

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #2

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2011 JUN 27 PM 3:23

WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: West Virginia Department of Agriculture TITLE NUMBER: 61

RULE TYPE: Legislative CITE AUTHORITY: §19-1-4(j)

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 2A

TITLE OF RULE BEING PROPOSED: LABELING OF IMPORTED HONEY, HONEY PRODUCTS OR HONEY BEE  
BY-PRODUCTS, ADULTERATED HONEY, HONEY PRODUCTS OR  
HONEY BEE BY-PRODUCTS RULE

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 July 27, 2011 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 & Development Division  
1900 Kanawha Blvd. E.  
Charleston, WV 25305  
Jean Smith, Director of Marketing & Development  
(304) 558-2210  
jsmith@ag.state.wv.us

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



Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL



**State of West Virginia**  
**DEPARTMENT OF AGRICULTURE**  
**Gus R. Douglass, Commissioner**

**Janet L. Fisher**  
**Deputy Commissioner**

**Bob Tabb**  
**Deputy Commissioner**

**Steve Miller**  
**Assistant Commissioner**

**SUMMARY**

**TITLE 61, SERIES 2A. LABELING OF IMPORTED HONEY, HONEY PRODUCTS OR HONEY BEE BY-PRODUCTS; ADULTERATED HONEY, HONEY PRODUCTS OR HONEY BEE BY-PRODUCTS LEGISLATIVE RULE**

The West Virginia Department of Agriculture proposes a new legislative rule to provide West Virginia consumers, honey producers and registered apiary operators protection from trade practices that include adulteration and misleading honey, honey product or honey bee by-product mislabeling. The proposed rule imposes penalties to prevent potential nondisclosure of the actual country of origin and misrepresentation of the contents of the packaged products which are purchased in the state to avoid perception that the honey, honey product or honey bee by-products are locally produced or produced within the United States of America.

The legislative rule proposal is intended to clarify and expand upon references in the Code of West Virginia, Chapter 19. Agriculture, Article 2. Marketing Agricultural Products under §19-2-7. Prohibited sales; and Article 2D. Imitation Honey Product Law under §19-2D-2. Labeling.



**State of West Virginia**  
**DEPARTMENT OF AGRICULTURE**  
**Gus R. Douglass, Commissioner**

**Janet L. Fisher**  
**Deputy Commissioner**

**Bob Tabb**  
**Deputy Commissioner**

**Steve Miller**  
**Assistant Commissioner**

**STATEMENT OF FACTS AND CIRCUMSTANCES**

**TITLE 61, SERIES 2A. LABELING OF IMPORTED HONEY, HONEY PRODUCTS OR HONEY BEE BY-PRODUCTS; ADULTERATED HONEY, HONEY PRODUCTS OR HONEY BEE BY-PRODUCTS LEGISLATIVE RULE**

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The rule has been developed through consultation with West Virginia Department of Agriculture Apiary Inspectors, West Virginia Beekeepers Association and the following sources: Federal Trade Commission; United States Department of Agriculture; Food and Drug Administration; American Beekeeping Federation; American Honey Producers Association; National Honey Packers and Dealers Association; Sioux Honey Association; Western States Honey Packers and Dealers Association; and Florida Department of Agriculture; Columbia Food Laboratories, Inc.; Nancy Gentry-Beekeeper and member State of Florida Honey Bee Technical Council, Florida Farm Bureau Apiary Advisory Committee.

**AUTHORITY:** As enacted by the Legislature of West Virginia as amended on June 6, 2003, and in effect from passage, §19-1-4(j) of the Code of West Virginia, grants the Commissioner of Agriculture authority to "Propose rules, including regulatory standards, for legislative approval in accordance with the provisions of article three [§§29A-3-1 et seq.], chapter twenty-nine-a of this code for the purpose of carrying out the requirements of this chapter.

APPENDIX B

***FISCAL NOTE FOR PROPOSED RULES***

Rule Title: TITLE 61, SERIES 2A. LABELING OF IMPORTED HONEY, HONEY PRODUCTS OR HONEY BEE BY-PRODUCTS; ADULTERATED HONEY, HONEY PRODUCTS OR HONEY BEE BY-PRODUCTS **+**

Type of Rule:  Legislative  Interpretive  Procedural

Agency: West Virginia Department of Agriculture

Address: 1900 Kanawha Blvd. E.  
Charleston, WV 25305

Phone Number: (304) 558-2210 Email: jsmith@ag.state.wv.us

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The proposed new rule allows the commissioner to exact a penalty to recover costs of testing only if testing proves conclusive that products have been adulterated or mislabeled. Estimated cost for testing a sample is \$250.00. Eight tests are projected at a total cost of \$2,000.00 to the West Virginia Department of Agriculture for the first fiscal year.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	2,000.00	2,000.00	2,000.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
<b>2. Estimated Total Revenues</b>	0.00	0.00	0.00

