

Chapter ATCP 70

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Note: Chapter Ag 40 as it existed on October 31, 1989, was repealed and a new chapter Ag 40 was created effective November 1, 1989; Chapter Ag 40 was renumbered ch. ATCP 70 under s. 13.93 (2m) (b) 1., Stats., Register, April, 1993, No. 448.

Subchapter I — Scope and Definitions

ATCP 70.01 Scope. This chapter applies to all food processing plants as defined under s. ATCP 70.02 (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.

ATCP 70.02 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. ATCP 70.11 (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.

(8m) "Cold-process smoked fish" or "cold-process smoke flavored fish" means fish which is treated with smoke or smoke flavoring to give it a smoked flavor, but which is not fully cooked or heat treated to coagulate protein in fish loin muscle.

(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.

(9m) "Critical control point" means a point in food processing at which a failure to monitor a food safety variable such as pH, temperature, time, or water activity (a_w), or a failure to control any food safety variable within critical limits or according to specific criteria, may result in an unacceptable food safety risk having a potentially adverse impact on human health.

(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 which produces processed fish or fish products.

(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, con-

fectionary or bottling establishment, and also includes 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. 254.64, 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.

(17m) "Hazard analysis and critical control point plan" or "HACCP plan" means a food processing plan under which a food processing plant operator effectively prevents food safety hazards by monitoring food safety variables at critical control points, and by controlling those variables within critical limits.

(17n) "Hot-process smoked fish" or "hot-process smoke flavored fish" means fish that is all of the following:

(a) Fully cooked or heat treated, or sold or represented as being fully cooked or heat treated.

(b) Treated with smoke or smoke flavoring to give it a smoked flavor.

(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 legislative reference bureau. 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 a natural or processed food, consisting wholly or in part of milk, milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, or other foods of animal origin, or consisting wholly or in part of heat-treated foods of plant origin, raw seed sprouts, cut melon, or any garlic and oil mixture, which is capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms, the growth of *Clostridium botulinum*, or the production of *Clostridium*

botulinum toxins. "Potentially hazardous food" does not include any of the following:

(a) An air cooled hard boiled egg with shell intact.

(b) A food with a water activity (a_w) value of 0.85 or less.

(c) A food with a hydrogen ion concentration (pH) of 4.6 or below when measured at 75°F. (24°C.).

(d) A food, in a hermetically sealed package, that is commercially processed to achieve and maintain commercial sterility under conditions of non-refrigerated storage and distribution.

(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. ATCP 70.13 or 70.14.

(22n) "Reduced oxygen packaging" means packaging that reduces the amount of oxygen in a package by mechanically evacuating the oxygen, displacing the oxygen with another gas or combination of gases, or otherwise controlling the oxygen content in a package to a level below the level of 21% normally found in the surrounding atmosphere. "Reduced oxygen packaging" includes altered atmosphere, modified atmosphere, controlled atmosphere, low oxygen and vacuum packaging.

(23) "Safe temperatures" means one of the following:

(a) Temperatures at or above 140°F. (60°C.) for potentially hazardous heated foods.

(b) Temperatures at or below 41°F. (5°C.) for potentially hazardous refrigerated foods, except as provided under par. (c).

(c) Temperatures at or below 38°F. (3.4°C.) for refrigerated fish or fish products.

(d) Temperatures at or below 0°F. (-17°C.) for potentially hazardous frozen foods.

(24) "Salt content" or "salt in the water phase," means the percent salt (sodium chloride) as determined by the method described in sections 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; cr. (8m), (9m), (17m), (17n), (22n), am. (12m), (16) (c), (20), r. and recr. (22), (23), Register, April, 1996, No. 484, eff. 5-1-96.

Subchapter II — General Requirements

ATCP 70.03 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 food processing plant license expires on March 31 annually. 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 application shall include applicable fees required under this section.

(2m) ANNUAL LICENSE FEE. An applicant for a food processing plant license shall pay an annual license fee. Except as provided in sub. (2n), the fee amount is as follows:

(a) For a food processing plant that has an annual production of at least \$25,000 but less than \$250,000, and is engaged in processing potentially hazardous food or in canning, an annual license fee of \$326.

