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August 27, 2003

HAND DELIVERED
Lisa Hourihan, Clerk
U.S. District Court
District of Massachusetts
1 Courthouse Way
Suite 2300
Boston, MA 02210

RE: Monsanto Company v. Oakhurst Dairy, Inc.
Civil Action No. 03-11273RCL

Dear Ms. Hourihan:

Enclosed for filing in the above captioned matter, please find Motion Of State Of Maine For Leave To File Memorandum Of Law As Amicus Curiae In Support Of Defendant Oakhurst Dairy Inc.'s Motion For Transfer Of Venue, together with the accompanying Memorandum Of Law of the State of Maine as Amicus Curiae, and Certificates of Service.

Please note that although we have attempted to contact Monsanto, we have not yet been informed whether Plaintiff intends to oppose the State's motion for leave. We would be most grateful if you would bring this to Judge Reginald C. Lindsay's attention. Please do not hesitate to contact me with any questions; thank you for your kind cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Francis Ackerman".

FRANCIS ACKERMAN
Assistant Attorney General

FEA/tlh
Enclosure(s)

Lisa Hourihan, Clerk
U.S. District Court
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August 27, 2003

pc: Richard P. Campbell, Esq., w/encl. (via facsimile)
John A. K. Grunert, Esq., w/encl. (via facsimile)
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Chuck Dow, Special Asst. to Atty General w/encl.

MONSANTO COMPANY,

Plaintiff

v.

OAKHURST DAIRY, INC.

Defendant

The State of Maine, by and through its Attorney General, now moves for leave, as *amicus curiae*, to file the accompanying memorandum of law in support of the pending motion of Defendant Oakhurst Dairy, Inc. (“Oakhurst”) for a transfer of venue from this Court to the District of Maine. In the absence of a rule governing the form of motions of this nature at the district court level, the paragraphs below follow the format prescribed at the appellate level. *See* FRAP Rule 29 (b).

Maine's sovereign interests are significantly implicated in this action. Plaintiff seeks a court order barring Oakhurst, a small commercial dairy with headquarters in Portland and 70% of its sales in Maine, from advertising the fact that its milk is produced without the use of bovine growth hormone, or rBST. The State is concerned that, if the

injunctive relief sought by Plaintiff herein were to issue, Maine and its citizens would be negatively impacted in the following ways, without limitation.

A. Quality trademark program. Through its Department of Agriculture, the State administers a “quality trademark” program which encourages and favors the production of milk in Maine without the use of rBST. The Maine Quality Trademark is a trademark registered by the Maine Department of Agriculture with the United States Patent and Trademark Office. The Maine Legislature directed the Department, pursuant to 7 M.R.S.A. § 2901-B, to promulgate rules permitting the use of the trademark on milk and milk products. The statute specifically requires that such rules include limitations relating to the use of milk from cows treated with rBST.

Acting in accordance with 7 M.R.S.A. § 2901-B, the Department adopted 01-001 CMR Chapter 136, “Official State of Maine Grades and Standards for Milk and Milk Products for Use with the State of Maine Quality Trademark.” These rules require, *inter alia*, that 100% of the milk in any package bearing the trademark must be from cows that have *not* been treated with rBST. In meeting this requirement, the dairy must obtain affidavits from each milk producer from which the dairy purchases or intends to purchase milk, containing a sworn statement that the milk producer has not used rBST in the previous 60 days and does not possess or intend to use rBST during the upcoming year.

Oakhurst’s claims that its farmers have pledged not to use artificial growth hormones are, therefore, consistent with the regulatory criteria for its licensure for use of the trademark. If the injunction sought by Plaintiff is issued, the public policy embodied in the quality trademark program could effectively be thwarted.

B. Consumer interest in accurate information. Maine consumers have

a strong interest in access to accurate and truthful information concerning the production processes used for food products, including milk and other dairy products. This is particularly true in the case of bio-scientific techniques such as the use of bovine growth hormone, or rBST, which is the subject of ongoing international controversy with regard to its potential effects on human and bovine health. Even if it could be or were conclusively demonstrated that milk produced using rBST carries no risk whatever to human health, Maine consumers still have the right and should have the ability to choose whether to purchase milk produced with or without rBST, at their option. In order to effectively exercise that right to choose, consumers require access to reliable information concerning the use of rBST. The interest of Maine consumers in access to ready and accurate information concerning the use of rBST by producers of the milk they drink would be seriously damaged by the issuance of the injunctive relief sought by Plaintiff.