Rule Title: TITLE 61, SERIES 2A. LABELING OF IMPORTED HONEY, HONEY PRODUCTS OR HONEY BEE BY-PRODUCTS; ADULTERATED HONEY, HONEY PRODUCTS OR HONEY BEE BY-PRODUCTS LEGISLATIVE RULE **+**

Rule Title:

TITLE 61, SERIES 2A. LABELING OF IMPORTED HONEY, HONEY PRODUCTS OR HONEY BEE BY-PRODUCTS; ADULTERATED HONEY, HONEY PRODUCTS OR HONEY BEE BY-PRODUCTS  
LEGISLATIVE RULE

**3. Explanation of above estimates (including long-range effect):**

Please include any increase or decrease in fees in your estimated total revenues.

The proposed new rule allows the commissioner to exact a penalty to producers, growers, shippers and retailers of honey, honey products or honey bee by-products to recover costs of testing only if testing proves conclusive that products have been adulterated or mislabeled. No increase or decrease in fees will be levied.

**MEMORANDUM**

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

The proposed rule would not have a fiscal impact as no increase or decrease in fees will be levied.

Date: 06/27/2011

Signature of Agency Head or Authorized Representative

Robert C. Tall

TITLE 61  
LEGISLATIVE RULE  
DEPARTMENT OF AGRICULTURE  
SERIES 2A

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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. –West Virginia Code §19-1-4(j).

1.3. Filing Date. –

1.4. Effective Date. –

§61-2A-2. Definitions

2.1. “Adulteration” means any alteration, introduction of additives or processing that causes change of the product from its pure form.

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

2.5. “Honey product” is any product that contains honey as an ingredient or whose label indicates honey as an ingredient.

2.6. “Imported” means brought into the United States from another country.

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

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

3.1. Label marking permitted; removal prohibited

3.1.a. 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 principle 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. Any package of bee pollen, royal jelly or package of honey, including any package containing foreign honey blended with domestic honey, produced in any country other than the United States and offered for sale in West Virginia shall be marked individually in a conspicuous place as legibly, indelibly, and permanently as possible by the person, firm, or corporation engaged in the business of the vending of the product to indicate to an ultimate purchaser the country or countries of origin.

3.1.b. Any person, firm, or corporation 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.

3.2. Penalties. -- If the Commissioner finds evidence that a vendor is found to be in violation of this rule, the Commissioner may quarantine all product from which the sample is taken and shall assess the penalties as provided in Code §19-2-11 et seq.

3.2.a. 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., the Commissioner may lift the quarantine.

3.3. Enforcement.--The Department of Agriculture shall enforce the provisions of this rule.

#### §61-2A-4. Adulteration-Honey, Honey Products

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

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

4.1.b. The product contains oligosaccharides indicative of invert syrup;

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

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

4.1.e. Other tests for standard of identity for honey sanctioned by the United States Department of Agriculture or the National Honey Board as considered necessary by the Commissioner of Agriculture.

4.2. If the Commissioner finds evidence of adulteration through testing and a vendor is found to be in violation of the terms contained in this rule, the Commissioner may quarantine all products from which the sample is taken and shall charge the vendor a penalty to recover the costs of testing.

4.2.a. Upon receipt of documentation from the vendor that fulfills packaging and labeling requirements adopted by this state, 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 subdivision 3.1.a. of this rule, the Commissioner may lift the quarantine.

4.2.b. In order to protect the beekeeping industry, the Commissioner shall require destruction of the product from which the sample is taken if the documentation set forth in subdivision 4.2.a. of this rule is not received within 90 days from notice to vendor when the sample is taken.

4.3. Penalties--In addition to test cost recovery penalties, the Commissioner shall have the right to assess other penalties as provided by West Virginia Code §19-2D-3 et seq.

4.4. Enforcement.--The Department of Agriculture shall be responsible for enforcing the provisions of this rule.



9032 Ashmeade Drive  
Fairfax, VA 22032  
June 16, 2011

Jean Smith  
Director, Marketing and Development  
WV Dept of Agriculture  
1900 Kanawha Blvd East  
Charleston, WV 25305-0170

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JUN 21 2011

Hi!

Many thanks for the opportunity to comment on your proposed new legislative rule.

I think there is a need to explain why the rule is necessary. I assume there is a new problem involving the discovery of either deliberate or inadvertent adulteration of honey bearing West Virginia labels. I know our local Costco store sells honey imported from China (I think) at an extraordinarily modest price, and I wonder if the problem could be repackaging that honey in small containers and simply relabeling it falsely. Would the tests proposed in the new regulations under these circumstances trigger an alarm? Also, (no offence) the tests that are conducted (4.1a,b,c,d) are obviously gibberish to the majority of readers - perhaps you could explain what they entail in your cover letter next time around.

