



State of Wisconsin
Governor Tony Evers

Department of Agriculture, Trade and Consumer Protection
Bradley M. Pfaff, Secretary

DATE: September 5, 2019

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Brad Pfaff, Secretary *Brad Pfaff*
Steve Ingham, Division of Food and Recreational Safety Administrator *Steve Ingham*

SUBJECT: ATCP 83, Dairy Product Advertising and Labeling

PRESENTED BY: Steve Ingham

REQUESTED ACTION:

At the September 19, 2019, Board meeting, the Department will request approval of a scope statement for revision of ch. ATCP 83 (Dairy Product Advertising and Labeling). This chapter of rules spells out requirements for labeling and advertising dairy products as being made from milk produced without the use of synthetic bovine somatotropin (also known as recombinant bovine somatotropin, rBST, synthetic bovine growth hormone, recombinant bovine growth hormone, or rBGH). Due to industry concerns about unnecessary redundant effort, the Department seeks to consider a requirement for about one provision of the rule (yearly producer notarized affidavits of rBST non-use).

SUMMARY:

Wisconsin statute (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 are to be based upon affidavits from milk producers stating that the milk producers do not use synthetic bovine growth hormone for the production of milk. The Department met this mandate by creating Wisconsin Administrative Code ch. ATCP 83.

This rule chapter defines terms including "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 it must be accompanied by a clarifying statement indicating that no significant difference has been shown between milk derived from cows treated with synthetic bovine somatotropin and milk derived from untreated cows, and formatting requirements must be met. Any rBST-free claim made in labeling and advertising must ultimately be substantiated at the dairy plant by milk producer affidavits indicating that each milk producer does not administer synthetic bovine somatotropin to their herd. Affidavits must be signed before a notary and renewed every year.

Most major dairy states do not have statutory or rule requirements analogous to ch. ATCP 83, with the notable exception of Vermont. Vermont has most of the same requirements but does not require renewal of the milk

Wisconsin - America's Dairyland

2811 Agriculture Drive • PO Box 8911 • Madison, WI 53708-8911 • Wisconsin.gov

An equal opportunity employer

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

Industry representatives appeared before the Board at its December, 2017 meeting and asked for revision of ATCP 83 to eliminate the requirement for annual renewal of the milk producer affidavit, citing the unnecessary cost and effort, and existing market pressures against use of rBST.

On July 29, 2019, the Governor approved a Scope Statement allowing consideration of revising ATCP 83 to eliminate the annual renewal requirement for the milk producer affidavit indicating that the producer does not treat their milking cows with rBST.

STATEMENT OF SCOPE

DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION (DATCP)

Rule No.: Ch. ATCP 83, Wis. Adm. Code

Relating to: Dairy Product Advertising and Labeling related synthetic bovine growth hormone

1. Description of the objective of the rule:

The objective of the proposed rule is to eliminate the annual renewal requirement for a milk producer's affidavit indicating non-use of recombinant bovine somatotropin (rBST; also known as recombinant bovine growth hormone or rBGH). A new affidavit would only be required when the milk producer begins shipping milk to a different dairy plant, or when a milk producer discontinues use of rBST in their herd for at least 30 days and thereafter seeks to sell milk to a food business making a "Farmer-certified rBGH free" or equivalent labeling claim. This rule revision better aligns Wisconsin regulations with those in other states and removes an unnecessary regulatory burden on Wisconsin milk producers.

2. Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives; the history, background and justification for the proposed rule:

Currently, dairy plants are required to have on file an annual notarized affidavit from all their milk producers if their dairy product labels make an rBST-free claim. Due to the prevalence of such labeling claims, nearly all 7,000 plus Grade A milk producers in Wisconsin are asked to sign new affidavits annually. Wisconsin is the only state that has the annual renewal requirement. States that do have rBST affidavit requirements only ask for a single affidavit. Only when milk producers change plants, or begin using rBST and then cease using it, would a new affidavit have to be signed.

Before preparing this scope statement, the Division surveyed various industry groups and dairy plants asking for their input into a proposed change removing the annual renewal requirement. The survey results indicated strong industry support for the proposed rule change.

An rBST-free affidavit would hold the same legal weight regardless of how much time had passed since it was notarized and signed. Eliminating the annual renewal removes an unnecessary regulatory burden on Wisconsin dairy plants and milk producers, thereby allowing them to focus on other issues.

3. Statutory authority for the rule (including the statutory citation and language):

Use of synthetic bovine growth hormone; labeling of dairy products is authorized by Wisconsin Statute 97.25. Administrative Rule chapter ATCP 83 details requirements for dairy product advertising and labeling of rBST-free claims.

4. Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule:

The Department estimates that it will use approximately .10 FTE staff to develop this rule. That calculation includes time required for investigation and analysis, drafting the rule, preparing related documents, coordinating any advisory committee meetings, holding public hearings, and communicating with affected persons and groups. The Department will use existing staff to develop this rule.

5. Description of all entities that may be impacted by the rule:

This rule will have a direct impact on all Wisconsin dairy plants making rBST-free claims and the Wisconsin milk producers supplying milk to these dairy plants.

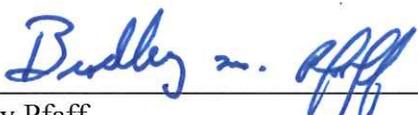
6. Summary and preliminary comparison of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule:

The Food and Drug Administration (FDA) issued a guidance statement on rBST-free label claim wording, and initially approved administration of rBST to cows producing milk for human consumption. Otherwise, FDA has not promulgated any regulation specific to rBST-free label claims.

7. Anticipated economic impact

The Department expects the proposed rule to have a positive impact on businesses because it will reduce the annual regulatory burden while maintaining the same level of protection against mislabeled dairy products. Survey comments from industry indicated the rule change would save them significant labor and mileage costs.

Contact Person: Steve Ingham, Administrator, Division of Food and Recreational Safety;
(608) 224-4701



Bradley Pfaff
Secretary
Department of Agriculture, Trade and Consumer Protection



Date