

STATE OF WISCONSIN)
) ss.
DEPARTMENT OF AGRICULTURE,)
TRADE AND CONSUMER PROTECTION)

Clearinghouse Rule
No. 94-126

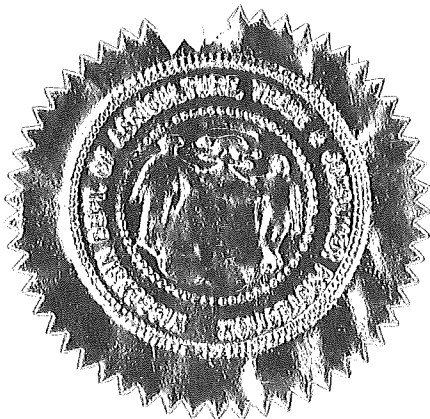
CERTIFICATION:

I, Alan T. Tracy, Secretary of the State of Wisconsin, Department of Agriculture, Trade and Consumer Protection, and custodian of the department's official records, hereby certify that the attached rulemaking order relating to dairy product advertising and labeling was signed and adopted by the Department on March 3, 1995.

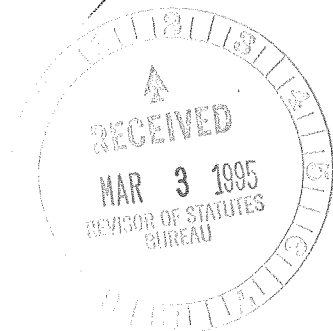
I further certify that I have compared the attached copy to the original on file in the department, and that the attached copy is a complete and accurate copy of the original.

Signed and sealed this 3rd day of March, 1995.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION



By 
Alan T. Tracy, Secretary





State of Wisconsin
Tommy G. Thompson, Governor

Department of Agriculture, Trade and Consumer Protection

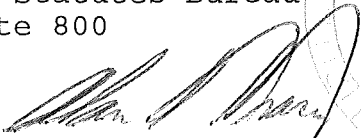
Alan T. Tracy, Secretary

2811 Agriculture Drive
Madison, Wisconsin 53704-6777

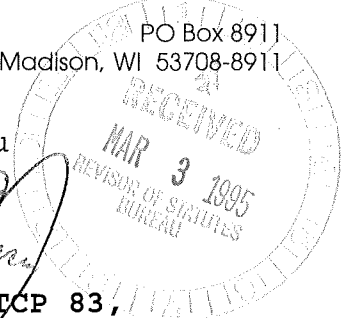
PO Box 8911
Madison, WI 53708-8911

DATE: March 3, 1995

TO: Gary Poulson - Revisor of Statutes Bureau
131 W. Wilson Street, Suite 800

FROM: Alan T. Tracy, Secretary 

SUBJECT: **Clearinghouse Rule No. 94-126, Chapter ATCP 83,
Relating to Dairy Product Advertising and Labeling**



The Department of Agriculture, Trade and Consumer Protection hereby submits the following information for filing with the above rule.

Final Regulatory Flexibility Analysis

This rule regulates dairy product advertising and labeling claims which represent, directly or by implication, that a dairy product is produced with milk from cows not treated with synthetic bovine somatotropin ("rBST"), also known as synthetic bovine growth hormone ("rBGH"). This rule applies to all such "rBST-free" claims, regardless of the terminology used in making the claims.

This rule applies to product labels, advertisements, point-of-sale displays, representations by wholesale suppliers, and other representations made in connection with the sale, offering for sale, advertising, promotion or distribution of dairy products in this state, regardless of where those dairy products originate.

This rule permits persons selling or distributing dairy products made with milk from cows not treated with synthetic bovine somatotropin to voluntarily advertise that fact, or voluntarily disclose that fact on the labels of those dairy products, provided that their advertising or labeling is not false, deceptive or misleading. These advertisements and label disclosures must be based on sworn affidavits from milk producers or written statements from suppliers certifying that the dairy products are produced from milk from producers who do not use synthetic bovine somatotropin in the production of milk.

The choice to label dairy products relative to the non-use of rBST is fully voluntary under this proposed rule. Therefore, the impact on small businesses depends upon their decision to label dairy products in this manner. If a small business chooses to utilize rBST labeling or advertising, this rule would have the following impact.

