

July 20, 2009

Governor Ted Strickland
Governor's Office
Riffe Center, 30th Flr.
77 South High St.
Columbus, OH 43215-6108

Dear Governor Strickland,

We, the undersigned consumers, dairy farmers, farm and agricultural organizations, public health, environmental groups, ethical investors, food processors and retailers are writing to ask you to rescind the emergency rule on dairy labeling in Ohio, approved in May 2008, that would restrict labels that refer to milk that comes from cows not treated with a synthetic bovine growth hormone (known as rbGH). Although a court ruled in favor of the Ohio Department of Agriculture, in a lawsuit brought by the International Dairy Foods Association (IDFA) and the Organic Trade Association (OTA), both IDFA and OTA are appealing that decision. In addition, similar legislation/regulations, which were being considered in other states, have all failed. We feel that the Ohio rule is not sufficiently pro-consumer, restricts free speech rights of dairies and processors and interferes with the smooth functioning of free markets. Defending it against a court appeal, in the present economic climate, is a waste of scarce governmental resources.

We strongly object to a number of sections in the rule.

We object to Section C, which states that all claims about the composition of milk are false and misleading. We agree that certain claims, e.g. "no hormones," or "hormone-free" are misleading as all milk contains hormones. But it is not misleading to say milk from cows not treated with recombinant bovine growth hormone (rbGH) is "rbGH-free." RbGH is not identical to the naturally produced bGH but differs by one amino acid¹. Furthermore, research in Europe has clearly shown that antibodies can distinguish between Elanco's rbGH product and naturally produced bGH.² Thus, since rbGH is a synthetic molecule that does not occur in nature, if a cow has not been treated with rbGH then it's impossible for the milk of that cow to contain rbGH. By definition, such milk is "rbGH-free." The claim "from cows not treated with rbGH" is permitted in this rule because it is not false and misleading. It logically follows that the claims "rbGH-free" or "rbST-free" cannot be false and misleading and so should be allowed as well. Prohibiting farmers, dairies and processors from making the truthful label claim "rbGH-free" interferes with their free speech rights under the first Amendment.

¹ Juskevich, JC and CG Guyer. 1990. Bovine growth hormone: Human food safety evaluation. *Science*, 249: 875-884.

² Erhard, MH, Kellner, J, Schmidhuber, S, Schams, D and U Löscher. 1994. Identification of antigenic differences of recombinant and pituitary bovine growth hormone using monoclonal antibodies. *Journal of Immunoassay*, 15: 1-19.
and Castigliero, L, Iannone, G, Grifoni, G, Rosati, R, Gianfaldoni, D and A Guidi. 2007. Natural and recombinant bovine somatotropin: immunodetection with a sandwich ELISA. *Journal of Dairy Research*, 74: 79-85.

Consumers believe such labels are appropriate. In October, 2008, the Consumer Reports National Research Center polled over 1,000 people nationwide on various food labeling issues; some 93 percent agreed that “dairies that produce milk and milk products without artificial growth hormones should be allowed to label their products as being free of these hormones.” In addition, some 57 percent of Americans were willing to pay more for milk and milk products produced without artificial growth hormones.³ These results clearly show that the vast majority of consumers want to know whether the milk they buy contains artificial growth hormones such as rbGH. Consumers want to know this information because of unanswered questions about the safety of milk from rbGH-treated cows, and adverse effects on the safety of the animal including increases in mastitis, reproductive effects, and foot problems.

We object to Section B(2), which requires an additional contextual statement (“The FDA has determined that no significant difference has been shown between milk derived from rbST-treated and non-rbST-treated cows”) in the same font, style, case, size, color and location as the main label claim (e.g. “from cows not treated with rbGH”). First, the label claim is not necessary as the US Food and Drug Administration (FDA) has explicitly said that it is not required. In a July 27, 1994 letter to the New York Department of Agriculture and Markets, FDA stated “the bottom line is that a contextual statement is not required, that in many instances a statement like “from cows not treated with rbST” would not be misleading, and in no instance is the specific statement “No significant difference . . .” required by FDA.”⁴

Second, we urge you not to require the contextual statement because there are ways in which the statement itself is misleading. There are, in fact, significant differences between milk from cows treated with rbGH and from cows not treated. FDA’s own publications have demonstrated that milk from cows treated with rbGH show statistically significant increases of the hormone insulin-like growth factor 1⁵ (IGF-1), which has been linked to breast⁶, colorectal⁷, and prostate⁸ cancer, although whether the increased IGF-1 levels due to rbGH in milk would affect health has not been established. Research has also shown increases in both clinical mastitis (visibly abnormal milk) as well as in somatic cell counts (indicative of subclinical mastitis and an indication of the quality of the milk) in cows that have been treated with rbGH compared to untreated cows.⁹ A detailed analysis of all the somatic cell counts (SCCs) (aka dispersed pus cells) data clearly demonstrated statistically significant increases in SCCs in cows

³ See pp. 13 in: <http://www.greenerchoices.org/pdf/foodpoll2008.pdf>

⁴ Letter dated July 27, 1994 from Jerold Mande, Executive Assistant to the Commissioner of FDA, to Harold Rudnick, Director, Division of Milk Control, New York Department of Agriculture and Markets

⁵ Freedom of Information Summary POSILAC (sterile sometribove zinc suspension), November 5, 1993 At: <http://www.fda.gov/cvm/4390.htm#bst6j>

⁶ Hankinson, S.E., Willett, W.C., Colditz, G.A., Hunter, D.J., Michaud, D.S., Deroo, B., Rosner, B. Speizer, F.E. and M. Pollack. 1998. Circulating concentrations of insulin-like growth factor-1 and risk of breast cancer. *Lancet*, 351(9113): 1393-1396.

