

**WEST VIRGINIA**  
**SECRETARY OF STATE**

**KEN HECHLER**

**ADMINISTRATIVE LAW DIVISION**

Form #4

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF RULE MODIFICATION OF A PROPOSED RULE**

AGENCY: West Virginia Department of Agriculture TITLE NUMBER: 61

CITE AUTHORITY: West Virginia Code Chapter 19 Article 11A Section 10.a

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, 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.



3.00

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. - This rule establishes 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. This rule is 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 WV Code §19-11A-2 and WV Code §19-11B-2.

2.2 "Bovine somatotropin" if the term is not otherwise modified, means a growth hormone that is produced naturally in the pituitary glands of cows.

2.3 "rBST" or recombinant bovine somatotropin means a fabricated form of bovine somatotropin and for simplicity includes the synonymous term rBGH or recombinant bovine growth hormone.

§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 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, persons wishing to label their products as coming from cows not treated with rBST 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 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 subsection 4.1 of this section must receive written approval from the Commissioner of Agriculture or his or her designee prior to it's 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";

5.1.b. "rBST 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 subsection 5.1 of this section 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 receive approval as required in section 4.2 of this rule.

#### §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 section 4 of this rule. Each person shall:

6.1.a. maintain verifiable written documentation of herds participating in the non-rBST-supplementation program to verify this fact. The documentation must include signed certification from the manager of each herd to verify the absence of supplemental rBST use.

6.1.a.1 The documentation 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; and

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 their product as coming from cows not treated with rBST.

6.2 All records required under this section must be made available to the Commissioner of Agriculture or his or her 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., WV Code §19-11B-1 et seq. or of this rule 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 this rule as it applies to milk production and processing areas for which the Bureau of Public Health is responsible under West Virginia Code.

7.3 The Commissioner may take any enforcement action outlined in WV Code §19-11A-13 or WV Code §19-11B-13.

7.4 Any product not labeled in compliance with this rule 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 this rule and proceed with further enforcement action as he or she considers necessary.



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*West Virginia Legislature*  
*Legislative Rule-Making Review Committee*

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Room M-152, State Capitol  
Charleston, West Virginia 25305  
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Senator Joe Manchin, III, Co-Chair  
Delegate Brian A. Gallagher, Co-Chair

October 4, 1994

Debra A. Graham, Counsel  
Marie Nickerson, Admr. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Mr. Robert Morris  
Assistant Commissioner  
Dept. of Agriculture  
State Capitol  
Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Labeling of Dairy Products for rBST or rBGH

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
  - (a) as originally filed \_\_\_\_\_
  - (b) as modified by the agency     X
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. \_\_\_\_\_
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. \_\_\_\_\_
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. \_\_\_\_\_
5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached. \_\_\_\_\_

Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.

cc: John Liggett  
Regulatory Protection Division