

(Academic exercise, Professional Communications, Josef Korbel School of International Studies)

Recommendation Re: Labeling of Dairy Products Controversy and the
Health of Coloradans

Submitted by:
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Prepared for:
Governor John Hickenlooper

EXECUTIVE SUMMARY

The Colorado Department of Agriculture (CDOA) recently announced that it is working on a new policy to address the problem of mislabeled food products. As part of that effort, it released a draft of a proposed public policy banning "absence claim" labeling on dairy foods. As a result, a heated controversy erupted among dairy farmers, consumers, health advocates, and the news media. If we view this issue in its scientific and legal context, however, with the health and welfare of Coloradans as our key priority, a reasonable and fair solution to the controversy becomes clear.

POLICY ISSUE

Last month, the Colorado Department of Agriculture (CDOA) announced the need for a new public policy addressing the problem of mislabeled food products — especially the use of “misleading” labels. After the CDOA distributed a draft of a public policy focused on banning dairy food labels that specify the absence of rBGH/rBST (a growth hormone which boosts milk production in cows), a brouhaha erupted involving many different parties — dairy farmers on both sides, politicians, advocacy groups, consumers, the news media, and the CDOA over what is appropriate, legal, fair, and in the best interests of Coloradans.

As a result, the CDOA postponed the ban pending input from stakeholders and possible revisions. Therefore, I am submitting, for your consideration, an analysis of the policy issue along with a recommendation.

CONTEXT

Both opponents and proponents of the proposed ban recognize the following components of this policy issue: (a) concerns about using agricultural biotechnology without a better understanding of its impact on people, animals, and ecosystems, (b) food safety and consumer protection — and how this particular issue impacts larger issues, (c) how "truth in labeling" affects the larger issue of providing health information to consumers, (d) how this purported "food safety and consumer protection" ban would stand up under the constitutional issue of free speech, (e) contentious issues of government control

— in particular, how marketing and advertising are to be controlled without disturbing free trade and free markets, and (f) how to address ethical questions and conflicting values in a highly diverse culture.

The CDOA originally tackled the issue of food labeling because of numerous complaints from consumers, farmers, and policy makers about mislabeled food products. One of the biggest concerns raised was about "absence claim" labeling and the possibility that such an approach could mislead consumers. However, the problem with the proposed ban on such labeling is that it benefits only one set of stakeholders: manufacturers of rBGH/rBST and the dairy farmers who use it. Not surprisingly, once the proposed ban was announced, the outcry from consumers (especially the very health-conscious citizens of such communities as Denver, Boulder, Ft. Collins, Aspen, and Steamboat), dairy farmers *not* using rBGH/rBST, and the news media became a firestorm.

To put this issue in national and international context, it is important to note that while the FDA allows the use of rBGH/rBST in milk production, it neither calls for nor forbids any kind of rBGH/rBST-referent labeling. Perhaps more importantly, the FDA decided to allow its use in the face of disputed scientific evidence and the fact that virtually every advanced nation besides the U.S. (Canada, Australia, New Zealand, Japan, and the 25 members of the European Union) *prohibits* the use of rBGH/rBST in milk production. And articles exploring concerns about rBGH/rBST have appeared in such prominent American newspapers as *The Wall Street Journal*.

POLICY OPTIONS

At this point, I see three policy options: (1) letting the CDOA completely handle this situation, no matter what its final decision, (2) telling the CDOA that based on various concerns and considerations, scientific and legal, the governor's office recommends it abandon its proposed "absence claim" labeling ban, or (3) telling the CDOA that based on various concerns and considerations, scientific and legal, the governor's office recommends that it abandon its proposed "absence claim" labeling ban and focus instead on the kinds of food product mislabeling that endangers the health of Coloradans rather than the potential profit margins of dairy farmers who choose to use rBGH/rBST.

RECOMMENDATION

The Governor has requested policy input on this issue that focuses exclusively on the health of Coloradans. My area of concentration as a Colorado Policy Analyst is the promotion of, and advocacy for, healthy diet, good nutrition, and safe foods for Coloradans. Therefore, I recommend that the CDOA cancels its proposed ban on "absence claim" labeling (which is used to help consumers maintain their chosen health standards, scientifically "proven" or not) and focus on the much more serious issue of food mislabeling that endangers the health of Coloradans.

This position is based on both scientific and legal concerns. First, there is a potential First Amendment free speech case on the part of the dairy farmers who advertise the absence of rBGH/rBST in their products. "Absence claim" labeling does not bash the competition or violate any laws; it simply provides the information that many consumers demand so that they can make informed choices about what they will eat and drink. Second, dairy farmers who do not use rBGH/rBST must charge more for their products, since cows not artificially stimulated with rBGH/rBST produce less milk. If the farmers were not allowed to note the absence of rBGH/rBST on their labels, they would be at a significant disadvantage competing in the marketplace with dairy farmers who use rBGH/rBST. (It would be exactly the same with organic dairy farmers or producers of "cage-free" eggs, were they not allowed to put "organic" or "cage-free" on their labels, since they also cost more to produce.)

Since there is a clear niche market for rBGH/rBST-free products — with growing numbers of consumers demanding food products without additives or questionable production methods — it is fair that the non-rBGH/rBST-using dairy farmers be able to market to their potential customers. Third, as numerous health-conscious citizens, policy advocates, and the news media have pointed out, the proposed ban seems to have no purpose beyond protecting a coalition of rBGH/rBST manufacturers and rBGH/rBST-using dairy farmers rather than allowing dairy products to be accurately labeled in a "full disclosure" manner.

Clearly, with virtually all advanced nations having outlawed the use of rBGH/rBST (with the

exception of the U.S., probably because of the scientifically questionable FDA decision to allow the use of rBGH/rBST), not to mention one major chain of New England milk processing plants that will process only rBGH/rBST-free milk (H.P. Hood and Lean Foods), there is clear precedent for allowing Colorado dairy farmers to note the absence of rBGH/rBST on their labels. Therefore, I recommend that the governor's office inform the CDOA that it opposes any ban on "absence claim" labeling, that the CDOA should focus on food labeling that is mislabeled or misleading — and that food producers be allowed to provide the information that consumers need who are looking for products free of questionable substances or production practices.