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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

TITLE 61  
WEST VIRGINIA LEGISLATIVE REGULATIONS  
STATE DEPARTMENT OF AGRICULTURE

SERIES 8E  
CONTROLLED ATMOSPHERE STORAGE OF APPLES

§ 61-8E-1 General.

1.1 Scope - These legislative regulations establish standards for controlled atmosphere storage conditions and sets forth procedures for keeping CA records.

1.2 Authority - W. Va. Code 19-5A-3, 7, 8, and 9.

1.3 Filing Date -

1.4 Effective Date -

§ 61-8E-2 Administrative.

2.1 ~~Pursuant to authority vested in the Commissioner of Agriculture, by article five-a, Code of West Virginia and by virtue of public hearing of April 26, 1967, I, Gus R. Douglass, do hereby prescribe and adopt the following regulations for Controlled Atmosphere Storage of Apples. This rule is for the purpose of implementing West Virginia Code 19-5a et. seq. pertaining to the Controlled Atmosphere Storage of Apples.~~

2.2 ~~Administration of article five-a is placed with the Consumer Protection Division of the West Virginia Department of Agriculture. Inspections made and certificates issued by inspectors of this Division the West Virginia Department of Agriculture or comparable inspections of cooperating government inspectors shall be prima facie evidence of compliance or noncompliance with the provision of this article.~~

2.3. The WV-CA number and state lot number shall be shown in letters and numbers not less than one-fourth (1/4) inch in height and shall appear on all master cartons or shipping containers. Such numbers may be shown but are not required on primary consumer containers. Bulk bins and field crates may be identified by means of labels attached to each container when shipped in commerce for repacking as CA fruit, such shipping and repacking must be done under the supervision of a state inspector. Cost of such supervision shall be borne by the applicant.

2.4 Any person who owns or operates a controlled atmosphere room or storage building located outside of West Virginia or who engages at a place outside of this State in the business of packing or repacking apples which have been held in controlled atmosphere storage and who intends to or who does market in the State of West Virginia apples so treated and represented as having been exposed to "Controlled Atmosphere Storage" shall be subject to the same requirements as any person located within this State: Provided, That where such person has registered with the proper authorities in the state of origin and has been licensed and assigned a registration or CA number under the authority of laws or regulations of such state, and such laws are comparable to article five-a, Code of West Virginia, he may engage in West Virginia commerce on the basis of such registration: Provided, That he shall have been issued a federal, federal-state or state certificate certifying compliance with that comparable state law and regulations and that all container markings are consistent with the provisions of the West Virginia CA Law.

2.5 Any person selling or placing in transit for first shipment of delivery any apples designated or identified as CA stored shall furnish an invoice or bill of lading showing the assigned CA number, a state lot number and the number and date of the official certificate certifying the compliance of same.

2.6 A licensee shall submit to the commissioner within thirty (30) days after the CA room is filled and sealed, a report showing the quantity, lot or subplot identify by variety of the apples held and the date of sealing. If any apples other than samples are removed prior to the expiration of the minimum holding period or final opening he shall notify the commissioner in writing within three (3) days stating the quantity and identity of the apples removed.

**§ 61-8E-3 Controlled Atmosphere Components And Time Limits.**

3.1 The maximum amount of oxygen retained in a sealed CA storage shall not exceed five percent (5%) by volume.

3.2 The maximum amount of time in which the oxygen content shall have been reduced to the above amount shall not exceed twenty (20) cumulative calendar days.

3.3 The fruit temperature in a CA storage room shall be maintained without significant deviation in a range of temperature as recommended by recognized research authorities as normal for the variety.

Dept. of Agri.  
Leg. Regs., 19-5A  
SERIES 8E, Sec. 3

3.4 A storage period of not less than ~~ninety (90)~~ sixty (60) calendar days shall be attained before fruit may be classed as CA stored: ~~Provided, That Jonathan variety may be classed as CA when stored a minimum of sixty (60) days.~~ Maximum storage time shall not exceed ten (10) months, but in no case, later than August first of the year following harvest.

3.4.1 The time lapse between harvest date of the fruit to be CA stored and the sealing of the Controlled Atmosphere Room shall not be longer than thirty (30) consecutive calendar days which time the fruit shall be held under normal refrigeration.

