

Chapter Ag 40

FOOD PROCESSING PLANTS

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Note: Chapter Ag 40 as it existed on October 31, 1989, was repealed and a new chapter Ag 40 was created effective November 1, 1989.

Subchapter I — Scope and Definitions

Ag 40.01 Scope. This chapter applies to all food processing plants as defined under s. Ag 40.02 (17), regardless of whether the food processing plant is subject to licensing under s. 97.29, Stats., or this chapter.

History: Cr. Register, October, 1989, No. 406, eff. 11-1-89.

Ag 40.02 Definitions. As used in this chapter:

(1) "Alcohol beverage" means an alcohol beverage as defined in s. 125.02 (1), Stats.

(2) "Approved sanitizer" means a substance or compound approved by the department for the sanitizing of equipment or utensils under s. Ag 40.11 (4).

(3) "Bakery" means any place where bread, crackers, pasta or pies, or any other food product for which flour or meal is the principal ingredient, are baked, cooked or dried, or prepared or mixed for baking, cooking or drying, for sale as food.

(4) "Bottle" means the immediate package or container in which bottled drinking water, soda water beverage or alcohol beverage is sold or distributed for consumption. "Bottle" includes a bottle cap or other seal for a bottle.

(5) "Bottled drinking water" means all water packaged in bottles or similar containers and sold or distributed for drinking purposes. "Bottled drinking water" includes distilled water, artesian water, spring water and mineral water, whether carbonated or uncarbonated.

(6) "Bottling establishment" means any place where drinking water, soda water beverage or alcohol beverage is manufactured or bottled for sale. "Bottling establishment" does not include a retail establishment engaged in the preparation and sale of beverages under a license issued under s. 125.26, Stats., or a restaurant permit or other permit issued under s. 50.51, Stats.

(7) "C-I-P system" means equipment which is designed, constructed and installed to be cleaned in place by the internal circulation of cleaning and sanitizing solutions onto product contact surfaces.

(8) "Canning" means the preservation and packaging in hermetically sealed containers of low-acid or acidified foods.

(9) "Confectionary" means any place where candy, fruit, nut meats or any other food product is manufactured, coated or filled with saccharine substances for sale as food.

(10) "Department" means the state of Wisconsin department of agriculture, trade and consumer protection

(11) "Equipment" means an implement, vessel, machine or apparatus, other than a utensil, which has one or more food contact surfaces and is used in the handling or processing of food at a food processing plant. "Equipment" includes C-I-P systems.

(12) "Fish" means any kind of fresh or salt water fish, or seafood, without limitation.

(12m) "Fish processing plant" means a food processing plant engaged in the production of processed fish.

(13) "Food" means:

(a) Articles used for food or drink by persons.

(b) Chewing gum.

(c) Articles used for components of matters specified in pars. (a) and (b).

(14) "Food contact surface" means any surface of equipment, utensils or food packages with which food normally comes in direct contact, or from which materials may drain, drip or otherwise be drawn into food.

(15) "Food package" means the immediate container in which food is sold or shipped from a food processing plant. "Food package" includes a bulk container or shipping container which has one or more food contact surfaces.

(16) "Food processing" means the manufacture or preparation of food for sale through the process of canning, extracting, fermenting, distilling, pickling, freezing, baking, drying, smoking, grinding, cutting, mixing, coating, stuffing, packing, bottling or packaging, or through any other treatment or preservation process. "Food processing" includes the activities of a bakery, confectionary or bottling establishment, and also in-

cludes the receipt and salvaging of distressed food for sale or use as food. "Food processing" does not include any of the following:

(a) Activities covered under a dairy plant license issued under s. 97.20, Stats.

(b) Activities covered under a meat or poultry establishment license issued under s. 97.42, Stats.

(c) The retail preparation and processing of meals for sale directly to consumers or through vending machines if the preparation and processing is covered under a restaurant permit or other permit issued under s. 50.51, Stats.

(d) Activities inspected by the federal department of agriculture under 21 USC 451 to 695 and 21 USC 1031 to 1056.

(e) The extraction of honey from the comb, or the production and sale of raw honey or raw bee products by a beekeeper.

(f) The washing and packaging of fresh fruits and vegetables if the fruits and vegetables are not otherwise processed at the packaging establishment.

(g) The receipt and salvaging of distressed food for sale or use as food if the food is received, salvaged and used solely by a charitable organization and if contributions to the charitable organization are deductible by corporations in computing net income under s. 71.26 (2) (a), Stats.

(17) "Food processing plant" means any place where food processing is conducted. "Food processing plant" does not include any establishment subject to the requirements of s. 97.30, Stats., or any restaurant or other establishment holding a permit under s. 50.51, Stats., to the extent that the activities of that establishment are covered by s. 97.30, Stats., or the permit under s. 50.51, Stats.

(18) "Ingredient water" means water used by a food processing plant as an ingredient for food.

(19) "Loin muscle" means the longitudinal quarter of the great lateral muscle of a fish, freed from skin, scales, visible blood clots, bones, gills and viscera and from the nonstriated part of such muscle, which part is known anatomically as the median superficial muscle.

(20) "Official methods of analysis" means the official methods of analysis of the association of official analytical chemists, fourteenth edition (1984).

Note: Those portions of the official methods of analysis cited in this chapter are on file with the department, the secretary of state and the revisor of statutes. The complete volume of official methods of analysis may be obtained from the association of official analytical chemists, 1111 North Nineteenth Street, Suite 210, Arlington, Virginia 22209.

(21) "Operations water" means water which is used by a food processing plant for cleaning equipment and utensils, handwashing, or other cleaning or sanitizing purposes.

(22) "Potentially hazardous food" means any food which consists wholly or in part of milk, milk products, eggs, meat, poultry, fish, shellfish, edible crustacea or other ingredients, and which is capable of supporting rapid and progressive growth of pathogenic or toxigenic microor-

ganisms. "Potentially hazardous food" does not include foods that have a pH level of 4.6 or below, or a water activity (a_w) value of 0.85 or less under standard conditions; or food products in hermetically sealed containers processed to prevent spoilage.

(22m) "Processed fish" means fish that is processed or preserved for human consumption by means of smoking, curing, salting, drying, marinating, pickling, fermenting or related processes. "Processed fish" does not include fish processed in accordance with s. Ag 40.13 or Ag 40.14.

(23) "Safe temperatures" as applied to potentially hazardous refrigerated foods means temperatures of 40°F (5°C) or below. As applied to potentially hazardous heated foods, safe temperatures means temperatures of 150°F (65°C) or above. As applied to frozen foods, safe temperatures means temperatures of 0°F (-17°C) or below.

(24) "Salt content" or "salt in the water phase," means the percent salt (sodium chloride) as determined by the method described in ss. 18.034 and 18.035 of the official methods of analysis, multiplied by 100 and divided by the percent salt (sodium chloride) plus the percent moisture in the finished product as determined by the method described in section 24.002 of the official methods of analysis.

(25) "Sanitize" means to destroy pathogens and other microorganisms, to the maximum practicable extent, by the application of an approved sanitizer or sanitizing method to food contact surfaces of equipment, utensils or food packages which are otherwise clean.

