

# **RULES RELATING TO rBST LABELING OF MILK AND DAIRY PRODUCTS**

## **1. DEFINITIONS**

- 1.1 “Department” means the Vermont Department of Agriculture, Food and Markets.
- 1.2 “Commissioner” means the Commissioner of Agriculture, Food and Markets.
- 1.3 “Milk Handler” or “Handler” means a person, firm, unincorporated association or corporation engaged in the business of collecting, transporting, buying, selling, assembling, packaging or processing milk or other dairy products for sale within or without the State of Vermont, but shall not include grocery stores, restaurants, or similar retail establishments.
- 1.4 “Milk Producer” or “Producer” is a person who owns or controls one or more dairy cows and sells or offers for sale a part or all of the milk produced by the animals.
- 1.5 “rBST” or “rBGH” means recombinant bovine somatotropin, a recombinant bovine growth hormone used with lactating dairy cows to increase the production of marketable milk, which is also known as rBGH.
- 1.6 “rBST/rBGH Supplier” or “Supplier” means any party, including a manufacturer, distributor, or other intermediary, who sells or freely distributes rBST/rBGH.
- 1.7 “Milk” means cow’s milk as defined in the Code of Federal Regulations, Title 21, Section 131.110, and includes reduced fat milk, lowfat or light milk, and nonfat, fat free or skim milk. Also included in this definition are those milk, reduced fat milk, lowfat or light milk, and nonfat, fat free or skim milk products which contain sweeteners, flavorings, safe and suitable microbial cultures, are acidified versions of these products, or have been compositionally modified.
- 1.8 “Cream” is the product defined in the Code of Federal Regulations, Title 21, Section 131.3(a) and includes fluid cream products such as light cream, light, whipping cream, heavy cream, or heavy whipping cream. Also included in this definition are those cream products which are whipped or contain sweeteners, flavorings, safe and suitable microbial cultures, or are acidified versions of these products.
- 1.9 “Butter” means the food product usually known as butter, which is made exclusively from milk or cream or both, with or without common salt, and with or without additional coloring matter, and containing not less than 80 per centum by weight of milk fat, all tolerances having been allowed for, or any dairy-based product labeled as butter, including lower fat versions and flavored or cultured versions of butter.

- 1.10 “Cheese” means specific cheeses ‘for which a standard of identity is listed in the Code’ of Federal Regulations, Title 21, Part 133, and/or any non standardized dairy based product labeled as “cheese”
- 1.11 “Sour Cream” is the product defined in the Code of Federal Regulations, Title 21~ Section 131.160, and includes reduced fat sour cream, lowfat or light sour cream, and nonfat or fat free sour cream. Also included in this definition are those sour cream, reduced f at sour cream, lowfat or light sour cream, and nonfat or~ fat free sour cream products which contain sweeteners, flavorings, safe and suitable microbial cultures, or are acidified versions of these products.,
- 1.12 “Ice Cream” Is the product defined in the Code of Federal Regulations, Title 21, Section 135.110, and includes reduced fat ice cream, lowfat or light ice cream, and nonfat or fat free ice cream.
- 1.13 “Frozen Desserts” means any dairy derived frozen dessert not conforming to definition 1.12.
- 1.14 “Buttermilk” is a fluid product resulting from the manufacture of butter from milk or cream. It contains not less than 8.25 percent of milk solids not fat.
- 1.15 “Half-and-half” is the product defined in the Code of Federal Regulations, Title 21, Section 131.180 and includes Half-and-half with safe and suitable microbial cultures or is acidified. ‘
- 1.16 “Yogurt” is, the product defined in- the Code of Federal Regulations Title 21, Section 131.200, and includes reduced fat yogurt, lowfat or light yogurt, and nonfat or fat free yogurt. ‘
- 1.17 “Infant Formula” means any dry, concentrated, condensed, or liquid food product ,which is intended to be ‘fed to infants, which after the removal of vitamins, minerals, and flavoring ingredients consists of dairy derived ingredients.
- 1.18 “Condensed/Dry Milk Products” means milk as defined in Definition 1.7 which has been concentrated, condensed, or dried by the removal of water therefrom and is intended to be reconstituted with water back to its original form or is intended to be used as an ingredient in a milk product defined in these rules.
- 1.19 “Condensed/Dry Whey *Products*” is a product resulting from the manufacture of cheese from milk or cream, which has been concentrated, condensed, or dried by the removal of water therefrom and is intended to be reconstituted with water back to its original form or is intended to be used as an ingredient in a milk product defined in these rules.