(b) For a food processing plant that has an annual production of at least \$250,000 and is engaged in processing potentially hazardous food or in canning, an annual license fee of \$685.

(c) For a food processing plant that has an annual production of at least \$25,000 but less than \$250,000, and is not engaged in processing potentially hazardous food or in canning, an annual license fee of \$131.

(d) For a food processing plant that has an annual production of at least \$250,000, and is not engaged in processing potentially hazardous food or in canning, an annual license fee of \$424.

(e) For a food processing plant that has an annual production of less than \$25,000, an annual license fee of \$78.

(2n) CANNING OPERATIONS; LICENSE FEE SURCHARGE. If a food processing plant is engaged in canning operations and has an annual production of \$25,000 or more, the operator shall pay an annual license fee surcharge of \$261, which shall be added to the license fee under sub. (2m).

Note: The treatment of subs. (2m) and (2n) first applies to applications for new licenses that are filed on or after February 1, 1998 and to renewals of food processing plant licenses which expire on March 31, 1998.

(2r) REINSPECTION FEE. (a) If the department reinspects a food processing plant because the department has found a violation of ch. 97, Stats., or this chapter on a regularly scheduled inspection, the department shall charge the food processing plant operator the reinspection fee specified under par. (b). A reinspection fee is payable when the reinspection is completed, and is due upon written demand from the department. The department may issue a demand for payment when it issues a license renewal application form to a food processing plant operator.

(b) The reinspection fee required under par. (a) is as follows:

1. For a food processing plant that has an annual production of less than \$250,000, and is engaged in processing potentially hazardous food or in canning, the reinspection fee is \$209.

2. For a food processing plant that has an annual production of at least \$250,000, and is engaged in processing potentially hazardous food or in canning, the reinspection fee is \$431.

3. For a food processing plant that has an annual production of less than \$250,000, and is not engaged in processing potentially hazardous food or in canning, the reinspection fee is \$123.

4. For a food processing plant that has an annual production of \$250,000 or more, and is not engaged in processing potentially hazardous food or in canning, the reinspection fee is \$400.

5. For a food processing plant that has an annual production of less than \$25,000 the reinspection fee is \$49.

(3) ACTION ON LICENSE APPLICATION. The department shall grant or deny a license application within 40 business days after the department receives a complete application. If the department

denies the license application, the department shall notify the applicant, in writing, of the reasons for the denial. 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 subch. VI of ch. 126, 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), Stats. 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.

History: Cr. Register, October, 1989, No. 406, eff. 11-1-89; am. (1) and (2), cr. (2m), (2n) and (2r), Register, January, 1998, No. 505, eff. 2-1-98; CR 05-044: am. (2), (2m), (2n), (2r), and (3) Register December 2005 No. 600, eff. 1-1-06; CR 06-028: am. (4) (b) Register November 2006 No. 611, eff. 12-1-06.

ATCP 70.04 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 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. There shall be adequate ventilation in all areas where food is processed or handled, in all areas where equipment or utensils are cleaned or sanitized, and in all dressing rooms, locker rooms, toilet rooms, employee break rooms, and garbage or rubbish storage areas. 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. Intake filters shall be capable of removing at least 85% of particulate matter that is 5 microns or larger in size. Exhaust fans, intake fans, ventilation ducts and filters 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, if used to ventilate any area of a food processing plant where exposed potentially hazardous food is handled, shall be capable of maintaining positive pressures in that area.

(7) TOILET FACILITIES. (a) A sufficient number of sanitary toilets to accommodate all employees, 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 employees to wash their hands shall be prominently posted in every toilet room used by employees. 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 employees. Personal clothing and other personal items of employees 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. Wiping cloths used to clean equipment and utensils shall be cleaned and sanitized daily, and shall be stored in an approved sanitizing solution between uses. Sanitizing solutions for wiping cloths shall be changed at least daily. Wiping cloths used to clean food contact surfaces of equipment and utensils shall not be used for any other purpose. Single service disposable towels may be used in place of re-usable cloths 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. Comm 81 to 87, enforced by the department of commerce.

(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 employees 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. ATCP 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.