(26) "Single service article" means any utensil or food package, or any part of a utensil or food package, which is designed to be used only once prior to disposal.

(27) "Smoked fish" means any food obtained by subjecting fresh fish, frozen fish, dried fish or cured fish to the direct action of smoke or smoke flavor, whether by burning wood or a similar burning material, or by applying a smoke-flavored solution, for the primary purpose of imparting the flavor and color of smoke to fish.

(28) "Soda water beverage" means all beverages commonly known as soft drinks or soda water, whether carbonated, uncarbonated, sweetened or flavored. "Soda water beverage" does not include alcohol beverages.

(29) "Utensil" means a hand-held or similarly portable container or device, such as a tong, spatula, strainer or scoop, which has one or more food contact surfaces and is used in the processing or handling of food at a food processing plant. "Utensil" does not include a food package.

History: Cr. Register, October, 1989, No. 406, eff. 11-1-89.

Subchapter II — General Requirements

Ag 40.03 Food processing plants; licensing; fees. (1) **LICENSE REQUIRED.** Except as provided under sub. (7), no person may operate a food processing plant without a valid license issued by the department for that food processing plant under s. 97.29, Stats. A license is not transferable between persons or food processing plants.

(2) **LICENSE APPLICATION.** Application for an annual food processing plant license shall be made on a form provided by the department. The Register, October, 1989, No. 406

application shall be accompanied by the fees required under s. 97.29 (3), Stats., and by the sworn statement required under s. 100.03 (2), Stats.

(3) **ACTION ON LICENSE APPLICATION.** The department shall grant or deny a license application within 40 business days after a complete license application, including all information required under s. 100.03, Stats., is received by the department. If the license application is denied, the department shall notify the applicant, in writing, of the reasons for the denial. If the operator of a food processing plant procures farm products from producers, either directly or through its affiliate as defined under s. 100.03 (1) (a), Stats., the department shall not issue or renew an annual license for that food processing plant unless the operator complies with s. 100.03, Stats. Except as provided under sub. (5), the department may conditionally grant a license application by issuing a temporary license under sub. (4).

(4) **TEMPORARY LICENSE.** (a) The department may issue a temporary license, for a period not to exceed 40 business days, pending final action on an application for an annual food processing plant license. The department shall grant or deny the annual license application before the temporary license expires. If the department denies an annual license application before the applicant's temporary license expires, the temporary license is automatically terminated when the applicant receives written notice of the denial.

(b) The holder of a temporary license may not procure farm products from producers, except as specifically authorized by the department in writing. The department may not authorize a food processing plant operator to procure farm products from producers unless the food processing plant operator complies with s. 100.03, Stats.

(c) The holder of a temporary license acquires no license rights beyond those conferred by the temporary license. A temporary license may not be issued in response to a renewal application by the holder of an existing license.

(5) **PRE-LICENSE INSPECTION.** The department may inspect a food processing plant, as the department deems necessary, before issuing a license for the food processing plant. The department may not issue a license or temporary license for a new food processing plant until the department inspects the new food processing plant for compliance with this chapter. A previously licensed food processing plant is not considered a new food processing plant under this subsection solely because of a change of ownership, or solely because of alterations in the food processing plant.

(6) **DENIAL, SUSPENSION OR REVOCATION OF LICENSE; CONDITIONAL LICENSE.** The department may deny, suspend or revoke a license, or impose conditions on a license as provided under s. 93.06 (7) and (8). Except as otherwise provided by statute or rule, the suspension or revocation of a license shall comply with the prior notice requirements of s. 227.51, Stats.

(7) **LICENSE EXEMPTIONS.** A food processing plant license is not required under s. 97.29, Stats., or this section for:

(a) A retail food establishment which is engaged in food processing if all of the following apply:

1. The retail food establishment is licensed by the department under s. 97.30, Stats., or by an agent city, village or county under ss. 97.30 and 97.41, Stats.

2. Wholesale receipts from food processing operations at the retail food establishment comprise no more than 25% of gross annual food sales from the retail food establishment. If a licensed retail food establishment is also licensed as a dairy plant under s. 97.20, Stats., or as a meat establishment under s. 97.42, Stats., sales of dairy or meat products processed at the establishment shall be excluded from the calculation of food sales receipts under this subdivision.

3. The retail food establishment is not engaged in canning or production of processed fish.

(b) A restaurant holding a permit under s. 50.51, Stats., if either of the following applies:

1. The restaurant does not process food for wholesale distribution, and is not engaged in canning or production of processed fish.

2. The restaurant is licensed as a retail food establishment, and is exempt from licensing as a food processing plant under par. (a).

(c) Food processing operations conducted at a dairy plant licensed under s. 97.20, Stats., if both of the following apply:

1. Receipts from non-dairy food processing operations at that location comprise no more than 25% of gross annual dairy and non-dairy food sales from that location.

2. The dairy plant is not engaged in canning foods other than dairy products, or in production of processed fish.

(d) Food processing operations conducted at a meat establishment, by the operator of the meat establishment, if all of the following apply:

1. The meat establishment is licensed under s. 97.42, Stats., or inspected under 21 USC 71 et seq. or 21 USC 451 et seq.

2. Receipts from non-meat food processing operations at that location comprise no more than 25% of gross annual meat and non-meat food sales from that location.

3. The meat establishment is not engaged in canning food other than meat or meat products, and is not engaged in production of processed fish.

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Ag 40.04 Construction and maintenance. (1) **CONSTRUCTION AND MAINTENANCE; GENERAL.** Buildings, facilities and equipment used in the operation of a food processing plant shall be of sound construction, and shall be capable of being maintained in a clean and sanitary condition. The interior and exterior portions of a food processing plant, and the premises on which the food processing plant is located, shall be kept free of unhealthful or unsanitary conditions, and shall be maintained in compliance with this chapter.

(2) **FLOORS, WALLS AND CEILINGS.** Floors, walls and ceilings in a food processing plant shall be kept clean and in good repair. Floors, walls and

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ceilings in processing areas, toilet rooms, and areas used for the cleaning or storage of equipment or utensils shall be constructed of smooth, impervious and easily cleanable materials. This does not prohibit the use of easily cleanable anti-slip floors. Walls and ceilings in processing areas shall be light colored. A food processing plant constructed or altered in a manner which changes the dimensions of a processing area after June 30, 1989 shall conform to the following requirements:

(a) The junctions of walls and floors in processing areas shall be coved to facilitate cleaning.

(b) Floors which are waterflushed for cleaning, or on which water or fluid wastes are discharged, shall have an adequate number of floor drains and be adequately sloped to ensure proper drainage to the floor drains.

(c) An adequate number of service sinks or curbed floor drains shall be provided for use in the cleaning of mops or wet floor cleaning tools, and for the disposal of mop water or similar wastes.