2. Desirability and relevance of *amicus* filing.

The attached *amicus* filing in support of Oakhurst's motion for transfer of venue is appropriate and relevant in that, while Oakhurst has correctly asserted that the sovereign interests of the State of Maine are significantly implicated in this lawsuit, the Maine Attorney General can speak to the nature of the State's sovereign interests with a special authority.

The Maine Attorney General is counsel to the State's Department of Agriculture, and advises the Department, *inter alia*, with regard to the administration of its quality trademark program. In addition, the Maine Attorney General is the constitutional officer of state government charged with the authority and responsibility to enforce state consumer protection and unfair trade statutes. Finally, as *parens patriae*, the Maine


Attorney General is empowered to represent the State and its citizens in the public interest.

This action touches the affairs of Maine consumers and citizens generally because the relief Plaintiff seeks would adversely affect all consumers' ability to make informed choices in the retail market for milk. In the attached filing, the Maine Attorney General articulates the interests of the State and of Maine consumers and citizens in having the case tried in their view and reach, and in having what is essentially a controversy implicating Maine laws and the rights of Maine consumers decided in Maine. We respectfully submit that these points are especially relevant to the question of venue raised by Oakhurst's motion.

For all the foregoing reasons, the Court should grant the State's motion for leave to file the accompanying memorandum of law as *amicus curiae*.

G. STEVEN ROWE
Attorney General

Dated: 8/27/03



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**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
EASTERN DIVISION**

MONSANTO COMPANY,)	
)	
Plaintiff)	
)	
)	
v.)	
)	Civil Action No. 03-11273-RCL
)	
OAKHURST DAIRY, INC.)	
)	
Defendant)	
)	

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing document by facsimile and first class mail on counsel of record for Plaintiff and Defendant on August 27, 2003, as follows:

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

MONSANTO COMPANY,

Plaintiff

v.

OAKHURST DAIRY, INC.

Defendant

Civil Action No. 03-11273-RCL

MEMORANDUM OF LAW OF THE STATE OF MAINE AS AMICUS CURIAE
IN SUPPORT OF DEFENDANT OAKHURST DAIRY INC.'S
MOTION FOR TRANSFER OF VENUE

The State of Maine, by and through its Attorney General, now files this memorandum of law as *amicus curiae* in support of Oakhurst Dairy, Inc.'s ("Oakhurst") motion for a transfer of venue from this Court to the District of Maine. In the paragraphs below, we first outline the State's twofold interest in this case. (1) to uphold the laws enacted by the Maine Legislature and implemented by the Maine Department of Agriculture, and (2) on behalf of Maine consumers and citizens. We then turn to a review of the factors relevant to the Court's determination of the venue issue raised in Oakhurst's motion, pursuant to 28 USC § 404 (a).

I. Interest of the State of Maine in the litigation.

Plaintiff Monsanto Company ("Monsanto"), a multinational corporation with

headquarters in St. Louis, Missouri and offices worldwide, is the manufacturer of bovine growth hormone, otherwise known as Posilac, bovine somatotropin or rBST, a hormonal treatment which is injected into cows in order to artificially enhance their milk production. This product, initially approved by the federal Food & Drug Administration in 1993, is now marketed and sold to producers accounting for approximately one-third of the nation's dairy output. Elsewhere, however, rBST is the focus of ongoing international controversy with regard to its potential adverse effects on human and bovine health; indeed, the product is banned in Canada and Europe.

Defendant Oakhurst Dairy, Inc. ("Oakhurst") is one of the smallest commercial dairies in New England. Oakhurst is headquartered in Portland, Maine, and some 70% of its sales are made in Maine; by contrast, only 7% of its sales take place in Massachusetts. On its product labels and elsewhere, Oakhurst displays the State's quality trademark and advertises the fact that its milk is produced by farmers who pledge not to use rBST. In the present lawsuit, Monsanto targets Oakhurst's advertising, seeking a court order barring the dairy from advertising its farmers' pledge on its label or anywhere else. A minuscule percentage of Oakhurst's advertising dollars are spent in Massachusetts; most of the dairy's advertising occurs in Maine.