(16) VARIANCES. The department may issue a written waiver granting a variance from a construction standard under this section if the department finds that the variance is reasonable and necessary under the circumstances, and that it will not compromise the purpose served by the construction standard. The administrator of the department's division of food safety may issue a waiver on behalf of the department. The department shall issue a waiver in writing, and shall keep a copy of the waiver on file for as long as the waiver remains in effect.

History: Cr. Register, October, 1989, No. 406, eff. 11-1-89; am. (6), (10) (d), cr. (16), Register, April, 1996, No. 484, eff. 5-1-96.

ATCP 70.05 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) EMPLOYEE HEALTH. No person who by medical examination or supervisory observation has or is reasonably suspected of having any of the following conditions may work in a food pro-

cessing plant in any capacity that may result in the contamination of food, or in the contamination of equipment or utensils used to process or handle food:

- (a) A communicable disease.
- (b) Any symptom of an acute gastrointestinal illness.
- (c) A discharging or open wound, sore or lesion on the hands, arms or other exposed portions of the body.

(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; r. and recr. (3), Register, April, 1996, No. 484, eff. 5-1-96.

ATCP 70.06 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 microor-

ganisms 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. ATCP 70.11.

(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.

ATCP 70.07 Water supply. (1) OPERATIONS WATER. (a) Operations water, other than water reclaimed according to sub. (3), shall be obtained from a source that complies with ch. NR 811 or 812.

(b) Operations water shall be available in consistently adequate quantity, and shall comply with the health related drinking water standards in ch. NR 809.

(c) If a food processing plant operator obtains operations water from a privately owned water system, the operator shall sample that water at least once annually. The operator shall have each sample tested by a laboratory certified under ch. ATCP 77, for compliance with the microbiological standards under s. NR 809.30.

(d) A food processing plant operator shall keep on file, for at least one year, the results of all microbiological and other tests conducted on operations water sampled at the food processing plant.

(e) Operations water used to wash field soil from raw fruits and vegetables may be reused for the following purposes if it is first filtered to remove soil and other particulate matter:

1. Washing subsequent deliveries of raw fruit or vegetables at the processing plant.

2. Flushing floors and gutters in the receiving area of the processing plant.

(2) INGREDIENT WATER. (a) Ingredient water, other than water reclaimed according to sub. (3), shall be obtained from a source that complies with ch. NR 811 or 812. Water reclaimed from food processing operations may not be used as an ingredient in bottled drinking water or in any soda water beverage.

(b) Ingredient water shall comply with the health related drinking water standards under ch. NR 809. If ingredient water for bottled drinking water or soda water beverages is obtained from a privately owned water supply, that water shall also comply with the health related enforcement standards under s. NR 140.10.

(c) If a food processing plant operator obtains ingredient water from a privately owned source, the operator shall sample that ingredient water at least once annually. The operator shall have each sample tested by a laboratory certified under ch. ATCP 77, for compliance with the microbiological standards under s. NR 809.30.

(d) If a food processing plant operator obtains ingredient water from a municipal source, the operator shall do all of the following:

1. Use current good manufacturing practices in handling that water, including safe and sanitary equipment, utensils, production controls and process controls that conform to good public health practice.

2. Provide documentation to the department, at the department's request, that the water complies with the microbiological standards under s. NR 809.30. Documentation may consist of information provided by the municipality.

(e) A food processing plant operator shall keep on file, for at least 5 years, the results of all microbiological and other tests conducted on ingredient water sampled at the food processing plant. The operator shall make the records available for inspection and copying by the department upon request.

(3) RECLAIMED WATER. (a) Water reclaimed from food processing operations may not be used as ingredient water unless all of the following apply:

1. The water is reclaimed by condensation, or by another reclamation process approved by the department.

2. The water complies with applicable standards under sub. (2) and par. (b).

3. The water is used within 24 hours after it is reclaimed.

(b) Water reclaimed from food processing operations may not be reused as operations water or ingredient water unless all of the following requirements are met:

1. The food processing plant operator organoleptically tests the reclaimed water at least weekly. The reclaimed water shall be of satisfactory organoleptic quality, and shall have no off-flavors, odors or slime formations.

