

1 **Report From Agency**

2 **DATCP Docket No. 09-R-12**
Rules Clearinghouse No. 10-055

Proposed Final Rule
July 28, 2010

PROPOSED RULE
OF THE WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

3 The Wisconsin department of agriculture, trade and consumer protection hereby proposes the
4 following permanent rule *to amend* ATCP 60.15(4) and 60.20(3) and (6)(intro.), (b) and (c);
5 *relating to* somatic cell standards for dairy goat milk.

Analysis Prepared by the Department
of Agriculture, Trade and Consumer Protection

This rule relaxes Wisconsin's current standard for somatic cells in goat milk to conform to a new, less stringent, national standard. The Department of Agriculture, Trade and Consumer Protection (DATCP) adopted a temporary emergency rule on February 5, 2010, and gave notice that it would adopt a "permanent" rule on the same subject. This "permanent" rule is identical to the temporary emergency rule adopted by DATCP.

Statutes Interpreted

Statutes Interpreted: ss. 97.22 and 97.24, Stats.

Statutory Authority

Statutory Authority: ss. 93.07(1), 97.22(8), 97.24(3) and 227.24, Stats.

Explanation of Statutory Authority

DATCP has broad general authority, under s. 93.07(1), Stats., to interpret laws under its jurisdiction. DATCP also has authority, under ss. 97.22(8) and 97.24(3), Stats., to adopt regulations governing the operation of dairy farms and the production of milk and fluid milk products.

This rule will maintain the competitiveness of Wisconsin goat milk producers, relative to producers in other states, by conforming Wisconsin goat milk standards to new (less stringent) national standards.

Related Statutes and Rules

Dairy plant operators are required to test goat milk received from producers, to ensure that goat milk meets somatic cell and other standards. Milk must be tested in certified laboratories, and test results must be reported to DATCP. Serious or continued violations of milk quality standards may result in state enforcement action, including the suspension of a milk producer's grade A dairy farm permit. In some serious cases, dairy plant operators must take immediate action to reject milk shipments from the affected dairy farms until violations are eliminated. However, not all violations require such an "immediate response." See, generally, chs. ATCP 60 and 80, Wis. Adm. Code.

Wisconsin rules for grade A milk and fluid milk products (including goat milk and fluid goat milk products) must be in reasonable accord with the interstate pasteurized milk ordinance (PMO). See s. 97.24, Stats. The PMO is adopted by the National Conference on Interstate Milk Shipments (NCIMS) with the approval of the United States Food and Drug Administration (FDA), and is administered by FDA. Wisconsin rules must be at least as stringent as the PMO in order for Wisconsin to ship milk and fluid milk products in interstate commerce.

Plain Language Analysis

Recently, NCIMS and FDA relaxed the PMO standard for somatic cells in Grade A goat milk, from 1,000,000 somatic cells per ml to 1,500,000 per ml. The United States Department of Agriculture is making an equivalent change in its somatic cell standard for Grade B goat milk (Grade B milk may not be sold as fluid milk, but may be used to manufacture non-fluid dairy products such as cheese).

This permanent rule relaxes Wisconsin's standard for somatic cells in Grade A and Grade B goat milk, from 1,000,000 somatic cells per ml to 1,500,000 per ml, to conform to the new national standard. This rule also eliminates the current "immediate response" requirement, under which a dairy plant operator must immediately reject goat milk shipments from producer whenever a somatic cell count on any shipment from that producer exceeds 1,500,000 per ml.

Fiscal Impact

This rule will have no fiscal impact on the state of Wisconsin or on local units of government. A complete *fiscal estimate* is attached.

Business Impact

This rule will benefit the Wisconsin dairy goat industry, by relaxing the current somatic cell standard for dairy goat milk to conform to the newly relaxed national standard. This rule will maintain parity with other states, and will relieve goat milk producers and dairy plant operators of certain problems associated with the current somatic cell standard. A complete *business impact analysis* is attached.

Federal and Surrounding State Programs

Federal Programs

There is no federal law that compels this rule change. However this rule is consistent with recent changes in national standards (see above).

Surrounding State Programs

All surrounding states with dairy goat herds are likely to adopt the standard contained in this rule.

Data and Analytical Methodologies

Somatic cell test methods for goat milk are currently prescribed by s. ATCP 60.22(3), Wis. Adm. Code. This rule does not change current test methods.

DATCP Contact

Questions and comments related to this rule may be directed to:

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1 **SECTION 1.** ATCP 60.15(4) is amended to read:
2 ATCP 60.15(4) SOMATICCELL COUNT. The somatic cell count of cow or sheep milk, as
3 determined by a direct microscopic somatic cell count or and electronic somatic cell count under
4 this subchapter, shall not exceed 750,000 cells per mil. The somatic cell count of goat milk, as
5 determined by the Pyronin Y Methyl green stain test, shall not exceed ~~4,000,000~~ 1,500,000 cells
6 per ml. Except as provided under s. ATCP 60.20(6), a dairy plant is not required to reject milk
7 shipments in response to a violation of this subsection unless the department suspends or revokes
8 the milk producer's license or grade A permit, or issues an order affecting the milk shipments

1 under s. ATCP 60.30.

2 **SECTION 2.** ATCP 60.20(3) and (6)(intro.), (b) and (c) are amended to read:

3 ATCP 60.20(3) TEST METHODS. A somatic cell count under the section shall be a direct
4 microscopic somatic cell count or an electronic somatic cell count. If the somatic cell count on
5 goat milk exceeds ~~1,000,000~~1,500,000, the somatic cell count shall be confirmed using the
6 Pyronin Y Methyl green stain test, unless that test was used to obtain the initial count.

7 (6)(intro.) IMMEDIATE RESPONSE LEVEL; REPORTING AND FOLLOW-UP. If a somatic cell
8 count under this section or s. ATCP 80.26 exceeds 1,000,000 somatic cells per ml. for cow or
9 sheep milk, ~~or 1,500,000 for goat milk,~~ the dairy plant operator shall do all the following:

10 (6)(b) Perform a confirmatory somatic cell count on at least one more sample of milk
11 collected from the milk producer's dairy farm. The operator shall collect the confirmatory
12 sample within 14 days after the date on which the operator collected the original sample. The
13 operator shall report the confirmatory somatic cell count to the department and the milk
14 producer within 3 business days after the operator obtains the confirmatory count. ~~A dairy plant
15 operator shall use the Pyronin Y Methyl green stain test when performing a confirmatory somatic
16 cell count on goat milk.~~

17 (6)(c) Reject milk shipments from the dairy farm if the confirmatory somatic cell count
18 under par. (b) still exceeds 1,000,000 somatic cells per ml. ~~for cow or sheep milk, or 1,500,000
19 for goat milk.~~ The milk producer may not ship cow or sheep milk from the dairy farm to any
20 dairy plant until a dairy plant operator conducts another somatic cell count and finds that the
21 count no longer exceeds this number.

1 **SECTION 3. EFFECTIVE DATE:** This rule takes effect on the first day of the month
2 following publication in the Wisconsin administrative register, as provided in s.227.22(2)(intro),
3 Stats.

Dated this _____ day of _____, 2010.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Randy Romanski, Deputy Secretary