WEST VIRGINIA CODE CHAPTER 19 ARTICLE 10A

WV Legislature

§19-10A-1. Purpose; and short title.

(a) The intent of this article is to protect and promote the public health and general welfare and to prevent fraud and deception in the production, processing, sale and distribution of eggs. This article provides for the registration of business houses engaged in selling, trading or traffic of eggs; establishes standards for the grading, classification and marketing of eggs; provides a penalty for the failure to comply with the provisions of this article; and provides for other purposes. This article shall be known as "The West Virginia Egg Marketing Law of 1998". All provisions of this code in conflict with this article are repealed.

(b) Except where otherwise indicated, it is the intent of the Legislature that this article substantially conform with the federal laws and regulations promulgated under the auspices of the United States secretary of agriculture and the United States secretary of health and human services in order to provide movement of eggs in intrastate and interstate commerce with a minimum of economic barriers.

WV Legislature

§19-10A-2. Definitions.

(a) "Ambient temperature" means the atmospheric temperature surrounding or encircling shell eggs.

(b) "Candle" means to determine the interior quality based on the use of a candling light as defined in federal standards adopted in section ten of this article.

(c) "Case" means a container that is not a carton and that is used to pack eggs for distribution or sale to the consumer. A case may contain either loose or cartoned eggs.

(d) "Commissioner" means the commissioner of agriculture for the State of West Virginia or his or her duly authorized agent.

(e) "Container" means any carton, basket, case, cart, pallet or other receptacle.

(f) "Consumer" means any person using eggs for food and shall include restaurants, hotels, cafeterias, hospitals, state institutions and any other establishment serving food to be consumed or produced on the premises, but shall not include the Armed Forces or any other federal agency or institution.

(g) "Denatured" means rendering unfit for human food by treatment or the addition of a foreign substance as approved by the United States Department of Agriculture (USDA), agriculture marketing service (AMS), administrator.

(h) "Distributor" means a person or firm engaged in the business of buying eggs from producers or other persons on his or her own account and selling or transferring eggs to other distributors or retailers. A distributor further means a person or firm engaged in producing eggs from his or her own flock and marketing of any portion of this production on a graded basis.

(i) "Egg" means the product of the domesticated chicken hen or any other eggs offered for sale for human consumption.

(j) "Embargo" means a written stop sale order issued by the commissioner of agriculture prohibiting the sale, use of or transportation of eggs in any manner until the embargo is released by the commissioner.

(k) "General embargo" means a statewide written stop sale order issued by the commissioner of agriculture prohibiting the sale, use of or transportation of eggs in any manner until the embargo is released by the commissioner.

(l) "Graded egg" means an egg which is classified in accordance with the standards established by the United States Department of Agriculture.

(m) "Inedible" and "unfit for human food" means eggs described as black rots, yellow rots,

WV Legislature

white rots, mixed rots (addled eggs), sour eggs, eggs with green whites, eggs with stuck yolks, moldy eggs, musty eggs, eggs showing blood rings, eggs containing embryo chicks (at or beyond the blood ring state), and any eggs that are adulterated as that term is defined in the federal food, drug and cosmetic act.

(n) "Packer" means any person who grades, sizes, candles or packs eggs for the purpose of resale.

(o) "Person" means any partnership, association, business trust, corporation or any organized group of persons, whether incorporated or not.

(p) "Possession" means the fact of possession by any person engaged in the sale of a commodity is prima facie evidence that the commodity is for sale.

(q) "Processor" means a person who operates a plant for the purpose of breaking eggs for freezing, drying or commercial food manufacturing.

(r) "Producer" means any person owning laying hens who markets eggs.

(s) "Repacker" means any person who packs previously graded and packed shell eggs for resale.

(t) "Retailer" means any person who sells eggs directly to the consumer.

(u) "Sell" means to offer for sale, expose for sale, have in possession for sale, exchange, barter or trade.

WV Legislature

§19-10A-3. Permits and registration.