2. The food processing plant operator collects daily samples of reclaimed water for the first 2 weeks after the operator first uses the reclamation system.

3. The food processing plant operator collects daily samples of reclaimed water for the first week after the operator puts the reclamation system back into use after repairing or altering the system.

4. The food processing plant operator collects semiannual samples of reclaimed water produced by the reclamation system.

5. A laboratory certified under ch. ATCP 77, tests the samples collected under subds. 2. to 4. for compliance with the microbiological standards under s. NR 809.30, the bacterial standard under subd. 6. and the organic matter standard under subd. 7.

6. The total bacterial plate count of every sample tested under subd. 5. is less than 500 bacteria per milliliter.

7. Every sample tested under subd. 5. has organic content of less than 12 milligrams per liter, measured by the chemical oxygen demand or permanganate-consumed test, or has a standard turbidity of less than 5 units.

8. The reclamation system is equipped with an automatic fail-safe monitoring device which monitors the organic content of reclaimed water and automatically diverts reclaimed water to a sanitary sewer if its organic content exceeds the standard under subd. 7.

9. Vessels used to hold or distribute reclaimed water are constructed of easily cleanable material that will not contaminate the water. Reclaimed operations water held for more than 24 hours shall be held at a temperature of at least 145° F. (63° C.), or shall be treated under sub. (4) to suppress bacterial growth.

10. The distribution system for the reclaimed water has no cross-connections to any municipal or private water supply system.

11. The distribution system for the reclaimed water is effectively designed and labeled to ensure that the reclaimed water is not mistaken for other water, and is used only for purposes authorized under this subsection.

(4) WATER TREATMENT. (a) A food processing plant operator may not use any chemical to suppress bacterial growth in water, or to prevent off-tastes or odors in water, unless that chemical is approved for that purpose by the federal food and drug administration. Neither the chemical as applied, nor any compound produced by the chemical application, may contribute to the adulteration of food.

(b) A food processing plant operator shall apply chemicals under par. (a) according to label directions, using an automatic proportioning device. Treated water shall be held for the period of time specified on the chemical label before it is used as ingredient water or operations water. A food processing plant operator shall conduct a daily testing program for any chemical added to water, to ensure that the chemical concentration does not contribute to the adulteration of food.

History: Cr. Register, October, 1989, No. 406, eff. 11-1-89; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1993, No. 448; r. and recr. (1), (2), cr. (3), (4), Register, April, 1996, No. 484, eff. 5-1-96; corrections in (1) (c), (2) (c) and (3) (b) 5., made under s. 13.93 (2m) (b) 7., Stats., Register, February, 2001, No. 542.

ATCP 70.08 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.

ATCP 70.09 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 haz-

ardous 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 follow a HACCP plan which monitors and controls food safety variables at critical control points in the manufacturing process. Monitoring and controlling food safety variables such as time, temperature, humidity, water activity (a_w), pH, pressure, and flow rate at critical control points can 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. By placing the frozen food in a refrigerated space at a temperature of not more than 41 °F (5 °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. ATCP 70.06 (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. ATCP 70.06 (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) SALVAGING DISTRESSED FOOD. (a) In this subsection:

1. "Distressed food" means processed food exposed to a fire, flood, transportation accident, refrigeration breakdown or other unusual condition which may affect its safety or suitability as human food. This subdivision does not include food or food packages damaged during normal conditions of food and food product handling, transit or storage.

2. "Reconditioned food" means packaged distressed food which is distributed or offered for sale as human food after its package is repaired or relabeled without being opened.

3. "Reprocessed food" means distressed food that is subsequently processed in accordance with the requirements under this chapter and distributed or offered for sale as human food.

(b) A food processing plant operator shall notify the department within 3 days after the operator takes possession of any distressed food, or within 3 days after food in the operator's custody becomes distressed food. The operator shall notify the department before the operator reprocesses or reconditions the distressed food.

(c) A food processing plant operator shall identify distressed food as such, and shall separate it from other food. No operator may store distressed food in a processing area, or under conditions which may lead to the contamination of other food, equipment, utensils or packaging materials.