(3) **PROCESSING AREA SEPARATED.** Within a food processing plant, food processing areas shall be separated by partition or be located at an adequate distance from other operations which may contaminate unpackaged food, so that contamination is effectively precluded. No processing may be conducted in a room used as living or sleeping quarters. If a food processing area shares one or more walls with adjacent living or sleeping quarters, processing operations shall be separated from the adjacent living or sleeping quarters by a tight-fitting, self-closing door.

(4) **DOORS AND WINDOWS.** Doors, windows, skylights, transoms and other openings to the outside shall be tight-fitting, free of breaks, and effectively screened or protected against the entry of rodents, insects, birds and other animals. External doors, other than overhead doors in delivery areas, shall be self-closing. External doors shall be kept closed when not in use.

(5) **LIGHTING.** (a) Lighting in every area of a food processing plant, whether natural or artificial, shall be sufficient for the purpose for which the area is used. Artificial lights in processing areas shall be equipped with protective shields or shatter resistant bulbs.

(b) There shall be not less than 20 foot candles (215 lux) of illumination on all processing surfaces. On surfaces used to inspect washed returnable food packages prior to repackaging, there shall be not less than 100 foot candles (1075 lux) of illumination.

(c) Except as provided in par. (b), the interior of a food processing plant shall be illuminated to the following levels measured 3 feet from the floor:

1. Not less than 20 foot candles (215 lux) in processing areas, equipment and utensil cleaning areas, handwashing areas and toilet areas.

2. Not less than 10 foot candles (108 lux) in food storage areas.

(6) **VENTILATION.** All areas in which food is processed or handled, all areas in which equipment or utensils are cleaned or sanitized, and all dressing rooms, locker rooms, toilet rooms, employe break rooms, and garbage or rubbish storage areas shall be adequately ventilated. Ventilation shall be adequate to remove excessive heat, steam, condensation,

vapors, obnoxious odors, smoke and fumes. Ventilation systems shall be positioned so that exhaust air is not vented onto exposed food, or onto clean food packages, equipment or utensils. Intake fans shall be equipped with filters that are readily removable for cleaning and replacement. Exhaust fans, intake fans and ventilation ducts shall be kept clean and in good repair, and shall be screened or louvered to prevent contamination of food by dust, dirt, insects or other contaminants. Ventilation systems shall be capable of maintaining positive pressures in food processing areas. Ventilation systems in processing areas shall comply with s. ILHR 64.67, enforced by the Wisconsin department of industry, labor and human relations.

(7) **TOILET FACILITIES.** (a) A sufficient number of sanitary toilets to accommodate all employes, in accordance with applicable state and local regulations, shall be provided in convenient locations. Toilet rooms shall be completely enclosed, well-lighted and equipped with tight-fitting, self-closing doors. Toilet rooms and fixtures shall be easily cleanable, and shall be kept clean and in good repair. Toilet rooms constructed, substantially reconstructed or extensively altered after June 30, 1989:

1. Shall be separately vented to the outside;
2. Shall be equipped with an exhaust fan capable of creating a negative pressure within the toilet facility; and
3. Shall not open directly into a food processing area.

(b) Handwashing facilities shall be located in or adjacent to every toilet room. Handwashing facilities shall include hot and cold running water, soap in a soap dispenser, and a sanitary single-service means of drying the hands. A sign directing employes to wash their hands shall be prominently posted in every toilet room used by employes. If handwashing facilities are installed after June 30, 1989, the facilities shall comply with the following requirements:

1. The facility shall be served by hot and cold running water provided through a mixing valve or combination faucet, or by potable tempered water.
2. Faucets shall be of a type which is not hand-operated. If a self-closing, slow-closing or metering faucet is used, that faucet shall provide a flow of water for at least 15 seconds without the need to reactivate the faucet.

(c) An easily cleanable covered trash receptacle and an adequate supply of toilet tissue shall be available in every toilet room at all times.

(8) **LOCKER AND LINEN FACILITIES.** Lockers or comparable facilities shall be provided for clothing and similar personal items of employes. Personal clothing and other personal items of employes shall not be stored in food processing or food storage areas, or in areas where food packages, equipment or utensils are cleaned or stored. Protective clothing worn during processing shall be stored in an orderly and sanitary manner. Soiled linen and clothing shall be kept in non-absorbent containers or laundry bags until removed for laundering. Soiled linen and clothing shall be removed as often as necessary to prevent unsanitary conditions.

(9) **HANDWASHING FACILITIES FOR PROCESSING AREAS.** (a) Handwashing sinks with available hot and cold running water shall be provided for use by all persons working in food processing areas. The sinks shall be conveniently located for use, and shall be kept in a clean and sanitary condition. A supply of soap or detergent, and sanitary single-service means for drying hands shall be kept available at the sink. If disposable towels are used, a clean, covered waste receptacle shall be provided for their disposal.

(b) A handwashing sink installed under this subsection after June 30, 1989, shall:

1. Be located in the processing area;
2. Be served by hot and cold running water provided through a mixing valve or combination faucet, or by potable tempered water; and
3. Be of a type which is not hand operated. If a self-closing, slow-closing or metering faucet is used, that faucet shall provide a flow of water for at least 15 seconds without the need to reactivate the faucet.

(10) **CLEANING FACILITIES.** (a) If equipment, utensils or food packages are cleaned or sanitized manually, the food processing plant shall be equipped with wash and rinse sinks which are suitable for all manual cleaning and sanitizing operations. Sinks shall be conveniently located and adequate in number. Each sink shall be constructed of stainless steel or other approved materials. Each sink shall have at least 2 compartments. A sink installed after June 30, 1989 shall have at least 3 compartments for washing, rinsing and sanitizing equipment and utensils.

(b) Every sink compartment shall be large enough to accommodate the immersion of at least 50% of the largest item to be cleaned or sanitized in the sink. Every sink compartment shall be served by hot and cold running water, and shall be cleaned prior to each use.

(c) Drain boards shall be provided in connection with every sink. Drain boards shall be large enough to accommodate soiled equipment and utensils prior to washing, and clean equipment and utensils after they are sanitized. Drain boards shall be located and constructed so that they do not interfere with washing and sanitizing operations. This paragraph does not prohibit the use of easily movable dish tables as drain boards if the dish tables comply with this paragraph.

(d) Brushes and cleaning tools shall be kept clean and in good repair. Cloths and sponges used to clean equipment and utensils shall be cleaned and sanitized frequently, and shall be stored in an approved sanitizing solution between uses. Cloths and sponges used to clean equipment and utensils shall not be used for any other purpose. Single service disposable towels may be used in place of re-usable cloths and sponges if they are discarded after each use.

(e) If a mechanical system is used to clean or sanitize equipment, utensils or food containers, the mechanical system shall be designed, installed and maintained so that it is fully effective for the purpose used.

(11) **EXTERIOR PREMISES.** The premises surrounding a food processing plant shall be well drained and shall be kept in a clean and orderly condition. The premises shall be kept free of accumulations of trash, garbage,

and other potential health nuisances. Driveways and parking lots shall be surfaced or maintained to minimize airborne dust and dirt.