This action implicates the public interest, and the interest of the State of Maine, in at least two ways.

Quality trademark program. First, it threatens to undermine the public policy expressed in Maine's Quality Trademark agricultural marketing program. The program enables dairies that bottle milk produced without the use of bovine growth hormone or

rBST and that meet certain other standards to affix the State's registered quality seal trademark to their product.

The Maine Quality Trademark is a trademark registered by the Maine Department of Agriculture with the United States Patent and Trademark Office. The Maine Legislature directed the Department, pursuant to 7 M.R.S.A. § 2901-B, to promulgate rules permitting the commercial use of the trademark on milk and milk products. Among other things, the statute specifically requires that such rules include limitations relating to the use of milk from cows treated with rBST. Acting in accordance with 7 M.R.S.A. § 2901-B, the Department adopted 01-001 CMR Chapter 136, "Official State of Maine Grades and Standards for Milk and Milk Products for Use with the State of Maine Quality Trademark," establishing the requirements for the use of the trademark, including the stricture that 100% of the milk in any package bearing the trademark must be from cows that have not been treated with rBST.

Pursuant to these rules, in order to qualify to employ the trademark, the dairy must obtain affidavits from each milk producer from which the dairy purchases or intends to purchase milk, containing a sworn statement that the milk producer has not used rBST in the previous 60 days and does not possess or intend to use rBST during the upcoming year. Oakhurst's advertising claim that its farmers have pledged not to use artificial growth hormones is, therefore, consistent with the regulatory criteria for its licensure for use of the trademark; and indeed, Oakhurst has qualified to affix the Quality Trademark to its product and uses the trademark on its labels, alongside its pledge advertisement.

By the same token, if the dairy were barred from advertising its farmers' pledge, its might be unable to employ the trademark without risking a finding of contempt. The

program, which encourages the production of milk in Maine without the use of rBST, would effectively be nullified if Plaintiff's suit is successful. Maine has a strong interest in defending the public policy embodied in the laws establishing its Quality Trademark program.

Consumer access to information; consumer choice. Second -- again if Plaintiff is successful in obtaining the relief it seeks -- Maine consumers would be deprived of access to reliable information concerning the use of rBST, and would therefore lose the ability they now enjoy to choose to purchase milk produced without rBST, should they so desire. Consumers may have concerns which prompt them to purchase milk produced without the use of bovine growth hormones, including concerns with regard to human or bovine health, or general objections to the use of bio-scientific techniques to artificially boost milk production in cows. The Attorney General, as the constitutional officer of state government charged with enforcing consumer protection statutes and as *parens patriae*, has a strong interest in protecting consumers' access to accurate information about the processes used in the production of foodstuffs, as well as their ability to make informed purchasing choices. *See* 5 MRSA § 207 (Maine Unfair Trade Practices Act); *Lund ex rel. Wilbur v. Pratt*, 308 A.2d 554 (Me. 1973) (broad powers to vindicate the public interest).

II. The strong public interest in having this local controversy decided in Maine outweighs other considerations affecting venue in this case.

Oakhurst's motion to transfer venue in this case to the District of Maine is made pursuant to 28 USC § 1404 (a), which provides for the transfer of venue to any district or division where the action might have been brought, "[f]or the convenience of parties and witnesses, in the interest of justice." There is no question that this case could have been

filed in the District of Maine. The motion is, accordingly, addressed to the sound discretion of the Court. *Home Products International North America, Inc. v. Peoplesoft USA, Inc.*, 201 FRD 42 (D. Ma. 2001) (matter within Court's discretion).

