

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE DEPARTMENT OF AGRICULTURE

FILED IN THE OFFICE OF
 A. JAMES MANCINI
 SECRETARY OF STATE
 THIS DATE 2/5/82
 Administrative Law Division

Chapter 19-2
 1981

GENERAL INDEX

for

SERIES XI

obsolete.
valid
July 1, 1982 to
June 10, 1985

PUBLIC MARKETS

PAGE NUMBER

SECTION 1 - General

1.01	Scope	1
1.02	Authority	1
1.03	Effective Date	1
1.04	Filing Date	1

SECTION 2 - Declaration of Policy

1

SECTION 3 - Definitions of Words and Terms

1

3.01	Commissioner	1
3.02	Feeding and Breeding Purposes	2
3.03	Grade	2
3.04	Immediate Slaughter	2
3.05	Person	2
3.06	Public Market	2
3.07	Veterinarian	3

SECTION 4 - Regulations

3

4.01	Permit Required	3
4.02	Permit, Application For	3
4.03	Permit Renewal	4
4.04	Transfer of Permit	4
4.05	Scales, Type and Location	5
4.06	Veterinary Office	5
4.07	Pens For Holding and Testing Cattle	5
4.08	Pens For Holding Swine For Feeding and Breeding Purposes	5
4.09	Pens For Holding Sheep For Feeding and Breeding Purposes	5
4.10	Pens (Grading)	6

4.11	Watering Facilities	6
4.12	Public Facilities	6
4.13	Opening Hour of Sale	6
4.14	Weighed on Day of Sale	6
4.15	Scales, Maintenance	6
4.16	Weighman, Grader, Auctioneer, Employment of	6
4.17	Grades, Classifications, Standards	6
4.18	Licenses, Weighman, Grader, Auctioneer	7
4.19	License Renewal, Auctioneer, Weighman, Grader	7
4.20	Grader, Application and Duties	7
4.21	Weighman, Application and Duties	8
4.22	Auctioneer, Application and Duties	9
4.23	Animals, Identification Of	10
4.24	Agents, Order Buyers, Purchases By	10
4.25	Scale Tickets	10
4.26	Records and Account	11
4.27	Reports, Statistical	12
4.28	Inspection and Test Certificates	12
4.29	Records, Disposition Of	12
4.30	Proceeds of Sale, Prompt Accounting	12
4.31	Market Zone Establishment	13
4.32	Veterinarian, Authority Of	13
4.33	Livestock, Inspected or Tested, Disposition Of	13
4.34	Veterinary Biologicals, Furnished By, Disposition Of	13
4.35	Veterinary Assistant, Employed By	13
4.36	Diseased Animals, Disposition Of	14
4.37	Pens, Quarantine	14
4.38	Cattle, Responsibility for Penning	14
4.39	Cattle, Originating Other Public Markets	14
4.40	Cattle Testing, Brucellosis, Disposition of Reactors	14
4.41	Swine, Responsibility for Penning, Identification and Inspection	15
4.42	Reports, False and Misleading	15
4.43	Market Responsibility to Purchaser	15
4.44	Settlements, Based on Weights	15
4.45	Livestock to be Sold on Own Merits to Highest Bidder	16
4.46	Livestock Intermingling	16
4.47	Livestock, Condition Of	16
4.48	Price Guarantees Prohibited	16
4.49	Market Manager Prohibited From Buying, Selling or Trading in Livestock Except in Name of Market	16
4.50	Commission, Service, Other Charges, Schedule and Posting Of	17
4.51	Fees To Be Collected, Tests	18
4.52	Sales, Regular and Special	18
4.53	Clerk Shall Record Price and Purchaser	20
4.54	Penalties	20

XIe - Tobacco Markets

SECTION 1 - General

- 1.01 Scope
- 1.02 Authority
- 1.03 Effective Date
- 1.04 Filing Date
- 1.05 Certification

SECTION 2 - Declaration of Policy

SECTION 3 - Definition of Word and Terms

- 3.01 Commissioner
- 3.02 Grade
- 3.03 Person
- 3.04 Public Market

SECTION 4 - Regulations

- 4.01 Permit required
- 4.02 Permit, Application For
- 4.03 Permit Renewal
- 4.04 Transfer of Permit
- 4.05 Scales, Type and Location
- 4.06 Dock Space, Employees
- 4.07 Public Facilities
- 4.08 Scales, Maintenance
- 4.09 Weighman, Grader, Auctioneer, Employment of
- 4.10 Grades, Classifications, Standards
- 4.11 Licenses, Weighman, Grader, Auctioneer
- 4.12 Licence Renewal, Auctioneer, Weighman, Grader
- 4.13 Grader, Application and Duties
- 4.14 Weighman, Application and Duties
- 4.15 Auctioneer, Application and Duties
- 4.16 Accounting to the Purchaser
- 4.17 Agents, Order Buyers, Purchases By
- 4.18 Scale Tickets
- 4.19 Records and Accounts
- 4.20 Reports, Statistical
- 4.21 Bonds, Public Market May Require from Purchases
- 4.22 Records, Disposition of
- 4.23 Reports, False and Misleading
- 4.24 Order Buying, Market Prohibited Buying on Commission Basis
- 4.25 Clerk Shall Record Price and Purchase
- 4.26 PROCEEDS FO Sale, Prompt Accounting
- 4.27 Market Employees Prohibited From Buying, Selling
or Trading In Tobacco
- 4.28 Commission, Service, Other Charges, Schedule &
Posting of
- 4.29 Inspection Fees To Be Collected
- 4.30 Scales, Daily Inspection and Tare
- 4.31 Spacing Baskets, Pallets on Warehouse Floor For
Sale
- 4.32 Basket Sales Per Hour

LEGISLATIVE

Dept. of Agri.
Chapter 19-2
Series XIe

XIe - Tobacco Markets

Section 4 - Regulations (continued)

- 4.33 Packing Tobacco, Public Market
- 4.34 Discrimination Prohibited
- 4.35 Requirement from Purchaser by Public Market
- 4.36 Rebates, Special Privilege and Services by Public
Market Prohibited
- 4.37 Comingling of Tobacco
- 4.38 Rejection and Resale of Tobacco
- 4.39 Additional Responsibilities of Public Market
- 4.40 Mixed or Nested Tobacco Rejected by Purchaser.

LEGISLATIVE

Dept. of Agri.
Chapter 19-2
Series XIf

XIf - Regulations Governing the Licensing of Auctioneers

SECTION 1 - General

- 1.01 Scope
- 1.02 Authority
- 1.03 Effective Date
- 1.04 Filing Date
- 1.05 Certification

Section 2 - Declaration of Policy

Section 3 - Definitions of Words and Terms

- 3.01 Auctioneer
- 3.02 Public Auction
- 3.03 Commissioner

Section 4 - License for Auctioneer Required

Section 5 - Bond Required

Section 6 - Requirements for Licensing

Section 7 - Duties of Licensee

Section 8 - Revocation or Suspension of License

Section 9 - Trainee Permits

Section 10 - Orders of the Commissioner; Hearings; Review.

Section 11 - Penalties.

Section 12 - Adoption and Effective Date.

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE DEPARTMENT OF AGRICULTURE

Chapter 19-2

Series XI
1981

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 2/5/82
Administrative Law Division

SUBJECT: Regulations Governing Public Markets

Section 1 - General

1.01 Scope. These regulations establish general operating procedures for public markets.

1.02 Authority. These regulations are issued under authority of Chapter 19, Articles 2 and 2a of the Official Code of West Virginia, 1931, as amended.

1.03 Effective Date. These regulations are promulgated and become effective on July 1, 1982.

1.04 Filing Date. These regulations were filed in the Office of the Secretary of State on February 5, 1982.

Section 2 - Declaration of Policy.

2.01 Articles 2 and 2a, Chapter 19 of the Official Code of West Virginia charges the Commissioner of Agriculture with the responsibility for promulgating and administering rules and regulations to govern the operation of public markets where agricultural or horticultural products including livestock and poultry are received and sold at public auction.

Section 3 - Definitions of Words and Terms. The following words and terms shall have the following meanings.

3.01 Commissioner. As defined in the law, Commissioner is the Commissioner of Agriculture of the State of West Virginia or his authorized agents.

3.02 Feeding and Breeding Purposes. Any livestock received, sold, offered or exposed for sale for purposes other than immediate slaughter.

3.03 Grade. The standards used to grade and classify livestock in West Virginia shall be the same as those established by the United States Department of Agriculture or that might be established by the Commissioner.

3.04 Immediate Slaughter. Livestock purchased by persons, firms or corporations engaged in shipping direct from the market to terminal markets or slaughtering places. Livestock purchased for immediate slaughter shall not be returned to farms.

3.05 Person. As defined in the law, person includes any individual, partnership, corporation or association.

3.06 Public Market. A public market as defined in the law is (1) any place of business where livestock, poultry or other agricultural or horticultural products are received and sold at public auction or, (2) any place where livestock is received from producers, assembled and sold or offered for sale, by any method including, but not limited to, public auction. The term public market shall include all such places where such activities are conducted, whether or not such activities are performed according to a scheduled routine or a historically established pattern of days and times: Provided, That sales totally sponsored, organized and financed by the State of West Virginia or by any state, regional or county agricultural fair or festival, or by any 4-H, FFA or other educational activity, shall not be included in this definition. Annual sales held by non-profit associations or non-profit corporations devoted to improving the quality of beef cattle raised in this state where the net proceeds from such sales are used exclusively for the association or corporation conducting such sale, or

purebred livestock sales conducted by generally recognized breed associations, shall not be subject to the provisions of sections eight and sixteen-a of this article: Provided, however, That only members in good standing in such non-profit association or non-profit corporation or such breed association shall offer cattle for sale at such annual sale and the by-laws of such association or corporation or such breed association shall provide either for a surety bond to be given as provided in this article or that each member offering stock at such sale shall bear any loss in proportion to the value of each member's stock to the total value of such stock being sold at such sale.

3.07 Veterinarian. The State Veterinarian, any accredited veterinarian employed by the Commissioner, and/or any individual designated as an agent of the veterinarian.

Section 4 - Regulations.

4.01 Permit Required. All persons desiring to operate a public market shall obtain a permit from the Commissioner.

4.02 Permit, Application For. All persons applying for a permit to operate a public market shall make application to the Commissioner on forms furnished by him. The application shall contain the following:

- (a) Proposed location of such market
- (b) Type of ownership; individual, partnership, corporation or association
- (c) Principal owners and their addresses
- (d) How financed
- (e) A fee of ten dollars (\$10.00)

- (f) A plat showing the location and the amount of land, including its elevations, location in relation to highways or railroads and general accessibility to the public.
- (g) Blueprints which show the details of construction of all barns, buildings and other facilities.

Before a permit shall be issued by the Commissioner, the applicant shall furnish a surety bond payable to the State of West Virginia for the benefit of consignors, who may be wronged or damaged by any fraud or fraudulent practices of the market, in the amount prescribed by the Commissioner, but in no case shall the bond be less than the average bond maintained by all other public markets in the state that have been in operation more than twelve months.

