

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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FILED

1990 JUN 29 AM 11:21

OFFICE OF THE SECRETARY OF STATE
STATE OF WEST VIRGINIA

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Agriculture TITLE NUMBER: 61

RULE TYPE: Legislative; CITE AUTHORITY Chpt 19-1-4B, 19-2, 19-2A

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: XT

TITLE OF RULE BEING AMENDED: Regulations Governing Public Markets

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

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON August 1, 1990 AT 4:00 PM

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

West Virginia Department of Agriculture

Marketing and Development Division

State Capitol

Charleston, West Virginia 25305

ATTN: R. L. Williams

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

SUMMARY

PROPOSED AMENDMENT TO AN EXISTING RULE

REGULATIONS GOVERNING PUBLIC MARKETS

SERIES XI

The purpose of this rule is to amend the existing rule to conform with amendments to Chapter 19, Article 2A. These amendments allowed the expansion of the existing bonding instrument from a surety bond to a number of alternative financial instruments which would provide the same security to the producers of livestock, poultry and other agricultural and horticultural products who have been wronged or damaged by fraud or fraudulent practices of the market. The rule also changes the procedure for public markets to adjust their tariff rates.

Other amendments simply insert the fee structure which was approved by the West Virginia Legislature through amendments to Chapter 19, Article 1-4B.

Other changes to the existing rule are to clarify the existing language where livestock and or poultry were frequently singled out and the language should refer to a variety of agricultural products. Language is also included which reflects changes of title within the organizational structure of the Department of Agriculture.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

FILED

Rule Title: Regulations Governing Public Markets

1999 JUN 29 AM 11: 23

Type of Rule: Legislative Interpretive Procedural

Agency Agriculture Address State Capitol
Charleston, West Virginia 25305

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Personal Services					
Current Expense					
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates: The changes in this rule allow for bonding of public markets through alternative financial instruments. Regardless of the type of bonding instrument, the state incurs the same record keeping costs.

3. Objectives of these rules: To bring the regulations into compliance with amendments to the law, bring the fee structure cited in the regulations in accordance to amendments made to Chapter 19-1-4B and to clarify language in the regulations.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

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

None

C. Economic Impact on Citizens/Public at Large.

None

Date:

June 29, 1990

Signature of Agency Head or Authorized Representative

Ch. B. Bredt

WEST VIRGINIA LEGISLATIVE REGULATIONS
STATE DEPARTMENT OF AGRICULTURE
Chapter 19-2 & 2A

FILED
1939 JUN 29 AM 11: 21
STATE DEPARTMENT OF AGRICULTURE
STATE OF WEST VIRGINIA

GENERAL INDEX
FOR
SERIES XI

TITLE: Regulations Governing Public Markets

- Section 1. General
- Section 2. Declaration of Policy
- Section 3. Definitions of Words and Terms
- Section 4. Regulations

WEST VIRGINIA LEGISLATIVE REGULATIONS
STATE DEPARTMENT OF AGRICULTURE
Chapter 19-2 & 2A
SERIES XI

FILED
1950 JUN 29 AM 11:26
OFFICE OF THE CLERK
STATE DEPARTMENT OF STATE

TITLE: Regulations Governing Public Markets

Section 1. General.

1.1 Scope - These Legislative regulations establish general operating procedures for public markets.

1.2 Authority - W. Va. Code 19-1-4B, 19-2 and 2A;

1.3 Filing Date -

1.4 Effective Date -

Section 2. Declaration Of Policy.

2.1 Articles two and two-a, 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. Article 1B authorizes the changes to the fees.

Section 3. Definitions Of Words And Terms.

3.1 The following words and terms have the following meanings:

3.1.1 "Commissioner," as defined in the law, is the Commissioner of Agriculture of the State of West Virginia or his authorized agent.

3.1.2 "Feeding and Breeding Purposes" means any livestock received, sold, offered or exposed for sale for purposes other than immediate slaughter.

3.1.3 "Grade" means 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.

3.1.4 "Immediate Slaughter" means 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.

3.1.5 "Person," as defined in the law, includes any individual, partnership, corporation or association.

3.1.6 "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 nonprofit associations or nonprofit 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 nonprofit associations or nonprofit corporations or such breed associations shall offer cattle for sale at such annual sale and the bylaws of such association or corporation or such breed association shall provide either for a 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.

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

3.1.8 "Bond" means a bond conditioned as the commissioner may require and acceptable to him, payable to the State of West Virginia, for the benefit of the consignors at said market of livestock, poultry, and other agricultural and horticultural products, who have been wronged or damaged by any fraud or fraudulent practices of the market and so adjudged by a court of competent jurisdiction and who shall have the right of action for damage for compensation against such bond.