- 1.20 “Egg Nog” is the product defined in the Code of Federal Regulations, Title 21, Section 131.170”, and includes reduced fat egg nog, lowfat or light egg nog, and nonfat or fat free egg nog.
- 1.21 “Person” ‘means individuals, corporations, partnerships, trusts, associations, cooperatives, and any and all other business units or entities. ‘ -
- 1.22 “Label” ‘means- a display of written, printed,, or graphic’ material upon the immediate container of any article or any of its containers or wrappers, or accompanying such article.
- 1.23 “rBST/rBGH-free claim” means any direct or implied claim that a milk or milk product is made from milk produced without the use of recombinant bovine somatotropin.

## **2. VOLUNTARY LABELING**

- 2.1 A person may, in connection with the sale of milk or milk products packaged in retail containers and offered for sale in Vermont, represent that the milk or milk product is derived from cows not treated with rBST/rBGH if the representation complies with this section. This subsection does not prohibit the use of other rBST/rBGH-free claims so long as they comply with this section.
- 2.2 No person may do any of the following in connection with the sale of milk or a milk product:
- 2.2a Make any rBST/rBGH-free claim that is false, deceptive or misleading.
- 2.2b Make any rBST/rBGH-free claim without appropriate qualifying statements under 2.3.
- 2:2c Make any rBST/rBGH-free claim unless that person. possesses reasonable substantiation for that claim when the claim is made. , Substantiation shall comply with Section 3.1 through 4.3 of these rules.
- 2.2d Represent, directly or by implication, that a dairy product contains no bovine somatotropin. 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 rBST or rBGH.
- 2.2e Make any rBST/rBGH-free claim for a milk or milk product if that milk or milk product is made with milk from cows treated with rBST/rBGH.
- 2.3 No person may make a rBST/rBGH-free claim in connection with the sale of milk or milk products unless that claim includes one of the following qualifying statements:

- 2.3a A clear and conspicuous statement that the U.S. Food and Drug Administration has not found a significant difference to exist between milk derived from rBST - treated and non-rBST-treated cows, or such other truthful and non-misleading statement conveying reasons, other than safety and quality, for choosing to use milk or dairy products which have not had rBST used in their production.
- 2.4 Qualifying statements must normally be at least as clear and conspicuous as the “rBST/rBGH-free” claim, and must be made directly in conjunction with the “rBST/rBGH-free” claim.
- 2.5 The type size of the qualifying statements shall not be less than 1/2 the type size of the principal rBST/rBGH-free claim. Upper case and lower case letters must be not less than 1/16inch in height.

### **3. SUBSTANTIATING rBST/rBGH CLAIMS**

- 3.1 The following requirements are hereby imposed on any milk producer selling to a person wishing to label milk or milk products as being derived from cows not treated with rBST/rBGH and selling those products for retail sale in Vermont.
- 3.2 No person may make an “rBST/rBGH-free” claim in connection with the advertising, sale or distribution of milk or a milk 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 received raw milk from producers, substantiation must include sworn affidavits from those producers stating that:
  - 3.2a No animals on the affiant’s farm are currently being treated with rBST/rBGH. .
  - 3.2b No animals on the affiant’s farm have received rBST/rBGH treatments within the past 90 days.
  - 3.2c Affiant will not knowingly allow animals to be brought into his or her dairy herd with have been treated with rBST/rBGH in the past 90 days.
  - 3.2d Affiant agrees to provide at least 90 days written notice to the buyer of his or her milk of affiant’s intention to use rBST/rBGH on his or her dairy herd.
  - 3.2e All affidavits shall recite that they are made under penalty of perjury and shall ‘be signed and sworn to before a notary public.