4.03 Permit Renewal. Persons operating a public market shall renew their permit annually. Applications for renewal of the permit shall be made on forms furnished by the Commissioner. The application shall be presented on or before the first day of July of each year and shall be accompanied by a surety bond payable to the State of West Virginia in an amount not to exceed one hundred twenty percent of the average of its sales during the preceding calendar year. A check or money order in the amount of ten dollars (\$10.00) shall accompany the application.

The Commissioner shall require a bond in an amount fixed by him when a public market has not operated for one year previous to the date of the application however in no case shall the bond be less than the average bond maintained by all other public markets in the state that have been in operation more than twelve months.

4.04 Transfer of Permit. No person holding a permit to operate a public market shall sell or otherwise transfer such permit without first

receiving permission in writing from the Commissioner.

4.05 Scales, Type and Location. Persons operating a public market shall install a sufficient number of scales to accommodate the maximum volume of business of the market at any time. All scales shall be equipped with a dial and printer or adjustable indicator, Type-Registering Beams, and be located where easily accessible to the docks.

4.06 Veterinary Office. All persons operating a public market shall provide and equip a veterinary office and laboratory that is acceptable to the Commissioner. Locks and keys shall be provided and the office shall be for use by the veterinarian and livestock inspectors only.

4.07 Pens For Holding and Testing Cattle. All persons operating a public market shall provide two holding pens to be used for the purpose of testing and examining cattle. These holding pens shall be constructed so that cattle may be safely worked from one through a catching chute into the other. The catching chute, gates and working area shall be constructed and maintained for maximum safety and efficiency.

4.08 Pens For Holding Swine For Feeding and Breeding Purposes. All persons operating a public market shall construct or allocate, under roof, a sufficient number of pens to be used exclusively for the purpose of examining and administering medication to swine received and offered for sale for feeding and breeding purposes. These pens shall be constructed with floors of impervious material, shall be well-lighted and shall be properly cleaned after each sale.

4.09 Pens For Holding Sheep For Feeding and Breeding Purposes. All persons operating a public market shall construct, under roof, a sufficient

number of pens to be used for sheep and lambs offered for sale for feeding and breeding purposes. These pens shall be well lighted and shall be properly cleaned after each sale.

4.10 Pens (Grading). All persons operating a public market shall provide pens for grading and classifying livestock. All pens shall be located under roof and shall be properly cleaned after each sale.

4.11 Watering Facilities. All persons operating a public market shall have fresh potable water available to all livestock.

4.12 Public Facilities. All persons operating a public market shall provide (a) Drinking fountains, and (b) Toilet facilities for the public and such facilities shall be maintained in a clean and sanitary condition in accordance with the requirements of the State Health Department.

4.13 Opening Hour of Sale. A public market shall keep the public informed as to the starting time of all sales and shall begin all sales no later than the approved sale time.

4.14 Weighed on Day of Sale. All livestock sold by weight at any public market shall be weighed at the market on the day of the sale.

4.15 Scales, Maintenance. A public market shall maintain their scales so as to insure accurate weights, and shall have the scale tested at least once every twelve months or oftener, if required by the State Commissioner of Labor.

4.16 Weighman, Grader, Auctioneer, Employment Of. A public market shall employ and use a licensed weighman, a licensed grader, and a licensed auctioneer at every sale where weighed and graded livestock are sold at auction.

4.17 Grades, Classifications, Standards. A public market representing or advertising that agricultural or horticultural products are being sold on

grades, classifications, or standards adaptable to such products, shall employ a licensed grader to sort, grade and classify such products. Such grades or standards shall conform to the grades, classifications or standards established by the United States Department of Agriculture or that might be established by the Commissioner.

4.18 Licenses, Weighman, Grader, Auctioneer. Application for weighman or grader's license shall be filed with the Commissioner on forms provided by him and shall be accompanied by check or money order in the amount of two dollars and fifty cents (\$2.50). Application for auctioneer's license shall be filed with the Commissioner as provided in Chapter 19, Article 2c and the regulations promulgated thereunder.

4.19 License Renewal, Auctioneer, Weighman, Grader. Any weighman or grader desiring to renew his license shall make application for such renewal on application forms provided by the Commissioner, on or before the first day of July of each year. Such application shall be accompanied by a check or money order made payable to the Commissioner in the sum of two dollars and fifty cents (\$2.50). Any auctioneer desiring to renew his license shall make application to the Commissioner for such renewal as provided in Chapter 19, Article 2c and the regulations promulgated thereunder.

4.20 Grader, Application and Duties. The applicant is required to qualify in accordance with the standard rules for grading livestock and other agricultural or horticultural products established by the United States Department of Agriculture and any special requirements established by the Commissioner.

- (a) The grader shall grade or classify all livestock in conformity with grades, classifications and standards established by the United States Department of Agriculture or that might be established by the Commissioner.

- (b) The license of a public market grader may be suspended or revoked by the Commissioner for his failure to grade and classify according to standards established by the United States Department of Agriculture.
- (c) A grader is authorized to settle disputes on grades and classifications and his decision shall be final unless appealed to the Commissioner.
- (d) At the end of each sale, the grader shall prepare a report showing the kinds of livestock graded or classified, the number in each grade or classification, and any other information required by the Commissioner. Such reports shall be in triplicate, the original to be forwarded to the Commissioner not later than the day following the sale, one copy to be given to the public market and one copy to be retained by the grader.
- (e) A public market shall employ sufficient help to assist the grader in grading and classifying livestock. Such employees shall be available to the grader at all times while grading is being conducted.

4.21 Weighman, Application and Duties. An applicant for weighman license shall be a person learned and efficient in weighing livestock.

- (1) The weighman shall have complete and unmolested charge of the scale at all times he is engaged in weighing.
- (2) shall record the true and accurate weight of all livestock weighed.
- (3) shall record the weight by typed impression after all other information has been entered and recorded on the ticket.

- (4) shall show on the scale ticket the amount of dockage, if any, on livestock and live poultry in addition to the information required to be on the scale ticket.
- (5) shall make a certified copy of scale ticket when requested by the owner or consignor of livestock or live poultry.
- (6) In the case of an error in preparing the scale ticket, the weighman shall make a corrected scale ticket after re-weighing of the livestock or live poultry. The correction ticket shall be attached to the original ticket and shall show on its face that it is a corrected ticket. A weighman is authorized to settle disputes on weights and scale records, or other matters pertaining to weights, and his decision shall be final unless appealed to the Commissioner.

4.22 Auctioneer, Application and Duties. Auctioneers shall be licensed as required under Chapter 19, 2c.

- (a) In case of a dispute between bidders, the auctioneer is authorized to settle such dispute by reopening the bid and reselling to the highest bidder.
- (b) An auctioneer, when offering livestock for sale at any public market for immediate slaughter, shall publicly announce that such livestock may be purchased for immediate slaughter only.
- (c) An auctioneer when selling livestock received, entered and/or offered for sale by any public market for feeding and breeding purposes, shall publicly announce that such livestock may be purchased for feeding or breeding purposes.
- (d) An auctioneer, when selling livestock by weight, shall announce

the weight of such livestock before same is sold. When any livestock is sold he shall announce the name of the person or firm buying said livestock. When livestock is sold to a person representing himself as agent or order buyer for another person, the auctioneer shall announce the name of the agent or order buyer, and, if possible, the name of the person for whom such livestock was purchased. The auctioneer shall also announce the price at which said livestock was sold. Such announcements shall be in an audible voice that can be heard throughout the sale arena by persons of average hearing.

4.23 Animals, Identification Of. It shall be the responsibility of each public market to individually identify by numbered tag each animal consigned to said market. Such tag number shall be recorded on the scale ticket in the space provided.

The consignor shall bear the responsibility for delivering correctly paired cows and calves to the market.

4.24 Agents, Order Buyers, Purchases By. When purchases are made at a public market by a person representing himself as agent or order buyer for another person, such public market shall record on the manifest, invoice and other records the name of the agent or order buyer, and for what person such was purchased.

4.25 Scale Tickets. A public market shall use scale tickets made in quadruplicate, or triplicate where manifest sheets are used, numbered serially, and shall contain the following information:

(Printed) (Printed)
(No. Serially) (Name of Market) Public Market _____, 19____

Received from _____ Address _____

Hogs Cattle Calves Lambs Sheep Horses Poultry

Tag and/or Mark _____ Pen No. _____

Buyer _____ Price _____

Remarks _____ Amount _____

Weighman _____

- (a) A public market shall record in spaces provided on the scale ticket all required information. The weighman shall record the true and actual weight of livestock, poultry and other agricultural or horticultural products entered and recorded for sale by the pound. A public market shall deliver one copy of the scale ticket to the consignor, one copy to the purchaser, if requested, one copy to the veterinarian or livestock inspector, and retain one copy for permanent record.
- (b) In case of a dispute over any weights, a public market official shall, upon request of either the consignor or buyer, reweigh any livestock, poultry, agricultural or horticultural product in question. Disputes arising from such reweighing may be appealed to the Agriculture Commissioner or his duly authorized agent.
- (c) Organizations exempted under the definition of a public market when selling agricultural or horticultural products by weight shall deliver to each consignor, at time of consignment, a scale ticket indicating the correct weight of the animal(s) consigned.

4.26 Records and Account. A public market shall keep a complete and accurate record of all transactions. The Commissioner or his duly authorized

agents shall have the right to enter the premises of any public market, at all reasonable hours, to examine the books and records of such market and to make any other inspection deemed necessary.

4.27 Reports, Statistical. A public market, when requested, shall make and furnish reports or other statistical information to the Commissioner on forms furnished by the Commissioner.

4.28 Inspection and Test Certificates. A public market shall complete test or inspection certificates issued by the veterinarian covering livestock tested or inspected by writing in the name and address of the purchaser in the blank spaces provided for same.

4.29 Records, Disposition Of. A public market shall keep any and all books, records, documents or other papers which contain or explain transactions of its business for a period of at least five (5) years.

4.30 Proceeds of Sale, Prompt Accounting. All monies received from the sale of agricultural or horticultural products by a public market are hereby declared to be the property of the consignor. A public market shall be responsible to a consignor for the full market value of all agricultural or horticultural products received or entered for sale. A public market shall, within seventy-two hours following the conclusion of the daily activities of such market, transmit or deliver by check to the consignors or the consignor's duly authorized agent, or by mail, the net proceeds received from the sale of the consignor's products, and a true written account of such sale showing the number, weight and price of each kind of livestock, poultry, agricultural or horticultural product sold, the name of the purchaser, the purchaser's agent or order buyer, if any, the date of the sale, the commission, yardage and any other lawful charges, and any other facts as may be necessary to complete the account.

4.31 Market Zone Establishment. The Commissioner shall establish and define an area surrounding each public market as the market zone for such public market and shall enter the boundaries of such market zone upon the records of the Department and cause such boundaries to be posted. All agricultural and horticultural products entering a market zone shall be handled and sold through the market and shall be subject to all the rules and regulations governing a public market.

4.32 Veterinarian, Authority Of. Accredited veterinarians or livestock inspectors employed by the Commissioner shall have the right to enter any public market or premises, public or private, within such market or market zone, where they have reason to believe that diseased animals or poultry may have been confined or kept in or on such premises, make examinations or apply such tests as may be necessary to determine whether or not any contagious or infectious disease exists.

