

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

FILED

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**OFFICE OF WEST VIRGINIA
SECRETARY OF STATE**

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: West Virginia Department of Agriculture TITLE NUMBER: 61

CITE AUTHORITY Chapter 19 Article 11A-1 et seq.

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 NEW RULE BEING PROPOSED: 4D

TITLE OF RULE BEING PROPOSED: Labeling of Dairy Products for rBST or rBGH

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Robert G. Lewis
Asst. Commissioner

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Labeling of Dairy Products for rBST or rBGH

Type of Rule: ^X Legislative Interpretive Procedural

Agency West Virginia Department of Agriculture

Address Regulatory Protection Division
1900 Kanawha Blvd., East
Charleston, WV 25305

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ 0	\$	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

We do not anticipate a large number of persons wishing to label their products as coming from cows not treated with rBST or rBGH. Consequently, we estimate the cost of enforcing such activity as negligible.

3. Objectives of these rules:

To provide an avenue whereby products coming from cows not treated with rBST can be labelled as such in a manner which would not be misleading in any particular

DATE: August 15, 1994

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Gus R. Douglass, Commissioner of Agriculture

Labeling of Dairy Products for rBST or rBGH

LEGISLATIVE RULE TITLE: _____

1. Authorizing statute(s) citation Chapter 19 Article 11 A-1 et seq.

2. a. Date filed in State Register with Notice of Hearing
Filed July 15, 1994 with Secretary of State's office for 30 day comment period.

b. What other notice, including advertising, did you give of the hearing?

None

c. Date of Hearing(s) N/A

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received X

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing:
(be exact)

August 15, 1994

f. Name and phone number(s) of agency person(s) to contact for additional information:

John Liggett, (304) 558-2227

TITLE 61
LEGISLATIVE RULE
WEST VIRGINIA DEPARTMENT OF AGRICULTURE

SERIES 4D
Labeling of Dairy Products for rBST or rBGH

§61-4D-1. General

1.1 Scope. - These rules establish mandatory label and labeling guidelines for persons wishing to differentiate their dairy products or frozen dessert products as having come from cows not treated with rBST. These regulations are voluntary only from the respect that persons are not required to differentiate their products as coming from cows not treated with rBST.

1.2 Authority - WV Code 19-11A-10.a and
WV Code 19-11B-10.a

1.3 Filing Date. -

1.4 Effective Date. -

1.5 This is a new legislative rule.

§61-4D-2. Definitions

2.1 All definitions are identical to those found in §19-11A-2 and §19-11B-2.

§61-4D-3. General Program and Policy.

1.1 Differentiating Dairy Products or Frozen Desserts through a label or labeling material as coming from cows treated or not treated with rBST or rBGH is not mandatory. Labeling finished products as coming from cows treated with rBST is not required due to the FDA's findings that milk from rBST treated cows is safe for human consumption. However, a firm wishing to label their products as coming from cows not treated with rBST or rBGH must follow the guidelines outlined in this rule.

§61-4D-4. Labeling Statement Guidelines

4.1 Persons wishing to differentiate their frozen desserts or dairy products through a product's label or labeling by indicating that they are made with or consist of milk coming from cows not treated with rBST or rBGH must use both of the following statements or something similar as long as it is not false or misleading in any particular:

4.1.a. "From cows not treated with rBST" and,

4.1.b. "No significant difference has been shown between milk derived from rBST-treated and non-rBST-treated cows."

4.2 All labeling information as outlined in §61-4D-4.1, must receive written approval from the Commissioner of Agriculture or his designee prior to its use.

§61-4D-5. Prohibited Acts

5.1 The following list of labeling statements are prohibited due to the fact that they are either false or they may imply a compositional difference and are therefore misleading:

5.1.a. "BST Free" or "BGH Free" or,

5.1.b. "rBST Free" or "rBGH Free" or,

5.1.c. "From cows not treated with rBST" when this statement is used alone and not in conjunction with the statement in §61-4D-4.1.b.

5.2 The list of examples in §61-4D-5.1, is not meant to be an exhaustive list of prohibited statements. Other statements not passing the false and misleading criteria shall be declared as prohibited by the Commissioner and will not be permitted.

§61-4D-6. Substantiation of Labeling Claims

6.1 Since there are currently no means of differentiating analytically between naturally occurring BST and recombinant BST and since there are no measurable compositional differences, the following requirements are hereby imposed on any person wishing to label frozen desserts or dairy products according to §61-4D-4.1 et seq. Each person shall:

6.1.a. maintain verifiable written documentation of herds participating in the non-rBST-supplementation program to verify this fact. This must include signed certification from the

manager of each herd to verify the absence of supplemental rBST use.

6.1.a.1 The system must include a tracking system for all herds that produced the milk as well as the milk derived ingredients which are used to make the product for which the claim is made.

6.1.b. maintain certifications that all milk from non-rBST herds has been physically segregated from other milk during the time of herd milking, transportation, processing and final packaging with the appropriate labeling. In facilities handling milk from both rBST treated and non-rBST treated cows, records must indicate a complete wash up cycle was accomplished between the use of equipment to process milk from rBST treated cows and the subsequent use of the same equipment to process milk from non-rBST treated cows. Written documentation to verify this fact must be maintained by the person wishing to label as such.

6.2 All records required for label claim substantiation must be made available to the Commissioner of Agriculture or his designated representative within 24 hours of a request.

§61-4D-7. Enforcement Policy

7.1 The Commissioner may assess a violation of WV Code §19-11A-1 et seq. or of these rules against any person believed to be responsible for the violation.

7.2 The West Virginia Bureau of Public Health will assist the Commissioner of Agriculture in enforcing these regulations as they apply to milk production and processing areas for which the Bureau of Public Health is responsible under West Virginia Code.

7.3 Enforcement action may include any or all of those outlined in WV Code §19-11A-1 et seq.

7.4 Any product not labeled in compliance with this article is considered misbranded and consequently prohibited from sale and subject to enforcement action.

7.4.a. However, the Commissioner may provide a 30 day exemption in order to allow a person to correct the violation.

7.4.b At the end of those 30 days the Commissioner shall embargo any product found in violation of these rules and proceed with further enforcement action as he/she deems necessary.

Summary

Labeling of Dairy Products for rBST or rBGH

§61-4D-1 et seq.

Legislative Rule

This rule provides guidance for the labeling of dairy products which have come from cows not treated with rBST or rBGH. This guidance assures the label and labeling will not be misleading in any particular.

This rule provides a method which any person can use to substantiate the above mentioned label claim.

This rule provides a method of enforcement for the Commissioner of Agriculture to follow in case of a labeling violation.

This rule depends largely on the Dairy Products and Imitation Dairy Products Law (§19-11A-1 et seq.) for authority with regard to enforcement options.

This rule was promulgated in response to House Resolution #13 issued by the House of Delegates on February 17, 1994.