

**ORDER OF THE STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION  
ADOPTING, AMENDING OR REPEALING RULES**

1 The state of Wisconsin department of agriculture, trade and consumer protection adopts the  
2 following order to repeal ATCP 80.56(4); to renumber ATCP 80.56(intro.) and (1) to (3); and to  
3 create ATCP 80.24(5) and 80.56(2); relating to pathogen tests on ready-to-eat dairy products.

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

Statutory authority: ss. 93.07(1), 97.09(4) and 97.20(4), Stats.

Statute interpreted: ss. 97.09(4) and 97.20(4), Stats.

The Department of Agriculture, Trade and Consumer Protection (DATCP) licenses and inspects dairy plants under s. 97.20, Stats. Current DATCP rules under s. ATCP 80.56(4), Wis. Adm. Code, require dairy plant operators to report to DATCP the results of any microbiological test that confirms the presence of a pathogenic organism in a pasteurized or ready-to-eat dairy product. The current reporting requirement discourages pathogen testing, because test reports become public records that may be open to public inspection even if the affected products are withheld from sale.

This rule repeals this counterproductive reporting requirement, and creates alternative rules that will provide better public health protection and encourage more pathogen testing. Under this rule:

- A dairy plant operator may not sell or distribute any ready-to-eat dairy product in which a microbiological test has confirmed the presence of a pathogenic organism or toxin.
- A dairy plant operator must report test results that confirm the presence of pathogens or toxins in ready-to-eat dairy products unless all the following apply:
  - \* The tested product bears a product code or production lot number and remains under the control or custody of the dairy plant operator.
  - \* The operator withholds, from sale or distribution, all ready-to-eat products that bear that product code or production lot number.

Under current rules, a dairy plant operator must keep records of all pathogen and toxin test results. This requirement will continue. DATCP may inspect and copy test records as necessary.

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1           **SECTION 1.** ATCP 80.24(title) is amended to read:

2           ATCP 80.24(1)(title) **Milk and dairy products; quality standards**

3           **SECTION 2.** ATCP 80.24(5) is created to read:

4           ATCP 80.24(5) PATHOGEN CONFIRMED IN READY-TO-EAT DAIRY PRODUCT; SALE

5 PROHIBITED. A dairy plant operator may not sell or distribute any ready-to-eat dairy product in  
6 which a microbiological test or laboratory analysis has confirmed the presence of a pathogenic  
7 organism or toxin.

8           **SECTION 3.** ATCP 80.56(intro.) and (1) to (3) are renumbered ATCP 80.56(1)(intro.)  
9 and (a) to (c).

10          **SECTION 4.** ATCP 80.56(2) is created to read:

11          ATCP 80.56(2)(a) Except as provided in par. (b), a dairy plant operator shall report to  
12 the department the result of any microbiological test or laboratory analysis that confirms the  
13 presence of a pathogenic organism or toxin in a ready-to-eat dairy product produced by the  
14 operator. The operator shall report to the department within 24 hours after the operator obtains  
15 the test result. The operator may report orally, electronically or in writing.

16          (b) A dairy plant operator is not required to report a test result under par. (a) if all the  
17 following apply:

18           1. The ready-to-eat dairy product is identified by a product code or production lot  
19 number and remains under the control or custody of the dairy plant operator.

20           2. The operator does not sell or distribute any ready-to-eat dairy product that bears the  
21 product code or production lot number under subd. 1.

22          **SECTION 5.** ATCP 80.56(4) is repealed.

1           **EFFECTIVE DATE.** The rules contained in this order shall take effect on the first day of  
2 the month following publication in the Wisconsin administrative register, as provided under s.  
3 227.22(2)(intro.), Stats.

Dated this \_\_\_\_\_ of \_\_\_\_\_, 2002

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE, AND CONSUMER PROTECTION

By \_\_\_\_\_  
James E. Harsdorf  
Secretary