(12) **PLUMBING SYSTEM AND SEWAGE DISPOSAL.** Sewage and waste materials from a food processing plant shall be removed in a sanitary manner, in compliance with applicable state and local regulations. All plumbing, plumbing fixtures, and equipment shall be designed, installed and maintained to prevent backflow, backsiphonage and cross-connections.

Note: Plumbing and plumbing fixtures are subject to the requirements of chs. ILHR 82 to 86, enforced by the department of industry, labor and human relations.

(13) **GARBAGE AND REFUSE DISPOSAL.** Garbage and refuse shall not be allowed to accumulate in or around a food processing plant. Garbage and refuse shall be removed as often as necessary to maintain the premises in a clean and sanitary condition. Garbage storage areas shall be constructed and maintained so that they do not attract or harbor insects, rodents or other animals. Garbage and refuse shall be held in durable, leakproof, easily cleanable, and pest-resistant containers. Containers shall be kept covered with tight-fitting lids, and shall be cleaned when necessary to prevent insanitary conditions. Garbage and refuse shall not be burned on the premises, except in compliance with state and local laws. Garbage and refuse shall not be burned on the premises if burning may contaminate food.

(14) **CONTROL OF PESTS.** Effective measures shall be taken, as necessary, to control insects, rodents and other pests in a food processing plant. Pesticides and other hazardous substances shall not be stored or used in a manner which may contaminate food, or which may constitute a hazard to employes or the public. Pesticides shall not be stored, handled or used in a manner inconsistent with label directions, or in a negligent manner.

Note: Pesticide storage and use must comply with ss. 94.67 to 94.71, Stats., and ch. Ag 29. Pesticides must be registered for use by the U.S. environmental protection agency or by the department.

(15) **CONSTRUCTION; PLAN REVIEW.** Before a food processing plant is constructed, substantially reconstructed or extensively altered, the operator of the food processing plant shall notify the department in writing. Plans and specifications for the construction, conversion or alteration may be submitted to the department for review before the work is begun. Plans and specifications shall be available for review by the department upon request.

History: Cr. Register, October, 1989, No. 406, eff. 11-1-89.

Ag 40.05 Personnel standards. (1) **CLEANLINESS.** Persons engaged in food processing shall maintain a high degree of personal cleanliness, and shall observe good hygienic practices during all working periods. Persons engaged in food processing shall wash their hands before beginning work and upon returning to work after using toilet facilities, eating, smoking or engaging in other activities which may contaminate the hands. Persons engaged in food processing shall keep their fingernails clean and neatly trimmed, and shall not wear fingernail polish unless they wear sanitary gloves at all times when handling food.

(2) **CLOTHING AND JEWELRY.** Persons in food processing areas or handling unpackaged food shall wear clean, washable outer garments and effective hair restraints, including effective hair restraints for beards

longer than 1/2 inch. Hair restraints may include hair nets, caps and snoods, but do not include hairsprays, visors or headbands. Persons working in food processing areas or handling unpackaged food shall remove all jewelry from their hands and fingers before having any direct manual contact with food or food contact surfaces. Jewelry shall not be worn in a manner which creates a risk of food contamination. This subsection does not apply to plain band wedding rings.

(3) **COMMUNICABLE DISEASE.** If any person is infected with a disease which is communicable by food handling, that person shall not work in a food processing plant in any capacity which may result in the contamination of food.

(4) **CONSUMPTION OF FOOD, BEVERAGES, AND TOBACCO.** No person may consume food, beverages or tobacco in any food processing area, or in any area where food processing equipment or utensils are cleaned or stored. Employees may not consume food, beverages or tobacco except in designated areas which are separated from food processing areas. This subsection does not prohibit a sanitary water fountain in a processing area, nor does it prohibit on-line quality control sampling in accordance with written quality control procedures established by the food processing plant operator.

History: Cr. Register, October, 1989, No. 406, eff. 11-1-89.

Ag 40.06 Equipment and utensils. (1) **CONSTRUCTION AND MAINTENANCE; GENERAL.** Equipment and utensils shall be of sanitary design and construction. Equipment and utensils shall be readily accessible for cleaning and inspection and shall be constructed so that they can be easily cleaned. Equipment and utensils shall be kept clean and in good repair.

(2) **FOOD CONTACT SURFACES.** Food contact surfaces of equipment and utensils shall be constructed of stainless steel or other materials which are smooth, impervious, nontoxic, noncorrosive, nonabsorbent and durable under normal use conditions. Food contact surfaces shall be easily cleanable, and shall be free of breaks, open seams, cracks or similar defects. Food contact surfaces shall not impart any odor, color, taste or adulterating substance to food. Food contact surfaces, other than food contact surfaces of approved C-I-P systems, shall be readily accessible for manual cleaning. Joints and fittings shall be of sanitary design and construction.

Note: Hard maple or other material which is non-absorbent may be used for cutting blocks, boards and bakers' tables. Sanitary wooden paddles in good condition may be used in confectionaries.

(3) **C-I-P SYSTEMS.** C-I-P systems shall be of sanitary design and construction, and shall be installed and maintained for sanitary operation. A C-I-P system shall be installed and maintained so that cleaning and sanitizing solutions can be circulated throughout all interior product contact surfaces of the system. C-I-P systems shall be equipped with adequate inspection ports or other access points. C-I-P systems shall be self-draining, or shall be capable of being easily and completely drained. A temperature recording device, which accurately records the return temperatures of cleaning and sanitizing solutions on a temperature recording chart, shall be installed in all circuits through which cleaning and sanitizing solutions are circulated.

(4) **LOCATION AND INSTALLATION OF EQUIPMENT.** Equipment which cannot be easily moved shall be installed in a manner which prevents liquid or debris from accumulating under or around the equipment. Equipment shall be installed so that there is adequate clearance on all sides for cleaning and maintenance. This does not apply to that portion of a tank or container which is designed and installed to protrude into or through the wall or ceiling of a food processing plant. Air intake vents for food or ingredient storage containers shall be located in processing areas or shall be properly filtered.

(5) **MEASURING DEVICES AND CONTROLS.** Every freezer and cold storage compartment used to store or hold potentially hazardous food shall be equipped with a thermometer or other device which accurately indicates the temperature in the compartment. Instruments and controls used for measuring, regulating and recording temperatures, pH, acidity, water activity, or other conditions that control or prevent the growth of undesirable microorganisms in food shall be accurate, and shall be adequate for their intended use.

(6) **LUBRICATION.** Equipment shall be designed and constructed so that gear and bearing lubricants do not come in contact with food or food contact surfaces. Only food grade lubricants may be used in equipment if incidental food contact may occur.

(7) **CLEANING AND SANITIZING EQUIPMENT AND UTENSILS; GENERAL.**
(a) Except as authorized by the department in writing, food contact surfaces of equipment and utensils shall be cleaned immediately after each day's use, and prior to any change in use which may result in cross-contamination of food. Food contact surfaces shall be cleaned more frequently, as necessary, to maintain them in a sanitary condition.