(a) The commissioner shall issue an "Egg Distributor Permit" to every person distributing eggs in West Virginia. Each egg distributor shall apply to the commissioner of agriculture for this permit on forms provided by the commissioner at least thirty days prior to distributing eggs in West Virginia and shall renew his or her permit annually at least thirty days prior to the expiration of his or her current permit.

(b) For the purposes of financing the administration and enforcement of this article, the State of West Virginia, through the West Virginia Department of Agriculture shall collect an inspection and permit fee from the distributor first introducing the eggs into West Virginia trade channels.

(c) The commissioner shall set an inspection fee and annual permit fee by legislative rule for the distribution of all shell eggs processed or sold in the State of West Virginia.

(d) All fees, interest, penalties or other moneys collected by the commissioner under the provisions of this article shall be paid into a special account and be expended upon the order of the commissioner for the purpose of the enforcement and administration of this article.

(e) An egg distributor shall conspicuously post his or her permit in the place of business to which it applies. The permit year is twelve months or any fraction thereof beginning July 1, and ending June 30 of each year.

(f) No permit is transferable. Each physical location where eggs are stored for distribution shall have a separate egg distributor permit.

(g) Producers exempted by the commissioner by legislative rule shall register with the West Virginia Department of Agriculture but are exempt from paying the permit or inspection fee pursuant to the provisions of section four of this article.

(h) The provisions of this article are applicable to all retailers, wholesalers, packers and distributors of eggs.

(i) The commissioner has the power to revoke or suspend the certificate for failure to comply with the provisions of this article and refuse to issue a certificate to willful violators.

WVLegislature

§19-10A-4. Exemptions.

Any person marketing eggs which he or she has produced is exempt from the provisions of section seven of this article except that carton labeling shall be according to legislative rule, cartons shall be clean and free of debris and eggs shall be held under refrigeration according to legislative rule. The commissioner may exempt small producers from portions of this article by legislative rule.

WV Legislature

§19-10A-5. Container requirements.

No distributor may market eggs unless there is clearly designated on the container the consumer grade and size or weight class established in accordance with the provisions of this article and the eggs shall conform to the designated grade and size or weight class, except when sold on contract to an agency of the United States government.

WV Legislature

§19-10A-6. Prohibited acts.

(a) If an authorized representative of the West Virginia Department of Agriculture determines, after an inspection, that any lot of eggs is in violation of this article, the representative may issue an embargo under the provisions of section ten of this article. An embargo shall specify the reason for its issuance and prohibit the sale, use of or transportation of eggs in any manner until the embargo is released by the commissioner.

The commissioner shall determine and assess violations of this article to the packer, repacker, distributor or retailer.

(b) No person, firm or corporation may sell, traffic in or deliver to the retail or consuming trade, any eggs that are:

(1) Loss, inedible, denatured or leaker eggs;

(2) Not refrigerated; or

(3) Mislabeled or deceptively advertised.

(c) No person may sell eggs for resale to consumers below "U.S. Consumer Grade B".

(d) No person may prepare, pack, place, deliver for shipment, deliver for sale, load, ship, transport, offer for sale in bulk containers or advertise by sign, placard or otherwise any eggs for human consumption which are mislabeled or deceptive.

(e) No person or retailer may repack eggs in cartons which were previously used and labeled by a packer, except as outlined in legislative rule.

(f) No person may distribute eggs without a valid egg distributor's permit.

(g) No person may store or transport eggs unless held under refrigeration as outlined in legislative rule.

(h) No person may offer for sale or expose for sale shell eggs that are in containers that are dirty, broken or not free from foreign odor.

WV Legislature

§19-10A-7. Labeling.