**§ 61-8E-4 Forms.**

4.1 The Commissioner may accept forms for recording air component determinations such as are used by established storage firms: Provided, That such forms clearly show the information required in section eight of the law and which form has been submitted to the Commissioner for approval. In addition to the requirements of section eight, a licensee shall maintain in his daily record which shall begin on the date of filling the room begins:

4.1.1 The quantity of fill by variety and lot identification.

4.1.2 The dates of any entry or resealing of the CA room.

4.1.3 The percentage of relative humidity.

**§ 61-8E-5 Minimum Condition Standards.**

5.1 The minimum condition and maturity standards for apples to be classed as CA shall be the United States Condition Standards for Export as amended from time to time.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Controlled atmosphere storage of apples

Type of Rule:  Legislative     Interpretive     Procedural

Agency: West Virginia Department of Agriculture

Address: 1900 Kanawha Boulevard  
Charleston, WV 25305

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	0	0	0	0	0
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

2. Explanation of Above Estimates:

3. Objectives of These Rules:

To bring West Virginia standards in line with surrounding states.

Rule Title: Controlled atmosphere storage of apples

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

none

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

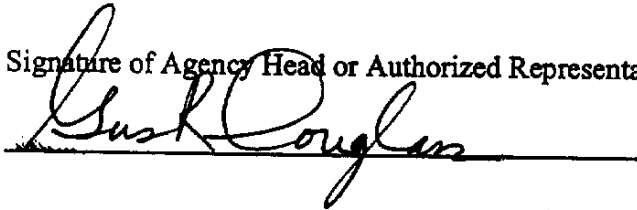
none

C. Economic Impact on Citizens/Public at Large.

none

Date: 6-5-01

Signature of Agency Head or Authorized Representative:



**Statement of Circumstance**

**Controlled Atmosphere Storage of Apples**

The purpose of the change of the rule is to bring West Virginia Controlled Atmosphere Storage standards in line with neighboring state standards and industry standards.

**The Summary of the Change in the Rule**

**Controlled Atmosphere Storage of Apples**

It changes the amount of time required for apples to qualify for Controlled Atmosphere Storage status from 90 days to 60.

**QUESTIONNAIRE**

*(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)*

DATE: July 24, 2001

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Department of Agriculture  
1900 Kanawha Boulevard, East  
Room E-28, State Capitol Complex  
Charleston, WV 25305 (304) 558-3550

LEGISLATIVE RULE TITLE: Controlled atmosphere storage of apples

1. Authorizing statute(s) citation 19-5A

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
June 5, 2001

b. What other notice, including advertising, did you give of the hearing?  
Letter to 20 producers and/or organizations. (Sample letter and list attached) News release sent to local newspaper. (copy attached)

c. Date of Public Hearing(s) or Public Comment Period ended:  
July 9, 2001 @ 7:00 p.m.

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached \_\_\_\_\_ No comments received XX

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 24, 2001

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Steve Hannah, Deputy Commissioner, WVDA

1900 Kanawha Boulevard, East

Room E-28 State Capitol Complex

Charleston, WV 25305 (804)558-3550

- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Mr. Guy Davis, WVDA

Post Office Box 66

Inwood, WV 25428

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

July 9, 2001

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

July 24, 2001

d. Attach findings and determinations and reasons:

Attached ~~No comments were received, therefore no changes were~~  
made in the proposed regulations.



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

Janet L. Fisher  
Deputy Commissioner

Steve Hannah  
Deputy Commissioner

July 9, 2001

Hearing on Controlled atmosphere storage of apples, WV code 19-5A-3,7,8,9

Hearing called to order at 7:00pm. by Steve Miller, Executive Director of Eastern Operations

Those in attendance were Kent Kidwell representative for Knouse Foods, Co-op. Inc., Inwood, WV and Mike Lineburg representative for National Fruit Product Co. Inc., Winchester, VA.

Neither person in attendance had any comment about this rule change.

Hearing was adjourned at 7:15pm.

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

Janet L. Fisher  
Deputy Commissioner

Steve Hannah  
Deputy Commissioner

June 12, 2001

*Handwritten:*  
- 27 p/232  
- 20 Janet Fisher  
- 6/12/01  
- PCS

Motts Inc.  
Gene Livelsberger  
45 Asper North Road  
P.O. Box 68  
Aspers, PA 17304

*Handwritten:*  
Mailed  
Copy to Candie  
for her files 6/13/01  
PCS

Dear Mr. Livelsberger:

The West Virginia Department of Agriculture has recently filed updated rules in the Secretary of State's Office concerning the Controlled Atmosphere Storage of Apples and the Schedule of Charges for Inspection Services: Fruit.