The form of the bond shall be approved by the commissioner and may include, at the option of the applicant, surety bonding, collateral bonding (including costs and securities), establishment of an escrow account or a combination of these methods. If collateral bonding is used, the operator may elect to deposit cash, or collateral securities or certificates as follows: Bonds of the United States or its possessions, of the federal land bank, or of the homeowners' loan corporation; full faith and credit general obligation bonds of the State of West Virginia; or other states, and of any county, district or municipality of the State of West Virginia or other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of the department. The cash deposit or market value of such securities or certificates shall be equal to or greater than the sum of the bond. It shall be the duty of the applicant to insure the market value of such bonds are sufficient. The commissioner shall, upon receipt of any such

deposit of cash, securities or certificates, promptly place the same with the treasurer of the State of West Virginia whose duty it shall be to receive and hold the same in the name of the state in trust for the purpose for which the deposit is made when the permit is issued. The applicant making the deposit is made when the permit is issued. The applicant making the deposit shall be entitled from time to time to receive from the state treasurer, upon the written approval of the commissioner, the whole or any portion of any cash, securities or certificates so deposited, upon depositing with him in lieu therefore, cash or other securities or certificates of the classes herein specified having value equal to or greater than the sum of the bond.

Section 4. Regulations.

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

4.2 Application for permit - 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:

4.2.1 Proposed location of such market;

4.2.2 Type of ownership: individual, partnership, corporation or association;

4.2.3 Principal owners and their addresses;

4.2.4 How financed;

4.2.5 A fee of twenty dollars (\$20.00);

4.2.6 A plat showing the location and the amount of land, including its elevations, in relation to highways or railroads and general accessibility to the public;

4.2.7 Blueprints which show the details of construction of all barns, buildings and other facilities.

4.2.8 Before a permit shall be issued by the Commissioner, the applicant shall furnish a 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 (12) months.

4.3 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 bond payable to the State of West Virginia in the amount not to exceed one

hundred twenty percent (120%) of the average of its sales during the preceding calendar year. A check or money order in the amount of twenty dollars (\$20.00) shall accompany the application.

4.3.1 The Commissioner shall require a bond in an amount fixed by him when a public market has not operated for one (1) year previous to the date of 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 (12) months.

4.4 Transfer of permit - No person holding a permit to operate a public market shall sell or otherwise transfer such permit.

4.5 Scales, type and location - Persons operating a public market shall install a sufficient number of scales to accommodate the minimum 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.

4.6 Veterinary office - All persons operating a public market for the purpose of offering livestock for sale 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 technicians only.

4.7 Pens for holding and testing cattle - All persons operating a public market for the purpose of offering cattle for sale shall provide two (2) 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.

4.8 Pens for holding swine for feeding and breeding purposes - All persons operating a public market where swine will be offered for sale 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.

4.9 Pens for holding sheep for feeding and breeding purposes - All persons operating a public market where sheep and lambs will be offered for sale 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 where livestock and poultry will be offered for sale 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 where livestock are offered for sale 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 and hand washing 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 products 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 ensure accurate weights, and shall have the scale tested at least once every twelve (12) months or oftener, if required by the State Commissioner of Labor.

4.16 Weighman, grader, auctioneer, employment of - A public market shall employ a licensed weighman, a licensed grader and a licensed auctioneer at every sale where weighed and graded products 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 five dollars (\$5.00). Application for auctioneer's license shall be filed with the Commissioner as provided in article two-c, chapter nineteen of the West Virginia Code, 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 West Virginia Department of Agriculture in the sum of five dollars (\$5.00). 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.

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

4.20.2 The license of a public market may be suspended or revoked by the Commissioner upon not less than fifteen days notice to the grantee of such license and shall be given an opportunity to be heard, for his failure to grade and classify according to the standards established by the United States Department of Agriculture.

4.20.3 A grader is authorized to settle disputes on grades and classifications and his decision shall be final unless appealed to the Commissioner.

4.20.4 At the end of each sale, the grader shall prepare a report showing the kinds of products 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 (1) copy to be given to the public market and one (1) copy to be retained by the grader.

4.20.5 A public market shall employ sufficient help to assist the grader in grading and classifying the products. 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 the products being offered for sale.

4.21.1 The weighman shall have complete and unmolested charge of the scale at all times he is engaged in weighing;

4.21.2 Shall record the true and accurate weight of all items weighed;

4.21.3 Shall record the weight by typed impression after all other information has been entered and recorded on the ticket;

4.21.4 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;

4.21.5 Shall make a certified copy of scale ticket when requested by the owner or consignor;

4.21.6 In the case of an error in preparing the scale ticket, the weighman shall make a corrected scale ticket after reweighing of the product. 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 article two-c, chapter nineteen of the West Virginia Code.

