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In Short ■ by Jane Kolodinsky, Qingbin Wang, and David Conner

rBST Labeling and Notification: Lessons from Vermont

The debate continues about labeling and notification of dairy products containing milk from cows treated with rBST. While the Food and Drug Administration (FDA) insists that no rBST labels are necessary, Vermont legislation mandated rBST labeling and notification in September 1995. Until the law was overturned by a court decision in August 1996, all dairy products sold in Vermont and containing milk from cows treated with rBST needed special labels. Vermont's experience, while the labeling laws were in place, may provide some lessons for government lawmakers and exporters concerned about labeling for products produced with new biotechnology.

rBST is a genetically engineered version of a naturally occurring hormone in cows. It can increase milk production in cows by up to 20 percent and thereby improve feed efficiency. The FDA has determined that milk from cows treated with rBST and milk from cows not treated with rBST are indistinguishable and that milk from cows treated with rBST presents no health risk. However, many individuals and consumer groups have lingering concerns about rBST's long-term health effects as well as its possible detrimental effects on the dairy industry. These concerns in the state of Vermont led to a strong demand for a labeling and notification law on dairy products that may contain milk from cows treated with rBST.

Vermont law ineffective

It was the intent of the Vermont labeling law to place the burden of labeling upon those who use rBST in milk production. However, in practice, the burden of labeling fell not upon the milk producer who used rBST, but upon the retailers, a burden they did not relish. Under the law, any dairy product containing milk from cows treated with rBST had to be labeled with a blue dot on the package, a blue overlay over the product's price marker, or had to be listed on a blue sign somewhere close to the product.

The Vermont law was immediately challenged in the Federal District Court for the District of Vermont by the International Dairy Foods Association and several other industrial groups. They argued that the law unfairly discriminated against dairy products that contain milk from cows treated with rBST. The law was originally upheld by U.S. District Court Judge Garvan Murtha in November 1995. Following that ruling, the law was implemented and continued until it was suspended by the 2nd U.S. Circuit Court of Appeals in New York in August 1996. The court held that the right of producers not to divulge information on its production methods should be equal to the consumers' right to know the production methods.

Despite the fact that the implementation of the mandatory law was considered a victory for consumers' right to information, in practice it failed to provide a majority of Vermonters with the needed information to make purchasing decisions about dairy products. According to survey data from a 1995 Vermont Poll conducted in December 1995, only about 48 percent of respondents noticed a change in the way that dairy products were labeled. Of those who noticed the rBST labels, only about 21 percent interpreted the labels correctly. The survey also showed that about 62 percent of those who were not in favor of rBST did not understand the labels. The ineffectiveness of the rBST labeling law in Vermont was confirmed by the data from a 1996 Vermont poll: only about 43 percent of the respondents considered the rBST labeling to be effective or very effective in providing information to consumers.

Consumers still need rBST information

Given this background, two questions are in order. First, since the FDA has ruled that milk produced with rBST is safe and no rBST labels are necessary, are there legitimate reasons why consumers should know if dairy products contain milk from cows treated with rBST? Second, if so, how can they get this information in a way that does not violate the right of producers not to divulge information on their production methods?

The literature clearly indicates that there are legitimate reasons why consumers may want to know if dairy products contain milk from cows treated with rBST. Feenstra gives a thorough overview of lingering health and safety concerns that remain despite the FDA ruling. Furthermore, besides health and safety, consumers may have other legitimate concerns.

Consumers may care about the socioeconomic impact of rBST. When rBST was introduced, some researchers suggested that rBST would be scale neutral because it required no large investment. However, some studies now indicate a positive correlation between herd size and the intention to use rBST, and that rBST contributes to fewer but larger farms. One intention of the Vermont labeling law was to protect its small dairy farmers from just this kind of economic change.

Some people worry that rBST may harm the environment. By comparing the costs and benefits of two competing production techniques, confinement with rBST use versus rotational grazing, Rayburn finds that pasture grazing results in less soil erosion, pollution, and fossil fuel consumption. Although the two production techniques are not mutually exclusive, buying milk from dairy farmers who do not use rBST may sponsor a type of agriculture that is more environmentally friendly.

Animal rights groups express concerns about the effect of rBST on cows. While use of rBST is not the first example of the trend to treat cows like "teats on legs" and not sentient animals, it may be a continuation of this trend. Comstock reports that rBST use is not likely to provide cows with more access to pasture land or to lead to "a kind of dairying in which animals are treated humanely."

Given the above concerns, we believe consumers should have information to act on their concerns. However, the initial mandatory labeling law in Vermont was flawed in many ways: it was unconstitutional, unpopular with those charged with implementing it, and ineffective in practice. Can information about the use of rBST be provided to consumers without violating producer rights?

Voluntary labeling logical

In the spring of 1997, the state of Vermont authorized voluntary labeling of rBST-free dairy products. It is important to ask how well this kind of measure will succeed, given the failure of its predecessor. There are many examples of products whose labels differentiate them from their competitors in ways that have legal standing and do not unfairly denigrate those competitors. Cigarette manufacturers, for example, are not required to list their ingredients. Yet, a company like American Spirit advertises its product as one made from pure, additive-free tobacco. This is simply stated as a fact and the consumer decides the importance of this quality. Some tuna companies advertise that their fish suppliers use dolphin-safe nets. Some cosmetic companies advertise that their products have been tested using "cruelty-free" methods.

The mandatory labeling law in Vermont did not intend to, but did inadvertently, post unwanted labeling costs to retailers. The study by Wang and co-researchers shows, however, that label costs may be covered by premium prices since 62 percent of Vermonters who participated in the 1995 Vermont Poll are willing to pay a premium of 10¢ or more per gallon for milk from cows not treated with rBST. Thus we speculate that the change to a voluntary "rBST-free" label should pay for itself through a premium price. A study by Fox confirms a potential niche market for rBST-free milk.

Finally, there is the issue of effectiveness of a voluntary labeling law. Wang and co-researchers assert that the original labels were confusing and placed in inconspicuous places in food stores. Furthermore, under the mandatory labeling law, consumers who want to avoid dairy products that may contain milk from cows treated with rBST had to look for the absence of the confusing rBST labels; a difficult task for many consumers. Under voluntary labeling,

they only need to look for "rBST-free" labels—clearly a simpler task.

Voluntary labeling of rBST-free dairy products is the method that best respects both consumers' right to information and producers' right to privacy. As asserted by Thompson:

> The biotechnology industry should look at the "no-biotech" labels as an insurance policy, one that will allow both religiously zealous and generally disaffected people a principle of exit from the new food system based on genetic engineering. Accommodating the concerns of this minority both serves the principle of consent, and removes the basis for the kind of conflict that has stigmarized rBST (p. 13).

The ball is in the court of concerned producers and consumers. It is up to them to bring the issues to the forefront, demonstrate the social and ethical benefits of their products, and use effective educational techniques to influence opinion and increase demand. The data from Vermont clearly suggest that a large proportion of consumers are concerned about rBST labeling issues. According to the data from the 1996 Vermont poll, 69 percent of the respondents believe that labeling rBST-free products would work better than labeling products containing milk from cows treated with rBST. ■

■ For more information

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Note: *AJAE* is the *American Journal of Agricultural Economics; RAE* is the *Review of Agricultural Economics.*