Ordinarily, a Plaintiff's choice of forum, though not dispositive, is entitled to a degree of deference. *E.g. Liberty Mutual Insurance Company v. Gardere & Wynne, LLP*, 1994 US Dist. Lexis 17928, at 9 (D. Ma. 1994) (choice of forum entitled to considerable weight). In this instance, however, choice of forum is not entitled to deference because: (1) the operative facts – Oakhurst's sales and advertising -- occur predominantly in Maine; (2) there are significant implications for a Maine statutory program; and (3) the nexus to Massachusetts is relatively tenuous. *Subaru of New England v. Subaru of Augusta, Inc.*, 121 FRD 1, 3 –4 (D. Ma. 1988) (no deference where operative facts occurred elsewhere); *Liberty Mutual, supra*, at 32 (because operative facts had no material connection with district, choice of forum carried less weight).

In the circumstances which obtain here, instead, the public interest merits special emphasis among the factors to be weighed. As the Supreme Court held in a seminal *forum non conveniens* ruling:

In cases which touch the affairs of many persons, there is reason for holding the trial in their view and reach rather than in remote parts of the country where they can learn of it by report only. There is a local interest in having localized controversies decided at home.

Gulf Oil Corp. v. Gilbert, 330 US 501, 509 (1947). In the present case, Monsanto's Complaint seeks relief which, if granted, would nullify an agricultural marketing program established under Maine statutory and regulatory law, affecting Maine businesses and farmers as well as state government. Moreover, the injunction sought would, in effect,

deprive Maine consumers of access to accurate information concerning the use of rBST in milk production, and also deprive them of the ability to select for purchase milk which was produced without the aid of hormonal enhancement. This is, truly, a case “which touch[es] the affairs of many persons”; in addition to government, dairies and farmers, all Maine consumers of dairy products are affected. Here, as in *Gulf Oil*, there is surely good reason “for holding the trial in their view and reach.” *See also Subaru, supra*, 121 FRD at 4 n.3 (noting stronger ties to New Hampshire as ground to transfer case to that venue); *Coady v. Ashcraft & Gerel*, 996 F. Supp. 95 (D. Ma. 1998), *rev'd on other grounds*, 223 F.3d 1 (1st Cir. 2000) (comparing nexus of case to Massachusetts and DC; finding the latter more tenuous).


CONCLUSION

For all the foregoing reasons, the State of Maine submits that the Court should exercise its discretion to grant Oakhurst’s motion, and transfer venue in this case to the District of Maine.

Respectfully submitted,

G. STEVEN ROWE
Attorney General

Dated: 8/27/03



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7 § 2901
Repealed

AGRICULTURE AND ANIMALS
Title 7

§ 2901. Repealed. Laws 1999, c. 679, § A-2, eff. April 12, 2000

Historical and Statutory Notes

See, now, 7 M.R.S.A. § 2900.

§ 2901-A. Standards and labeling

Notwithstanding any other requirements of this chapter, milk and milk products, defined in accordance with standards then in effect that have been adopted by the United States Government and labeled in conformity with labeling requirements then in effect that have been adopted by the United States Government, are considered to conform with the definitions and labeling requirements set forth in this chapter; except that containers of milk and cream packaged in Maine must also bear the name and address of the Maine licensed milk distributor and sufficient information to identify the milk plant where packaged.

1973, c. 67; 1999, c. 362, § 7; 1999, c. 679, § A-3, eff. April 12, 2000.

Historical and Statutory Notes

Laws 1999, c. 362, § 7, in the first clause, substituted "that" for "which" in two places, and "are considered" for "shall be deemed", and in the exception clause, substituted "packaged in Maine must" for "shall" and deleted "as required by section 2903" at the end.

Laws 1999, c. 679, § A-3, substituted "distributor" for "dealer".

Library References

Food ☞ 5.
WESTLAW Topic No. 178.
C.J.S. Food § 15.

§ 2901-B. Trademark for milk and milk products

The department shall adopt rules permitting the use of the certification trademark provided for in section 443-B on milk or milk products. The initial rules must include limitations relating to the use of milk from cows that have been treated with recombinant bovine somatotropin, referred to in this section as "rbST." The rules may require that the department receive written consent from producers to draw blood from their milking herd, examine historical milk production records, inspect medicine storage places, and to perform other inspections reasonably necessary to verify compliance with the trademark criteria.