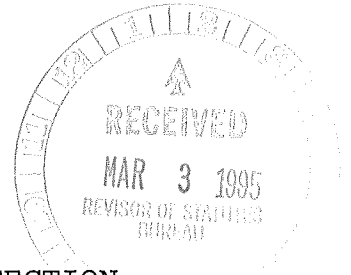
Gary Poulson
March 3, 1995
Page 2

- Each milk producer selling milk to a dairy plant making a label claim would be required to sign an affidavit stating that they do not use rBST in milk production. The dairy plant would be responsible for obtaining these affidavits and maintaining them on file at the dairy plant.
- The department may require a person making an rBST claim in this state to substantiate that claim. The department may require that person to submit substantiating documents within 14 days, or at a later date specified by the department.
- Any person making an rBST claim in this state would need to review all labels and advertising to insure that such material met the requirements of this rule.
- Any person choosing to make an rBST claim may incur costs related to the segregation of milk during transport and processing in addition to direct costs associated with labeling and advertising.

It is impossible to determine the actual costs to small businesses. The costs would differ based on the size and location of the business. Since making an rBST claim is a fully voluntary activity, a large portion of the costs will be self-determined according to the extent of involvement of businesses choosing to make such claims.

Comments from Legislative Committees

The rule was referred to the Senate Committee on Transportation, Agriculture and Local Affairs on January 24, 1995 and to the Assembly Committee of Agriculture on January 30, 1995. The department received no comments or request for hearing from either committee.



ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
ADOPTING RULES

1 The state of Wisconsin department of agriculture, trade and
2 consumer protection adopts the following order to create chapter
3 ATCP 83 related to dairy product advertising and labeling.

Analysis Prepared by the Department of
Agriculture, Trade and Consumer Protection

Statutory authority: ss. 93.07(1), 97.09(4), 97.25(3) and
100.20(2), Stats.

Statutes interpreted: ss. 93.15, 97.25, 97.03(1)(a) and
(e), 100.18, 100.183 and 100.20, Stats.

This rule regulates dairy product advertising and labeling claims which represent, directly or by implication, that a dairy product is produced with milk from cows not treated with synthetic bovine somatotropin ("rBST"), also known as synthetic bovine growth hormone ("rBGH"). This rule applies to all such "rBST-free claims," regardless of the terminology used in making the claims.

This rule applies to product labels, advertisements, point-of-sale displays, representations by wholesale suppliers, and other representations made in connection with the sale, offering for sale, advertising, promotion or distribution of dairy products in this state, regardless of where those dairy products originate.

Labeling Permitted

Under this rule, persons selling or distributing dairy products made with milk from cows not treated with synthetic bovine somatotropin may voluntarily advertise that fact, or voluntarily disclose that fact on the labels of those dairy products, provided that their advertising or labeling is not false, deceptive or misleading.

Deceptive Labeling Prohibited

Under this rule, no person may do any of the following in connection with the advertising, sale or distribution of a dairy product in this state:

- Make any rBST-free claim that is false, deceptive or misleading.
- Make any rBST-free claim without appropriate qualifying statements specified under this rule (see below).
- Make any rBST-free claim unless that person possesses reasonable substantiation for that claim when the claim is made. Substantiation must comply with this rule (see below).
- Represent, directly or by implication, that dairy products produced with milk from cows treated with synthetic bovine somatotropin differ significantly in composition from other dairy products. (Milk produced from cows treated with rBST is indistinguishable from other milk, in terms of its composition.)
- Represent, directly or by implication, that dairy products produced with milk from cows treated with synthetic bovine somatotropin are of lower quality, or are less safe or less wholesome than other dairy products. (The federal Food and Drug Administration approved the use of rBST in milk production after concluding that its use posed no food safety risk.)
- Represent, directly or by implication, that a dairy product contains no bovine somatotropin. (Bovine somatotropin is produced naturally by cows, and occurs naturally in milk.) "rBST-free" claims must be clearly modified to refer to synthetic bovine somatotropin. Synthetic bovine somatotropin may be designated as "rBST" or "rBGH."
- Make any rBST-free claim for a dairy product if that dairy product, or any ingredient of that dairy product, is made with milk from cows treated with synthetic bovine somatotropin.

Qualifying Statements Required

Under this rule, no person may make an rBST-free claim in connection with the advertising, sale or distribution of a dairy product in this state unless that claim includes all of the following qualifying statements:

- A clear and conspicuous statement that milk used in that dairy product is derived "from cows not treated with rBST," or an equivalent statement which clarifies that the rBST-free claim denotes a difference in milk production methods rather than a compositional difference in dairy products. (An unqualified rBST-free claim may be deceptive or misleading, in that it may imply a compositional difference

between milk from treated and untreated cows rather than a difference in the way milk is produced.)

