WEST VIRGINIA SECRETARY OF STATE
KRIS WARNER
ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Agriculture

RULE TYPE: Legislative

TITLE-SERIES: 61-02A

RULE NAME: Labeling of Imported Honey, Honey Products or Honeybee By-Products, Adulterated Honey, Honey Products, or Honeybee By-Products Rule

CITE AUTHORITY: §19-1-4(j)

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Amie J Minor -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 61
LEGISLATIVE RULE
DEPARTMENT OF AGRICULTURE

SERIES 2A
LABELING OF IMPORTED HONEY, HONEY PRODUCTS OR HONEY BEE BY-PRODUCTS; ADULTERATED HONEY, HONEY PRODUCTS OR HONEY BEE BY-PRODUCTS

§61-2A-1. General.

1.1. Scope. -- This legislative rule establishes guidelines for the labeling of imported or adulterated honey, honey products and honey bee by-products packaged for sale in West Virginia.

1.2. Authority. -- W. Va. Code §19-1-4(j).

1.3. Filing Date. -- ~~April 13, 2012~~.

1.4. Effective Date. -- ~~July 1, 2012~~.

1.5. Sunset Date. -- This rule shall terminate and have no further force or effect on August 1, 203~~6~~2.

1.~~5~~6. Enforcement. -- The Department of Agriculture is responsible for enforcing the provisions of this rule.

§61-2A-2. Definitions.

2.1. "Adulteration of a honey product" means any honey product whose principal ingredient is honey and which has undergone alteration, introduction of additives or processing so as to make the product appear or misconstrued to be in its pure, unadulterated form. Any honey product is considered adulterated if the adulteration of the honey product is economically motivated with the intent to achieve economic gain by misleading prospective consumers through deceptive labeling or other false representation of its actual content or origin.

2.2. "Bee pollen" is a food supplement consisting of pollen that has been packed by worker honey bees into granules, with added honey or nectar.

2.3. "Country of origin" means the country where a product originates.

2.4. "Fructose", or fruit sugar, is a simple monosaccharide found in many foods and is the most water-soluble of all the sugars. Honey, tree fruits, berries, melons, and some root vegetables contain significant amounts of molecular fructose, usually in combination with glucose.

2.5. "Glucose" is a simple monosaccharide and carbohydrate that cells use as the primary source of energy.

2.6. "Honey bee by-product" is a product that directly results from the honey bee manufacture of foodstuff for the nutrition and development of honey bees.

2.7. "Honey product" is any product that contains honey as an ingredient or whose label indicates honey as an ingredient.

2.8. "Imported" means brought into the United States from another country.

2.9. "Invert sugar syrup" is a mixture of simple monosaccharide sugars of glucose and fructose.

2.10. "Maltose" is the disaccharide produced when the enzyme amylase catalyzes the breakdown of starch into sugars and is often referred to as malt sugar.

2.11. "Monosaccharides" are basic units of carbohydrates and are the simplest form of sugar.

2.12. "Oligosaccharides" is a saccharide polymer containing a small number of component sugars, also known as simple sugars (monosaccharides).

2.13. "Principal ingredient" means the ingredient is the predominant ingredient by weight when other ingredients are present.

2.14. "Royal jelly" is a honey bee secretion that is used in the nutrition of larvae, as well as adult queens.

2.15. "Stable Carbon Isotope Ratio Analysis or SCIRA" for a honey test measures the carbon-13 content of the whole honey, according to Association of Official Analytical Chemists (AOAC) methods. These methods can detect the adulteration of expensive honey with cheap high-fructose corn syrup (HFCS) and cane sugar.

2.16. "Sucrose" is the organic compound commonly known as table sugar whose molecules are a disaccharide derived from glucose and fructose.

2.17. "Vendor" is a person offering something for sale.

§61-2A-3. Country of Origin Labeling -- Honey, Honey Products, Honey Bee By-products.

3.1. Label marking permitted; removal prohibited.

3.1.1. All producers, growers and shippers of bee pollen, royal jelly and honey in this state may mark each individual package of bee pollen, royal jelly or package of honey on the principal display panel in a conspicuous place as legibly, indelibly and permanently as possible to indicate to an ultimate purchaser that the product was produced in West Virginia. A vendor shall mark individually, any package of bee pollen, royal jelly or package of honey, including any package containing imported honey blended with domestic honey offered for sale in West Virginia in a conspicuous place as legibly, indelibly and permanently as possible by the vendor of the product to indicate to an ultimate purchaser the country or countries of origin.

3.1.2. Any vendor engaged in the business of the vending of bee pollen, royal jelly or honey who is engaged in the business of selling products labeled or identified as to origin shall not willfully and knowingly remove the labels or identifying marks.

§61-2A-4. Adulteration of Honey and Honey Products.

4.1. The following conditions are prima facie evidence of "adulteration of honey or honey product" sold or offered for sale as honey and the honey product is subject to the provisions of W. Va. Code §19-2D-1 et seq. Imitation Honey Product Law.

4.1.1. The product has a maltose content in excess of 10%;

4.1.2. The product contains oligosaccharides indicative of invert syrup;

4.1.3. The absolute value of Stable Carbon Isotope Ratio Analysis (SCIRA) is not more negative than -20.0 for the product; and

4.1.4. The product has a protein value minus honey value more negative than -1.0 by the SCIRA Standard.

4.2. The Commissioner may order other tests for standard of identity for honey endorsed by the United States Department of Agriculture or the National Honey Board as considered necessary by the Commissioner of Agriculture.

§61-2A-5. Penalties.

5.1. If the Commissioner finds evidence that a vendor is in violation of this rule, the Commissioner may quarantine all honey products from which the sample is taken and shall assess the penalties as provided in W. Va. Code §19-2-11, shall charge the vendor a penalty to recover the costs of testing and may assess other penalties provided by W. Va. Code §19-2D-3.

5.1.1. Upon receipt of documentation from the vendor that fulfills packaging and labeling requirements adopted by the State of West Virginia, the Food and Drug Administration and the Federal Trade Commission, pursuant to the Fair Packaging and Labeling Act, 15 United States Code §§ 1451-1461 et seq. and fulfills requirements as set forth in 3.1.a. and W. Va. Code §19-2D-2, Imitation Honey Product Law, Labeling, the Commissioner may lift the quarantine.

5.1.2. In order to protect the beekeeping industry, the Commissioner shall require destruction of the honey product from which the sample is taken if the documentation set forth in subdivision 5.1.a. of this rule is not received within 90 days from notice to the vendor when the sample is taken.