4.33 Livestock, Inspected or Tested, Disposition Of. A public market shall not permit the removal of any livestock or poultry inspected or subject to inspection, or tested or subject to test for any communicable or infectious disease affecting livestock or poultry, unless and until released by the veterinarian or livestock inspector.

4.34 Veterinary Biologicals, Furnished by, Disposition of. A public market shall furnish all necessary veterinary biologicals for testing livestock. Such veterinary biological products shall be approved by the Commissioner, shall be administered by an accredited veterinarian or an agent under his supervision, and shall be used exclusively for testing livestock received, sold or offered for sale through the public market.

4.35 Veterinary Assistant, Employed By. A public market shall employ sufficient help to assist the veterinarian or his agent in testing livestock

at the market. Such employees shall be available to the veterinarian or his agent at all times on the day of the sale.

4.36 Diseased Animals, Disposition of. Livestock received by a public market which show symptoms of contagious, infectious or communicable disease, may be held in quarantine, on the premises of such public market, at the expense of the owner.

4.37 Pens, Quarantine. A public market is required to provide and designate by name "quarantine pens" to be used exclusively for brucellosis reactor cattle and hospital pens for livestock quarantined for diseases other than brucellosis.

4.38 Cattle, Responsibility for Penning. A public market shall take the full responsibility for and place all mature cattle in testing pens. All such cattle shall be tested for brucellosis by an accredited veterinarian or livestock inspector.

4.39 Cattle, Originating Other Public Markets. Mature cattle originating from a dealer, or from another public market within the state, shall not be received, sold or offered for sale for feeding and breeding purposes unless accompanied, at time of delivery, by a brucellosis test certificate showing such animal or animals to have been tested negative for brucellosis within the preceding thirty (30) days.

4.40 Cattle Testing, Brucellosis, Disposition of Reactors. All cattle placed in testing pens shall be tested for brucellosis. No cattle subject to test for brucellosis shall be released to purchaser until they have been bled and the test results have been obtained.

- (a) All cattle when tested and found to be reactors, shall be tagged in the left ear with a metal tag and branded on the left jaw with the letter "B", and sold only for immediate slaughter.

- (b) All testing pens allotted for cattle received, offered for sale, sold or exposed for sale, shall be properly cleaned after each sale. If conditions warrant, the State Veterinarian may request that such pens be properly cleaned and disinfected.
- (c) Non-reacting cattle from a herd entering a public market in which reacting cattle are found by market testing may be returned to the farm under quarantine to be tested at state expense, or sold for immediate slaughter.

4.41 Swine, Responsibility for Penning, Identification and Inspection.

A public market shall place all swine to be offered for sale for feeding or breeding purposes in swine pens, for identification and inspection by methods approved by the Commissioner. All pens allotted for swine received, offered, sold or exposed for sale for feeding and/or breeding purposes shall be thoroughly cleaned and disinfected after each sale by the public market.

4.42 Reports, False and Misleading. A public market shall not issue or circulate any false or misleading reports, records or representations concerning market conditions or the price of any agricultural or horticultural products.

4.43 Market Responsibility to Purchaser. A public market shall be responsible to the purchaser of any livestock or other commodity until the responsibility for such is signed for by the purchaser or his authorized agent.

4.44 Settlements, Based on Weights. When livestock or live poultry is bought and/or sold by weight, settlement therefore shall be on the basis of the weight shown on the original scale ticket or corrected scale ticket.

Shrinkage deductions in weight of livestock must be shown in writing on all copies of the scale ticket and the consignor's sale invoice.

a copy of such correspondence provided to the Commissioner.

Applications for a market permit must include a copy of the proposed tariff rates and proof of proper advertisement. Tariff rate schedules shall be conspicuously posted in no less than four (4) areas of the market including the entrance, dock, scales, and sale ring. The schedule must state in print at least 1/4 inch high that the rates are those established annually by the market management and shall be effective through June 30 of the next year.

4.51 Fees To Be Collected, Tests. A public market shall:

- (a) Collect a fee of fifty cents (50¢) per head for all cattle tested for brucellosis.
- (b) On the first day of each month, forward to the Commissioner all monies due for testing done during the previous month.

4.52 Sales, Regular and Special. All public markets shall continue to operate on the same day of the week on which they are holding regular sales as of the effective date of these regulations. A public market desiring to make a change in its regular sale day shall file an application at least sixty (60) days prior to the date of such contemplated change with the Commissioner. A public market shall not advertise and hold special livestock sales on days other than their regular sale day, until such public market has been given permission by the Commissioner to hold such sale. When a public market desires to hold a special sale, it shall make application in writing at least thirty (30) days prior to the date it contemplates holding such sale, to the Commissioner, and shall include all information pertaining to the character of the sale.

- (a) A public market that discontinues a regular sale day or the operation of the market for a period of time during the year shall notify the Commissioner, in writing, at least fourteen (14)

days in advance of such discontinuance, and shall again notify the Commissioner at least fourteen (14) days in advance, in writing, of the scheduled reopening of the market.

- (b) Livestock and poultry sold at special sales by public markets are subject to the same health requirements as regular scheduled sales.
- (c) Sales totally sponsored, organized and financed by the State of West Virginia or by any state, regional or county agricultural fair or festival, or by any 4-H, FFA or other educational activity shall file their reasons, in writing, for exemption from the definition of a public market with the Commissioner at least thirty (30) days prior to the event and before February 15th each year if the event is held annually.
- (d) Non-profit associations, non-profit corporations and breed associations planning livestock sales within the state shall file in writing with the Commissioner annually or before February 15th of each year, the place and date of all such sales if an annual event, or at least thirty (30) days prior to the event if it is held irregularly or is being held for the first time.
- (e) Non-profit associations, non-profit corporations and breed associations planning sales in West Virginia shall file with the Commissioner at least thirty (30) days prior to the sale a surety bond in an amount no less than the average of all other public markets that have been in operation more than twelve months or shall file a certified copy of the By-laws of the

corporation or association with the Commissioner advising him that the members offering stock at the sale shall bear any loss in proportion to the total value of such stock being sold at such sale.

- (f) At the conclusion of each non-profit association, non-profit corporation or breed association sale, the secretary of the organization conducting such sale shall certify to the Commissioner in writing that only active members in good standing sold live-stock at such sale. Such reports must state that all proceeds due consignors have been paid in full. Any deficiencies in payment from purchasers must be reported immediately to the Commissioner and shall include the name, address and phone number of such purchaser and the amount of the deficiency.

4.53 Clerk Shall Record Price and Purchaser. A public market clerk shall record the name of the buyer and the price at which agricultural or horticultural products are sold as announced by the auctioneer.

4.54 Penalties. Any person who shall violate any of the provisions of these regulations or the articles under which they are promulgated, or who shall obstruct or hinder the Commissioner in the performance of his duties under this article shall be guilty of a misdemeanor and, upon conviction thereof, shall, for the first offense, be fined not more than one hundred dollars (\$100.00), and upon conviction for each subsequent offense, be fined not more than five hundred dollars (\$500.00), and in addition to such fine may be confined in the county jail for not more than ninety (90) days.

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE DEPARTMENT OF AGRICULTURE

Chapter 19-2
1981

GENERAL INDEX

for

SERIES XI

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 9/5/82
Administrative Law Division

PUBLIC MARKETS

PAGE NUMBER

SECTION 1 - General

1.01	Scope	1
1.02	Authority	1
1.03	Effective Date	1
1.04	Filing Date	1

SECTION 2 - Declaration of Policy 1

SECTION 3 - Definitions of Words and Terms 1

3.01	Commissioner	1
3.02	Feeding and Breeding Purposes	2
3.03	Grade	2
3.04	Immediate Slaughter	2
3.05	Person	2
3.06	Public Market	2
3.07	Veterinarian	3

SECTION 4 - Regulations 3

4.01	Permit Required	3
4.02	Permit, Application For	3
4.03	Permit Renewal	4
4.04	Transfer of Permit	4
4.05	Scales, Type and Location	5
4.06	Veterinary Office	5
4.07	Pens For Holding and Testing Cattle	5
4.08	Pens For Holding Swine For Feeding and Breeding Purposes	5
4.09	Pens For Holding Sheep For Feeding and Breeding Purposes	5
4.10	Pens (Grading)	6

PUBLIC MARKETS

PAGE NUMBER

4.11	Watering Facilities	6
4.12	Public Facilities	6
4.13	Opening Hour of Sale	6
4.14	Weighed on Day of Sale	6
4.15	Scales, Maintenance	6
4.16	Weighman, Grader, Auctioneer, Employment of	6
4.17	Grades, Classifications, Standards	6
4.18	Licenses, Weighman, Grader, Auctioneer	7
4.19	License Renewal, Auctioneer, Weighman, Grader	7
4.20	Grader, Application and Duties	7
4.21	Weighman, Application and Duties	8
4.22	Auctioneer, Application and Duties	9
4.23	Animals, Identification Of	10
4.24	Agents, Order Buyers, Purchases By	10
4.25	Scale Tickets	10
4.26	Records and Account	11
4.27	Reports, Statistical	12
4.28	Inspection and Test Certificates	12
4.29	Records, Disposition Of	12
4.30	Proceeds of Sale, Prompt Accounting	12
4.31	Market Zone Establishment	13
4.32	Veterinarian, Authority Of	13
4.33	Livestock, Inspected or Tested, Disposition Of	13
4.34	Veterinary Biologicals, Furnished By, Disposition Of	13
4.35	Veterinary Assistant, Employed By	13
4.36	Diseased Animals, Disposition Of	14
4.37	Pens, Quarantine	14
4.38	Cattle, Responsibility for Penning	14
4.39	Cattle, Originating Other Public Markets	14
4.40	Cattle Testing, Brucellosis, Disposition of Reactors	14
4.41	Swine, Responsibility for Penning, Identification and Inspection	15
4.42	Reports, False and Misleading	15
4.43	Market Responsibility to Purchaser	15
4.44	Settlements, Based on Weights	15
4.45	Livestock to be Sold on Own Merits to Highest Bidder	16
4.46	Livestock Intermingling	16
4.47	Livestock, Condition Of	16
4.48	Price Guarantees Prohibited	16
4.49	Market Manager Prohibited From Buying, Selling or Trading in Livestock Except in Name of Market	16
4.50	Commission, Service, Other Charges, Schedule and Posting Of	17
4.51	Fees To Be Collected, Tests	18
4.52	Sales, Regular and Special	18
4.53	Clerk Shall Record Price and Purchaser	20
4.54	Penalties	20

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE DEPARTMENT OF AGRICULTURE

Chapter 19-2

Series XI
1981

SUBJECT: Regulations Governing Public Markets

Section 1 - General

1.01 Scope. These regulations establish general operating procedures for public markets.

1.02 Authority. These regulations are issued under authority of Chapter 19, Articles 2 and 2a of the Official Code of West Virginia, 1931, as amended.

1.03 Effective Date. These regulations are promulgated and become effective on July 1, 1982.

1.04 Filing Date. These regulations were filed in the Office of the Secretary of State on February 5, 1982.

Section 2 - Declaration of Policy.

2.01 Articles 2 and 2a, Chapter 19 of the Official Code of West Virginia charges the Commissioner of Agriculture with the responsibility for promulgating and administering rules and regulations to govern the operation of public markets where agricultural or horticultural products including livestock and poultry are received and sold at public auction.