(d) No food processing plant operator may do either of the following:

1. Reprocess for sale, as human food, any distressed food which is unwholesome or adulterated.

2. Offer for sale, sell or distribute food in packages that are damaged to such an extent that the food may have been exposed or subjected to possible contamination, including packages with bulging ends, ruptures, hairline fractures, breakage along critical seams, or openings which may have exposed food to contamination.

(e) No food processing plant operator may sell or distribute reprocessed or reconditioned food at wholesale unless the operator gives the purchaser or recipient written notice that the food is reprocessed or reconditioned. The notice shall also include the name and address of the person who reprocessed or reconditioned the distressed food. The notice may be included on an invoice, bill of lading, or other writing which documents the sale or distribution of the food.

(f) A food processing plant operator shall keep, for at least one year, all of the following records related to distressed food handled by that operator:

1. A description of the distressed food, including the type of food, the package or container style, and the amount of the food.

2. The source of the distressed food, or the conditions which caused it to become distressed food.

3. The date on which the operator received the distressed food.

4. The nature of any reprocessing or reconditioning which the operator performed on the distressed food.

5. If the distressed food is not sold directly at retail, the final disposition of the distressed food. The record of final disposition shall include the name and address of the person, such as the food wholesaler, food distributor, waste disposal firm or waste disposal site operator, to whom the food processing plant operator delivered the food.

(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 legislative reference bureau.

History: Cr. Register, October, 1989, No. 406, eff. 11-1-89; am. (3) (c) 1., r. and recr. (6), Register, April, 1996, No. 484, eff. 5-1-96.

ATCP 70.10 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 bot-

bles, 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. ATCP 70.11. 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. ATCP 70.04 (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.

ATCP 70.11 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. ATCP 70.24.

(e) Application, according to manufacturer's instructions, of a nontoxic 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. Subsection (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 legislative reference bureau.

(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 Wis-

consin 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.

ATCP 70.115 Ready-to-eat foods; reporting pathogens and toxins. (1) REQUIREMENT. Except as provided under sub. (2), a food processing plant operator shall report to the department the results of any microbiological test or laboratory analysis which indicates that any ready-to-eat food produced by that operator contains pathogenic organisms or toxins. The operator shall report to the department within 24 hours after the operator obtains the test results. The operator may report orally, electronically or in writing.

(2) EXEMPTION. A food processing plant operator is not required to report test results under sub. (1) if all of the following apply:

(a) The ready-to-eat-food is identified by a product code or production lot number.

(b) The food processing plant operator has not yet sold or distributed any of the ready-to-eat food represented by the product code or production lot number under par. (a), but retains direct control over all of that ready-to-eat food.

History: Cr. Register, April, 1996, No. 484, eff. 5-1-96.

Subchapter III — Canning Operations; Supplementary Requirements

ATCP 70.12 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.

ATCP 70.13 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 legislative reference bureau.

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

ATCP 70.14 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 legislative reference bureau.

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

ATCP 70.15 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.

ATCP 70.16 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.

ATCP 70.17 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

ATCP 70.18 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.

ATCP 70.185 HACCP plan. (1) **PLAN REQUIRED.** Every fish processing plant operator shall have and follow a HACCP plan by January 1, 1997, except that the operator of a plant processing smoked fish in reduced oxygen packages shall have and follow a HACCP plan beginning not later than May 1, 1996. An operator shall, upon request, provide the department with a copy of the HACCP plan. The department may require an operator to modify a HACCP plan to comply with this section.

(2) **PLAN CONTENTS.** A HACCP plan required under sub. (1) shall clearly and accurately identify, for each type of fish product, all of the following:

(a) Potential food safety hazards, such as microbiological, chemical or physical hazards, related to that fish product.

(b) Critical control points in the processing of that fish product at which the operator will monitor critical variables, such as time, temperature, pH or water activity to ensure that critical limits are met. Critical control points shall be identified on a process flow-chart which depicts the operator's entire food processing procedure for that product.

(c) The critical limits which must be met at each critical control point under par. (b) to prevent unacceptable food safety hazards.

