioner Gus R. Douglass  
558-2201

David E. Miller, Deputy Commissioner • Janet L. Fisher, Assistant Commissioner

## WEST VIRGINIA MARKETING OF EGGS LAW REGULATIONS TITLE 61 - SERIES 7A REVIEW OF PROPOSED CHANGES

The West Virginia Egg Marketing Law of 1998 passed into law on March 12, 1998, and became effective June 12, 1998. The following is a brief summary of the proposed changes to the Legislative Rule.

**61-7A-2 DEFINITIONS:** Clarification expanded in many instances and additions added for a better understanding in today's market place. A few examples are ambient temperature, consumer, distributor, embargo, general embargo, and graded eggs.

**61-7A-3 PERMITS AND INSPECTION FEES:** Currently our only fee is ten dollars (\$10.00) for anyone distributing eggs in West Virginia. We are proposing an inspection fee of eight cents (\$0.08) per case(30 dozen), paid on a quarterly basis and continues the yearly permit fee of ten dollars (\$10.00).

**61-7A-4 Exemptions:** Additions to this section:

- Indicate on the carton, date eggs are packed and the statement "Ungraded Eggs"
- Wash the eggs in an acceptable and sanitary method prior to packing
- Eggs being transported shall be refrigerated above freezing at forty-five degrees Fahrenheit (45°) or less.

**61-7A-5 PROHIBITED ACTS:** Major change to this section is the modification of the temperature from sixty degrees Fahrenheit (60°F) to forty-five degrees Fahrenheit (45°F) or less. This change will help ensure the public safety of the consumers in West Virginia. Illness from Salmonella Enteritidis can be avoided through adequate refrigeration, proper cooking and handling.

We have disallowed the repacking of eggs at retail and distributor level.

**61-7A-6 EMBARGO ORDERS:** The addition of a General Embargo to this section will allow the Commissioner to order a statewide stop sale of shell eggs to ensure the quality of the eggs in the state.

West Virginia Marketing of Eggs Law Regulations

## West Virginia Department of Agriculture

**61-7A-7 LABELING REQUIREMENTS:** Additions to this section include designating on the container or consumer receptacle of shell eggs "Keep Refrigerated," a use-by or expiration date and retail breakaway cartons shall contain full labeling information on each half or portion.

**61-7A-8 STANDARDS, GRADES AND WEIGHT CLASSES:** The standards of the United States Department of Agriculture are adopted. This will help eliminate problems that may occur with interstate and intrastate commerce.

**61-7A-9 ADVERTISING:** Eggs advertised or labeled as organic or fertile eggs or any other claims of unusual interior quality or superiority must be accompanied by a statement of proof to the Commissioner and/or inspection to confirm the claim.

**61-7A-10 EGG HANDLING FACILITIES, TEMPERATURE AND HUMIDITY, SANITATION AND CLEANING AND**

**61-7A-11 REFRIGERATION:** The temperature changed from sixty degrees Fahrenheit (60°F) to forty-five degrees (45°F) or less ambient temperature.

These proposed changes have been compared to surrounding states and have been found compatible and timely in regard to up-and-coming issues related to the egg industry. As a result, these changes will ensure continued protection to the citizens of West Virginia.

TITLE 61  
LEGISLATIVE RULES  
DEPARTMENT OF AGRICULTURE

SERIES 7A  
MARKETING OF EGGS LAW

**§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**

1.4 **Effective Date**

1.5 **Incorporation by Reference.** The following documents are incorporated in this rule by reference in their entirety.

1.5.a. 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.

1.6 **Repeal and Replace.** This rule repeals and replaces Department of Agriculture Rule, the West Virginia Marketing of Eggs Law Regulations, 61CSR-7A which was Filed on June 1, 1976, with an Effective Date of July 1, 1976.

**§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 (30<sup>th</sup>) day of June following date of issue.

2.3 The annual permit fee of \$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 (15<sup>th</sup>) 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.a. The name and address of the responsible person or business producing and selling the eggs;

3.1.b. The date the eggs are packed; and,

3.1.c. 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 (45°F) or less ambient temperature.

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.a. 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.b. 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 or 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.a. 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.b. 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 WV 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.

#### **§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.a. Maintain the eggs above freezing at forty-five (45°F) degrees Fahrenheit ambient temperature or less;
- 8.1.b. Maintain a relative humidity that will minimize shrinkage;
- 8.1.c. Store egg cartons in a clean and sanitary area, free of foreign odor;
- 8.1.d. Keep cartons clean and free of foreign odor and debris; and
- 8.1.e. Wash eggs in an acceptable and sanitary method prior to packing.