- A clear and conspicuous statement that no significant difference has been shown between milk derived from cows treated with synthetic bovine somatotropin and milk derived from untreated cows.
- Other clear and conspicuous qualifying statements needed to ensure that the rBST-free claim is not untrue, deceptive or misleading. (For example, if a retailer makes an rBST-free claim that could be misconstrued to apply to several different products in a dairy display case, that claim should be qualified to identify the dairy products to which it applies.)

Format of Qualifying Statements

Under this rule, required qualifying statements must normally be at least as clear and conspicuous as the rBST-free claim, and must be made directly in conjunction with the rBST-free claim. However, if an rBST-free claim is made on the label of a dairy product package, the required qualifying statements may appear in a separate statement on the same display panel of that package if all of the following conditions are met:

- The principal rBST-free claim is limited to the phrase "farmer certified rBST-free," "from cows not treated with rBST," "made with milk from cows not treated with rBST," or an equivalent phrase.
- The qualifying statements are clearly legible.
- The type size of the qualifying statements is not less than 1/3 the type size of the principal rBST-free claim.

Substantiating Claims

Under this rule, no person may make an rBST-free claim in connection with the advertising, sale or distribution of a dairy product in this state unless that person possesses reasonable substantiation for that claim at the time the claim is made. If the person making the claim receives raw milk from producers, substantiation must include sworn affidavits from those producers stating that the producers do not use synthetic bovine somatotropin in milk production. Affidavits must comply with this rule (see below).

If the person making an rBST-free claim for a dairy product does not receive raw milk from producers, that person must have a written statement from each person who supplies that dairy product or its dairy ingredients to the person making the rBST-

free claim. The supplier's statement must certify that the dairy product or dairy ingredient is made from milk produced without the use of synthetic bovine somatotropin.

Demand for Substantiation

The department may require any person making an rBST-free claim in this state to substantiate that claim according to this rule. The department may require the person to submit substantiating documents within 14 days, or by a later date specified by the department. No person may submit, as substantiation for an rBST-free claim, documentation which that person acquired after that person had already made the claim.

Milk Producer Affidavits

Under this rule, a milk producer affidavit used to substantiate an rBST-free claim must be a sworn and notarized statement, signed by the milk producer, which certifies that the milk producer does not use synthetic bovine somatotropin in the production of milk.

No milk producer signing an affidavit may, contrary to that affidavit, use synthetic bovine somatotropin in the production of milk. No milk producer in this state may withdraw or cancel an affidavit unless that milk producer gives the recipient of that affidavit at least 30 days prior written notice of that withdrawal or cancellation. No milk producer may, while his or her affidavit remains in effect, add to his or her herd a cow that has been treated with rBST within the previous 30 days.

Under this rule, no person may use a milk producer affidavit to substantiate an rBST-free claim if any of the following applies:

- The milk producer has withdrawn or canceled that affidavit.
- The person making the rBST-free claim knows, or has reason to know, that the producer who signed the affidavit is using synthetic bovine somatotropin in milk production.
- The affidavit is more than one year old when the rBST-free claim is made.

1 **SECTION 1.** Chapter ATPC 83 is created to read:

1 CHAPTER ATCP 83

2 DAIRY PRODUCT ADVERTISING AND LABELING

3 NOTE: This chapter applies to product labels,
4 advertisements, point-of-sale displays, representations
5 by wholesale suppliers, and other representations made
6 in connection with the sale, offering for sale,
7 advertising, promotion or distribution of dairy
8 products in this state, regardless of where those dairy
9 products originate.

10
11 This chapter is adopted under ss. 93.07(1), 97.09(4),
12 97.25(3) and 100.20(2), Stats., and interprets ss.
13 93.15, 97.25, 97.03(1)(a) and (e), 100.18, 100.183 and
14 100.20, Stats. Violations of this chapter may be
15 prosecuted under s. 93.21(4), 97.72, 100.18(11), or
16 100.26(1), (3), (4) or (6), Stats.

17
18 A person who suffers a monetary loss because of a
19 violation of this chapter may sue the violator directly
20 under s. 100.20(5), Stats., and may recover twice the
21 amount of the loss, together with costs and reasonable
22 attorneys fees.