(d) Procedures which the operator will use to monitor critical variables at each critical control point under par. (b) to ensure that critical limits are met. An operator shall observe, measure and record each critical variable with sufficient frequency and accuracy to ensure that critical limits are met.

(e) Effective corrective actions which the operator will take whenever a critical limit is violated. Corrective actions shall do all of the following:

1. Correct the process to restore compliance with critical limits.
2. Evaluate the safety of food processed while the critical limit was violated.
3. Prevent the sale or distribution of any food which presents an unacceptable food safety hazard.

(f) Methods which the operator will use to verify and ensure compliance with the procedures under pars. (d) and (e).

(g) Records which the operator will keep related to the implementation of the HACCP plan, including monitoring records. The operator shall retain the records for at least 6 months.

History: Cr. Register, April, 1996, No. 484, eff. 5-1-96.

ATCP 70.19 Raw materials; preparation. (1) A fish processing plant operator shall inspect fish and fish products before they are processed. Fish and fish products used in processing shall be sound, wholesome, free of organoleptically detectable spoilage, and free of visible parasites and extraneous matter.

(2) Fish shall be eviscerated in a manner which minimizes disturbance of intestinal tract contents. Evisceration equipment shall be designed and constructed for sanitary operation, and shall minimize contact between viscera and fish parts intended for further processing.

(3) Fish may not be eviscerated in the same room where fish are processed unless, pursuant to a HACCP plan under s. ATCP 70.185, all food contact surfaces and non-food contact surfaces in the room are effectively cleaned and sanitized after the room is used for evisceration and before it is used for processing.

(4) No ready-to-eat fish or fish products may be held or handled in the same room where raw fish or fish products are being processed.

(5) Fish shall be free of viscera before they are processed in ready-to-eat form. This subsection does not apply to small species of fish, such as anchovies and herring sprats, that are processed to have a salt content of at least 10%, a water activity (a_w) of less than 0.85, or a pH of 4.6 or less.

(6) Unfrozen fish received for processing shall be refrigerated to an internal temperature of 38° F. (3.4° C.) or below, and shall be maintained at that temperature until processed. Frozen fish shall be thawed, by one of the methods prescribed under s. ATCP 70.09 (3) (c), immediately before they are processed.

(7) All fish shall be thoroughly washed before they are processed. Eviscerated fish shall be washed immediately after they are eviscerated. Frozen fish shall be washed immediately after they are thawed or, if subsequently eviscerated, immediately after they are eviscerated. Fish shall be washed by a vigorous spray or continuous flow of potable water. Washing shall include the body cavity of eviscerated fish.

(8) Before fish are processed, they shall be frozen or treated to eliminate parasites which may pose a human health hazard. This subsection does not apply to any of the following:

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

(b) Fish which the consumer normally cooks before consuming.

History: Cr. Register, October, 1989, No. 406, eff. 11-1-89; r. and recr. Register, April, 1996, No. 484, eff. 5-1-96.

ATCP 70.20 Fish processing operations and controls. (1) No person may offer for sale, sell or distribute any fish or fish product in a reduced oxygen package unless one of the following applies:

(a) The packaged fish or fish product is heat processed, after the package is sealed, in a manner which effectively destroys the bacterium *Clostridium botulinum* (type E) and its spores.

(b) The packaged fish or fish product is frozen to a temperature of 0° F. (-17° C) or below, and the package is labeled on its principal display panel with the statement "PERISHABLE — KEEP FROZEN PRIOR TO USE" in conspicuous letters which are at least the size of the letters used in the food name.

(c) The fish or fish product is processed in a manner which renders it no longer a potentially hazardous food.

(d) All fish contained in the package are smoked according to s. ATCP 70.21.

(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) No retailer or distributor may repackage consumer size packages of processed fish products packaged at a fish processing plant. If a retailer or distributor repackages fish products from packages other than consumer size packages, the retailer or distributor shall label the repackaged fish according to standards specified for smoked fish under s. ATCP 70.22.

History: Cr. Register, October, 1989, No. 406, eff. 11-1-89; r. and recr. (1), (6), r. (7), Register, April, 1996, No. 484, eff. 5-1-96.

