



State of Wisconsin  
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection  
Rod Nilsestuen, Secretary

**DATE:** August 13, 2010

**TO:** The Honorable Fred Risser  
President, Wisconsin State Senate  
Room 220, South, State Capitol  
PO Box 7882  
Madison, WI 53707-7882

The Honorable Michael Sheridan  
Speaker, Wisconsin State Assembly  
Room 211 West, State Capitol  
PO Box 8953  
Madison, WI 53708-8953

**FROM:** Randy Romanski, Deputy Secretary  
Department of Agriculture, Trade and Consumer Protection

**SUBJECT:** **Somatic Cell Standards for Dairy Goat Milk**  
*(Clearinghouse Rule #10-055)*

The Department of Agriculture, Trade and Consumer Protection (“DATCP”) is transmitting this rule for legislative committee review, as provided in s. 227.19(2) and (3), Stats. DATCP will publish notice of this referral in the Wisconsin Administrative Register, as provided in s. 227.19(2), Stats.

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

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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.

### ***Public Hearings***

DATCP held 1 public hearing on this rule. DATCP held the hearing on May 25, 2010 in Madison and accepted written comments until June 25, 2010. No persons attended the hearings and no persons offered written comments.

### ***Rule Changes after Public Hearings***

No changes were made to the hearing draft based on the public hearings, because no comments were made, either at the public hearings or in writing.

### ***Response to Rules Clearinghouse Comments***

The Legislative Council Rules Clearinghouse recommended three technical changes to the draft rule. DATCP modified the final draft rule to address all of the technical comments.

#### ***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.

#### ***Environmental Impact***

This rule will have no environmental impact on Wisconsin.

### ***Federal and Surrounding State Regulations***

#### **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.

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***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.