As mandated by law, we will be hosting public hearings on proposed changes to these two laws on July 9, 2001, at the Inwood Field Office of the West Virginia Department of Agriculture at 145 Pilgrim Street in Inwood, West Virginia. The Controlled Atmosphere Storage of Apples hearing will begin at 7:00 p.m. and the Schedule of Charges for Inspection Services: Fruit will begin at 7:30 p.m.

Should you be unable to attend the public hearings, you may submit written comments on the proposed changes. Written comments should be postmarked no later than July 9, 2001.

Sincerely,

Gus R. Douglass  
Commissioner

GRD:pcs

George S. Orr & Sons  
P.O. Box 906  
Martinsburg, WV 25402-0906

Jefferson Orchards Inc.  
P.O. Box 700  
Kearneysville, WV 25430

Dave Cox  
Knouse Foods Co-op. Inc.  
800 Peach Glen-Idaville Road  
Peach Glen, PA 17306

J. H. Kilmer  
P.O. Box 6055  
Martinsburg, WV 25402

Gus White & Kent Kidwell  
P.O. Box 170  
Inwood, WV 25428

Summit Point Raceway Orchard  
P.O. Box 190  
Summit Point, WV 25446

Dennis Rantum  
Purchasing Department  
Heinz USA  
P.O. Box 57  
Pittsburg, PA 15230-0057

East Coast Brokers  
Batista & Evelyn Madonia  
P.O. Box 2636  
Plant City, FL 33564

Gene Sine  
Virginia Fruit Sales  
Winchester, VA 22601  
(540) 662-4302

Gary Shanholtz  
Shanholtz Orchards  
HC 64, Box 400  
Romney, WV 26757

Bill Johnson & Mike Lineburg  
National Fruit Product Co. Inc.  
P.O. Box 2040  
Winchester, VA 22604-1240

Malcolm Orchards  
HC 60, Box 64  
Levels, WV 25431

Homer Feller  
Mt. Levels Orchard  
HC 60, Box 31-J  
Levels, WV 25431

Robert Fiero  
Robert Fiero Co. Inc.  
410 West Race Street  
Martinsburg, WV 25401

Mike Miller  
Eastern Fruit Sales  
Route 5, Box 629G  
Martinsburg, WV 25401

Carolyn Lewis Kilmer  
Orchard Estate of Charles Lewis  
P.O. Box 1884  
Martinsburg, WV 25401

Otho & Ronnie Lewis  
Lewis Brothers Orchard  
RD #1, Box 219  
Martinsburg, WV 25401

J. M. Scott  
National Fruit Product, Inc.  
Route 1, Box 135  
Gerrardstown, WV 25420

Motts Inc.  
Gene Livelsberger  
45 Asper North Road  
P.O. Box 68  
Aspers, PA 17304

West Virginia State Horticultural Society  
% Mr. Doug Raines, President  
P. O. Box 552  
Martinsburg, WV 25401



# NEWS RELEASE

Gus R. Douglass, Commissioner

Janet L. Fisher, Deputy Commissioner

Steve Hannah, Deputy Commissioner

For Immediate Release

June 14, 2001

## WVDA SCHEDULES HEARINGS FOR INWOOD AREA, JULY 9

CHARLESTON, WV — Commissioner of Agriculture Gus R. Douglass announced that a public hearing has been scheduled for July 9 to receive comments regarding changes in Title 61, Series 8E, Controlled Atmosphere Storage of Apples and Title 61, Series 8B, Schedule of Charges for Inspection Services: Fruit.

The hearings are scheduled for 7:00 p.m. and 7:30 p.m., respectively, at the West Virginia Department of Agriculture's (WVDA) Inwood Field Office, 145 Pilgrim Street, Inwood.

If you would like to comment about the changes in these rules, you may appear in person at the hearing or write to Commissioner Gus R. Douglass, WVDA, 1900 Kanawha Blvd., E., Charleston, WV 25305 by July 13, 2001.

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WEST VIRGINIA DEPARTMENT OF AGRICULTURE