



TED STRICKLAND
GOVERNOR
STATE OF OHIO

Executive Order 2008 – 03S

Immediate Adoption of Rule to Define What Constitutes False and Misleading Labels on Milk and Milk Products

- 1. Oversight of Ohio's Dairy Industry.** The Ohio Department of Agriculture (ODA) is responsible for administering rules, policies, and procedures to facilitate the efficient operation of Ohio's dairy industry. As a part of its administrative duties, ODA is responsible for ensuring that the labels on dairy products including, but not limited to, milk and milk products, are not false or misleading, as required by Ohio law.
- 2. The Use of Artificial Hormones in Milk Production.** Recombinant bovine somatotropin (rbST) is an artificial hormone that, when used in milk production, increases the amount of milk produced by a cow. This artificial hormone is a duplicate of the naturally occurring hormone found in cows. Since 1994, the United States Food and Drug Administration (U.S. FDA) has allowed the use of rbST in dairy cows because it has determined that there is no significant difference between milk produced from cows supplemented with rbST and milk produced from cows not supplemented with rbST.
- 3. Labeling of Milk and Milk Products.** Despite the conclusions reached by the U.S. FDA regarding the use of rbST, Ohio consumers, dairy producers and retailers continue to have differing opinions on its use in the production of milk and milk products. Because of these differing opinions, and in order to distinguish different methods of producing milk and milk products, some retailers have begun using phrases, such as: "rbST free" and "artificial hormone free" on their labels. In turn, the dairy producers that use rbST on their farms have objected to the use of these phrases as a misleading sales practice because they believe these terms imply that milk from cows supplemented with rbST is different than milk from cows not supplemented with rbST.

4. **Definitions of “False” and “Misleading” Under Ohio Law.** Current Ohio law does not define the terms “false” or “misleading” in this context. As such, there is no guidance for dairy producers and retailers regarding the manner in which their products should be packaged and sold to avoid being labeled false or misleading, nor is there guidance for Ohio consumers to assist them in making informed choices regarding the milk or milk products that they purchase and consume.
5. **Testing the Validity of Certain rbST Claims.** Because there is currently no scientifically reliable means of testing milk to determine if it was produced with or without the use of rbST, ODA deems it false and/or misleading to claim that milk is “rbST free” or “artificial hormone free.” On the other hand, dairy producers and retailers maintain, and can be required to provide to the ODA, documentation about their milk production practices which demonstrate whether they use, or do not use, rbST.
6. **Maximizing Consumer Information and Consumer Choice.** Ohio’s citizens are best served when they have complete and accurate information with which to make choices about the products they buy. Accordingly, ODA should exercise its obligations to assure that milk product labeling is neither false nor misleading in a manner which maximizes consumer information, and thus, consumer choice. With respect to the use of rbST in the milk production process, consumer information and consumer choice are maximized when labeling informing consumers that milk has been produced without the use of rbST, also informs them that the U.S. FDA has determined that there is no significant difference between milk produced from cows supplemented with rbST and milk produced from cows not supplemented with rbST.
7. **Making the Rule Defining What Constitutes False and Misleading Labels on Milk and Milk Products effective February 7, 2008.** In order for Ohio consumers to have accurate information when purchasing milk and milk products and for dairy producers and retailers to have explicit guidance on the requirements for appropriately labeling milk and milk products, adoption of a rule in the Ohio Administrative Code defining what constitutes false and misleading labels must occur immediately.
8. **Procedure for Immediate Enactment of Rule Changes.** Section 119.03(F) of the Ohio Revised Code authorizes the Governor, on the request of an agency, to suspend the normal rulemaking procedures with respect to a specific rule when an emergency exists necessitating the immediate adoption, amendment or rescission of the rule. When such a

determination is made, the agency may immediately adopt that rule, but the rule is valid for only ninety (90) days.

9. **Determination of Emergency.** I believe that an emergency exists justifying the suspension of the normal rulemaking process when the failure to act immediately would negatively impact the citizens of Ohio. ODA has asked me to determine, and I have determined, that the failure to immediately adopt a rule preventing misleading labels on milk and milk products and requiring accurate information on how those products are produced will negatively impact Ohioans by not allowing them to make an informed decision about the goods that they purchase and consume. Therefore, an emergency exists necessitating the immediate adoption of a new administrative rule in this regard.

10. **Authorization for Immediate Rule Implementation.** Accordingly, the normal rulemaking procedures are suspended with respect to the adoption of Rule 901:11-8-01 of the Ohio Administrative Code. This rule will define what constitutes false and misleading labels on milk and milk products, require dairy producers who claim that they do not utilize rbST to submit affidavits and other documentation to that effect, permit ODA to review such documentation, and create labels that contain representations consistent with the U.S. FDA's findings on rbST. This rule will be filed electronically by ODA with the Secretary of State, the Director of the Legislative Service Commission, and the Joint Committee on Agency Rule Review. ODA may, therefore, adopt this rule immediately.

11. I signed this Executive Order on February 7, 2008, and it will expire at the end of the ninetieth day it is in effect, May 7, 2008.



Ted Strickland
Ted Strickland, Governor

ATTEST:

Jennifer Brunner, Secretary of State