4.22.1 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.

4.22.2 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.

4.22.3 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.

4.22.4 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 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.

4.24 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.

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

4.25 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.

4.26 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: (refer to Appendix A)

4.26.1 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 (1) copy of the scale ticket to the consignor, one (1) copy to the purchaser, if requested, one (1) copy to the inspector Commissioner of Agriculture or his agent, and retain one (1) copy for permanent record.

4.26.2 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.

4.26.3 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 product(s) consigned.

4.27 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.

4.28 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.

4.29 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.

4.30 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.

4.31 Proceeds of sale, prompt accounting - All moneys 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 (72) 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.

4.32 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.

4.33 Veterinarian, Authority of - Accredited veterinarians or livestock technicians 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.

4.34 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 technician.

4.35 Veterinary biological, 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.

4.36 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.

4.37 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.

4.38 Pens, quarantine - A public market offering livestock for sale 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.

4.39 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 technician.

4.40 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 thirty (30) days.

4.41 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.

4.41.1 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.

4.41.2 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.

4.41.3 Nonreacting 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.

4.42 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.

4.43 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.

4.44 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.

4.45 Settlements, based on weights - When livestock or live poultry is bought and/or sold by weight, settlement therefor 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.

4.46 Products 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.

4.47 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.

4.48 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.

4.49 Price guarantees prohibited - No public market, in soliciting consignment 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.

4.50 Market manager prohibited from buying, selling or trading in livestock in the 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 markets.

4.50.1 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.

4.50.2 When it appears to the manager of a public market that the product being offered for sale is selling below a reasonable market price, the manager may buy said product in the name of the public market at which he is employed. He shall have the right to sell such product purchased by the market to anyone other than himself, and if there be a loss on the sale of such product, 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.

4.51 Schedule of rates and charges for Public Markets. Each public market shall file with the Commissioner, a signed copy of all schedules of rates and charges, supplements and amendments thereto. The schedules, supplements and amendments must be conspicuously posted for public inspection at the public markets and filed with the Commissioner at least ten days before their effective dates. Each schedule, supplement and amendment shall set forth its effective date, a description of the services rendered, the public market at which it applies, the name and address of the public market owner, the kind of products covered by the schedule and any rules or regulations which effect any rate or charge contained therein.

4.51.1 The rate schedule may be based on either a base rate or a percentage rate. The rates for special sales for unusual services, such as are included in purebred or 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. Department of Agriculture, Packers and Stockyards Administration for their consideration at least ten days prior to their effective date with a copy of such correspondence provided to the Commissioner.

4.52 Fees to be collected, tests - A public market shall:

4.52.1 Collect a fee of one dollar (\$1.00) per head for all cattle tested for brucellosis.

4.52.2 On the first day of each month, forward to the Commissioner all moneys due for testing done during the previous month.

4.53 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.

4.53.1 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.

4.53.2 Livestock and poultry sold at special sales by public markets are subject to the same health requirements as regular scheduled sales.

4.53.3 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 15 each year if the event is held annually.

4.53.4 Nonprofit associations, nonprofit corporations and breed associations planning livestock sales within the state shall file in writing with the Commissioner annually or before February 15 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.

4.53.5 Nonprofit associations, nonprofit corporations and breed associations planning sales in West Virginia shall file with the Commissioner at least thirty (30) days prior to the sale a bond in the amount no less than

the average of all other public markets that have been in operation more than twelve (12) months or shall file a certified copy of the bylaws 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.

4.53.6 At the conclusion of each nonprofit association, nonprofit 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 purchases 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.

(Sec. 4.25)

APPENDIX A

SCALE TICKET

(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 _____



STATE OF WEST VIRGINIA
DEPARTMENT OF AGRICULTURE

State Capitol
Charleston, WV 25305

Cleve Benedict
Commissioner

JUN 29 1990
11:22
FEB 1

June 29, 1990

The Honorable Ken Heckler
Secretary of State
Ground Floor, W-157, State Capitol
Charleston, West Virginia 25305

Dear Mr. Heckler:

Enclosed is a copy of the Proposed Legislative Rule "Regulations Governing Public Markets" for inclusion in the State Register. This rule is filed to bring the existing rule in conformity with the amendments to Chapter 19, Article 2A.

The proposed rule is submitted in two formats. The first strikes out the old language and underlines the new language. The second lists the proposed language only.

Thank you for your assistance.

Kind regards,

Cleve Benedict
Agriculture Commissioner

CEB/pmk
Enclosure