(a) Any container or subcontainer in which eggs are marketed to consumers shall bear on the exterior of the container the following:

(1) The identity of the packer by registry of USDA plant number or by state permit number or name and address of the packer, distributor, retailer or repacker;

(2) The correct grade and size or weight classification;

(3) The term "EGGS";

(4) The quantity of eggs per retail unit (i.e. one dozen, eighteen count, etc.) or dozens per case when packing loose eggs for institutional use or an accurate statement of the quantity of the contents in terms of numerical count;

(5) The words "keep refrigerated" in a plain and conspicuous manner on each container or consumer receptacle of shell eggs;

(6) Use by or expiration date; and

(7) Additional labeling according to legislative rule.

(b) Loose eggs shall be labeled according to legislative rule.

WV Legislature

§19-10A-8. Invoice requirements.

(a) Every person, firm or corporation selling eggs to a retailer or manufacturer shall furnish an invoice showing the size and quality of the eggs according to the standards prescribed by this article together with the name and address of the person by whom the eggs were sold and date of the sale. This invoice shall be retained for one year.

(b) The commissioner of agriculture is authorized to examine the invoices and such other records needed to determine the cause and place of any violation of this article.

WV Legislature

§19-10A-9. Advertising.

(a) All eggs offered for sale at retail shall be plainly marked as to grade and size with letters not less than three-eighths inch in height.

(b) All eggs advertised or displayed for sale for human food at a given price shall be advertised or displayed in the manner adopted by legislative rule.

(c) Restaurants, hotels, delicatessens and other eating places using eggs below "A" quality shall advertise this fact to the public according to legislative rule.

WV Legislature

§19-10A-10. Powers and duties of the commissioner.

(a) The commissioner shall by legislative rule establish standards for the grading, classification and marketing of shell eggs bought and sold by any person, firm or corporation in the State of West Virginia. These standards shall conform to, on date of the sale to the consumer, the minimum standards promulgated by the U.S. Department of Agriculture as defined in the "United States Standards, Grades and Weight Classes for Shell Eggs", authorized under Section 205, 60 Stat. 1091, Public Law 135, 82nd Congress; 7 U.S.C. 1624, effective July 11, 1952, as amended.

(b) All duties and functions required to be performed by the West Virginia Department of Agriculture under the provisions of this article shall be performed by the commissioner of agriculture.

(c) The commissioner of agriculture shall enforce the provisions of this article and may make and propose those rules for promulgation as may be necessary for the enforcement of this article.

(d) The commissioner has the power to issue an embargo or general embargo for any product which is or is believed to be adulterated, mislabeled or is not in compliance with this article and to cause the distributing of that product to cease. Nothing in this article may be construed as to requiring the commissioner to issue embargoes for minor violations of this article when the commissioner believes that a written notice of violation will serve the public interest.

(e) Audits:

(1) The West Virginia Department of Agriculture may conduct annual audits of all permit holders, including out-of-state permit holders to ensure proper reporting of egg inspection fees.

(2) Out-of-state permit holders shall reimburse the department for travel expenses incurred in conducting out-of-state audits. The state of West Virginia's out-of-state daily allowance for meals and lodging is the maximum amount reimbursable, plus travel expenses to and from locations of permit holders.

WV Legislature

§19-10A-11. Egg handling facilities, temperature and humidity, sanitation and cleaning.

(a) Any packer or distributor engaged in the assembling, marketing or the processing of eggs for marketing shall maintain egg handling facilities in a manner commensurate with laws governing food establishments.

(b) All eggs shall be stored or transported under refrigeration as required by legislative rule.

(c) The commissioner shall set standards for egg handling facilities, humidity, sanitation and the cleaning of eggs by legislative rule.

WV Legislature

§19-10A-12. Access to premises.

(a) The commissioner of agriculture may enter any store, vehicle, market or any other business or place where eggs are bought, stored, processed, packed or offered for sale and to make inspections as needed to determine compliance with this article and rules adopted under the authority of this article. During an inspection the commissioner of agriculture may also candle and weigh eggs to determine if the grades and sizes of the eggs conform to grades and sizes labeled on the exterior of the container.

(b) All eggs are considered the property of the person in whose possession they are found except those in the custody of common carriers or public warehouses where the owner is identified by record.