ATCP 70.21 Smoked fish processing. (1) SALTING OR BRINING REQUIRED. (a) Before any fish is smoked, it shall be dry salted or brined so that the amount of water-phase salt in the loin muscle of the finished smoked fish meets applicable requirements under subs. (2) to (4). The fish shall be rinsed with fresh water immediately after it is removed from the salt or brine.

(b) Throughout the dry salting or brining process under par. (a), fish and brine shall be kept at a temperature of not more than 38° F. (3° C.).

(c) A fish processing plant operator shall test each type of finished smoked fish product at least quarterly, using an official method of analysis, to ensure that the fish contains the amount of salt required under par. (a). The operator shall retain test records at the processing plant for at least 6 months, and shall make the records available to the department for inspection and copying upon request.

(2) **AIR PACKAGED HOT-PROCESS SMOKED FISH.** Air packaged hot-process smoked fish shall be processed as follows:

(a) Each fish shall be brined under sub. (1) so that the finished smoked fish contains at least 2.5% water-phase salt.

(b) Each fish shall be heated so that the entire fish is held at a continuous internal temperature of at least 145°F. (63°C.) for at least 30 minutes.

(3) **HOT-PROCESSED SMOKED FISH IN REDUCED OXYGEN PACKAGES.** Hot-processed smoked fish packaged in reduced oxygen packages shall be processed as follows:

(a) Each fish shall be brined under sub. (1) so that the finished smoked fish contains at least 3.5% water-phase salt, except that fish brined with a sodium nitrite solution containing not less than 100 parts per million nor more than 200 parts per million of sodium nitrite may be brined so that the finished smoked fish contains at least 3.0% water-phase salt.

(b) Each fish shall be heated so that the entire fish is held at a continuous internal temperature of at least 145°F. (63°C.) for at least 30 minutes.

(4) **COLD-PROCESS SMOKED FISH.** Cold-process smoked fish shall be processed as follows:

(a) Each fish shall be dry salted or brined so that the finished smoked fish contains at least 3.5% water-phase salt, except that:

1. Fish brined with a sodium nitrite solution containing not less than 100 parts per million nor more than 200 parts per million

of sodium nitrite may be brined so that the finished smoked fish contains at least 3.0% water-phase salt.

2. Fish which is frozen immediately after smoking, which remains frozen until sold to consumers at retail, and which is labeled according to s. ATCP 70.22 (1) (e), may be brined so that the finished smoked fish contains at least 2.5% water-phase salt.

(b) Each fish shall be smoked at a temperature of not more than 90°F. (32°C.) for not more than 20 hours, or at a temperature of not more than 50°F. (10°C.) for not more than 24 hours.

(5) **TEMPERATURE RECORDS.** 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 smoked fish. The temperature recording device shall record the internal temperature of the loin muscle of fish which are located in the coldest portion of the smokehouse. For every lot of fish smoked, a fish processing plant operator shall keep a time-temperature recording chart that identifies the specific oven or chamber load and the processing date. Time and temperature records shall be kept on file in the smoked fish processing plant for at least 6 months. Temperature recording devices shall be accurate to within one degree Fahrenheit or 0.5° Celsius.

(6) **ALTERNATIVE PROCEDURES; AUTHORIZATION.** The department may authorize a smoking procedure other than a procedure described under subs. (2) to (4) if the department finds that the alternative procedure is equally effective in preventing food safety hazards. Authorization, if any, shall be granted in writing, and shall be signed by the department secretary or the administrator of the department's division of food safety.

(7) **SMOKE FLAVORING.** Smoke flavoring used in processing smoked fish shall be approved for that purpose by the United States department of agriculture or the federal food and drug administration.

(8) **PACKAGING LOCATION.** Smoked fish may be packaged in reduced oxygen packages only at the processing plant where the fish are smoked.

History: Cr. Register, October, 1989, No. 406, eff. 11-1-89; r. and recr. Register, April, 1996, No. 484, eff. 5-1-96.

ATCP 70.22 Labeling and sale of smoked fish.

(1) Every food package containing smoked fish shall be clearly and conspicuously labeled, on the principal display panel of that package, with all of the following information:

(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 21 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.