(b) Food contact surfaces of equipment used solely to process low moisture food ingredients, chocolate, fats and oils, liquid nutritive sweeteners, peanut butter, or similar foods which are not potentially hazardous, shall be maintained in a sanitary condition. If wet cleaning may cause conditions conducive to microbial growth, other effective cleaning methods shall be used.

(c) Food contact surfaces of equipment and utensils shall be sanitized before each day's use, and before any change in use which may result in cross-contamination of food. Sanitizing methods shall comply with s. Ag 40.11.

(8) **CLEANING AND SANITIZING C-I-P SYSTEMS.** C-I-P systems shall be cleaned and sanitized in compliance with manufacturer specifications. Cleaning and sanitizing records shall be maintained for all C-I-P systems. The records shall identify every C-I-P system which has been cleaned or sanitized, the date and time when each C-I-P system was cleaned and sanitized, the temperature of the cleaning or sanitizing solution, and the length of time for which the C-I-P system was exposed to each cleaning and sanitizing solution. Records shall be signed or initialed by a responsible person at the food processing plant. Records shall be maintained on file at the food processing plant for at least 90 days, and shall be made available for inspection and copying by the department upon request.

(9) **STORAGE OF CLEAN EQUIPMENT AND UTENSILS.** Equipment and utensils, unless stored in an approved sanitizing solution, shall be stored

so as to drain dry. Equipment and utensils shall be protected from contamination prior to use.

(10) **SINGLE-SERVICE ARTICLES.** Single-service articles shall be stored in the original containers in which they were received, or in other closed containers which will protect them from contamination prior to use. Single-service articles shall not be re-used.

History: Cr. Register, October, 1989, No. 406, eff. 11-1-89.

Ag 40.07 Water supply. (1) **Operations water.** Operations water shall be obtained from a source which complies with ch. NR 111 or 112, and shall be provided in consistently adequate quantity. Operations water shall comply with the health related drinking water standards in ch. NR 109. If a privately owned water system is used as the source of operations water, the operator of the food processing plant shall collect and analyze a sample of the water for compliance with the microbiological standards under s. NR 109.30 at least once annually. Microbiological analyses shall be conducted in a laboratory certified under s. 143.15, Stats. Records of microbiological analyses shall be kept on file at the food processing plant for a period of one year.

(2) **INGREDIENT WATER.** (a) Ingredient water shall be obtained from a source which complies with ch. NR 111 or 112. Ingredient water shall comply with the health related drinking water standards of ch. NR 109. Ingredient water for bottled drinking water and soda water beverages which is obtained from a privately owned supply shall also comply with the health related enforcement standards under s. NR 140.10.

(b) If ingredient water is obtained from a privately owned source, the operator of a food processing plant shall sample and analyze that ingredient water at least once annually for compliance with the microbiological standards under s. NR 109.30. The food processing plant operator shall maintain a record of the test results for 5 years.

(c) If ingredient water is obtained from a municipal source, the ingredient water shall be handled in accordance with good manufacturing practice. Upon request by the department, a food processing plant operator shall provide documentation that ingredient water from a municipal source complies with the microbiological standards under s. NR 109.30.

History: Cr. Register, October, 1989, No. 406, eff. 11-1-89.

Ag 40.08 Food ingredients. (1) **GENERAL.** Food ingredients shall be safe, wholesome and unadulterated, and shall comply with applicable standards of identity under s. 97.09, Stats. Raw agricultural commodities and other food ingredients shall be segregated and examined as necessary to determine whether they are clean and fit for processing. Processed foods and dairy products which are used as food ingredients shall be obtained from sources which comply with applicable licensing and inspection requirements.

(2) **EGGS AND EGG PRODUCTS.** Only clean whole eggs, pasteurized eggs in liquid, frozen or dry form, or pasteurized egg products may be used in processing. Eggs and egg products may be pasteurized during processing. Clean whole eggs shall be equivalent to USDA Grade B or better with shells intact and without cracks and checks.

History: Cr. Register, October, 1989, No. 406, eff. 11-1-89.

Ag 40.09 Food handling and storage. (1) **GENERAL.** Food shall be protected from contamination and decomposition while being processed, handled, conveyed or held at a food processing plant. Food shall be processed and held in a manner which keeps the food in a safe, wholesome and unadulterated condition. Potentially hazardous foods shall be processed and held at temperatures, or in a manner, which minimizes the potential for growth of undesirable microorganisms.

(2) **FOOD STORAGE.** Food storage areas shall be maintained in a clean, sanitary and orderly condition, free from conditions which may result in the adulteration of food. Potentially hazardous foods shall be stored at safe temperatures. Storage areas shall be constructed and maintained so that waste water and other waste liquids do not drain into, or accumulate in any storage area. Food shall not be stored in a manner which may tend to attract or harbor pests.

(3) **FOOD PROCESSING.** (a) Food processing shall be conducted under appropriate conditions and controls to minimize the potential for growth of undesirable microorganisms, or the contamination of food.

Note: One way to comply with this requirement is to monitor physical factors such as time, temperature, humidity, a_w , pH, pressure, and flow rate, and manufacturing operations such as freezing, dehydration, heat processing, acidification and refrigeration, to ensure that mechanical breakdowns, time delays, temperature fluctuations, and other conditions do not contribute to the decomposition or contamination of food.

(b) If potentially hazardous food is heated, refrigerated or frozen in the course of processing, the internal temperature of the food shall be accurately monitored, as necessary, to ensure that safe temperatures are promptly attained and maintained.

(c) Potentially hazardous frozen foods, if thawed for processing, shall be thawed by one of the following methods:

1. In a refrigerated space at a temperature of not more than 40°F (4°C).
2. Under potable running water at a temperature of not more than 70°F (21°C). Water velocity shall be sufficient to agitate loose particles and drain or float them away from the food being thawed.
3. In a microwave oven if the food is fully cooked in the microwave oven, or if cooking is immediately completed in another cooking facility.
4. In any cooking facility, as part of the process by which the food is fully cooked.

(4) **BULK FLOUR HANDLING SYSTEMS.** (a) Food contact surfaces of bulk flour handling equipment shall comply with the provisions of s. Ag 40.06(2). Pneumatic systems using storage bins constructed of semi-permeable cloth material are exempt from the requirement that surfaces be smooth and nonabsorbent, provided the surfaces can be effectively cleaned. Attachment mechanisms for holding inspection port covers, access doors, delivery pipe caps or other removable accessories shall have no loose parts. Delivery pipe caps shall be kept in place, and secured against removal, except when a bulk flour handling system is in use. Outside installations shall be watertight or suitably covered to prevent entry of water and foreign material.

(b) Intake air used in pneumatic flour handling systems shall be filtered to exclude particles of 50 microns or larger. Air discharged from the system shall be filtered so that no visible dust is permitted to escape.

Filters shall be readily removable for cleaning or replacement. Straight runs of pneumatic conveyors shall comply with the provisions of s. Ag 40.06 (1), except that piping which is self-purging is exempt from accessibility requirements.

(5) **RAW INGREDIENTS AND FINISHED PRODUCTS; SEPARATE HANDLING.** Effective measures shall be taken to prevent cross contamination between raw ingredients and finished food products. Raw ingredients shall not be handled simultaneously with finished products in any part of a food processing plant if either the raw materials or the finished products are uncovered or unprotected, and if the handling may result in contamination.