23
24 **ATCP 83.01 DEFINITIONS.** In this chapter:

25 (1) "Bovine somatotropin" or "BST" means the protein growth
26 hormone that is produced naturally in the pituitary glands of
27 cows and that occurs naturally in the milk of cows. "Bovine
28 somatotropin" includes bovine somatotropin represented by any
29 name or symbol, such as "bovine growth hormone" or "BGH."

30 (2) "Dairy product" has the meaning given in s.
31 97.20(1)(b), Stats.

32 (3) "Milk" has the meaning given in s. 97.22(1)(e), Stats.

33 (4) "Person" means an individual, corporation, cooperative,
34 partnership, limited liability company, association or other
35 business organization or entity.

36 (5) "rBST-free claim" means any direct or implied claim
37 that a dairy product contains no synthetic bovine somatotropin,

1 or is made from milk produced without the use of synthetic bovine
2 somatotropin. "rBST-free claim" includes a statement made under
3 s. ATCP 83.02(5)(b) by a supplier of dairy products or
4 ingredients, but does not include a milk producer affidavit under
5 s. ATCP 83.02(7).

6 (6) "Sale" means advertising, promoting, labeling,
7 distributing, offering for sale or selling a dairy product in
8 this state, whether at wholesale or retail.

9 (7) "Synthetic bovine somatotropin" or "rBST" means bovine
10 somatotropin fabricated by recombinant DNA technology or other
11 means. "Synthetic bovine somatotropin" includes synthetic bovine
12 somatotropin represented by any name or symbol, such as
13 "artificial bovine growth hormone," "recombinant bovine growth
14 hormone," "artificial bovine somatotropin," "recombinant bovine
15 somatotropin" or "rBGH."

16 ATCP 83.02 SYNTHETIC BOVINE SOMATOTROPIN; ADVERTISING AND
17 LABEL CLAIMS. (1) A person may, in connection with the sale of
18 a dairy product, represent that the dairy product is "farmer
19 certified rBST-free" if the representation complies with this
20 section.

21 NOTE: See s. 97.25, Stats. Subsection (1) does not
22 prohibit the use of other rBST-free claims that comply
23 with this section.

24 (2) No person may do any of the following in connection
25 with the sale of a dairy product:

26 (a) Make any rBST-free claim that is false, deceptive or
27 misleading.
28

1 (b) Make any rBST-free claim without appropriate qualifying
2 statements under subs. (3) and (4).

3 (c) Make any rBST-free claim unless that person possesses
4 reasonable substantiation for that claim when the claim is made.
5 Substantiation shall comply with sub. (5).

6 (d) Represent, directly or by implication, that dairy
7 products produced with milk from cows treated with synthetic
8 bovine somatotropin differ significantly in composition from
9 other dairy products.

10 (e) Represent, directly or by implication, that dairy
11 products produced with milk from cows treated with synthetic
12 bovine somatotropin are of lower quality, or are less safe or
13 less wholesome than other dairy products.

14 (f) Represent, directly or by implication, that a dairy
15 product contains no bovine somatotropin.

16 NOTE: Since bovine somatotropin occurs naturally in milk, a
17 statement that milk is "BST-free" or "BGH-free" is
18 false unless the statement is clearly modified to refer
19 to synthetic bovine somatotropin. Synthetic bovine
20 somatotropin may be designated as "rBST" or "rBGH."
21

22 (g) Make any rBST-free claim for a dairy product if that
23 dairy product, or any ingredient of that dairy product, is made
24 with milk from cows treated with synthetic bovine somatotropin.

25 (3) QUALIFYING STATEMENTS REQUIRED. No person may make an
26 rBST-free claim in connection with the sale of a dairy product
27 unless that claim includes all of the following qualifying
28 statements:

29 (a) A clear and conspicuous statement that milk used in

1 that dairy product is derived "from cows not treated with rBST,"
2 or an equivalent statement which clarifies that the rBST-free
3 claim denotes a difference in milk production methods rather than
4 a compositional difference in dairy products.

5 NOTE: An unqualified rBST-free claim may be deceptive or
6 misleading, in that it may imply a compositional
7 difference between milk from treated and untreated cows
8 rather than a difference in the way milk is produced.
9

10 (b) A clear and conspicuous statement that no significant
11 difference has been shown between milk derived from cows treated
12 with synthetic bovine somatotropin and milk derived from
13 untreated cows.