(h) If the contents of the package include cold-process smoked fish, the statement "NOT FULLY COOKED" in letters at least the size of those used for the name of the food.

(2) Smoked fish shall not be sold more than 21 days after the date of processing unless the smoked fish are exempt under sub. (1) (g).

(3) Smoked fish processed on different dates may not be commingled in the same container, either at the processing plant or while the fish is being stored, distributed or offered for sale at wholesale or retail.

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

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

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

(c) The food is not sold at retail within 21 days after the date on which its smoked fish contents were smoked, unless the smoked fish are exempt under sub. (1) (g).

(d) The food is held at a temperature above 38° F. (3.4° C.) at any time prior to retail sale. This paragraph does not apply to a food which the department specifically exempts in writing because it is not a potentially hazardous food.

(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.

(9) Cold-process smoked fish may not be used as an ingredient in any other perishable, ready-to-eat food.

History: Cr. Register, October, 1989, No. 406, eff. 11-1-89; r. and recr. (1) (intro.), cr. (1) (h), (5) (d), (9), am. (3), (5) (intro.), (a) to (c), Register, April, 1996, No. 484, eff. 5-1-96; **CR 06-028: am. (1) (g) (intro.) and (2) Register November 2006 No. 611, eff. 12-1-06.**

ATCP 70.225 Caviar processing. (1) Except as provided under sub. (2), harvested fish roe and harvested fish by-products containing roe shall at all times be refrigerated at a temperature of not more than 38°F. (3.4°C.).

(2) Processing areas used to dry salted roe or roe product shall be kept at a temperature of not more than 50°F. (10°C.).

(3) Fish roe and fish by-products containing roe shall be harvested, stored and transported in covered food grade containers. Each container shall be conspicuously labeled or tagged to indicate the date and time when each of the following operations, if performed, was performed:

(a) The roe or by-products containing roe were harvested from the fish.

(b) The roe sacks were separated from the entrails. Roe sacks shall be separated from entrails within 48 hours after they are harvested from the fish.

(c) The roe was separated from the roe sacks. Roe shall be separated from roe sacks within 72 hours after the roe sacks are harvested from the fish, unless the caviar is processed and packed in roe sacks.

(d) The roe was processed and packed in roe sacks. Caviar processed and packed in roe sacks shall be processed and packed within 72 hours after the roe sacks are harvested from the fish.

(4) No fish processing plant operator may accept, for processing, any fish roe or fish by-products containing roe which are not properly refrigerated, contained and labeled under subs. (1) and (2).

(5) Finished product caviar shall be free of pathogens, and shall contain a minimum of 2.5% salt by weight as determined by quantitative analysis for total salt content.

(6) No fish processing plant personnel may have direct hand contact with finished, ready-to-eat caviar.

History: Cr. Register, April, 1996, No. 484, eff. 5-1-96.

Subchapter V — Bottling Establishments; Supplementary Requirements

ATCP 70.23 General. Bottling establishments shall comply with applicable provisions of subch. II. Bottling establishments shall also comply with this subchapter.

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

ATCP 70.24 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. ATCP 70.11. 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	160	150	140	130	120	110
	C 77	71	66	60	54	49	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.

ATCP 70.25 Returnable and single-service bottles. Bottles shall comply with food package requirements under s. ATCP 70.10 (1). Returnable bottles shall be cleaned, sanitized and inspected in compliance with s. ATCP 70.10 (2) and (3). Single service bottles shall comply with s. ATCP 70.10 (4).

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

ATCP 70.26 Product sampling; recordkeeping; reports. (1) Operations water and ingredient water used in a bottling establishment shall comply with standards specified under s. ATCP 70.07.

(2) Bottled drinking water and soda water beverages shall comply with ch. NR 809 and the health related enforcement standards of s. NR 140.10.

(3) 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:

Frequency	Product Analysis
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) (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; r. and recr. (1), Register, April, 1996, No. 484, eff. 5-1-96; correction in (2) made under s. 13.93 (2m) (b) 7., Stats., Register, January, 1998, No. 505.

Subchapter VI — Effect of Rules on Local Ordinances

ATCP 70.27 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.