⁷ Giovannucci, E., Pollack, M.N., Platz, E.A., Willett, W.C., Stampfer, M.J., Majeed, N., Colditz, G.A., Speizer, F.E. and S.E. Hankinson. 2000. A prospective study of plasma insulin-like growth factor-1 and binding protein-3 and risk of colorectal neoplasia in women. *Cancer Epidemiology, Biomarkers & Prevention*, 9: 345-349.

⁸ Chan, J.M., Stampfer, M.J., Giovannucci, E., Gann, P.H., Ma, J., Wilkinson, P., Hennekens, C.H. and M. Pollack. 1998a. Plasma insulin-like growth factor-I and prostate cancer risk: a prospective study. *Science*, 279: 563-566.

⁹ Freedom of Information Summary POSILAC (sterile sometribove zinc suspension), November 5, 1993 At: <http://www.fda.gov/cvm/4390.htm#bst6j>;

treated with rbGH compared to control cows.¹⁰ The additional antibiotic required to treat these infections can't help but contribute to the overall problem of antibiotic resistance in humans, a major national health problem.

Finally, we note that since you issued this emergency rule, similar measures have been proposed in additional states, including Indiana, Vermont, Missouri, Utah, and Kansas. In every instance, they were soundly defeated. Kansas Governor Kathleen Sebelius, in one of her last acts before becoming U.S. Secretary of Health and Human Services, vetoed a bill calling for dairy labeling rules similar to Ohio's. She gave three key reasons:

“The milk labeling provisions negatively impact a dairy producer's ability to inform consumers that milk is from cows not treated with recombinant bovine growth hormone . . . Supporters of the bill claim it's necessary to protect consumers from false or misleading information. Yet there has been overwhelming opposition by consumer groups, small dairy producers and retailers to this proposed legislation. Furthermore, I am concerned that patchwork labeling requirements that differ from state to state will make it too expensive, in an already troubled economy, to provide consumers with information regarding the dairy products they purchase.”

Rather than continue to defend this rule in litigation, we urge you to rethink the wisdom of spending State resources to support a rule which interferes with Ohioans' ability to make an informed decision about the dairy products they buy, with farmers and dairies' rights to free speech, and with consumer right-to-know. In this era of increased concern about what's in our food and how it is produced, Ohio should be making more information available not less. For these reasons, please rescind this rule.

Yours,

Signers from Ohio

Annie and Jay Warmke,
Blue Rock Station
Philo, OH

Darwin Kelsey, Executive Director
Countryside Conservancy

Sylvia Zimmerman, President of the Board
Innovative Farmers of Ohio

Karen Hansen, Education and Outreach Consultant
Ohio Conference on Fair Trade

¹⁰ Millstone, E, Brunner, E and I White. 1994. Plagiarism or protecting public health? *Nature*, 371: 647-648.

Carol Goland
Ohio Ecological Food and Farming Association

Ellen Mee, Director of Environmental Health Programs
Ohio Environmental Council

Laurel Hopwood
Ohio Sierra Club

Bernadette Unger, President of the Board
MOON Cooperative Services
Oxford, OH

Signers Outside Ohio

Robyn O'Brien, Founder
AllergyKids

Michael Passoff, Associate Director, Corporate Social Responsibility
As You Sow

Kasha Ho'okili Ho, Program Manager
Breast Cancer Action

Charles Margulis
Center for Environmental Health

Heather Whitehead, True Food Network Director
Center for Food Safety

Christopher Waldrop, Director, Food Policy Institute
Consumer Federation of America

Michael Hansen, Senior Scientist
Consumers Union

Mark Kastel
Cornucopia Institute

Michael Kieschnick, President
CREDO/Working Assets

John Kinsman, President
Family Farm Defenders

Bill Wenzel, National Director
Farmer-to-Farmer Campaign on Genetic Engineering

Wenonah Hauter, Executive Director
Food and Water Watch

Richard R. Wood, Executive Director
Food Animal Concerns Trust

Jaime Harvie, Health Food Workgroup Coordinator
Health Care Without Harm

David Wallinga, Director, Food and Health Program
Institute for Agriculture and Trade Policy

Jeffrey Smith, Executive Director
Institute for Responsible Technology

Frederick Kirschenmann, President, Kirschenmann Family Farms
Medina, North Dakota

Barbara Jennings, CSJ
Midwest Coalition for Responsible Investments

Katherine Ozer, Executive Director
National Family Farm Coalition

Ed Maltby, Executive Director
Northeast Organic Dairy Producers Alliance

Steve Gilman, Policy Coordinator
Northeast Organic Farming Association Interstate Council representing 7 states (NOFA-VT, NOFA-NH, NOFA-MASS, NOFA-CT, NOFA-NY, NOFA-NJ and NOFA-RI)

Judy Byron, OP
Northwest Coalition for Responsible Investment

Jim Goodman, Northwood Farms
Wonewoc, WI

Rick North, Project Director, Campaign for Safe Food
Oregon Physicians for Social Responsibility

Ronnie Cummins, Executive Director
Organic Consumers Association

Mark Lipson, Policy Program Director

Organic Farming Research Foundation

Christine Bushway, Executive Director
Organic Trade Association

Brian Snyder, Executive Director
Pennsylvania Association for Sustainable Agriculture

Ted Schettler, Science Director
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Sister Barbara Aires, Coordinator of Corporate Responsibility
Sisters of Charity of Saint Elizabeth

Nora Nash, OSF, Director Corporate Social Responsibility
Sisters of St. Francis of Philadelphia

Jill Davies, Director
Sustainable Living Systems

Chuck Deichmann, Willow Creek Farm
Belmont, NY

Cc: Robert J. Boggs, Director Ohio Department of Agriculture