



International Dairy Foods Association

Milk Industry Foundation

National Cheese Institute

International Ice Cream Association

**Before Utah Department of Agriculture
Statement on Proposed Rule R70-340**

By Clay Hough

Senior Group Vice President

International Dairy Foods Association

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On behalf of hundreds of dairy processors across this nation, including good corporate citizens of the State of Utah, I am here to strongly oppose the Department of Agriculture and Food's Proposed Rule R70-340.

More than anything else, this rule is simply unnecessary. Utah's consumers are not being misled or cheated and there is no public outcry to change dairy labels. The proposal attempts to solve a problem that does not exist with a solution that will harm the vast majority of Utah's residents.

This Rule erects barriers that effectively eliminate nearly every label with an absence claim being made in Utah today, which is why its implementation is opposed by dairy processors, consumer organizations, and the organic community. Specifically, Rule 70-340 will:

- deny consumers their right to know important information regarding whether a product contains milk from cows not treated with synthetic hormones;
- restrict the right of dairy processors to market dairy products using truthful advertising and labels about the use of synthetic hormones;
- impede commerce in your state by creating a patchwork of labeling requirements that are inconsistent across state lines; and
- harm the entire dairy industry, both farmers and processors, in Utah by reducing demand for dairy products;

The International Dairy Foods Association (IDFA) represents our nation's dairy manufacturing and marketing industries, and their suppliers. We have approximately 530 members representing more than a \$100 billion a year industry. Our 220 dairy processing members operate more than 600 plants that range from large multi-national corporations to single plant companies. Together they represent more than 85 percent of the milk, cultured products, cheese, and frozen desserts produced and marketed in the United States. We have 9 members in Utah, including Kraft Foods, Dean Foods, the Kroger Company, Gossner Foods, and National Dairy Holdings to name a few.

Recombinant bovine somatotropin, or rbST, was approved for use by the FDA in 1993. Its purpose is to stimulate greater milk production in lactating dairy cows. Because the use of synthetic growth hormones is highly controversial, in 1994 the FDA issued guidelines to give dairy processors a “safe harbor” that would allow them to convey desired information regarding rbST to consumers in a truthful and not misleading manner.

The dairy industry in Utah and across the United States has been relying upon FDA's guidance and safe harbor. Our nation's fifty states have followed these guidelines, with only very limited exceptions, for more than a decade. Under the guidelines, processors nationwide understand what can and cannot be placed on a label regarding the use of synthetic hormones. Because the guidelines are imposed federally, processors can market products locally, regionally and nationally.

Rule R70-340 will upset the FDA's carefully balanced solution that has worked successfully for more than 13 years; a solution that provides consumers the information they are demanding.

This Rule does not benefit consumers. Today's consumers want more choices in the dairy case – not fewer. Public surveys all confirm that there is a growing segment of consumers who want dairy products from cows that have not been treated with rbST. If you don't believe me, just ask mothers who buy milk for their children if they prefer milk from cows that have not been treated with artificial hormones.

Let's be clear about one thing -- the reason why processors are marketing products with absence claims is simply because consumers are demanding it. Per capita fluid milk consumption has been declining in this country for three straight decades. We should be working together to reverse the decline in milk consumption -- that's what will benefit Utah's dairy farmers. Instead, you are considering a rule which will tie our hands when it comes to listening to consumer preference. You are engaged in a public debate that could lead to loss of consumer confidence and trust in dairy products.

At IDFA, we are witnessing a nationwide effort to increase the sales of rbST through a state-by-state effort to make labeling requirements so restrictive that absence claims will disappear from the dairy case. An effort in Pennsylvania was followed by a bill in Indiana. Just two weeks ago, Ohio issued an emergency regulation in this area, and Kansas is considering legislation. It is fundamentally unfair, not to mention an economic burden, on dairy processors to face such a bewildering array of differing requirements.

Utah's proposal is part of this nationwide campaign. It is a clear impediment to interstate commerce, and will have a major impact on national marketers, such as Kraft and Nestle that do business in your state. Most dairy processors market across state lines yet Utah's proposed rule is not uniform with labeling requirements in your neighboring states. As such, labels in Utah will need to be different from labels in Idaho, Colorado

and California. With different rules across states lines, companies may simply choose not to undertake an expensive re-labeling proposition. That is the goal of this nationwide effort.

This isn't just a fight for dairy processors. Approval of Rule R70-340 will, contrary to claims of its supporters, harm Utah's dairy farmers as well. Consumers have spoken regarding their desire to know if a dairy product has been produced with milk from cows treated with rbST and the answer is clear -- many base their decision to purchase dairy products on that information.

Denying or frustrating the right of dairy processors to provide this information to consumers will not change their concerns, but it may very well change what they buy. Dairy farmers should be as concerned as dairy processors that consumers will leave the dairy case entirely and move to less nutritious substitutes. Sports drinks, sodas, and flavored waters already crowd the aisles of grocery stores. Declining milk consumption means less demand for milk and, ultimately, less need for dairy farmers.

In sum, there will be lots and lots of losers if your proposal is adopted. You are mistaken if you think this Rule will help farmers. You will be doing harm to the very producers you are trying to protect, the dairy industry as a whole, and the millions of consumers who choose to buy milk and dairy products.

Finally, I would like to list the many ways that the proposed Rule is overbroad, poorly constructed and vague.

- By covering all food products, the proposed Rule extends well beyond the FDA guidance that covers only dairy products. In addition, your proposal covers advertisements and well as labeling. No other regulations, or proposed regulations, extend to advertisements.
- The proposed regulation applies to claims of quality and safety, as well as the use of synthetic hormones, and requires analytical tests to back up any such claim. Creamier, richer, better tasting are all terms of quality. How can Utah demand analytical tests for such obviously subjective claims?
- This proposal requires a disclaimer statement that is "contiguous to and as readable as the claim." The Food and Drug Administration does not require this - in fact, no other states requires this, except Ohio, which recently imposed such a requirement under a very controversial emergency order. Proponents of this proposed Rule know that it is impossible to carry out. Some labels are simply too small to include such a disclaimer. Can you imagine an 8 ounce milk container, or a serving size of yogurt being able to comply with this? They can't - and that's the whole point of this new requirement - to get rbST production-based absence claims off of product labels.

- The contiguity requirement is overly restrictive if the purpose is to inform the consumer in a truthful and not misleading manner. What does it mean to be as "readable as the claim"? As currently drafted, this section makes it difficult -- if not impossible -- for dairy processors to understand and makes enforcement subjective at best.
- This proposal also requires that the processor must "maintain a record of the analytical test used to verify a claim" on a label or advertisement. Since there is no test to determine the presence of the synthetic hormone rbST in milk, this requirement could be construed as totally eliminating the ability to make an rbST absence claim, including production claims such as the milk was produced from cows not treated with artificial hormones. Such an outright ban violates the commercial speech rights of dairy processors.

The process followed by the Utah Department Agriculture has been arbitrary, non-transparent, and unfair to relevant stakeholders. You have not provided -- perhaps in violation of state law -- sufficient time for comments on this proposal. There are at least three drafts of this proposed regulation in circulation, including one dated as recently as February 15, 2008. It is difficult, if not impossible, to comment on regulations that are in flux. This hearing on February 26, 2008, is only eleven days after the latest draft was issued.

In light of all the above, we urge the Department to withdraw the Proposed Rule R70-340, and continue to review dairy product labels using the guidelines provided by FDA.

Thank you for your attention to this critical issue.