Section 3 - Definitions of Words and Terms. The following words and terms shall have the following meanings.

3.01 Commissioner. As defined in the law, Commissioner is the Commissioner of Agriculture of the State of West Virginia or his authorized agents.

3.02 Feeding and Breeding Purposes. Any livestock received, sold, offered or exposed for sale for purposes other than immediate slaughter.

3.03 Grade. The standards used to grade and classify livestock in West Virginia shall be the same as those established by the United States Department of Agriculture or that might be established by the Commissioner.

3.04 Immediate Slaughter. Livestock purchased by persons, firms or corporations engaged in shipping direct from the market to terminal markets or slaughtering places. Livestock purchased for immediate slaughter shall not be returned to farms.

3.05 Person. As defined in the law, person includes any individual, partnership, corporation or association.

3.06 Public Market. A public market as defined in the law is (1) any place of business where livestock, poultry or other agricultural or horticultural products are received and sold at public auction or, (2) any place where livestock is received from producers, assembled and sold or offered for sale, by any method including, but not limited to, public auction. The term public market shall include all such places where such activities are conducted, whether or not such activities are performed according to a scheduled routine or a historically established pattern of days and times: Provided, That sales totally sponsored, organized and financed by the State of West Virginia or by any state, regional or county agricultural fair or festival, or by any 4-H, FFA or other educational activity, shall not be included in this definition. Annual sales held by non-profit associations or non-profit corporations devoted to improving the quality of beef cattle raised in this state where the net proceeds from such sales are used exclusively for the association or corporation conducting such sale, or

purebred livestock sales conducted by generally recognized breed associations, shall not be subject to the provisions of sections eight and sixteen-a of this article: Provided, however, That only members in good standing in such non-profit association or non-profit corporation or such breed association shall offer cattle for sale at such annual sale and the by-laws of such association or corporation or such breed association shall provide either for a surety bond to be given as provided in this article or that each member offering stock at such sale shall bear any loss in proportion to the value of each member's stock to the total value of such stock being sold at such sale.

3.07 Veterinarian. The State Veterinarian, any accredited veterinarian employed by the Commissioner, and/or any individual designated as an agent of the veterinarian.

Section 4 - Regulations.

4.01 Permit Required. All persons desiring to operate a public market shall obtain a permit from the Commissioner.

4.02 Permit, Application For. All persons applying for a permit to operate a public market shall make application to the Commissioner on forms furnished by him. The application shall contain the following:

- (a) Proposed location of such market
- (b) Type of ownership; individual, partnership, corporation or association
- (c) Principal owners and their addresses
- (d) How financed
- (e) A fee of ten dollars (\$10.00)

(f) A plat showing the location and the amount of land, including its elevations, location in relation to highways or railroads and general accessibility to the public.

(g) Blueprints which show the details of construction of all barns, buildings and other facilities.

Before a permit shall be issued by the Commissioner, the applicant shall furnish a surety bond payable to the State of West Virginia for the benefit of consignors, who may be wronged or damaged by any fraud or fraudulent practices of the market, in the amount prescribed by the Commissioner, but in no case shall the bond be less than the average bond maintained by all other public markets in the state that have been in operation more than twelve months.

4.03 Permit Renewal. Persons operating a public market shall renew their permit annually. Applications for renewal of the permit shall be made on forms furnished by the Commissioner. The application shall be presented on or before the first day of July of each year and shall be accompanied by a surety bond payable to the State of West Virginia in an amount not to exceed one hundred twenty percent of the average of its sales during the preceding calendar year. A check or money order in the amount of ten dollars (\$10.00) shall accompany the application.

The Commissioner shall require a bond in an amount fixed by him when a public market has not operated for one year previous to the date of the application however in no case shall the bond be less than the average bond maintained by all other public markets in the state that have been in operation more than twelve months.

4.04 Transfer of Permit. No person holding a permit to operate a public market shall sell or otherwise transfer such permit without first

receiving permission in writing from the Commissioner.

4.05 Scales, Type and Location. Persons operating a public market shall install a sufficient number of scales to accommodate the maximum volume of business of the market at any time. All sales shall be equipped with a dial and printer or adjustable indicator, Type-Registering Beams, and be located where easily accessible to the docks.

4.06 Veterinary Office. All persons operating a public market shall provide and equip a veterinary office and laboratory that is acceptable to the Commissioner. Locks and keys shall be provided and the office shall be for use by the veterinarian and livestock inspectors only.

4.07 Pens For Holding and Testing Cattle. All persons operating a public market shall provide two holding pens to be used for the purpose of testing and examining cattle. These holding pens shall be constructed so that cattle may be safely worked from one through a catching chute into the other. The catching chute, gates and working area shall be constructed and maintained for maximum safety and efficiency.

4.08 Pens For Holding Swine For Feeding and Breeding Purposes. All persons operating a public market shall construct or allocate, under roof, a sufficient number of pens to be used exclusively for the purpose of examining and administering medication to swine received and offered for sale for feeding and breeding purposes. These pens shall be constructed with floors of impervious material, shall be well-lighted and shall be properly cleaned after each sale.

4.09 Pens For Holding Sheep For Feeding and Breeding Purposes. All persons operating a public market shall construct, under roof, a sufficient

number of pens to be used for sheep and lambs offered for sale for feeding and breeding purposes. These pens shall be well lighted and shall be properly cleaned after each sale.

4.10 Pens (Grading). All persons operating a public market shall provide pens for grading and classifying livestock. All pens shall be located under roof and shall be properly cleaned after each sale.

4.11 Watering Facilities. All persons operating a public market shall have fresh potable water available to all livestock.

4.12 Public Facilities. All persons operating a public market shall provide (a) Drinking fountains, and (b) Toilet facilities for the public and such facilities shall be maintained in a clean and sanitary condition in accordance with the requirements of the State Health Department.

4.13 Opening Hour of Sale. A public market shall keep the public informed as to the starting time of all sales and shall begin all sales no later than the approved sale time.

4.14 Weighed on Day of Sale. All livestock sold by weight at any public market shall be weighed at the market on the day of the sale.

4.15 Scales, Maintenance. A public market shall maintain their scales so as to insure accurate weights, and shall have the scale tested at least once every twelve months or oftener, if required by the State Commissioner of Labor.

4.16 Weighman, Grader, Auctioneer, Employment Of. A public market shall employ and use a licensed weighman, a licensed grader, and a licensed auctioneer at every sale where weighed and graded livestock are sold at auction.

4.17 Grades, Classifications, Standards. A public market representing or advertising that agricultural or horticultural products are being sold on

grades, classifications, or standards adaptable to such products, shall employ a licensed grader to sort, grade and classify such products. Such grades or standards shall conform to the grades, classifications or standards established by the United States Department of Agriculture or that might be established by the Commissioner.

4.18 Licenses, Weighman, Grader, Auctioneer. Application for weighman or grader's license shall be filed with the Commissioner on forms provided by him and shall be accompanied by check or money order in the amount of two dollars and fifty cents (\$2.50). Application for auctioneer's license shall be filed with the Commissioner as provided in Chapter 19, Article 2c and the regulations promulgated thereunder.

4.19 License Renewal, Auctioneer, Weighman, Grader. Any weighman or grader desiring to renew his license shall make application for such renewal on application forms provided by the Commissioner, on or before the first day of July of each year. Such application shall be accompanied by a check or money order made payable to the Commissioner in the sum of two dollars and fifty cents (\$2.50). Any auctioneer desiring to renew his license shall make application to the Commissioner for such renewal as provided in Chapter 19, Article 2c and the regulations promulgated thereunder.

4.20 Grader, Application and Duties. The applicant is required to qualify in accordance with the standard rules for grading livestock and other agricultural or horticultural products established by the United States Department of Agriculture and any special requirements established by the Commissioner.

- (a) The grader shall grade or classify all livestock in conformity with grades, classifications and standards established by the United States Department of Agriculture or that might be established by the Commissioner.

- (b) The license of a public market grader may be suspended or revoked by the Commissioner for his failure to grade and classify according to standards established by the United States Department of Agriculture.
- (c) A grader is authorized to settle disputes on grades and classifications and his decision shall be final unless appealed to the Commissioner.
- (d) At the end of each sale, the grader shall prepare a report showing the kinds of livestock graded or classified, the number in each grade or classification, and any other information required by the Commissioner. Such reports shall be in triplicate, the original to be forwarded to the Commissioner not later than the day following the sale, one copy to be given to the public market and one copy to be retained by the grader.
- (e) A public market shall employ sufficient help to assist the grader in grading and classifying livestock. Such employees shall be available to the grader at all times while grading is being conducted.

4.21 Weighman, Application and Duties. An applicant for weighman license shall be a person learned and efficient in weighing livestock.

- (1) The weighman shall have complete and unmolested charge of the scale at all times he is engaged in weighing.
- (2) shall record the true and accurate weight of all livestock weighed.
- (3) shall record the weight by typed impression after all other information has been entered and recorded on the ticket.

- (4) shall show on the scale ticket the amount of dockage, if any, on livestock and live poultry in addition to the information required to be on the scale ticket.
- (5) shall make a certified copy of scale ticket when requested by the owner or consignor of livestock or live poultry.
- (6) In the case of an error in preparing the scale ticket, the weighman shall make a corrected scale ticket after re-weighing of the livestock or live poultry. The correction ticket shall be attached to the original ticket and shall show on its face that is is a corrected ticket. A weighman is authorized to settle disputes on weights and scale records, or other matters pertaining to weights, and his decision shall be final unless appealed to the Commissioner.

4.22 Auctioneer, Application and Duties. Auctioneers shall be licensed as required under Chapter 19, 2c.

- (a) In case of a dispute between bidders, the auctioneer is authorized to settle such dispute by reopening the bid and reselling to the highest bidder.
- (b) An auctioneer, when offering livestock for sale at any public market for immediate slaughter, shall publicly announce that such livestock may be purchased for immediate slaughter only.
- (c) An auctioneer when selling livestock received, entered and/or offered for sale by any public market for feeding and breeding purposes, shall publicly announce that such livestock may be purchased for feeding or breeding purposes.
- (d) An auctioneer, when selling livestock by weight, shall announce

the weight of such livestock before same is sold. When any livestock is sold he shall announce the name of the person or firm buying said livestock. When livestock is sold to a person representing himself as agent or order buyer for another person, the auctioneer shall announce the name of the agent or order buyer, and, if possible, the name of the person for whom such livestock was purchased. The auctioneer shall also announce the price at which said livestock was sold. Such announcements shall be in an audible voice that can be heard throughout the sale arena by persons of average hearing.

4.23 Animals, Identification Of. It shall be the responsibility of each public market to individually identify by numbered tag each animal consigned to said market. Such tag number shall be recorded on the scale ticket in the space provided.

The consignor shall bear the responsibility for delivering correctly paired cows and calves to the market.

4.24 Agents, Order Buyers, Purchases By. When purchases are made at a public market by a person representing himself as agent or order buyer for another person, such public market shall record on the manifest, invoice and other records the name of the agent or order buyer, and for what person such was purchased.