(6) **FIRE, FLOOD OR CASUALTY DAMAGE.** Food which has been subjected to possible contamination in a fire, flood, or other casualty shall not be offered or reprocessed for sale for human consumption unless the department has inspected the food and authorized its sale or disposition. A food processing plant shall notify the department whenever food in the establishment's possession has been subjected to possible damage or contamination because of fire, flood or other casualty.

(7) **FOOD IRRADIATION.** Irradiation in the production, processing and handling of food shall comply with applicable federal regulations under 21 CFR 179.

Note: Copies of 21 CFR 179 are on file with the department, the secretary of state and the revisor of statutes.

History: Cr. Register, October, 1989, No. 406, eff. 11-1-89.

Ag 40.10 Food packages. (1) **GENERAL.** Food packages shall be of sanitary design and construction, so as to protect food contents from reasonably foreseeable risks of contamination. Food packages shall be clean, sanitary and free of any extraneous or deleterious substance. Food shall not be sold or distributed in packages which are damaged to the extent that food contents may be adulterated as a result of the damage. A sealed food package is damaged within the meaning of this subsection if the package or seal is broken or bulged.

(2) **CLEANING AND SANITIZING RETURNABLE FOOD PACKAGES.** Returnable or multi-use food packages, including returnable bottles, shall be effectively cleaned and sanitized before being reused. Cleaning and sanitizing processes shall remove all extraneous matter and potential adulterants from a food package before the food package is reused. Sanitizing methods shall comply with s. Ag 40.11. No food package may be reused unless it is specifically designed and constructed for that purpose.

(3) **INSPECTION OF RETURNABLE FOOD PACKAGES.** Returnable or multi-use packages, after being cleaned and sanitized, shall be inspected before being reused. Inspection shall be adequate to detect extraneous material and adulterants, and any damage to product contact surfaces. Inspection shall be performed on surfaces lighted in compliance with s. Ag 40.04 (5) (b).

(4) **SINGLE-SERVICE FOOD PACKAGES.** Single-service food packages, including bottle caps and other single-service articles used to package food, shall be made from clean, sanitary materials. Single-service food packages shall be clean and sanitary at the time of use. Single service food packages shall be protected from contamination prior to use, and shall be

handled in a sanitary manner. Single-service food packages, including single-service bottles and bottle caps, shall not be re-used.

History: Cr. Register, October, 1989, No. 406, eff. 11-1-89.

Ag 40.11 Sanitizers and sanitizing methods. (1) **SANITIZING METHODS.** All returnable or multi-use food packages, and all food contact surfaces of equipment and utensils used to handle potentially hazardous foods, shall be sanitized prior to each use by one of the following sanitizing methods:

(a) Immersion for at least 30 seconds in clean water at a temperature of at least 170°F (77°C).

(b) Immersion for a period of at least 2 minutes in a sanitizing solution containing at least 100 ppm of available chlorine, and having a pH not higher than 8.3, at a temperature not less than 75°F (24°C) nor more than 110°F (44°C).

(c) Immersion for a period of at least one minute in a sanitizing solution containing at least 12.5 ppm of available iodine, and having an acid pH not higher than 5.0, at a temperature of not less than 75°F (24°C) nor more than 110°F (44°C).

(d) Immersion in a caustic sanitizing solution according to s. Ag 40.24.

(e) Application, according to manufacturer's instructions, of a non-toxic chemical sanitizer or sanitizing method which has been demonstrated to be equally effective for sanitizing purposes as the methods described under pars. (a) through (d), and which has been approved by the department under sub. (4).

(2) **BAKING AND COOKING CONTAINERS; EXEMPTION.** Sub. (1) does not apply to baking and cooking containers if heating time and temperature combinations meet industry standards and are adequate to destroy pathogenic microorganisms, provided that the containers are cleaned, stored and used in a manner which prevents contamination of food.

(3) **SANITIZERS; MAXIMUM CONCENTRATIONS.** Sanitizers and cleaning compounds used on food contact surfaces shall not be used in a way that leaves a toxic residue on the food contact surface. Sanitizing solutions shall not exceed the maximum concentrations established by the food and drug administration, United States department of health and human services, under 21 CFR 178.1010. A test kit or other device that measures the concentration of sanitizing solutions in parts per million shall be used as necessary to ensure compliance with this subsection at all times.

Note: Copies of 21 CFR 178.1010 are on file with the department, the secretary of state and the revisor of statutes.

(4) **SANITIZERS; DEPARTMENTAL APPROVAL.** The department shall approve sanitizers and sanitizing methods which the department finds to be safe and effective for sanitizing equipment, utensils and returnable or multi-use bottles.

Note: Sanitizers and sanitizing methods approved by the United States department of agriculture under the poultry products inspection act, 21 USC 451 et. seq., or the federal meat inspection and wholesome meat acts, 21 USC 601 et. seq., or by the Wisconsin department of health and social services under subch. III. ch. 50, Stats., are approved by the department. The department may deny or withdraw approval of any sanitizer or sanitizing method, whether or not approved by any other state or federal agency, if the department determines

that the sanitizer or sanitizing method is not safe or effective for the purposes or under the conditions used, or that it adversely affects the sanitary characteristics of equipment, utensils or food packages.

History: Cr. Register, October, 1989, No. 406, eff. 11-1-89.

Subchapter III — Canning Operations; Supplementary Requirements

Ag 40.12 General. Food processing plants engaged in canning operations shall comply with applicable provisions of subch. II. Food processing plants engaged in canning operations shall also comply with this subchapter.

History: Cr. Register, October, 1989, No. 406, eff. 11-1-89.

Ag 40.13 Thermally processed low-acid foods packaged in hermetically sealed containers. Persons who thermally process and package low-acid foods in hermetically sealed containers shall comply with applicable federal regulations under 21 CFR 113.

Note: Copies of 21 CFR 113 are on file with the department, the secretary of state and the revisor of statutes.

History: Cr. Register, October, 1989, No. 406, eff. 11-1-89.

Ag 40.14 Acidified foods. Persons who process acidified foods shall comply with applicable federal regulations under 21 CFR 114.

Note: Copies of 21 CFR 114 are on file with the department, the secretary of state and the revisor of statutes.

History: Cr. Register, October, 1989, No. 406, eff. 11-1-89.

Ag 40.15 Facilities and equipment; cleaning. Equipment used to handle raw agricultural commodities at a food processing plant shall be designed, constructed and maintained so that the equipment is easily cleanable and accessible for cleaning. Equipment shall be kept clean. If necessary to prevent unsanitary conditions, both water and steam shall be used to clean machinery and equipment. Cleaning equipment, and an ample supply of water and steam shall be available for cleaning purposes. Cleaning equipment shall be adequate for cleaning purposes, and shall be kept in good repair.

History: Cr. Register, October, 1989, No. 406, eff. 11-1-89.