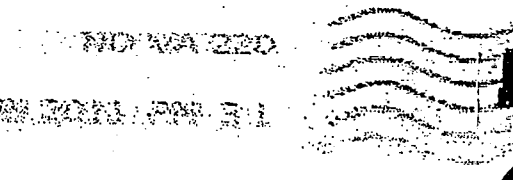
Thanks again for the opportunity to comment and best wishes.

Sincerely,

Dan Stiles



V. Daniel Stiles  
9032 Ashmeade Dr.  
Fairfax, VA 22032-1437



**Smith, Jean**

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**From:** Steve Conlon [nfashion@thistledewfarm.com]  
**Sent:** Wednesday, June 15, 2011 10:21 AM  
**To:** Smith, Jean

Jeannie, I just read the proposed rule for honey. I realize that comments are to be submitted in writing , but I don't see myself having time for that. So, here's an observation. The definition of adulteration may need some tweaking. As it reads now, our flavored honeys would be considered adulterated since we introduce additives to change the product from its' pure form. Generally adulteration is done for economic gain to produce a product that appears to be in its' pure form. Additionally, those additives would not be listed as ingredients.

See you sooner than I wish, Steve

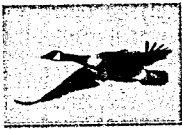
**Smith, Jean**

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**From:** MARTIN, RUSSELL L. BECVAMC [RUSSELL.MARTIN@va.gov]  
**Sent:** Wednesday, June 15, 2011 8:15 AM  
**To:** Smith, Jean  
**Subject:** bee law proposal

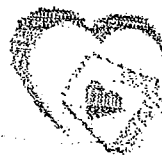
I recently received a letter discussing the pending proposal change to the vW law. I noted you were seeking comments prior to final ruling.

My thoughts.: while I can understand the general concept of protecting WV beekeepers interests via poor marketing I think this goes overboard. The Beekeeping requirements in this state are already so extensive It requires multiple reviews/discussions with the state office to even get started in beekeeping. Furthermore, I nor any of my county beekeepers have ever noted problems in selling out of honey stock every year. I just took 13 quarts off my hive Saturday and will sell the final bottle today using simple word of mouth advertising. Perhaps more time and resources should be spent in offering assistance, both financial and mentoring with new beekeepers in this state. If we increase the number of beekeepers and number of native colonies in this state we can all profit in resources, collaboration and revenue that will effectively block any need of "out of state/out of country sellers". I think if anything needs done to the existing laws concerning beekeeping, it is to trim off about 20 pages of excess rules, regulations and requirements that you and I both know are unnecessary and simply impossible to enforce anyway. As to the new proposal, who is going to be out inspecting labels in the local stores, what budget is going to be used to reimburse the store owner for confiscated items, pay for the high cost of laboratory testing etc? Even today I note multiple out of state honey in stores without all the extensive labeling requirements I am expected to comply with. When are we going to simply police our existing rules? Sorry to rant but you can understand that in my opinion, rules are only as good as the ability to understand, comply and police. Let's work on fixing what we already have and not make more. Rusty Martin



Jesse Marks Jr  
3230 Ellis Rd  
Linn, WV 26384

CLARKSBURG WV 263  
15 JUN 2011 PM 3T



Response to letter dated June 13<sup>th</sup> 2011

To Jean Smith

my wife (Barbara) and I are retired. We have one colony of bees. We have some fruit trees & a vegetable garden (for our own use) we don't sell any honey or bee products. We use the one colony to pollinate our trees and garden.

Thanks for keeping us informed

Jesse J. Marks

Phone 304 462 8446

June 15, 2011



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JUN 18 2011

In response to the questions about Honey labeling:

I have noticed on labeled honey at stores "A product of Canada, USA, Argentina and China". There have also been variations in this as to "A product of North America, South America and China.

If indeed there is anything in the product other than "Pure Honey" or Pure Hive Product" then I am absolutely for putting a stop to inferior products.

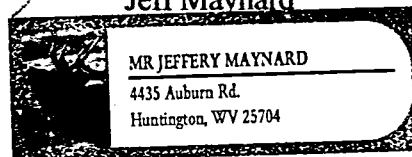
My curiosity lays in the announcement of a biochemist in India that developed a bacteria a few years ago. When placed in sugar that it would digest it and leave a product just like "Honey" and at that time there were no tests to detect it.

We were told at one gathering of bee keepers that this was being pitched to conglomerates as a way to bring down honey cost by mixing it by half with real honey. Is this true and if so what is being done about it?

Thank you for watching this situation and keeping bees healthy and Honey Pure.