WV Legislature

§19-10A-13. Penalties.

(a) Criminal penalties. -- Any person violating any provision of this article or any rule adopted under the authority of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $500 for the first offense, and for the second or subsequent offense, shall be fined not less than $500 nor more than $1,000, or imprisoned not more than six months, or both fined and imprisoned. Magistrates have concurrent jurisdiction with circuit courts to enforce the provisions of this article.

(b) Civil penalties. -- Any person violating a provision of this article or any rules adopted under the authority of this article may be assessed a civil penalty by the commissioner of agriculture. In determining the amount of any civil penalty, the commissioner shall give due consideration to the history of previous violations of any person, the seriousness of the violation, including any irreparable harm to the environment, any hazards to the health and safety of the public, any economic damages to the public and the demonstrated good faith of any person charged to achieve compliance with this article before and after written notification of the violation:

(1) The commissioner may assess a civil penalty of up to $1,000 for a violation;

(2) The civil penalty is payable to the State of West Virginia and is collectible in any manner now or hereafter provided for collection of debt. If any person liable to pay a civil penalty neglects or refuses to pay the civil penalty, the amount of the civil penalty, together with interest at ten percent, is a lien in favor of the State of West Virginia upon the property, both real and personal, of that person after the lien has been entered and docketed to record in the county where the property is situated. The clerk of the county, upon receipt of the certified copy of the lien, shall enter it to record without requiring the payment of costs as a condition precedent to recording.

(c) Notwithstanding any other provision of law to the contrary, the commissioner may propose for promulgation and adopt rules which permit consent agreement or negotiated settlements for the civil penalties assessed as a result of violation of the provision of this article.

(d) Upon application by the commissioner for an injunction, the circuit court of the county in which the violation is occurring, has occurred or is about to occur, as the case may be, may grant a temporary or permanent injunction restraining any person from violating or continuing to violate any provision of this article or any rule promulgated under this article, notwithstanding the existence of other remedies of law. Any such injunction shall be issued without bond.

(e) No state court may allow for the recovery of damages for any administrative action taken, if the court finds that there was a probable cause for that action.

(f) It is the duty of the prosecuting attorney of the county in which the violation occurred to

WV Legislature

represent the Department of Agriculture, to institute proceedings and to prosecute the person charged with that violation.

(g) Hearings and appeals. --

(1) Any person aggrieved by any action taken under this article shall be afforded the opportunity for a hearing before the commissioner under the rules promulgated by the commissioner;

(2) Hearings shall be conducted in accordance with procedures set forth by rule;

(3) All the testimony and evidence at a hearing shall be recorded by mechanical means, which may include the use of tape recordings. The mechanical record shall be maintained for ninety days from the date of the hearing and a transcript shall be made available to the aggrieved party;

(4) Any person who feels aggrieved of the suspension, revocation or denial order may appeal within sixty days to the circuit court of the county in which the person has located its principal place of business.

WV Legislature

§19-10A-14. Persons punishable as principals.

(a) Whoever commits any act prohibited by any section of this article, or aids, abets, induces or procures its commission, is punishable as a principal.

(b) Any person who causes an act to be done which if directly performed by him or her or another would be a violation of the provisions of this article is punishable as a principal.

WV Legislature

§19-10A-15. Cooperation with other entities.

The commissioner may cooperate with and enter into agreements with governmental agencies of this state, other states, agencies of the federal government, agencies of foreign governments and private associations in order to carry out the purpose and provisions of this article.

WV Legislature

§19-10A-16. Confidentiality of trade secrets.

The commissioner may not make public information which contains or relates to trade secrets, commercial or financial information obtained from a person or privileged or confidential information: Provided, That when the information is needed to carry out the provisions of this article, this information may be revealed, subject to a protective order, to any federal, state or local agency consultant or may be revealed, subject to a protective order, at a closed hearing or in findings of fact issued by the commissioner.

WV Legislature