4.25 Scale Tickets. A public market shall use scale tickets made in quadruplicate, or triplicate where manifest sheets are used, numbered serially, and shall contain the following information:

(Printed) (Printed)
(No. Serially) (Name of Market) Public Market _____, 19____

Received from _____ Address _____

Hogs Cattle Calves Lambs Sheep Horses Poultry

Tag and/or Mark _____ Pen No. _____

Buyer _____ Price _____

Remarks _____ Amount _____

Weighman _____

- (a) A public market shall record in spaces provided on the scale ticket all required information. The weighman shall record the true and actual weight of livestock, poultry and other agricultural or horticultural products entered and recorded for sale by the pound. A public market shall deliver one copy of the scale ticket to the consignor, one copy to the purchaser, if requested, one copy to the veterinarian or livestock inspector, and retain one copy for permanent record.
- (b) In case of a dispute over any weights, a public market official shall, upon request of either the consignor or buyer, reweigh any livestock, poultry, agricultural or horticultural product in question. Disputes arising from such reweighing may be appealed to the Agriculture Commissioner or his duly authorized agent.
- (c) Organizations exempted under the definition of a public market when selling agricultural or horticultural products by weight shall deliver to each consignor, at time of consignment, a scale ticket indicating the correct weight of the animal(s) consigned.

4.26 Records and Account. A public market shall keep a complete and accurate record of all transactions. The Commissioner or his duly authorized

agents shall have the right to enter the premises of any public market, at all reasonable hours, to examine the books and records of such market and to make any other inspection deemed necessary.

4.27 Reports, Statistical. A public market, when requested, shall make and furnish reports or other statistical information to the Commissioner on forms furnished by the Commissioner.

4.28 Inspection and Test Certificates. A public market shall complete test or inspection certificates issued by the veterinarian covering livestock tested or inspected by writing in the name and address of the purchaser in the blank spaces provided for same.

4.29 Records, Disposition Of. A public market shall keep any and all books, records, documents or other papers which contain or explain transactions of its business for a period of at least five (5) years.

4.30 Proceeds of Sale, Prompt Accounting. All monies received from the sale of agricultural or horticultural products by a public market are hereby declared to be the property of the consignor. A public market shall be responsible to a consignor for the full market value of all agricultural or horticultural products received or entered for sale. A public market shall, within seventy-two hours following the conclusion of the daily activities of such market, transmit or deliver by check to the consignors or the consignor's duly authorized agent, or by mail, the net proceeds received from the sale of the consignor's products, and a true written account of such sale showing the number, weight and price of each kind of livestock, poultry, agricultural or horticultural product sold, the name of the purchaser, the purchaser's agent or order buyer, if any, the date of the sale, the commission, yardage and any other lawful charges, and any other facts as may be necessary to complete the account.

4.31 Market Zone Establishment. The Commissioner shall establish and define an area surrounding each public market as the market zone for such public market and shall enter the boundaries of such market zone upon the records of the Department and cause such boundaries to be posted. All agricultural and horticultural products entering a market zone shall be handled and sold through the market and shall be subject to all the rules and regulations governing a public market.

4.32 Veterinarian, Authority Of. Accredited veterinarians or livestock inspectors employed by the Commissioner shall have the right to enter any public market or premises, public or private, within such market or market zone, where they have reason to believe that diseased animals or poultry may have been confined or kept in or on such premises, make examinations or apply such tests as may be necessary to determine whether or not any contagious or infectious disease exists.

4.33 Livestock, Inspected or Tested, Disposition Of. A public market shall not permit the removal of any livestock or poultry inspected or subject to inspection, or tested or subject to test for any communicable or infectious disease affecting livestock or poultry, unless and until released by the veterinarian or livestock inspector.

4.34 Veterinary Biologicals, Furnished by, Disposition of. A public market shall furnish all necessary veterinary biologicals for testing livestock. Such veterinary biological products shall be approved by the Commissioner, shall be administered by an accredited veterinarian or an agent under his supervision, and shall be used exclusively for testing livestock received, sold or offered for sale through the public market.

4.35 Veterinary Assistant, Employed By. A public market shall employ sufficient help to assist the veterinarian or his agent in testing livestock

at the market. Such employees shall be available to the veterinarian or his agent at all times on the day of the sale.

4.36 Diseased Animals, Disposition of. Livestock received by a public market which show symptoms of contagious, infectious or communicable disease, may be held in quarantine, on the premises of such public market, at the expense of the owner.

4.37 Pens, Quarantine. A public market is required to provide and designate by name "quarantine pens" to be used exclusively for brucellosis reactor cattle and hospital pens for livestock quarantined for diseases other than brucellosis.

4.38 Cattle, Responsibility for Penning. A public market shall take the full responsibility for and place all mature cattle in testing pens. All such cattle shall be tested for brucellosis by an accredited veterinarian or livestock inspector.

4.39 Cattle, Originating Other Public Markets. Mature cattle originating from a dealer, or from another public market within the state, shall not be received, sold or offered for sale for feeding and breeding purposes unless accompanied, at time of delivery, by a brucellosis test certificate showing such animal or animals to have been tested negative for brucellosis within the preceding thirty (30) days.

4.40 Cattle Testing, Brucellosis, Disposition of Reactors. All cattle placed in testing pens shall be tested for brucellosis. No cattle subject to test for brucellosis shall be released to purchaser until they have been bled and the test results have been obtained.

- (a) All cattle when tested and found to be reactors, shall be tagged in the left ear with a metal tag and branded on the left jaw with the letter "B", and sold only for immediate slaughter.

- (b) All testing pens allotted for cattle received, offered for sale, sold or exposed for sale, shall be properly cleaned after each sale. If conditions warrant, the State Veterinarian may request that such pens be properly cleaned and disinfected.
- (c) Non-reacting cattle from a herd entering a public market in which reacting cattle are found by market testing may be returned to the farm under quarantine to be tested at state expense, or sold for immediate slaughter.

4.41 Swine, Responsibility for Penning, Identification and Inspection.

A public market shall place all swine to be offered for sale for feeding or breeding purposes in swine pens, for identification and inspection by methods approved by the Commissioner. All pens allotted for swine received, offered, sold or exposed for sale for feeding and/or breeding purposes shall be thoroughly cleaned and disinfected after each sale by the public market.

4.42 Reports, False and Misleading. A public market shall not issue or circulate any false or misleading reports, records or representations concerning market conditions or the price of any agricultural or horticultural products.

4.43 Market Responsibility to Purchaser. A public market shall be responsible to the purchaser of any livestock or other commodity until the responsibility for such is signed for by the purchaser or his authorized agent.

4.44 Settlements, Based on Weights. When livestock or live poultry is bought and/or sold by weight, settlement therefore shall be on the basis of the weight shown on the original scale ticket or corrected scale ticket.

Shrinkage deductions in weight of livestock must be shown in writing on all copies of the scale ticket and the consignor's sale invoice.

4.45 Livestock to be Sold on Own Merits to Highest Bidder. A public market shall offer all agricultural and horticultural products consigned for sale at auction and shall sell such products to the highest bidder.

4.46 Livestock Intermingling. A public market shall not pen livestock entered or received to be sold for immediate slaughter, with cattle entered or received to be sold for feeding and/or breeding purposes.

4.47 Livestock, Condition of. Public market officials shall cause the condition of any obviously sick, injured, or otherwise unhealthy animals to be noted on the scale ticket and such condition must be announced by the auctioneer prior to the sale of such animal.

4.48 Price Guarantees Prohibited. No public market, in soliciting consignments of agricultural or horticultural products, shall guarantee to the owner or others thereof that such products will be sold at a specific price or prices if consigned to its market.

4.49 Market Manager Prohibited From Buying, Selling or Trading in Livestock Except in Name of Market. A public market shall not permit its manager to engage in buying, selling or otherwise trading in livestock for himself, his agent or partner at said market.

(a) Licensed weighmen, graders and auctioneers employed as such at a public market shall not buy or trade in agricultural or horticultural products at the public markets at which they are employed as weighmen, graders or auctioneers.

(b) Individuals who own or operate public markets shall not serve as auctioneers at regularly scheduled sales at said market.

- (c) When it appears to the manager of a public market that livestock being offered for sale is selling below a reasonable market price, the manager may buy said livestock in the name of the public market at which he is employed. He shall have the right to sell such livestock purchased by the market to anyone other than himself, and if there be a loss on the sale of such livestock, the public market shall absorb such loss. On such purchases and sales, the public market shall set up a special account on which all such transactions are to be recorded, and shall make an itemized report to the Commissioner on forms furnished by him, when requested.

4.50 Commission, Service, Other Charges, Schedule and Posting Of.

The management of the public market shall have permission to annually establish tariff rates. Such rates will take effect on July 1 of each year and shall remain in effect through June 30 of the following year without change.

The rates established for the market shall be advertised in a newspaper of general circulation within the market area at least twice in separate weeks during the month of May prior to their taking effect. All advertisements shall include language stating that the rates are "established by the market management."

The rate schedule may be based on either a base rate or a percentage rate and shall be advertised and posted annually whether they remain the same or are changed. Rates for special sales or unusual services such as are included in purebred and dispersal sales shall be determined under special arrangements agreed to between the parties prior to such sales. Such tariff rate schedules shall be forwarded to the U.S.D.A. Packers and Stockyards Administration for their consideration at least ten (10) days prior to their effective date with

a copy of such correspondence provided to the Commissioner.

Applications for a market permit must include a copy of the proposed tariff rates and proof of proper advertisement. Tariff rate schedules shall be conspicuously posted in no less than four (4) areas of the market including the entrance, dock, scales, and sale ring. The schedule must state in print at least 1/4 inch high that the rates are those established annually by the market management and shall be effective through June 30 of the next year.

4.51 Fees To Be Collected, Tests. A public market shall:

- (a) Collect a fee of fifty cents (50¢) per head for all cattle tested for brucellosis.
- (b) On the first day of each month, forward to the Commissioner all monies due for testing done during the previous month.

4.52 Sales, Regular and Special. All public markets shall continue to operate on the same day of the week on which they are holding regular sales as of the effective date of these regulations. A public market desiring to make a change in its regular sale day shall file an application at least sixty (60) days prior to the date of such contemplated change with the Commissioner. A public market shall not advertise and hold special livestock sales on days other than their regular sale day, until such public market has been given permission by the Commissioner to hold such sale. When a public market desires to hold a special sale, it shall make application in writing at least thirty (30) days prior to the date it contemplates holding such sale, to the Commissioner, and shall include all information pertaining to the character of the sale.

- (a) A public market that discontinues a regular sale day or the operation of the market for a period of time during the year shall notify the Commissioner, in writing, at least fourteen (14)

days in advance of such discontinuance, and shall again notify the Commissioner at least fourteen (14) days in advance, in writing, of the scheduled reopening of the market.

- (b) Livestock and poultry sold at special sales by public markets are subject to the same health requirements as regular scheduled sales.
- (c) Sales totally sponsored, organized and financed by the State of West Virginia or by any state, regional or county agricultural fair or festival, or by any 4-H, FFA or other educational activity shall file their reasons, in writing, for exemption from the definition of a public market with the Commissioner at least thirty (30) days prior to the event and before February 15th each year if the event is held annually.
- (d) Non-profit associations, non-profit corporations and breed associations planning livestock sales within the state shall file in writing with the Commissioner annually or before February 15th of each year, the place and date of all such sales if an annual event, or at least thirty (30) days prior to the event if it is held irregularly or is being held for the first time.
- (e) Non-profit associations, non-profit corporations and breed associations planning sales in West Virginia shall file with the Commissioner at least thirty (30) days prior to the sale a surety bond in an amount no less than the average of all other public markets that have been in operation more than twelve months or shall file a certified copy of the By-laws of the

corporation or association with the Commissioner advising him that the members offering stock at the sale shall bear any loss in proportion to the total value of such stock being sold at such sale.