Ag 40.16 Food packages used in canning operations. Food packages used in canning operations, including metal cans and lids, shall be clean and sanitary. Food packages shall be stored in a manner which protects them from contamination, and shall be properly cleaned before being used. Effective mechanical washers shall be used to clean food packages prior to use. Washing machines shall be arranged so that waste water does not splash or drip onto cleaned or filled food packages.

History: Cr. Register, October, 1989, No. 406, eff. 11-1-89.

Ag 40.17 Handling raw agricultural commodities and by-products. (1) Raw agricultural commodities shall be washed, sorted, trimmed as necessary, and inspected before being canned. This does not require the washing of kraut.

(2) Waste and by-products from canning operations shall be stored and handled in a sanitary manner.

History: Cr. Register, October, 1989, No. 406, eff. 11-1-89.

Subchapter IV — Fish Processing Plants; Supplementary Requirements

Ag 40.18 General. Fish processing plants shall comply with applicable provisions of subchapter II. Fish processing plants shall also comply with this subchapter.

History: Cr. Register, October, 1989, No. 406, eff. 11-1-89.

Ag 40.19 Raw materials; preparation. (1) All fish received by a fish processing plant, including frozen or partially processed fish, shall be inspected prior to processing. Fish used in processing shall be sound, wholesome and free of organoleptically detectable spoilage.

(2) Fish shall be eviscerated in a manner which minimizes disturbance of intestinal tract contents. Areas used for evisceration shall be separated from other processing areas.

(3) Fish shall be free of viscera before they are processed. This does not apply to small species of fish, such as anchovies and herring sprats, provided that they are adequately processed and have a salt content of at least 10%, a water activity (a_w) below 0.85, or a pH of 4.6 or less.

(4) Unfrozen fish received for processing shall be refrigerated to an internal temperature of 38°F (3°C) or below, and shall be maintained at that temperature until processed. Frozen fish received for processing shall be kept frozen until processed. Immediately prior to processing, frozen fish shall be thawed by one of the methods prescribed under s. Ag 40.09 (3) (c).

(5) All fish shall be thoroughly washed prior to processing. Washing shall follow any evisceration or thawing. Fish shall be washed by a vigorous spray or continuous flow of potable water. Washing shall include the body cavity of eviscerated fish.

(6) All fish shall be frozen or otherwise treated prior to processing to eliminate parasites of public health significance. This does not apply to:

(a) Fish which are heated to a minimum of 122°F (50°C) for at least 10 seconds during processing.

(b) Fish which are normally cooked by the consumer prior to consumption.

History: Cr. Register, October, 1989, No. 406, eff. 11-1-89.

Ag 40.20 Fish processing operations and controls. (1) No person may produce processed fish for sale or distribution unless the fish has been processed in a manner which is generally recognized as effective in destroying the bacterium *Clostridium botulinum* (type E) and its spores. A fish processing plant shall keep a detailed written description of processing methods, procedures, and controls that are used to produce processed fish. The description shall be available for inspection and copying by the department, at the department's request.

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(2) All inedible fish products and wastes shall be promptly segregated from edible products. Inedible products shall be removed from the fish processing plant or be placed in containers plainly marked with the words "inedible," "animal feed," "not for human food" or some similar designation. Containers holding inedible products and wastes shall be tightly covered. Processing areas, equipment and utensils used to process human food shall not be used to process animal feed or other inedible products or wastes.

(3) Processing plant personnel shall thoroughly wash and sanitize their hands before handling finished processed fish. No person may handle finished processed fish after handling raw fish or raw fish containers unless that person first washes and sanitizes his or her hands. Processing plant operators shall inform their personnel of these requirements and shall enforce them at all times.

(4) When processing is completed, processed fish shall immediately be refrigerated to a temperature of 38°F (3°C) or below, and shall be kept at that temperature. This does not apply to any of the following:

(a) Salted fish which have a salt content of at least 20%.

(b) Fish which are frozen immediately after processing and kept frozen until sold to consumers at retail.

(5) Processed fish shall be inserted directly from the final smoking or processing device into the food package in which the processed fish is to be sold or distributed. Processed fish shall not be packaged in any area where raw fish are handled. No wooden counter box or other intermediate holding container, other than a final food package, may be used to contain finished processed fish. Processed fish may not be repackaged from one food package to another at the processing plant. Processed fish shall be packaged in a manner that prevents cross contamination or recontamination. Finished processed fish shall not have any direct or indirect contact with raw fish or with equipment or utensils used to handle raw fish.

(6) If processed fish are repackaged by a retailer or distributor, other than the operator of the fish processing plant, the repackaged fish shall be labeled as required by s. Ag 40.22.

(7) Processed fish shall not be packaged in a vacuum or modified atmosphere package unless one of the following conditions is met:

(a) The package is heat-processed after sealing at a temperature and for a time sufficient to destroy all spores of the bacterium, *Clostridium botulinum*.

(b) The contents of the package are frozen and the package is labeled in compliance with s. Ag 40.22 (1) (e).

History: Cr. Register, October, 1989, No. 406, eff. 11-1-89.

Ag 40.21 Smoked fish processing. (1) Before smoking, fish shall be dry salted or brined in a manner which maintains the fish and the brining solution at a temperature of 38°F (3°C) or less. Fish shall be dry salted or brined in a manner which ensures that the salt in the water phase of the loin muscle is not less than 3.5% after processing. Fish shall be rinsed with fresh water after being removed from the brining solution.

(2) Nitrites shall not be used in fish processing except as provided under 21 CFR 172.175.

Note: 21 CFR 172.175 is on file with the department, the secretary of state and the revisor of statutes.

(3) Every smokehouse shall be equipped with a temperature recording device which is designed, installed and maintained to make a continuous record of the internal temperatures of fish located in the coldest area of the smokehouse. The recorded temperature shall be the internal temperature of flesh, not body cavity. Time-temperature recording charts from every fish smoking operation shall identify the specific oven or chamber load, and the date of processing. Records of time and temperature shall be kept on file in the smoked fish processing plant for a minimum of 3 months.

(4) Except as authorized by the department in writing, fish smoking procedures shall be adequate to ensure that the internal flesh temperature of every fish reaches at least 160° Fahrenheit, and is held at that temperature for at least 30 minutes. This subsection does not apply to smoked fish which are clearly labeled to indicate that they must be cooked by the consumer prior to consumption.

(5) Microbiological examinations shall be conducted on in-line and finished product samples with sufficient frequency to ensure that processing procedures are adequate and finished products are safe.

(6) Chemical analysis of finished product samples shall be conducted with sufficient frequency to ensure that the salt content is adequate and that other chemical additives are present at acceptable levels.

History: Cr. Register, October, 1989, No. 406, eff. 11-1-89.

Ag 40.22 Labeling and sale of smoked fish. (1) Food packages containing smoked fish, including consumer-size and bulk containers, shall be labeled to show:

(a) The name and address of the smoked fish processor or distributor.

(b) The name of the product, including the common species name of the fish from which the product is derived.

(c) The net weight of the package contents.