1. **Notice by producer.** If the criteria for use of the certification trademark include absence of the use of rbST, a milk producer in this State who sells milk to a milk plant that uses the trademark must notify that milk plant before using rbST within the milking herd of the producer's dairy farm. Notification to the milk plant must be made at least 45 days before using rbST. Notification must be made by certified mail and sent to the milk plant's employee responsible for milk procurement at the plant location where the milk is processed. For purposes of this section, "possession of rbST" means use.

2. **Failure to provide notice.** If a Maine milk producer fails to give the milk plant the notice required in subsection 1, the milk plant is not required to comply

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with the notice required under any contract milk under any contract 1993, c. 663, § 1, eff. April

Laws 1999, c. 679, § A-4, first sentence, substituted "er", "that" for "who" and "p the second sentence, substituted "dealer" and in the third

§ 2901-C. Licenses

A person required to or rules adopted under transport or transfer license or permit.

1. **Milk distributor** commissioner and shall annual volume of milk c fee may not be lower t money received from m

2. **Bulk milk haul** who is based in this St renew that permit annu means a bulk milk hau state to sample raw mil

3. **Receiving static** station shall obtain a p shall renew that permit

4. **Transfer station** shall obtain a permit : renew that permit annu

5. **Milk transporta** milk transportation con from the commissioner : 1999, c. 679, § A-5, eff. Ap

§ 2902. Repealed. L

The repealed section, which fees, was derived from:

1961, c. 163, § 1.
1971, c. 164, § 13.
1977, c. 394, §§ 137, 138.

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MILK AND MILK PRODUCTS
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with the notice requirements section 2903-A before refusing to continue to purchase milk under any contract with that milk producer.

1993, c. 663, § 1, eff. April 12, 1994; 1999, c. 679, § A-4, eff. April 12, 2000.

Historical and Statutory Notes

Laws 1999, c. 679, § A-4, in subsec. 1, in the first sentence, substituted "milk plant" for "dealer", "that" for "who" and "plant" for "dealer", in the second sentence, substituted "milk plant" for "dealer" and in the third sentence, substituted

"milk plant's" for "dealer's"; and in subsec. 2, inserted "milk" preceding "producer" in two places and substituted "milk plant" for "dealer" in two places.

§ 2901-C. Licenses and permits

A person required to obtain a permit or license under this section, section 2902-A or rules adopted under section 2910 or pursuant to former section 2902 may not sell, transport or transfer milk or milk products prior to obtaining the appropriate license or permit.

1. **Milk distributor license.** A milk distributor shall obtain a license from the commissioner and shall renew that license annually. The license fee is based on the annual volume of milk or milk products sold or distributed in the State. The annual fee may not be lower than \$25 or exceed \$300. The commissioner shall deposit all money received from milk distributor license fees into the General Fund.

2. **Bulk milk hauler and sampler permit.** A bulk milk hauler and sampler who is based in this State shall obtain a permit from the commissioner and shall renew that permit annually. For the purposes of this section, "based in this State" means a bulk milk hauler and sampler who does not have a permit from another state to sample raw milk or raw milk products.

3. **Receiving station permit.** A person who owns or operates a receiving station shall obtain a permit for that receiving station from the commissioner and shall renew that permit annually.

4. **Transfer station permit.** A person who owns or operates a transfer station shall obtain a permit for that transfer station from the commissioner and shall renew that permit annually.

5. **Milk transportation company permit.** A person who owns or operates a milk transportation company shall obtain a permit for the transportation company from the commissioner and shall renew that permit annually.

1999, c. 679, § A-5, eff. April 12, 2000.

§ 2902. Repealed. Laws 1999, c. 679, § A-6, eff. April 12, 2000

Historical and Statutory Notes

The repealed section, which related to licensing fees, was derived from:

1961, c. 163, § 1.
1971, c. 164, § 13.
1977, c. 694, §§ 137, 138.

1979, c. 672, §§ A-34 to A-36.
1981, c. 315, §§ 7 to 9.
1981, c. 574, § 1.
1985, c. 751, §§ 1 to 3.
1989, c. 888, §§ 3, 4.
1999, c. 362, § 5.