- (f) At the conclusion of each non-profit association, non-profit corporation or breed association sale, the secretary of the organization conducting such sale shall certify to the Commissioner in writing that only active members in good standing sold livestock at such sale. Such reports must state that all proceeds due consignors have been paid in full. Any deficiencies in payment from purchasers must be reported immediately to the Commissioner and shall include the name, address and phone number of such purchaser and the amount of the deficiency.

4.53 Clerk Shall Record Price and Purchaser. A public market clerk shall record the name of the buyer and the price at which agricultural or horticultural products are sold as announced by the auctioneer.

4.54 Penalties. Any person who shall violate any of the provisions of these regulations or the articles under which they are promulgated, or who shall obstruct or hinder the Commissioner in the performance of his duties under this article shall be guilty of a misdemeanor and, upon conviction thereof, shall, for the first offense, be fined not more than one hundred dollars (\$100.00), and upon conviction for each subsequent offense, be fined not more than five hundred dollars (\$500.00), and in addition to such fine may be confined in the county jail for not more than ninety (90) days.



STATE OF WEST VIRGINIA
DEPARTMENT OF AGRICULTURE
CHARLESTON 25305

GUS R DOUGLASS
COMMISSIONER

WILLIAM H GILLESPIE
ADMINISTRATIVE ASSISTANT

February 5, 1982

Honorable A. James Manchin
West Virginia Secretary of State
Capitol Building
Charleston, WV 25305

Dear Secretary Manchin:

I am attaching two copies of amended West Virginia Administrative Regulations for the State Department of Agriculture regulations governing public markets. These are filed in accordance with Chapter 29A, Article 3, Section 7(a). These regulations are promulgated and issued under authority of Chapter 19, Article 2 and 2a of the Code of West Virginia, 1931, as amended.

I hereby certify that these are the original regulations to be filed in the office of the Secretary of State on February 5, 1982.

With best regards, I am

Very truly yours,

Gus R. Douglass
Agriculture Commissioner

GRD/G/d

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 2/5/82
Administrative Law Division



STATE OF WEST VIRGINIA
OFFICE OF THE SECRETARY OF STATE
CHARLESTON 25305

A. JAMES MANCHIN
SECRETARY OF STATE

STATE REGISTER FILING

I, Gus R. Douglass, Agriculture Commissioner,
Title or Position

W. Va. Department of Agriculture, hereby submit to record in
Department or Division

the State Register on 8 1/2 x 11" paper two (2) copies of

- proposed rules and regulations concerning topics of material not covered by existing rules and regulations;
- proposed rules and regulations superseding rules and regulations already on file;
- notice of hearing;
- findings and determinations;
- rules and regulations; or
- other - specify (_____)

This filing pertains to

Chapter 19
Article Article 2 and 2a
Series XI
Section _____
Page No. 1 through 22

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 2/5/82

- proposed rules and regulations are required to go to Legislative Rule Making Committee;
- proposed rules and regulations are excluded from Legislative Rule Making Committee;

February 5, 1982
Date Submitted
[Signature]
Signature of Person Authorizing
this Filing

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE DEPARTMENT OF AGRICULTURE

Chapter 19-2
1981

GENERAL INDEX

for

SERIES XI

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 2/5/82
Administrative Law Division

PUBLIC MARKETS

PAGE NUMBER

SECTION 1 - General

1.01	Scope	1
1.02	Authority	1
1.03	Effective Date	1
1.04	Filing Date	1

SECTION 2 - Declaration of Policy 1

SECTION 3 - Definitions of Words and Terms 1

3.01	Commissioner	1
3.02	Feeding and Breeding Purposes	2
3.03	Grade	2
3.04	Immediate Slaughter	2
3.05	Person	2
3.06	Public Market	2
3.07	Veterinarian	3

SECTION 4 - Regulations 3

4.01	Permit Required	3
4.02	Permit, Application For	3
4.03	Permit Renewal	4
4.04	Transfer of Permit	4
4.05	Scales, Type and Location	5
4.06	Veterinary Office	5
4.07	Pens For Holding and Testing Cattle	5
4.08	Pens For Holding Swine For Feeding and Breeding Purposes	5
4.09	Pens For Holding Sheep For Feeding and Breeding Purposes	5
4.10	Pens (Grading)	6

4.11	Watering Facilities	6
4.12	Public Facilities	6
4.13	Opening Hour of Sale	6
4.14	Weighed on Day of Sale	6
4.15	Scales, Maintenance	6
4.16	Weighman, Grader, Auctioneer, Employment of	6
4.17	Grades, Classifications, Standards	6
4.18	Licenses, Weighman, Grader, Auctioneer	7
4.19	License Renewal, Auctioneer, Weighman, Grader	7
4.20	Grader, Application and Duties	7
4.21	Weighman, Application and Duties	8
4.22	Auctioneer, Application and Duties	9
4.23	Animals, Identification Of	10
4.24	Agents, Order Buyers, Purchases By	10
4.25	Scale Tickets	10
4.26	Records and Account	11
4.27	Reports, Statistical	12
4.28	Inspection and Test Certificates	12
4.29	Records, Disposition Of	12
4.30	Proceeds of Sale, Prompt Accounting	12
4.31	Market Zone Establishment	13
4.32	Veterinarian, Authority Of	13
4.33	Livestock, Inspected or Tested, Disposition Of	13
4.34	Veterinary Biologicals, Furnished By, Disposition Of	13
4.35	Veterinary Assistant, Employed By	13
4.36	Diseased Animals, Disposition Of	14
4.37	Pens, Quarantine	14
4.38	Cattle, Responsibility for Penning	14
4.39	Cattle, Originating Other Public Markets	14
4.40	Cattle Testing, Brucellosis, Disposition of Reactors	14
4.41	Swine, Responsibility for Penning, Identification and Inspection	15
4.42	Reports, False and Misleading	15
4.43	Market Responsibility to Purchaser	15
4.44	Settlements, Based on Weights	15
4.45	Livestock to be Sold on Own Merits to Highest Bidder	16
4.46	Livestock Intermingling	16
4.47	Livestock, Condition Of	16
4.48	Price Guarantees Prohibited	16
4.49	Market Manager Prohibited From Buying, Selling or Trading in Livestock Except in Name of Market	16
4.50	Commission, Service, Other Charges, Schedule and Posting Of	17
4.51	Fees To Be Collected, Tests	18
4.52	Sales, Regular and Special	18
4.53	Clerk Shall Record Price and Purchaser	20
4.54	Penalties	20

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE DEPARTMENT OF AGRICULTURE

Chapter 19-2

Series XI
1981

SUBJECT: Regulations Governing Public Markets

Section 1 - General

1.01 Scope. These regulations establish general operating procedures for public markets.

1.02 Authority. These regulations are issued under authority of Chapter 19, Articles 2 and 2a of the Official Code of West Virginia, 1931, as amended.

1.03 Effective Date. These regulations are promulgated and become effective on July 1, 1982.

1.04 Filing Date. These regulations were filed in the Office of the Secretary of State on February 5, 1982.

Section 2 - Declaration of Policy.

2.01 Articles 2 and 2a, Chapter 19 of the Official Code of West Virginia charges the Commissioner of Agriculture with the responsibility for promulgating and administering rules and regulations to govern the operation of public markets where agricultural or horticultural products including livestock and poultry are received and sold at public auction.

Section 3 - Definitions of Words and Terms. The following words and terms shall have the following meanings.

3.01 Commissioner. As defined in the law, Commissioner is the Commissioner of Agriculture of the State of West Virginia or his authorized agents.

3.02 Feeding and Breeding Purposes. Any livestock received, sold, offered or exposed for sale for purposes other than immediate slaughter.

3.03 Grade. The standards used to grade and classify livestock in West Virginia shall be the same as those established by the United States Department of Agriculture or that might be established by the Commissioner.

3.04 Immediate Slaughter. Livestock purchased by persons, firms or corporations engaged in shipping direct from the market to terminal markets or slaughtering places. Livestock purchased for immediate slaughter shall not be returned to farms.

3.05 Person. As defined in the law, person includes any individual, partnership, corporation or association.

3.06 Public Market. A public market as defined in the law is (1) any place of business where livestock, poultry or other agricultural or horticultural products are received and sold at public auction or, (2) any place where livestock is received from producers, assembled and sold or offered for sale, by any method including, but not limited to, public auction. The term public market shall include all such places where such activities are conducted, whether or not such activities are performed according to a scheduled routine or a historically established pattern of days and times: Provided, That sales totally sponsored, organized and financed by the State of West Virginia or by any state, regional or county agricultural fair or festival, or by any 4-H, FFA or other educational activity, shall not be included in this definition. Annual sales held by non-profit associations or non-profit corporations devoted to improving the quality of beef cattle raised in this state where the net proceeds from such sales are used exclusively for the association or corporation conducting such sale, or

purebred livestock sales conducted by generally recognized breed associations, shall not be subject to the provisions of sections eight and sixteen-a of this article: Provided, however, That only members in good standing in such non-profit association or non-profit corporation or such breed association shall offer cattle for sale at such annual sale and the by-laws of such association or corporation or such breed association shall provide either for a surety bond to be given as provided in this article or that each member offering stock at such sale shall bear any loss in proportion to the value of each member's stock to the total value of such stock being sold at such sale.

3.07 Veterinarian. The State Veterinarian, any accredited veterinarian employed by the Commissioner, and/or any individual designated as an agent of the veterinarian.

Section 4 - Regulations.

4.01 Permit Required. All persons desiring to operate a public market shall obtain a permit from the Commissioner.

4.02 Permit, Application For. All persons applying for a permit to operate a public market shall make application to the Commissioner on forms furnished by him. The application shall contain the following:

- (a) Proposed location of such market
- (b) Type of ownership; individual, partnership, corporation or association
- (c) Principal owners and their addresses
- (d) How financed
- (e) A fee of ten dollars (\$10.00)

- (f) A plat showing the location and the amount of land, including its elevations, location in relation to highways or railroads and general accessibility to the public.
- (g) Blueprints which show the details of construction of all barns, buildings and other facilities.

Before a permit shall be issued by the Commissioner, the applicant shall furnish a surety bond payable to the State of West Virginia for the benefit of consignors, who may be wronged or damaged by any fraud or fraudulent practices of the market, in the amount prescribed by the Commissioner, but in no case shall the bond be less than the average bond maintained by all other public markets in the state that have been in operation more than twelve months.

4.03 Permit Renewal. Persons operating a public market shall renew their permit annually. Applications for renewal of the permit shall be made on forms furnished by the Commissioner. The application shall be presented on or before the first day of July of each year and shall be accompanied by a surety bond payable to the State of West Virginia in an amount not to exceed one hundred twenty percent of the average of its sales during the preceding calendar year. A check or money order in the amount of ten dollars (\$10.00) shall accompany the application.

