
WEST VIRGINIA CODE CHAPTER 19
ARTICLE 5A

WV Legislature

§19-5A-1. Purpose and construction.

The purpose of this article is to regulate controlled atmosphere storage warehouses, for controlling the condition and maturity of fresh fruits and vegetables, so that upon removal therefrom they may be designated as CA stored.

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§19-5A-2. Definitions.

- (a) "Department" means the Department of Agriculture of the State of West Virginia.
- (b) "Commissioner" means the commissioner of agriculture of the State of West Virginia or his duly authorized representatives.
- (c) "Controlled atmosphere storage" or "CA" means any storage warehouse consisting of one or more rooms in any one facility in which atmospheric gases are controlled in their amount and in degrees of temperature for the purpose of controlling the condition and maturity of any fresh fruits and vegetables in order that upon removal therefrom they may be designated as having been exposed to controlled atmosphere.
- (d) "Person" means an individual, firm, partnership, corporation, cooperative, company, society or association and each officer, agent or employee thereof and shall import either the singular or plural as the case may be.

§19-5A-3. Commissioner to enforce article; rules and regulations; cooperation with other authorities.

(a) The commissioner shall administer and enforce the provisions of this article and for this purpose he is hereby authorized and empowered to promulgate rules and regulations and to employ or contract with such persons as may be appropriate.

(b) The commissioner is hereby authorized and empowered to cooperate with the federal government and any agencies, departments, and instrumentalities thereof, the State of West Virginia and any agencies, departments or political subdivisions thereof, and any other state or commonwealth and any agencies, departments or political subdivisions thereof, in order to carry out the effective administration of this article.

§19-5A-4. License required for operation of warehouse; application; fees; term of license; inspections; refusal, suspension or revocation of license.

No person shall engage in the business of operating a controlled atmosphere storage warehouse unless he shall have first obtained a license from the commissioner so to do, which license remains unsuspended and unrevoked. Application for such license shall be made on forms prescribed by the commissioner and shall be accompanied by a fee required in this section. When a person operates two or more CA storage warehouses not on the same premises in this state, a separate license shall be required for each such storage warehouse. Each license shall expire on June 30 next following its issuance, and the annual fee for each such license shall be \$25. Before issuing any license required by the provisions of this section, the commissioner shall inspect the applicant's CA storage warehouse and if the commissioner is satisfied that the warehouse is properly equipped and is in conformity with the provisions of this article and any rules and regulations promulgated by the commissioner, he shall issue the license. Each applicant for a license shall specify the name of the person applying for the license, the principal business address, name of the person domiciled in this state authorized to receive and accept service and legal notices of all kinds, the storage capacity of the controlled atmosphere storage warehouse by cubic capacity or volume, kind of fruits or vegetables for which the applicant intends to provide controlled atmosphere storage, and any other information prescribed by the commissioner as necessary in carrying out the provisions of this article.

The commissioner may refuse to grant a license or may suspend or revoke a license issued under the provisions of this section whenever he finds that the applicant's or licensee's CA storage warehouse, as the case may be, is not properly equipped, or is not in conformity with the provisions of this article or any rules and regulations promulgated by the commissioner.

No such revocation or suspension of a license shall be effective until the licensee has received notice thereof, which notice shall specify the grounds for such revocation or suspension.

§19-5A-5. Access to warehouses, records, etc.

The commissioner shall have access to and is empowered to enter and make inspections during business hours of all controlled atmosphere storage warehouses licensed by this state. The licensee shall make available on demand to the commissioner all records pertaining to the conduct of said controlled atmosphere storage warehouses.

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§19-5A-6. CA warehouse numbers; issuance and use.

The commissioner when issuing a license shall assign a warehouse number which shall be preceded by the letters WV- CA.

No person in this state shall place, stamp, mark or cause to be placed, stamped or marked the letters "CA" or a similar designation in conjunction with a number or numbers upon any container or subcontainer of any fruits or vegetables, or imply that such fruits and vegetables have been subjected to controlled atmosphere conditions unless the commissioner has inspected such fruits and vegetables and issued a state lot number in conjunction with a certificate stating their quality and condition, that they were stored in a warehouse licensed under the provisions of this article and met the requirements of the article and regulations promulgated thereunder: Provided, That if such fruits and vegetables are not allowed to enter the channels of commerce within two weeks of such inspection or subsequent similar inspection by the commissioner the letters "CA" and the state lot number shall be eradicated by the licensee.

§19-5A-7. Oxygen content, time and temperature requirements for classification of fruits or vegetables as controlled atmosphere stored.

The commissioner shall adopt regulations:

- (a) Prescribing the maximum amount of oxygen that may be retained in a sealed controlled atmosphere warehouse.
- (b) Prescribing the maximum period of time in which the oxygen content shall be reduced to the amount prescribed under subdivision (a) of this section.
- (c) Prescribing the length of time and degree of temperature at which any fruits or vegetables shall be retained in a controlled atmosphere storage warehouse before they may be classed as having been stored in a CA storage.

§19-5A-8. Air component determinations; records; forms; contents.

The licensee shall make air component determinations as to the percentage of carbon dioxide, oxygen and temperature at least once each day. A record of such determinations shall be kept on a form prescribed by the commissioner for a period of at least one year and shall include the following:

- (a) Full name and address of licensee.
- (b) Number and storage capacity of the warehouse.
- (c) Date of sealing of the warehouse.
- (d) Date of opening of the warehouse.
- (e) A daily record of the date and time of tests including the percentage of carbon dioxide, oxygen and the temperature.
- (f) Any records required by the commissioner to fulfill the provisions of this article.

§19-5A-9. Minimum condition and maturity standards.

The commissioner shall establish minimum condition and maturity standards for fruits and vegetables which are to be designated as "CA" stored.

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§19-5A-10. Subpoena power; production of books, records, etc.; enjoining violation; admissibility of inspection certificates.

The commissioner shall have subpoena power to compel the attendance of witnesses and/or the production of books, records or documents anywhere in the state in a hearing affecting the authority or privilege granted by a license issued under the provisions of this article and may bring an action to enjoin the violation or threatened violation of any provision of this article or of any regulation adopted pursuant to this article in a court of record in the county in which violation occurs or is about to occur, notwithstanding the existence of any other remedy of law. Official inspection certificates issued by the commissioner shall be received in all courts of this state as prima facie evidence as statements of facts contained therein.

§19-5A-11. Unlawful acts; penalties.

It shall be unlawful for any person to sell, offer for sale, hold or transport for sale any fruits or vegetables represented as having been exposed to controlled atmosphere storage or to use any terms or form of words or symbols of similar import unless such fruits and vegetables have been stored in a controlled atmosphere storage which meets the requirements of this article and the regulations adopted hereunder. Any person violating the provisions of this article or the regulations adopted hereunder shall be guilty of a misdemeanor, and, upon conviction thereof, shall for the first offense be fined not less than \$50 nor more than \$250 and upon conviction of each subsequent offense shall be fined not less than \$250 nor more than \$500.

§19-5A-12. Article cumulative and nonexclusive; severability.

The provisions of this article shall be cumulative and nonexclusive and shall not affect any other remedy. If any section or provision of this article shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the article as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

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