01 DEPARTMENT OF AGRICULTURE, FOOD & RURAL RESOURCES
001 DIVISION OF QUALITY ASSURANCE AND REGULATIONS
Chapter 136: OFFICIAL STATE OF MAINE GRADES AND STANDARDS FOR MILK
AND MILK PRODUCTS FOR USE WITH THE STATE OF MAINE QUALITY
TRADEMARK

I. DEFINITIONS

For the purpose of this Chapter, and unless the context otherwise indicates, the following words shall have the following meanings:

- A. "Applicant" means a person who owns or operates a milk plant, who has applied for an initial license to use the State of Maine Quality Trademark for milk or milk products and a licensed user seeking to renew a license.
- B. "Commissioner" means the Commissioner of the Maine Department of Agriculture, Food and Rural Resources.
- C. "Department" means the Maine Department of Agriculture, Food and Rural Resources, Division of Quality Assurance and Regulations.
- D. "Licensed User" means an owner or operator of a milk plant who has applied for and been issued a license granting permission to use the official Quality Trademark on packages or advertisement in compliance with Chapter 135, Official Use of the State of Maine Quality Trademark.
- E. "Milk" means milk and milk products as defined in 7 M.R.S.A., section 2901.
- F. "Milk Plant" means any place, premises or establishment where milk or milk products are collected, handled, processed, stored, pasteurized, aseptically processed, bottled or otherwise prepared for distribution.
- G. "Milk Producer" means the owner or operator of a dairy farm where milk is sold in bulk form to a milk plant.
- H. "Produced within the State" means 80% of the milk in any package must have actually been produced within the state. For any given package, the percentage of milk produced within the state will be deemed to be that percentage of the licensed user's milk used for processing which was actually produced within Maine during the calendar month, according to the Maine Milk Commission.

- I. "Recombinant bovine somatotropin" or rBST means the synthetic version of the naturally-occurring hormone, bovine somatotropin or rBST, produced through recombinant DNA technology.
- J. "State of Maine Quality Trademark" means the official quality trademark consisting of a silhouette of the State of Maine divided into three horizontal sections, as further described in Department of Agriculture, Food and Rural Resources Rules, Official Use of the State of Maine Trademark, Chapter 135.

II. OFFICIAL STANDARDS

The Grade "A" pasteurized Milk Ordinance, 1993 revision, as promulgated by the United States Department of Health and Human Services and, alternatively, the standards set forth in The Maine Milk Laws of the Maine Department of Agriculture, Title 7 MRSA Sections 2900 through 2910 and Chapter 329-Rules Governing Maine Milk and Milk Products are hereby adopted as the official standards for Maine Grade A milk.

III. LICENSING REQUIREMENT

An applicant must meet the criteria outlined below in order to obtain a State of Maine Quality Trademark license for milk or milk products:

- A. An applicant must obtain an original affidavit executed within the preceding six months from each milk producer and other milk plants from whom the applicant regularly purchases or intends to purchase milk or milk products. All affidavits must be in compliance with the requirements of Section VI of this rule.
- B. An applicant must provide the Department with an affidavit setting forth the current list of milk producers and other milk plants from whom the applicant regularly purchases or intends to purchase milk stating that the milk producers and milkplants have furnished affidavits in compliance with Section VI of this rule. An applicant who owns or operates a dairy farm where sales of milk produced on the farm are made directly to consumers shall also provide the Department with an affidavit in the form prescribed for producers by Section VI of this rule. The affidavit of an applicant shall also contain a statement that the applicant believes that the milk the applicant has or will purchase or produce is from cows not treated with rBST.
- C. An applicant who has previously held a license under these rules or is a licensed user who is applying for a renewal of an existing license must have substantially complied with the requirements of this rule while exercising the privileges of the license.

- D. An applicant must obtain written consent from each milk producer from whom the applicant regularly purchases or intends to purchase milk or milk products allowing the Department to draw blood from the milking herd, examine milk production records, inspect medicine storage places, and review such business records as are reasonably necessary to verify compliance with this rule.