The Commissioner shall require a bond in an amount fixed by him when a public market has not operated for one year previous to the date of the application however in no case shall the bond be less than the average bond maintained by all other public markets in the state that have been in operation more than twelve months.

4.04 Transfer of Permit. No person holding a permit to operate a public market shall sell or otherwise transfer such permit without first

receiving permission in writing from the Commissioner.

4.05 Scales, Type and Location. Persons operating a public market shall install a sufficient number of scales to accommodate the maximum volume of business of the market at any time. All sales shall be equipped with a dial and printer or adjustable indicator, Type-Registering Beams, and be located where easily accessible to the docks.

4.06 Veterinary Office. All persons operating a public market shall provide and equip a veterinary office and laboratory that is acceptable to the Commissioner. Locks and keys shall be provided and the office shall be for use by the veterinarian and livestock inspectors only.

4.07 Pens For Holding and Testing Cattle. All persons operating a public market shall provide two holding pens to be used for the purpose of testing and examining cattle. These holding pens shall be constructed so that cattle may be safely worked from one through a catching chute into the other. The catching chute, gates and working area shall be constructed and maintained for maximum safety and efficiency.

4.08 Pens For Holding Swine For Feeding and Breeding Purposes. All persons operating a public market shall construct or allocate, under roof, a sufficient number of pens to be used exclusively for the purpose of examining and administering medication to swine received and offered for sale for feeding and breeding purposes. These pens shall be constructed with floors of impervious material, shall be well-lighted and shall be properly cleaned after each sale.

4.09 Pens For Holding Sheep For Feeding and Breeding Purposes. All persons operating a public market shall construct, under roof, a sufficient

number of pens to be used for sheep and lambs offered for sale for feeding and breeding purposes. These pens shall be well lighted and shall be properly cleaned after each sale.

4.10 Pens (Grading). All persons operating a public market shall provide pens for grading and classifying livestock. All pens shall be located under roof and shall be properly cleaned after each sale.

4.11 Watering Facilities. All persons operating a public market shall have fresh potable water available to all livestock.

4.12 Public Facilities. All persons operating a public market shall provide (a) Drinking fountains, and (b) Toilet facilities for the public and such facilities shall be maintained in a clean and sanitary condition in accordance with the requirements of the State Health Department.

4.13 Opening Hour of Sale. A public market shall keep the public informed as to the starting time of all sales and shall begin all sales no later than the approved sale time.

4.14 Weighed on Day of Sale. All livestock sold by weight at any public market shall be weighed at the market on the day of the sale.

4.15 Scales, Maintenance. A public market shall maintain their scales so as to insure accurate weights, and shall have the scale tested at least once every twelve months or oftener, if required by the State Commissioner of Labor.

4.16 Weighman, Grader, Auctioneer, Employment Of. A public market shall employ and use a licensed weighman, a licensed grader, and a licensed auctioneer at every sale where weighed and graded livestock are sold at auction.

4.17 Grades, Classifications, Standards. A public market representing or advertising that agricultural or horticultural products are being sold on

grades, classifications, or standards adaptable to such products, shall employ a licensed grader to sort, grade and classify such products. Such grades or standards shall conform to the grades, classifications or standards established by the United States Department of Agriculture or that might be established by the Commissioner.

4.18 Licenses, Weighman, Grader, Auctioneer. Application for weighman or grader's license shall be filed with the Commissioner on forms provided by him and shall be accompanied by check or money order in the amount of two dollars and fifty cents (\$2.50). Application for auctioneer's license shall be filed with the Commissioner as provided in Chapter 19, Article 2c and the regulations promulgated thereunder.

4.19 License Renewal, Auctioneer, Weighman, Grader. Any weighman or grader desiring to renew his license shall make application for such renewal on application forms provided by the Commissioner, on or before the first day of July of each year. Such application shall be accompanied by a check or money order made payable to the Commissioner in the sum of two dollars and fifty cents (\$2.50). Any auctioneer desiring to renew his license shall make application to the Commissioner for such renewal as provided in Chapter 19, Article 2c and the regulations promulgated thereunder.

4.20 Grader, Application and Duties. The applicant is required to qualify in accordance with the standard rules for grading livestock and other agricultural or horticultural products established by the United States Department of Agriculture and any special requirements established by the Commissioner.

- (a) The grader shall grade or classify all livestock in conformity with grades, classifications and standards established by the United States Department of Agriculture or that might be established by the Commissioner.

- (b) The license of a public market grader may be suspended or revoked by the Commissioner for his failure to grade and classify according to standards established by the United States Department of Agriculture.
- (c) A grader is authorized to settle disputes on grades and classifications and his decision shall be final unless appealed to the Commissioner.
- (d) At the end of each sale, the grader shall prepare a report showing the kinds of livestock graded or classified, the number in each grade or classification, and any other information required by the Commissioner. Such reports shall be in triplicate, the original to be forwarded to the Commissioner not later than the day following the sale, one copy to be given to the public market and one copy to be retained by the grader.
- (e) A public market shall employ sufficient help to assist the grader in grading and classifying livestock. Such employees shall be available to the grader at all times while grading is being conducted.

4.21 Weighman, Application and Duties. An applicant for weighman license shall be a person learned and efficient in weighing livestock.

- (1) The weighman shall have complete and unmolested charge of the scale at all times he is engaged in weighing.
- (2) shall record the true and accurate weight of all livestock weighed.
- (3) shall record the weight by typed impression after all other information has been entered and recorded on the ticket.

- (4) shall show on the scale ticket the amount of dockage, if any, on livestock and live poultry in addition to the information required to be on the scale ticket.
- (5) shall make a certified copy of scale ticket when requested by the owner or consignor of livestock or live poultry.
- (6) In the case of an error in preparing the scale ticket, the weighman shall make a corrected scale ticket after re-weighing of the livestock or live poultry. The correction ticket shall be attached to the original ticket and shall show on its face that it is a corrected ticket. A weighman is authorized to settle disputes on weights and scale records, or other matters pertaining to weights, and his decision shall be final unless appealed to the Commissioner.

4.22 Auctioneer, Application and Duties. Auctioneers shall be licensed as required under Chapter 19, 2c.

- (a) In case of a dispute between bidders, the auctioneer is authorized to settle such dispute by reopening the bid and reselling to the highest bidder.
- (b) An auctioneer, when offering livestock for sale at any public market for immediate slaughter, shall publicly announce that such livestock may be purchased for immediate slaughter only.
- (c) An auctioneer when selling livestock received, entered and/or offered for sale by any public market for feeding and breeding purposes, shall publicly announce that such livestock may be purchased for feeding or breeding purposes.
- (d) An auctioneer, when selling livestock by weight, shall announce

the weight of such livestock before same is sold. When any livestock is sold he shall announce the name of the person or firm buying said livestock. When livestock is sold to a person representing himself as agent or order buyer for another person, the auctioneer shall announce the name of the agent or order buyer, and, if possible, the name of the person for whom such livestock was purchased. The auctioneer shall also announce the price at which said livestock was sold. Such announcements shall be in an audible voice that can be heard throughout the sale arena by persons of average hearing.

4.23 Animals, Identification Of. It shall be the responsibility of each public market to individually identify by numbered tag each animal consigned to said market. Such tag number shall be recorded on the scale ticket in the space provided.

The consignor shall bear the responsibility for delivering correctly paired cows and calves to the market.

4.24 Agents, Order Buyers, Purchases By. When purchases are made at a public market by a person representing himself as agent or order buyer for another person, such public market shall record on the manifest, invoice and other records the name of the agent or order buyer, and for what person such was purchased.

4.25 Scale Tickets. A public market shall use scale tickets made in quadruplicate, or triplicate where manifest sheets are used, numbered serially, and shall contain the following information:

(Printed) (Printed)
(No. Serially) (Name of Market) Public Market _____, 19____

Received from _____ Address _____

Hogs Cattle Calves Lambs Sheep Horses Poultry

Tag and/or Mark _____ Pen No. _____

Buyer _____ Price _____

Remarks _____ Amount _____

_____ Weighman _____

- (a) A public market shall record in spaces provided on the scale ticket all required information. The weighman shall record the true and actual weight of livestock, poultry and other agricultural or horticultural products entered and recorded for sale by the pound. A public market shall deliver one copy of the scale ticket to the consignor, one copy to the purchaser, if requested, one copy to the veterinarian or livestock inspector, and retain one copy for permanent record.
- (b) In case of a dispute over any weights, a public market official shall, upon request of either the consignor or buyer, reweigh any livestock, poultry, agricultural or horticultural product in question. Disputes arising from such reweighing may be appealed to the Agriculture Commissioner or his duly authorized agent.
- (c) Organizations exempted under the definition of a public market when selling agricultural or horticultural products by weight shall deliver to each consignor, at time of consignment, a scale ticket indicating the correct weight of the animal(s) consigned.

4.26 Records and Account. A public market shall keep a complete and accurate record of all transactions. The Commissioner or his duly authorized

agents shall have the right to enter the premises of any public market, at all reasonable hours, to examine the books and records of such market and to make any other inspection deemed necessary.

4.27 Reports, Statistical. A public market, when requested, shall make and furnish reports or other statistical information to the Commissioner on forms furnished by the Commissioner.

4.28 Inspection and Test Certificates. A public market shall complete test or inspection certificates issued by the veterinarian covering livestock tested or inspected by writing in the name and address of the purchaser in the blank spaces provided for same.

4.29 Records, Disposition Of. A public market shall keep any and all books, records, documents or other papers which contain or explain transactions of its business for a period of at least five (5) years.

4.30 Proceeds of Sale, Prompt Accounting. All monies received from the sale of agricultural or horticultural products by a public market are hereby declared to be the property of the consignor. A public market shall be responsible to a consignor for the full market value of all agricultural or horticultural products received or entered for sale. A public market shall, within seventy-two hours following the conclusion of the daily activities of such market, transmit or deliver by check to the consignors or the consignor's duly authorized agent, or by mail, the net proceeds received from the sale of the consignor's products, and a true written account of such sale showing the number, weight and price of each kind of livestock, poultry, agricultural or horticultural product sold, the name of the purchaser, the purchaser's agent or order buyer, if any, the date of the sale, the commission, yardage and any other lawful charges, and any other facts as may be necessary to complete the account.

4.31 Market Zone Establishment. The Commissioner shall establish and define an area surrounding each public market as the market zone for such public market and shall enter the boundaries of such market zone upon the records of the Department and cause such boundaries to be posted. All agricultural and horticultural products entering a market zone shall be handled and sold through the market and shall be subject to all the rules and regulations governing a public market.

4.32 Veterinarian, Authority Of. Accredited veterinarians or livestock inspectors employed by the Commissioner shall have the right to enter any public market or premises, public or private, within such market or market zone, where they have reason to believe that diseased animals or poultry may have been confined or kept in or on such premises, make examinations or apply such tests as may be necessary to determine whether or not any contagious or infectious disease exists.

4.33 Livestock, Inspected or Tested, Disposition Of. A public market shall not permit the removal of any livestock or poultry inspected or subject to inspection, or tested or subject to test for any communicable or infectious disease affecting livestock or poultry, unless and until released by the veterinarian or livestock inspector.

