



State of Wisconsin  
Governor Tony Evers

---

**Department of Agriculture, Trade and Consumer Protection**

**DATE:** February 26, 2020

**TO:** The Honorable Roger Roth  
President, Wisconsin State Senate  
Room 220 South  
State Capitol  
PO Box 7882  
Madison, WI 53707-7882

The Honorable Robin Vos  
Speaker, Wisconsin State Assembly  
Room 217 West  
State Capitol  
PO Box 8953  
Madison, WI 53708

**FROM:** Randy J. Romanski, Interim Secretary  
Department of Agriculture, Trade and Consumer Protection

**SUBJECT: Ch. ATCP 83 – Dairy Product Advertising and Labeling; Final Rule Draft**

*Introduction*

The Department of Agriculture, Trade and Consumer Protection (Department) is transmitting this rule for legislative committee review, as provided in s. 227.19 (2) and (3), Stats. The Department will publish notice of this referral in the Wisconsin Administrative Register, as provided in s. 227.19 (2), Stats.

*Background*

Under Wis. Admin. Code ch. ATCP 83 (Dairy Product Advertising and Labeling), the Department 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). The labeling requirements are to be based upon affidavits from milk producers stating that the milk producers do not use synthetic bovine somatotropin for the production of milk. Affidavits must be renewed and signed before a notary every year. The objective of the proposed rule is to eliminate the annual renewal requirement for a milk producer's affidavit.

### ***Rule Content***

In revising Wis. Admin. Code ch. ATCP 83 (Dairy Product Advertising and Labeling), the Department seeks to eliminate the redundant effort necessary for milk producers to comply with the requirement to provide a yearly signed and notarized affidavit indicating non-use of rBST.

### ***Public Hearings***

The Department held one public hearing on this rule on December 17, 2019 at the Department of Agriculture, Trade and Consumer Protection – Hall of Fame Room 172 in Madison, WI.

Public hearing notices were posted at the State Legislature’s Active Rules Clearinghouse website and in the Administrative Register. Notices were e-mailed to all Department licensed dairy plant facilities as well as affected industry groups. A total of ten persons/organizations attended the hearing and/or submitted comments. Attendees included representatives from Foremost Farms, the Wisconsin Dairy Products Association, and the Wisconsin Independent Businesses. Comments were also received from industry groups including the Wisconsin Cheese Makers Association, Family Dairies USA, and the Cooperative Network.

Feedback received from industry groups and organization representatives indicated strong support for the proposed rule change. Industry representatives indicated that the proposed change would eliminate an undue burden for the dairy industry, citing significant cost and time savings. Commenters also stated that the proposed rule would better align Wisconsin with the regulations found in surrounding states.

### ***Response to Clearinghouse Comments***

The Legislative Council Rules Clearinghouse reviewed the proposed rule and did not identify any technical corrections to address.

### ***Small Business Regulatory Review Board Report***

The Small Business Regulatory Review Board did not issue a report on this rule.

### ***Fiscal and Economic Impact and Effect on Small Business***

The Department expects the proposed rule to have a positive impact on dairy businesses because it will reduce the annual regulatory burden while maintaining the same level of protection against mislabeled dairy products.

### ***Environmental Impact***

This rule has no environmental impact.

### ***Federal and Surrounding State Laws***

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. The states of Michigan, Iowa, Minnesota, and Illinois do not mandate milk producers in rule to comply with rBST-free labeling and affidavit requirements.