Best Wishes

Jeff Maynard



Williamsburg, WV  
June 11, 2011

Jean Smith  
WV Department of Agriculture  
1900 Kanawha Blvd E  
Charleston, WV 25305

Dear Jean Smith:

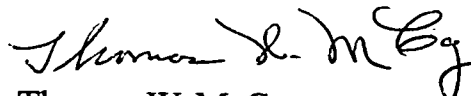
I received your letter today re labeling of honey in WV. Your letter is not clear to me as a small honey producer as to how this effects my small operation.

I am A member of the Southeastern Beekeepers Association in Greenbrier county and we have of last month 100 members not all having bees but interested in bees and their value to health and pollination. Last season I processed and sold or gave away about 80 quarts of honey and labeled each quart jar as pure West Virginia honey. I have had a few hives of bees for the last 20 years and have never made one penny of profit but only re-capped part of my expense on A yearly basis. My honey has never been anything but pure honey.

If these new rules require me to send in A sample to the state lab for testing then I will be out of business immediately because bee keeping is very time consuming at the present as well as expensive and any government intervention will cause us to loose most of our members as we have already discussed this issue at previous meetings. We already post signs as required to avoid law suits if someone were to be stung which I find A bit silly. My bees are inspected yearly by A state inspector and are disease free.

I am enclosing one of my computer generated labels. Please let me know if this is sufficient to your meet whatever new requirements your letter refers.

Yours truly

  
Thomas W. McCoy

Thomas W. McCoy  
8635 Shoestring Trail  
Box 104  
Williamsburg, WV 24991

Delbert W. Bennett  
983 Decewalk Hwy  
Waverly WV 26184  
RECEIVED (204) 464-4609  
JUN 17 2011

requirements as set forth in subdivision 3.1.a. of this rule, the Commissioner may lift the quarantine.

4.2.b. In order to protect the beekeeping industry, the Commissioner shall require destruction of the product from which the sample is taken if the documentation set forth in subdivision 4.2.a. of this rule is not received within 90 days from notice to vendor when the sample is taken.

4.3. Penalties--In addition to test cost recovery penalties, the Commissioner shall have the right to assess other penalties as provided by West Virginia Code §19-2D-3 et seq.

4.4. Enforcement.--The Department of Agriculture shall be responsible for enforcing the provisions of this rule.

I CAN ONLY SAY THAT IT IS ABOUT TIME THAT ACTION BE TAKEN ON THE FOLLOWING.

- 1- Import honey being bottled and sold as local honey.
- 2- Import honey bought by someone - and when he is asked is this your honey - He answers yes. He did not lie (because he did buy it) however the person asking wanted to know if it was local honey (seller lied in this respect)
3. Certain people mixing honey (to add coloring) to cane syrup and selling it as 100% pure honey. (this has happened).

I ONLY HOPE THIS LAW WILL PASS BUT I DO NOT EVER SEE THAT IT WILL BE ENFORCED. IT COULD BE IF IMPORT HONEY WAS TRACKED TO BUYERS & DISTRIBUTORS AND EVENTUALLY TO THE BUYER AND THEN HOW THE BUYER PACKAGES IT. RESPECTFULLY  
Delbert W. Bennett

RECEIVED

JUN 17 2011

requirements as set forth in subdivision 3.1.a. of this rule, the Commissioner may lift the quarantine.

4.2.b. In order to protect the beekeeping industry, the Commissioner shall require destruction of the product from which the sample is taken if the documentation set forth in subdivision 4.2.a. of this rule is not received within 90 days from notice to vendor when the sample is taken.

4.3. Penalties--In addition to test cost recovery penalties, the Commissioner shall have the right to assess other penalties as provided by West Virginia Code §19-2D-3 et seq.

4.4. Enforcement.--The Department of Agriculture shall be responsible for enforcing the provisions of this rule.

June 16, 2011

I think any honey that is sold whereby the bees have been fed sugar syrup, or any other substance, that's labeled as pure honey should be in violation of the law.

Imported honey should not be accepted for sale in this country. But, if it is imported it should be carefully tested before reaching the market. The consumer should be protected.

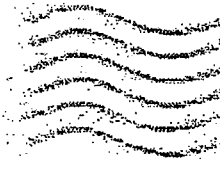
Respectfully,  
Ray E. Fought  
Registered Bee Keeper



Carroll Adkins  
2062 Big Lynn Ck. Rd.  
Genoa, WV. 25517

CHARLESTON WV 253

21 JUN 2011 9AM 2 1



RECEIVED  
JUN 22 2011

11/11/90

To whom it may concern;  
I agree with the proposed  
Legislative law.

I myself do not sale honey from  
my hives for marketing, but I do want  
those that do to be protected and for  
them to abide by West Virginia Legislature.

Sincerely  
Carroll Adkins