14 (c) Other clear and conspicuous qualifying statements
15 needed to ensure that the rBST-free claim is not untrue,
16 deceptive or misleading.

17 NOTE: For example, if a retailer makes an rBST-free claim
18 that could be misconstrued to apply to several
19 different products in a dairy display case, that claim
20 should be qualified to identify those dairy products to
21 which it applies.
22

23 (4) FORMAT OF QUALIFYING STATEMENTS. (a) Except as
24 provided under par. (b), qualifying statements required under
25 sub. (3) in connection with an rBST-free claim shall be both of
26 the following:

27 1. At least as clear and conspicuous as the rBST-free
28 claim.

29 2. Made directly in conjunction with the rBST-free claim,
30 so that there is no written or graphic material separating the
31 rBST-free claim from the required qualifying statements.

32 (b) If an rBST-free claim is made on the label of a dairy

1 product package, the qualifying statements required under sub.
2 (3) may appear in a separate statement on the same display panel
3 of that package if all of the following conditions are met:

4 1. The principal rBST-free claim is limited to the phrase
5 "farmer certified rBST-free," "from cows not treated with rBST,"
6 "made with milk from cows not treated with rBST," or an
7 equivalent phrase.

8 2. The qualifying statements are clearly legible.

9 3. The type size of the qualifying statements is not less
10 than 1/3 the type size of the principal rBST-free claim.

11 (5) SUBSTANTIATING CLAIMS. (a) No person may make an
12 rBST-free claim in connection with the sale of a dairy product
13 unless that person possesses reasonable substantiation for that
14 claim at the time the claim is made. Substantiation shall comply
15 with pars. (b) and (c).

16 (b) Except as provided under par. (c), a person making an
17 rBST-free claim for a dairy product may substantiate that claim
18 with a written statement from each person who supplies that dairy
19 product or its dairy ingredients to the person making the rBST-
20 free claim. The statement by each supplier shall certify that
21 the dairy product or dairy ingredient provided by that supplier
22 is made from milk produced without the use of synthetic bovine
23 somatotropin.

24 (c) No person who receives raw milk from milk producers may
25 make an rBST-free claim in connection with the sale of that milk,
26 or in connection with the sale of any dairy product made from

1 that milk, unless that claim is substantiated by affidavits from
2 those milk producers. The affidavits shall comply with sub. (7).

3 (6) DEMAND FOR SUBSTANTIATION. The department may issue a
4 written notice to any person making an rBST-free claim in
5 connection with the sale of a dairy product, requiring that
6 person to provide the department with that person's
7 substantiation under sub. (5) for that claim. The department may
8 require that person to provide that substantiation within 14
9 days, or by a later date specified by the department. No person
10 may fail to provide substantiation under this subsection within
11 the time specified by the department.

12 (7) MILK PRODUCER AFFIDAVITS. (a) A milk producer
13 affidavit under sub. (5)(c) shall be a written statement, signed
14 by the milk producer, which certifies to the person receiving the
15 affidavit that the milk producer does not use synthetic bovine
16 somatotropin in the production of milk shipped to that person.
17 All affidavits in effect after January 1, 1996, shall be sworn
18 and notarized.

19 (b) No milk producer signing an affidavit under par. (a)
20 may, contrary to that affidavit, use synthetic bovine
21 somatotropin in the production of milk shipped to the recipient
22 of that affidavit.

23 (c) No milk producer may do any of the following:

24 1. Sign an affidavit under par. (a) if any cow in the milk
25 producer's herd has been treated with rBST within the previous 30
26 days.

1 2. Withdraw or cancel an affidavit under par. (a) unless
2 that milk producer gives the recipient of that affidavit at least
3 30 days prior written notice of that withdrawal or cancellation.

4 3. Add to the milk producer's herd, while his or her
5 affidavit under par. (a) remains in effect, a cow that has been
6 treated with rBST within the previous 30 days.

7 (d) No person may use a milk producer affidavit to
8 substantiate an rBST-free claim if any of the following applies:

9 1. The milk producer has withdrawn or canceled that
10 affidavit.

11 2. The person making the rBST-free claim knows, or has
12 reason to know, that the producer who signed the affidavit is
13 using synthetic bovine somatotropin in milk production.