(d) If smoked fish contained in the package are sold or distributed in an unfrozen state, the words "PERISHABLE - KEEP REFRIGERATED AT OR BELOW 38°F" in conspicuous letters at least the size of the name of the food.

(e) If smoked fish contained in the package are sold or distributed in a frozen state, the words "PERISHABLE-KEEP FROZEN PRIOR TO USE" in conspicuous letters at least the size of the name of the food.

(f) The processing date of the smoked fish.

(g) The last date on which the smoked fish may be sold at retail, which shall be not more than 17 days after the processing date under par. (f). This paragraph does not apply to any of the following:

1. Smoked fish which are distributed and sold in a frozen state.

2. Smoked fish which are clearly labeled to indicate that they must be cooked by the consumer prior to consumption.

3. Smoked fish which have more than 10% salt content.

4. Smoked fish which are specifically exempted by the department in writing.

(2) Smoked fish shall not be sold more than 17 days after the date of processing unless the smoked fish are exempt under sub. (1) (g).

(3) Smoked fish processed on different dates shall not be commingled in the same container.

(4) No person may misrepresent a smoked fish processing date, or sell or distribute smoked fish under any processing date other than the original processing date stated by the processor.

(5) Smoked fish shall be immediately removed from sale, and shall be destroyed or treated to render the smoked fish unattractive and unfit for human consumption, if any of the following occurs:

(a) The smoked fish package is not labeled with a processing date.

(b) The smoked fish package is not labeled with a final date of sale, unless the smoked fish are exempt under sub. (1) (g).

(c) The smoked fish are not sold at retail within 17 days after their processing date, unless the smoked fish are exempt under sub. (1) (g).

(6) No smoked fish may be sold, distributed, or offered or exposed for sale in this state unless the smoked fish have been processed, labeled and handled in compliance with this subchapter. This subsection applies to every person engaged in the sale or distribution of smoked fish in this state, regardless of whether the person processes smoked fish in this state.

(7) No person may sell frozen smoked fish at retail from a bulk container. No person may display or sell unfrozen smoked fish at retail from a bulk container unless a conspicuous sign or counter placard is placed at the point of display or sale. The sign or counter placard shall bear the words "PERISHABLE - KEEP REFRIGERATED," together with all other label information required to appear on a smoked fish package under sub. (1). The sign or counter placard need not state the net weight of the smoked fish if net weight is determined at time of sale.

(8) Smoked fish may not be sold or distributed in a frozen state unless the fish are frozen at the smoked fish processing plant and kept frozen until sold at retail. Frozen smoked fish may not be thawed for sale in an unfrozen state.

History: Cr. Register, October, 1989, No. 406, eff. 11-1-89.

Subchapter V — Bottling Establishments; Supplementary Requirements

Ag 40.23 General. Bottling establishments shall comply with applicable provisions of subchapter II. Bottling establishments shall also comply with this subchapter.

History: Cr. Register, October, 1989, No. 406, eff. 11-1-89.

Ag 40.24 Automatic bottle washing. Bottles cleaned in an automatic bottle washer shall be sanitized while in the washer by a sanitizing method which complies with s. Ag 40.11. If bottles are sanitized by being soaked in a caustic solution, the causticity of the sanitizing solution shall be monitored and maintained at an appropriate level in relation to solution temperature and soaking time. The following table shows minimum causticity levels required for sanitizing solutions (expressed in terms of percent concentration of sodium hydroxide, NaOH, in the sanitizing solution), based on applicable soaking times and temperatures:

MINIMUM CAUSTICITY LEVELS REQUIRED FOR SANITIZING SOLUTIONS (% CONCENTRATION OF NaOH), BASED ON SOAKING TIME AND TEMPERATURE

Time in Minutes	Temperature (Degrees)						
	*F 170 C 77	160 71	150 66	140 60	130 54	120 49	110 43
3	0.57	0.86	1.28	1.91	2.86	4.27	6.39
5	0.43	0.64	0.96	1.43	2.16	3.22	4.80
7	0.36	0.53	0.80	1.19	1.78	2.66	3.98

History: Cr. Register, October, 1989, No. 406, eff. 11-1-89.

Ag 40.25 Returnable and single-service bottles. Bottles shall comply with food package requirements under s. Ag 40.10 (1). Returnable bottles shall be cleaned, sanitized and inspected in compliance with ss. Ag 40.10 (2) and (3). Single service bottles shall comply with s. Ag 40.10 (4).

History: Cr. Register, October, 1989, No. 406, eff. 11-1-89.

Ag 40.26 Product sampling; recordkeeping; reports. (1) OPERATIONS WATER AND INGREDIENT WATER. Operations water used in a bottling establishment shall comply with s. Ag 40.07 (1). Ingredient water shall comply with s. Ag 40.07 (2).

(2) BOTTLED PRODUCTS. Bottled drinking water and soda water beverages shall comply with ch. NR 109 and the health related enforcement standards of s. NR 140.10.

(3) SAMPLE TESTING. The operator of the bottling establishment shall collect and analyze representative samples of bottled product to provide reasonable assurance of compliance with sub. (2). The operator shall collect and analyze bottled product at the minimum frequency specified under sub. (4), and more frequently if necessary to provide reasonable assurance of compliance with sub. (2). This subsection does not require testing for contaminants other than bacteria if ingredient water is obtained from a municipal source which complies with sub. (2). Upon request by the department, the operator of a bottling establishment shall provide current documentation that ingredient water from a municipal source complies with sub. (2).

(4) The applicable minimum frequency of sampling and analysis under sub. (3), by type of contaminant, is as follows:

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<u>Frequency</u>	<u>Product Analysis</u>
Monthly	Bacteria
Quarterly	Nitrate
Every third year	Volatile Organics Pesticides Inorganics
Every fifth year	Radionuclides

Note: Initial samples shall be taken within a year after November 1, 1988. If any sample shows a detectable level of a contaminant, the sampling frequency shall be increased to at least an annual basis.

(5) RECORDS AND REPORTING. (a) Bottling establishment operators shall maintain records of all test results obtained from the analysis of operations water and ingredient water. Test results shall be made available for inspection and copying by the department upon request. Results of microbiological analyses shall be maintained for one year, chemical analyses for 6 years; and radiological analyses for 10 years.

(b) A processor of bottled water shall report the results of all required analyses under sub. (3) to the department. Results for each license year shall be reported to the department upon request. If the result of any individual analysis exceeds the established enforcement standard, the bottled water processor shall submit a copy of that analytical report to the department within 7 days of the completion of the analysis.

History: Cr. Register, October, 1989, No. 406, eff. 11-1-89.

Subchapter VI — Effect of Rules on Local Ordinances

Ag 40.27 Effect of rules on local ordinances. (1) This chapter does not prohibit or nullify any local government ordinance with which it is not in direct conflict as provided in sub. (2).

(2) If this chapter conflicts directly with any local government ordinance, so that it is impossible to comply with one except by violating the other, this chapter controls.

(3) Compliance with local government ordinances does not relieve any person from the duty of complying with this chapter.

History: Cr. Register, October, 1989, No. 406, eff. 11-1-89.