- 3.3 If the person making a “rBST/rBGH-free” claim for milk or a milk product does not receive raw milk from producers that person must obtain an affidavit from all milk handlers selling milk and milk products affirming to the receiving handler that milk sold to the receiving handler is from producers in compliance with rule 3.2.

#### **4. PRODUCER AFFIDAVIT**

- 4.1 Under this rule, a milk producer affidavit used to substantiate an “rBST/rBGH-free claim” must be a sworn and notarized statement, signed by the milk producer, which contains the affirmations set forth in Section 3.2 of these rules.
- 4.1a Any producer affidavit executed after June 30, 1994, shall be deemed valid if it complies with the-requirements of Vermont law and these rules, and if the producer has not informed a handler in response to a letter sent by a handler in accordance with section 4.3 of these rules ,that the producer will not comply with the 90 day notice -requirements of 6 V.S.A. §2762.
- 4.2 No milk producer signing an affidavit may, contrary to that affidavit, use rBST/rBGH 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 90 days prior written notice of that withdrawal or cancellation. No milk producer may, while his or her affidavit remains in effect, knowingly add to his or her herd a cow that has been treated with rBST/rBGH within the previous 90 days.
- 4.3 Each handler may send to a producer from whom the handler has been notified by affidavit that the producer will comply with any 30 day requirement regarding the use of rBST, a letter to the effect that, unless informed otherwise by the producer, the producer is agreeing that it will instead comply/with any 90 day requirement contained in 6 V.S.A. §2762.
- 4.4 No milk handler may rely upon a milk producer affidavit to substantiate an “rBST/rBGH-free claim” if:
- 4.4a He/she knows, or has reason to know, that the milk producer has withdrawn or cancelled that affidavit, or if
- 4.4b He/she knows, or has reason to know, that the producer who signed the affidavit is using rBST/rBGH in milk production.

## 5. HANDLER AFFIDAVIT

- 5.1 The milk handler shall by affidavit, notify the Commissioner of the handler's practices adopted to assure that milk from cows not treated with rBST/rhGH is kept separate from other milk throughout the collection, transportation and processing steps until the finished milk or dairy product is in final packaged form in a labeled container, and swears that he or she will notify the Commissioner at least 90 days before ceasing use of such practices.
- 5.2, The milk handler Shall at least annually notify the Commissioner of all products and brand labels for which a rBST/rhGH claim is being made.
- 5.3 The milk handler shall notify the Commissioner at least 90 days before a change in rBST/rBGH claim of any product or brand label processed or distributed by the milk handler.
- 5.4 A handler whose affidavit claims:
- A) That all milk or dairy products marketed under a given brand, name are 'derived from cows not treated with rBST/rBGH, may state in an advertisement, either verbally or written, or in a point of sale display that the entire line of milk or dairy products with this brand name is derived from cows not treated with rBST/rBGH.
  - B). That some milk or dairy products marketed under a given brand name are derived from cows not treated with rBST/rBGH, but makes no such claim regarding other milk or dairy products with this brand name, shall in, any advertisement, either verbally or written, of rBST/rBGH free milk **or** dairy product, or in a point of sale display, identify the specific milk or dairy product or products **with** this brand name derived from cows not treated with rBST/rBGH.

