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Effective Dates: February 4, 2010 through July 3, 2010

**WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION
DATCP Docket No. 09-R-15**

EMERGENCY RULE

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

Analysis Prepared by Department of Agriculture, Trade and Consumer Protection

Emergency 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) is adopting this temporary emergency rule pending the adoption of a more "permanent" rule on the same subject.

This emergency rule will take effect immediately upon publication in the official state newspaper, and will remain in effect for 150 days. The Legislature's Joint Committee for Review of Administrative Rules may extend this emergency rule for up to 120 additional days.

Statutes Interpreted: ss. 97.22 and 97.24, Stats.

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.

DATCP is authorized to adopt temporary emergency rules under s. 227.24, Stats., if emergency rules are necessary to protect the public health, safety or welfare pending the adoption of "permanent" rules. This emergency rule protects the public welfare by maintaining the competitiveness of Wisconsin goat milk producers, relative to producers in other states, pending the adoption of "permanent" rules to conform 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 emergency 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 emergency 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 emergency 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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FINDING OF EMERGENCY

(1) Recently, the National Conference of Interstate Milk Shippers voted to relax the 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 Food and Drug Administration accepted this change and will include it in the next edition of the Interstate Pasteurized Milk Ordinance. The United States Department of Agriculture is adopting the same standard for grade B goat milk, as part of its standards for "Milk for Manufacturing Purposes and its Production and Processing."

(2) Wisconsin rules currently establish a limit of 1,000,000 somatic cells per ml in goat milk, which is more stringent than the new national standard of 1,500,000 per ml. The more stringent Wisconsin standard, if not modified to conform to the new national standard, will put Wisconsin dairy goat milk producers at a significant financial, operational, and competitive disadvantage compared to producers in other states.

(3) This emergency rule modifies Wisconsin's current standard, and makes it consistent with the new national standard. The department of agriculture, trade and consumer protection (DATCP) is adopting this rule as a temporary emergency rule, pending rulemaking proceedings to modify the standard on a more "permanent" basis. "Permanent" rulemaking proceedings normally require over a year to complete. This emergency rule is needed to mitigate a potential hardship to Wisconsin producers of dairy goat milk, pending the adoption of "permanent" rules.

EMERGENCY RULE

SECTION 1. ATCP 60.15(4) is amended to read:

ATCP 60.15(4) SOMATIC CELL COUNT. The somatic cell count of cow or sheep milk, as determined by a direct microscopic somatic cell count or and electronic somatic cell count under this subchapter, shall not exceed 750,000 cells per ml. The somatic cell count of goat milk, as determined by the Pyronin Y Methyl green stain test, shall not exceed ~~1,000,000~~ 1,500,000 cells per ml. Except as provided under s. ATCP 60.20(6), a dairy plant is not required to reject milk shipments in response to a violation of this subsection unless the department suspends or revokes the milk producer’s license or grade A permit, or issues an order affecting the milk shipments under s. ATCP 60.30.

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

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

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

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

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

SECTION 2. EFFECTIVE DATE: This emergency rule takes effect upon publication, and remains in effect for 150 days. The department may seek to extend this emergency rule as provided in s. 227.24, Stats.

Dated this _____ day of _____, 2010.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Rodney J. Nilsestuen, Secretary

EmR1003

**Wisconsin Department of Agriculture, Trade and Consumer Protection
Business Impact Analysis¹**

Rule Subject: Somatic Cell Limits in Dairy Goat Milk
Adm. Code Reference: ATCP 60
Rules Clearinghouse #: Not yet assigned
DATCP Docket #: 09-R-15

Rule Summary

This emergency rule changes the limit for somatic cell counts in dairy goat milk from 1,000,000 somatic cells per ml to 1,500,000 per ml to align with the national standard. As the new limit for somatic cells in dairy goat milk is equivalent to the current “immediate response level” for goat milk found in ATCP 60.20(6), this emergency rule removes this provision from the rule.

Business Impact

This emergency rule will not have a significant impact on Wisconsin dairy plant operators or dairy goat milk producers. The emergency rule makes no changes to current routine milk quality testing or reporting requirements. The emergency

¹ This analysis includes, but is not limited to, a small business analysis (“regulatory flexibility analysis”) under ss. 227.114 and 227.19(3)(e), Stats.

rule eliminates the “immediate response level” for dairy goat milk and may reduce resampling of those goat milk farms that exceed the current “immediate response level.”

Accommodation for Small Business

Overall, this rule should have no adverse impact on small business. This rule relaxes the somatic cell limits in dairy goat milk. size. Most, if not all, dairy goat milk producers in Wisconsin are small businesses.

Conclusion

Overall, this rule will benefit Wisconsin’s growing dairy goat industry by leveling the playing field between Wisconsin and other goat milk producing states

Dated this _____ day of _____, 2009.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Steven C. Ingham, Administrator,
Division of Food Safety