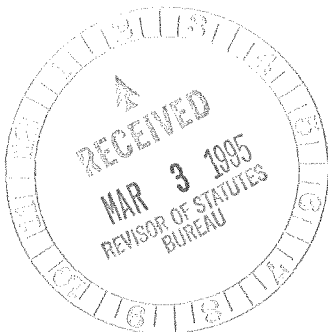
14 3. The affidavit is more than one year old when the rBST-
15 free claim is made.

16 SECTION 2. The rules contained in this order shall take
17 effect on the first day of the month following publication in the
18 Wisconsin administrative register, as provided under s.
19 227.22(2)(intro.), Stats.

20 Dated this 3rd day of March, 1995.

21
22 STATE OF WISCONSIN
23 DEPARTMENT OF AGRICULTURE,
24 TRADE AND CONSUMER PROTECTION

25
26 By Alan T. Tracy
27 Alan T. Tracy, Secretary
28



** APPENDIX A **

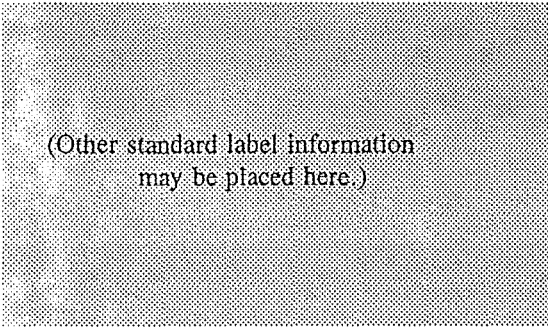
SAMPLE LABEL STATEMENTS

These are sample label statements which would be acceptable for fluid milk under the rule, provided all other requirements of the rule are met. The use of equivalent words or phrases is not prohibited. Note that rBGH and rBST are considered to be equivalent, interchangeable terms. For dairy products other than fluid milk, the statement "from cows not treated with rBST" should be altered to read "made with milk from cows not treated with rBST."

Farmer Certified rBST-Free
From cows not treated with rBST
No significant difference has been shown
between milk from rBST-treated and untreated cows.

**From cows certified as
not treated with rBST**
No significant difference has been shown
between milk from rBST-treated and untreated cows.

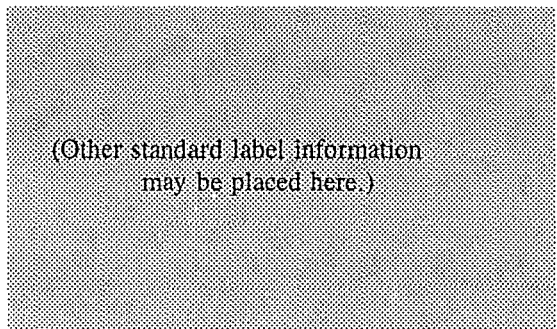
Farmer Certified rBST-Free



(Other standard label information
may be placed here.)

From cows not treated with rBST
No significant difference has been shown
between milk from rBST-treated and untreated cows.

From cows not treated with rBST



(Other standard label information
may be placed here.)

No significant difference has been shown
between milk from rBST-treated and untreated cows.

For non-label claims, such as those made in advertising and point-of-purchase displays, all qualifying statements must be at least as clear and conspicuous as the primary statement. All qualifying statements must be placed directly in conjunction with the primary statement.

SAMPLE PRODUCER AFFIDAVIT

Name _____ Grade A Permit # (if applicable) _____
License # (if applicable) _____

Address _____

City _____ State _____ Zip Code _____

Name of Farm _____

Address (if different) _____

City _____ State _____ Zip Code _____

Telephone (____) _____ Plant Receiving Milk _____

State of Wisconsin)
County of) ss:
)

I, _____, as the owner or permit holder responsible for the dairy farm operation identified above, hereby certify as follows:

1. That no animals on the above farm are currently being treated with recombinant bovine somatotropin (rBST), also known as recombinant bovine growth hormone (rBGH);

2. That no animals on the above farm have received rBST treatments within the past 30 days;

3. That I will provide written notice to the buyer of my milk at least thirty (30) days in advance if I intend to use rBST on my dairy cattle; and

4. That I will not sell milk from animals added to my herd if those animals may have received rBST treatment within the previous 30 days.

I declare, under oath, that the above statement is true and correct to the best of my knowledge.

Producer Signature _____, Subscribed and sworn to before me this _____ day of _____, 1994.

Notary Public

County, Wisconsin
My Commission Expires _____