IV. RESPONSIBILITIES OF LICENSED USERS

- A. Licensed users must obtain new affidavits from milk producers and milk plants from whom milk is purchased on an annual basis.
- B. Licensed users shall file supplemental affidavits with the Department showing the addition of any milk producers or milk plants not mentioned in the affidavit furnished under Section III subsection B, and shall obtain the applicable affidavits and consents under Section VI as soon as practicable following the formation of any contract or arrangement for milk purchases with any new milk producer or milkplant.
- C. All affidavits required under this rule to be obtained from milk producers and milkplants must be in compliance with Section VI and be maintained on file and made available for inspection by the Department at all reasonable times.
- D. A licensed user must obtain written consent from each milk producer from whom the licensed user purchases or intends to purchase milk, or milk products allowing the Department to draw blood from the milking herd, examine milk production records, inspect medicine storage places, and review such business records as are reasonably necessary to verify compliance with this rule. Licensed users must retain and make the written consents available to the Department at all reasonable times.
- E. In displaying or advertising the State of Maine Quality Trademark and making any statements, claims or explanations with regard to the absence of rBST, licensed users must follow any and all labeling regulations or other enforceable guidelines as prescribed from time to time by the United States Food and Drug Administration. Failure to do this may be considered a violation of 7 MRSA §2901-B and may result in sanctions and suspension or revocation of said license.
- F. Licensed users must demonstrate compliance at all times with all applicable federal or state laws and regulations and milk must meet the standards established by Section II of this rule for Maine Grade A milk.
- G. Licensed users may affix the trademark only to packages containing milk produced within the state.

V. INSPECTION

The commissioner, or a duly authorized agent of the commissioner, may perform inspections as authorized by the written consents which must be obtained under these rules.

VI. AFFIDAVIT FORMAT

Licensed users shall file affidavits required in Sections III and IV of this rule on forms as prescribed and furnished by the Commissioner.

- A. In the case of affidavits supplied by milk producers to licensed users, the affidavits shall contain, at a minimum, the full name and address of the milk producer and a sworn statement stating that the milk producer has not used, recombinant bovine somatotropin (rBST) in the previous 60 days, does not possess, and does not intend to use (rBST) during the upcoming year. The affidavit of a milk producer shall also contain the consent required by Section IV, subsection B., and a statement acknowledging a producer's obligations under Title 7 M.R.S.A. §2901-B, sub-§1 which requires that:
1. A milk producer in this State who sells milk to a milk plant who uses the trademark must notify that milk plant before using rBST within the milking herd of the producer's dairy farm;
 2. Notification to the dealer must be made at least 45 days before using rBST; and
 3. Notification must be made by certified mail and sent to the milk plant's employee responsible for milk procurement at the plant location where the milk is processed.
- B. In the case of affidavits supplied by owners or operators of milk plants to licensed users, the affidavits shall contain, at a minimum, the full name and address of the milk plant and a sworn statement stating that the milk plant possesses, and will make available to the Department, affidavits and consents in compliance with Section VI of this rule from all producers whose milk or milk products is supplied by the milk plant to the licensed user.

VII. NOTIFICATION OF NONCONFORMANCE

The Maine Department of Agriculture, Division of Quality Assurance and Regulations shall be furnished with copies of noncompliance notifications to any milk producer, milk supplier, or milk plant as determined by inspections performed by the Division of Animal Health and Industry.

VIII. SUSPENSION OF LICENSE

The Commissioner may act, in accordance with the Maine Administrative Procedures Act, to suspend or revoke licenses issued under this rule for violation of any of the terms and conditions of this rule. The failure to comply with the requirements of this rule shall be sufficient cause for the suspension or revocation of the license.

IX. RETENTION OF RECORDS

Records and affidavits required to be maintained by licensed users may be discarded after three years.

X. STATUTORY AUTHORITY: 7 M.R.S.A. Sections 443, 443-B, 2901-B, 2909.

XI. EFFECTIVE DATE:

(APA Office Note: see rule history below.)

EFFECTIVE DATE:

September 3, 1994

EFFECTIVE DATE (ELECTRONIC CONVERSION):

May 4, 1996

AMENDED:

January 23, 2001

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

MONSANTO COMPANY,)	
)	
Plaintiff)	
)	
v.)	
)	Civil Action No. 03-11273-RCL
)	
OAKHURST DAIRY, INC.)	
)	
Defendant)	
)	

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing document by facsimile and first class mail on counsel of record for Plaintiff and Defendant on August 27, 2003, as follows:

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