

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #4

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SEP 30 3 42 PM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: West Virginia Department of Agriculture TITLE NUMBER: 61

CITE AUTHORITY WV Code 19-10A

AMENDMENT TO AN EXISTING RULE: YES NO

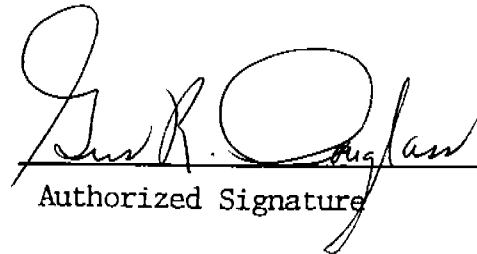
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 7A

TITLE OF RULE BEING AMENDED: Marketing of Eggs Regulations

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE, 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.


Authorized Signature

\$3.20

**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 (30th) 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 (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.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.



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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

State Capitol - Room MB-49
Charleston, West Virginia 25305
(304) 347-4840

Senator Mike Ross, Co-Chairman
Delegate Mark Hunt, Co-Chairman
Debra A. Graham, Counsel

September 23, 1998

Joseph A. Altizer, Associate Counsel
Rita Pauley, Associate Counsel
Teri Anderson, Administrative Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Gus R. Douglass
WV Department of Agriculture
Capitol Complex
Building 1, Room 28

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Marketing of Eggs Regulations, 61CSR7A**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed
 - (b) as modified by the agency
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Department of Agriculture

Subject: Marketing of Eggs, 61CSR7A

OFFICE OF THE SECRETARY OF STATE

JUN 3 10 24 AM '98

FILED

PERTINENT DATES

Filed for public comment: June 11, 1998
Public comment period ended: July 13, 1998
Filed following public comment period: July 14, 1998
Filed LRMRC: July 14, 1998
Filed as emergency:

Fiscal Impact: None

ABSTRACT

The proposed rule repeals and replaces a current legislative rule. The following is a section by section synopsis of the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule. It also incorporates several federal documents by reference.

Section 2 sets forth the statutory definitions in their entirety.

Section 3 sets an annual permit fee of \$10 for persons distributing eggs in this State. It also sets an inspection fee of \$.08 per each case of eggs processed or distributed in West Virginia.

Section 4 sets forth labeling, transportation and packing standards for those persons who are exempt from certain requirements of the statute. The Code exempts persons who market eggs they have produced. This section seems to try to limit the Code exemption to persons marketing less than 150 dozen eggs.

Section 5 relates to prohibited acts. It sets forth the prohibitions from the statute. It also contains prohibitions regarding descriptive terminology which may be used relating to

eggs which are being distributed and prohibits the repacking of eggs.

Section 6 relates to embargo orders. It provides that the Commissioner may issue a general embargo to a distributor, processor, packer or retail outlet and may order a hearing for permit revocation.

Section 7 contains the statutory labeling requirements. It also sets forth requirements for the labeling of loose eggs and eggs which are in breakaway cartons.

Section 8 relates to standards and tolerances for interior and exterior shell egg quality. It needs to be deleted because it references standards in a document already incorporated by reference.

Section 9 relates to advertising. It requires eating establishments which use eggs below "A" quality to advertise that fact through a placard or on the menu.

Section 10 contains temperature, humidity and sanitary standards for egg handling facilities.

Section 11 contains the standard for refrigeration of eggs.

Section 12 basically states that due process is available to any person aggrieved by an action of the Commissioner.

Section 13 states that the Commissioner can amend the rule.

AUTHORITY

Statutory authority: W.Va. Code, §19-10A-10, which provides, in part, as follows:

(a) The commissioner shall by legislative rule establish standards for the grading, classification and marketing of shell eggs bought and sold by any person, firm or corporation in the state of West Virginia. These standards shall conform to, on date of the sale to the consumer, the minimum standards promulgated by the U. S. department of

agriculture as defined in the "United States Standards, Grades and Weight Classes for Shell Eggs", authorized under Section 205, 60 Stat. 1091, Public Law 135, 82nd Congress; 7 U.S.C. 1624, effective July 11, 1952, as amended...

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

Yes. Section 4 of the proposed rule appears to limit the exemption in the Code for persons marketing eggs which they have produced.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

Yes. Section 3 uses terminology different from that which is in the statute and shortens the time period for applying for a permit.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

A major portion of the proposed rule is in the Code and needs to be eliminated from the proposed rule.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

Yes. The proposed rule needs rewritten.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has technical modifications to suggest.