## 6. COMMISSIONER'S VERIFICATION

- 6.1 The Commissioner is authorized to conduct random inspections of dairy farm operations to determine whether evidence exists that rBST/rBGH is or has been used in the production of milk, which may include inspection of a milking herd, historical milk production records, and medicine storage places. If an inspection finds evidence contradicting the claim of a producer made under Section 3.2 of these rules, the Commissioner shall immediately so notify the attorney general and the handler concerned.
- 6.2 The Commissioner is authorized to investigate when he or she deems appropriate, and the Commissioner shall at least annually review, the business operations of any milk handler who claims pursuant to this subchapter that rBST/rBGH has not been used in the

production of milk or dairy products offered for retail sale in Vermont, for the purpose of verifying such claims. An investigation or an annual review may be made, if the Commissioner deems appropriate, of claims of non-rBST/rBGH use in the production in other states or countries of milk or dairy products offered for retail sale in Vermont, pursuant to 6 V.S.A. §2767. An investigation or a review may include the examination of a milk handler's collection, transportation, processing or manufacturing equipment, methods and historical records, including records of milk pickups and deliveries.

- 6.3 The Commissioner is authorized to confirm a producer's claim of non-rBST/rBGH use pursuant to section 3.2 of these rules:
- (1) in conjunction with the random inspection of dairy farm operations pursuant to Section 6.1 of these rules;
  - (2) upon the written request of a handler regarding specific producers supplying milk to the handler; or
  - (3) when the Commissioner has reason to suspect that a specific producer has made a false affidavit.
- 6.4 Any supplier of rBST/rBGH doing business or wishing to 'do business in Vermont shall register with 'the, Commissioner. In the event the Commissioner is investigating a producer's claim of non-rBST/rBGH use pursuant to Section 6.2 of these rules, a supplier shall, when requested by the Commissioner, make available to the Commissioner records of business transactions with the producer under investigation by the Commissioner.
- 6.4a "Registration" under this section means to provide the supplier's name, address, telephone number, and name and address of any corporate agent, to the Commissioner, or to the Vermont Secretary of State under Chapter 15 of Title 11.
- 6.5 The Commissioner shall annually prepare a list of each milk handler, and of each milk or dairy product of the handler concerned, whose claim of non-rBST/rBGH use pursuant to Section 2 of these rules has been validated. The list shall be available to the public upon request.
- 6.6 If the Commissioner determines that the claims of a milk handler of non-rBST/rBGH use pursuant to Section 2 of these rules cannot be verified, the Commissioner shall immediately so notify the Attorney General and the handler concerned.

## **7. ENFORCEMENT PENALTY**

- 7.1 A violation of these rules may give rise to a civil, administrative or criminal enforcement action under Title 9, Title 6 or Title 13.
- 7.2 The commissioner may seek search warrants and accept assurances of discontinuance under sections 1, 12, and 13 of Chapter 1, Title 6, or may suspend or revoke the license issued to a milk handler under 6 V.S.A. §2721 and §2855 who violates these rules.
- 7.3 The Attorney General or State's Attorney may prosecute civil, criminal or administrative actions in accordance with the Civil and Criminal Rules of Procedure and the Administrative Procedure Act.

## **8. MILK PURCHASE REFUSAL**

- 8.1 if the Attorney General commences an enforcement action against a milk producer for a false affirmation, claim or affidavit pursuant to applicable Statutes and these rules, the charge shall be a matter of public record and a handler purchasing milk from the producer may immediately refuse to purchase and accept milk from that producer, notwithstanding the provisions of 6 V.S.A. §2752.

## **9. RECIPROCITY**

- 9.1 A person may offer for retail sale in this state milk and dairy products from other states and countries, the label of which displays the claim that rBST/rBGH has not been used in the production of the milk or dairy products, if the milk or dairy products are identified by the Commissioner:
- (1) as from a state or country which has a law comparable to this subchapter and the milk or dairy products are labeled in compliance with the laws of that state or country, or employs other methods administered by the state or country acceptable to the Commissioner for verifying claims that rBST/rBGH has not been used in milk production and processing;
  - (2) as provided by a handler which employs a method acceptable to the Commissioner for verifying claims that rBST/rBGH has not been used in milk production and processing, or
  - (3) as from a state or country with a law or laws precluding the use of rBST/rBGH in the production of milk.

## **10. SEVERABILITY**

- 10.1 The provisions of these rules are severable. If any provision is invalid, or if any application thereof to any person or circumstance is invalid, the invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application.