4.34 Veterinary Biologicals, Furnished by, Disposition of. A public market shall furnish all necessary veterinary biologicals for testing livestock. Such veterinary biological products shall be approved by the Commissioner, shall be administered by an accredited veterinarian or an agent under his supervision, and shall be used exclusively for testing livestock received, sold or offered for sale through the public market.

4.35 Veterinary Assistant, Employed By. A public market shall employ sufficient help to assist the veterinarian or his agent in testing livestock

at the market. Such employees shall be available to the veterinarian or his agent at all times on the day of the sale.

4.36 Diseased Animals, Disposition of. Livestock received by a public market which show symptoms of contagious, infectious or communicable disease, may be held in quarantine, on the premises of such public market, at the expense of the owner.

4.37 Pens, Quarantine. A public market is required to provide and designate by name "quarantine pens" to be used exclusively for brucellosis reactor cattle and hospital pens for livestock quarantined for diseases other than brucellosis.

4.38 Cattle, Responsibility for Penning. A public market shall take the full responsibility for and place all mature cattle in testing pens. All such cattle shall be tested for brucellosis by an accredited veterinarian or livestock inspector.

4.39 Cattle, Originating Other Public Markets. Mature cattle originating from a dealer, or from another public market within the state, shall not be received, sold or offered for sale for feeding and breeding purposes unless accompanied, at time of delivery, by a brucellosis test certificate showing such animal or animals to have been tested negative for brucellosis within the preceding thirty (30) days.

4.40 Cattle Testing, Brucellosis, Disposition of Reactors. All cattle placed in testing pens shall be tested for brucellosis. No cattle subject to test for brucellosis shall be released to purchaser until they have been bled and the test results have been obtained.

- (a) All cattle when tested and found to be reactors, shall be tagged in the left ear with a metal tag and branded on the left jaw with the letter "B", and sold only for immediate slaughter.

- (b) All testing pens allotted for cattle received, offered for sale, sold or exposed for sale, shall be properly cleaned after each sale. If conditions warrant, the State Veterinarian may request that such pens be properly cleaned and disinfected.
- (c) Non-reacting cattle from a herd entering a public market in which reacting cattle are found by market testing may be returned to the farm under quarantine to be tested at state expense, or sold for immediate slaughter.

4.41 Swine, Responsibility for Penning, Identification and Inspection.

A public market shall place all swine to be offered for sale for feeding or breeding purposes in swine pens, for identification and inspection by methods approved by the Commissioner. All pens allotted for swine received, offered, sold or exposed for sale for feeding and/or breeding purposes shall be thoroughly cleaned and disinfected after each sale by the public market.

4.42 Reports, False and Misleading. A public market shall not issue or circulate any false or misleading reports, records or representations concerning market conditions or the price of any agricultural or horticultural products.

4.43 Market Responsibility to Purchaser. A public market shall be responsible to the purchaser of any livestock or other commodity until the responsibility for such is signed for by the purchaser or his authorized agent.

4.44 Settlements, Based on Weights. When livestock or live poultry is bought and/or sold by weight, settlement therefore shall be on the basis of the weight shown on the original scale ticket or corrected scale ticket.

Shrinkage deductions in weight of livestock must be shown in writing on all copies of the scale ticket and the consignor's sale invoice.

4.45 Livestock to be Sold on Own Merits to Highest Bidder. A public market shall offer all agricultural and horticultural products consigned for sale at auction and shall sell such products to the highest bidder.

4.46 Livestock Intermingling. A public market shall not pen livestock entered or received to be sold for immediate slaughter, with cattle entered or received to be sold for feeding and/or breeding purposes.

4.47 Livestock, Condition of. Public market officials shall cause the condition of any obviously sick, injured, or otherwise unhealthy animals to be noted on the scale ticket and such condition must be announced by the auctioneer prior to the sale of such animal.

4.48 Price Guarantees Prohibited. No public market, in soliciting consignments of agricultural or horticultural products, shall guarantee to the owner or others thereof that such products will be sold at a specific price or prices if consigned to its market.

4.49 Market Manager Prohibited From Buying, Selling or Trading in Livestock Except in Name of Market. A public market shall not permit its manager to engage in buying, selling or otherwise trading in livestock for himself, his agent or partner at said market.

(a) Licensed weighmen, graders and auctioneers employed as such at a public market shall not buy or trade in agricultural or horticultural products at the public markets at which they are employed as weighmen, graders or auctioneers.

(b) Individuals who own or operate public markets shall not serve as auctioneers at regularly scheduled sales at said market.

- (c) When it appears to the manager of a public market that livestock being offered for sale is selling below a reasonable market price, the manager may buy said livestock in the name of the public market at which he is employed. He shall have the right to sell such livestock purchased by the market to anyone other than himself, and if there be a loss on the sale of such livestock, the public market shall absorb such loss. On such purchases and sales, the public market shall set up a special account on which all such transactions are to be recorded, and shall make an itemized report to the Commissioner on forms furnished by him, when requested.

4.50 Commission, Service, Other Charges, Schedule and Posting Of.

The management of the public market shall have permission to annually establish tariff rates. Such rates will take effect on July 1 of each year and shall remain in effect through June 30 of the following year without change.

The rates established for the market shall be advertised in a newspaper of general circulation within the market area at least twice in separate weeks during the month of May prior to their taking effect. All advertisements shall include language stating that the rates are "established by the market management."

The rate schedule may be based on either a base rate or a percentage rate and shall be advertised and posted annually whether they remain the same or are changed. Rates for special sales or unusual services such as are included in purebred and dispersal sales shall be determined under special arrangements agreed to between the parties prior to such sales. Such tariff rate schedules shall be forwarded to the U.S.D.A. Packers and Stockyards Administration for their consideration at least ten (10) days prior to their effective date with

a copy of such correspondence provided to the Commissioner.

Applications for a market permit must include a copy of the proposed tariff rates and proof of proper advertisement. Tariff rate schedules shall be conspicuously posted in no less than four (4) areas of the market including the entrance, dock, scales, and sale ring. The schedule must state in print at least 1/4 inch high that the rates are those established annually by the market management and shall be effective through June 30 of the next year.

4.51 Fees To Be Collected, Tests. A public market shall:

- (a) Collect a fee of fifty cents (50¢) per head for all cattle tested for brucellosis.
- (b) On the first day of each month, forward to the Commissioner all monies due for testing done during the previous month.

4.52 Sales, Regular and Special. All public markets shall continue to operate on the same day of the week on which they are holding regular sales as of the effective date of these regulations. A public market desiring to make a change in its regular sale day shall file an application at least sixty (60) days prior to the date of such contemplated change with the Commissioner. A public market shall not advertise and hold special livestock sales on days other than their regular sale day, until such public market has been given permission by the Commissioner to hold such sale. When a public market desires to hold a special sale, it shall make application in writing at least thirty (30) days prior to the date it contemplates holding such sale, to the Commissioner, and shall include all information pertaining to the character of the sale.

- (a) A public market that discontinues a regular sale day or the operation of the market for a period of time during the year shall notify the Commissioner, in writing, at least fourteen (14)

days in advance of such discontinuance, and shall again notify the Commissioner at least fourteen (14) days in advance, in writing, of the scheduled reopening of the market.

- (b) Livestock and poultry sold at special sales by public markets are subject to the same health requirements as regular scheduled sales.
- (c) Sales totally sponsored, organized and financed by the State of West Virginia or by any state, regional or county agricultural fair or festival, or by any 4-H, FFA or other educational activity shall file their reasons, in writing, for exemption from the definition of a public market with the Commissioner at least thirty (30) days prior to the event and before February 15th each year if the event is held annually.
- (d) Non-profit associations, non-profit corporations and breed associations planning livestock sales within the state shall file in writing with the Commissioner annually or before February 15th of each year, the place and date of all such sales if an annual event, or at least thirty (30) days prior to the event if it is held irregularly or is being held for the first time.
- (e) Non-profit associations, non-profit corporations and breed associations planning sales in West Virginia shall file with the Commissioner at least thirty (30) days prior to the sale a surety bond in an amount no less than the average of all other public markets that have been in operation more than twelve months or shall file a certified copy of the By-laws of the

corporation or association with the Commissioner advising him that the members offering stock at the sale shall bear any loss in proportion to the total value of such stock being sold at such sale.

- (f) At the conclusion of each non-profit association, non-profit corporation or breed association sale, the secretary of the organization conducting such sale shall certify to the Commissioner in writing that only active members in good standing sold livestock at such sale. Such reports must state that all proceeds due consignors have been paid in full. Any deficiencies in payment from purchasers must be reported immediately to the Commissioner and shall include the name, address and phone number of such purchaser and the amount of the deficiency.

4.53 Clerk Shall Record Price and Purchaser. A public market clerk shall record the name of the buyer and the price at which agricultural or horticultural products are sold as announced by the auctioneer.

4.54 Penalties. Any person who shall violate any of the provisions of these regulations or the articles under which they are promulgated, or who shall obstruct or hinder the Commissioner in the performance of his duties under this article shall be guilty of a misdemeanor and, upon conviction thereof, shall, for the first offense, be fined not more than one hundred dollars (\$100.00), and upon conviction for each subsequent offense, be fined not more than five hundred dollars (\$500.00), and in addition to such fine may be confined in the county jail for not more than ninety (90) days.



STATE OF WEST VIRGINIA
DEPARTMENT OF AGRICULTURE
CHARLESTON 25305

GUS R. DOUGLASS
COMMISSIONER

WILLIAM H GILLESPIE
ADMINISTRATIVE ASSISTANT

February 5, 1982

Honorable A. James Manchin
West Virginia Secretary of State
Capitol Building
Charleston, WV 25305

Dear Secretary Manchin:

I am attaching two copies of amended West Virginia Administrative Regulations for the State Department of Agriculture regulations governing public markets. These are filed in accordance with Chapter 29A, Article 3, Section 7(a). These regulations are promulgated and issued under authority of Chapter 19, Article 2 and 2a of the Code of West Virginia, 1931, as amended.

I hereby certify that these are the original regulations to be filed in the office of the Secretary of State on February 5, 1982.

With best regards, I am

Very truly yours,

Gus R. Douglass
Agriculture Commissioner

GRD/G/d

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 2/5/82
Administrative Law Division



STATE OF WEST VIRGINIA
OFFICE OF THE SECRETARY OF STATE
CHARLESTON 25305

A. JAMES MANCHIN
SECRETARY OF STATE

STATE REGISTER FILING

I, Gus R. Douglass, Agriculture Commissioner,
Title or Position

W. Va. Department of Agriculture, hereby submit to record in
Department or Division

the State Register on 8 1/2 x 11" paper two (2) copies of

- () proposed rules and regulations concerning topics of material not covered by existing rules and regulations;
- () proposed rules and regulations superseding rules and regulations already on file;
- () notice of hearing;
- () findings and determinations;
- (X) rules and regulations; or
- () other - specify ()

This filing pertains to

Chapter 19
 Article Article 2 and 2a
 Series XI
 Section _____
 Page No. 1 through 22

FILED IN THE OFFICE OF
 A. JAMES MANCHIN
 SECRETARY OF STATE
 THIS DATE 2/5/82
 Administrative Law Division

- (X) proposed rules and regulations are required to go to Legislative Rule Making Committee;
- () proposed rules and regulations are excluded from Legislative Rule Making Committee;

February 5, 1982

Date Submitted

Signature of Person Authorizing
this Filing