

Chapter ATCP 83

DAIRY PRODUCT ADVERTISING AND LABELING

ATCP 83.01 Definitions.

ATCP 83.02 Synthetic bovine somatotropin; advertising and label claims.

Note: Chapter ATCP 83 was adopted as an emergency rule effective August 10, 1994.

Note: This chapter 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 chapter is adopted under ss. 93.07 (1), 97.09 (4), 97.25 (3) and 100.20 (2), Stats., and interprets ss. 93.15, 97.25, 97.03 (1) (a) and (e), 100.18, 100.183 and 100.20, Stats. Violations of this chapter may be prosecuted under s. 93.21 (4), 97.72, 100.18 (11), or 100.26 (1), (3), (4) or (6), Stats. A person who suffers a monetary loss because of a violation of this chapter may sue the violator directly under s. 100.20 (5), Stats., and may recover twice the amount of the loss, together with costs and reasonable attorney fees.

ATCP 83.01 Definitions. In this chapter:

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

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

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

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

(5) "rBST-free claim" means any direct or implied claim that a dairy product contains no synthetic bovine somatotropin, or is made from milk produced without the use of synthetic bovine somatotropin. "rBST-free claim" includes a statement made under s. ATCP 83.02 (5) (b) by a supplier of dairy products or ingredients, but does not include a milk producer affidavit under s. ATCP 83.02 (7).

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

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

History: Cr. Register, April, 1995, No. 472, eff. 5-1-95.

ATCP 83.02 Synthetic bovine somatotropin; advertising and label claims. (1) A person may, in connection with the sale of a dairy product, represent that the dairy product is "farmer certified rBST-free" if the representation complies with this section.

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

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

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

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

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

(d) 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.

(e) 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.

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

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

(g) 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.

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

(a) 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.

Note: 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.

(b) 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.

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

Note: 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 those dairy products to which it applies.

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

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

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

(b) If an rBST-free claim is made on the label of a dairy product package, the qualifying statements required under sub. (3) may appear in a separate statement on the same display panel of that package if all of the following conditions are met:

1. 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.

2. The qualifying statements are clearly legible.

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

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

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

(c) No person who receives raw milk from milk producers may make an rBST-free claim in connection with the sale of that milk, or in connection with the sale of any dairy product made from that milk, unless that claim is substantiated by affidavits from those milk producers. The affidavits shall comply with sub. (7).

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

(7) MILK PRODUCER AFFIDAVITS. (a) A milk producer affidavit under sub. (5) (c) shall be a written statement, signed by the milk

producer, which certifies to the person receiving the affidavit that the milk producer does not use synthetic bovine somatotropin in the production of milk shipped to that person. All affidavits in effect after January 1, 1996, shall be sworn and notarized.

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

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

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

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

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

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

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

2. 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.

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

History: Cr. Register, April, 1995, No. 472, eff. 5-1-95.