



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection
Sheila E. Harsdorf, Secretary

DATE: January 8, 2018

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Sheila Harsdorf, Secretary
Steve Ingham, PhD, Division of Food and Recreational Safety Administrator

SUBJECT: **ATCP 83, Dairy Product Advertising and Labeling**

PRESENTED BY: Steve Ingham, PhD

REQUESTED ACTION:

At the December 21, 2017 DATCP Board meeting, the Board requested that the Department provide a report regarding the annual filing of rBST Free Affidavits. This report and accompanying presentation are in response to the DATCP Board's request for further information.

For the January 25, 2018 DATCP Board meeting, the Department will present background information on Wis. Admin. Code ch. ATCP 83 (Dairy Product Advertising and Labeling). This chapter of rules spells out requirements for labeling and advertising dairy products, specifically noting that the products are made from milk produced without the use of synthetic bovine somatotropin (also known as recombinant bovine somatotropin, synthetic bovine growth hormone, or recombinant bovine growth hormone).

The Department will include an overview of what Wis. Admin. Code ch. ATCP 83 currently requires, requirements by other states, federal guidance, and industry concerns about these current requirements.

SUMMARY:

Wis. Stat. § 97.25 charges the Department with promulgating rules that authorize operators of certain licensed food businesses in Wisconsin to label dairy products as "Farmer-certified rBGH free" or an equivalent statement that is not false or misleading. The labeling statements must be based upon affidavits from milk producers stating that they do not use synthetic bovine growth hormone in the production of their milk.

The Department met the statutory § 97.25, Stats., mandate by creating Wis. Admin. Code ch. ATCP 83. The rule provisions define terms such as: "bovine somatotropin" or "BST", "synthetic bovine somatotropin" or "rBST", and "rBST-free claim". The rule specifies limitations on advertising and label rBST-free claims for dairy products. When such a claim is made, by rule, the claim must be accompanied by a clarifying statement

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indicating that no significant difference has been shown between milk derived from cows treated with synthetic bovine somatotropin and milk derived from untreated cows. Formatting requirements must also be met.

Any rBST-free claim made in labeling and advertising must ultimately be substantiated at the dairy plant by sworn affidavits signed by milk producers. Milk producers sign the affidavits thereby affirming that they do not administer synthetic bovine somatotropin to their herds. All of the affidavits must be signed and sworn before a notary. Affidavits currently must be renewed annually.

Practices of Other States

Most major dairy states do not have statutory or administrative rule requirements analogous to Wis. Admin. Code ch. ATCP 83, with the notable exception of Vermont. Vermont mandates most of the same requirements as Wisconsin, but Vermont does not require an annual renewal of the milk producer affidavit.

Federal Guidance

The United States Food and Drug Administration (FDA) last issued guidance on labeling claims related to synthetic bovine somatotropin in 1994.

Request by Industry Representatives

Industry representatives appeared before the DATCP Board at its December 21, 2017 Board meeting and asked for repeal of Wis. Admin. Code § ATCP 83.02(7)(d)3. to eliminate the requirement for annual renewal of the milk producer affidavits, citing unnecessary costs and effort. In support of its request, industry representatives also emphasized the existing market pressures against the use of rBST.