

CHAPTER 97

FOOD REGULATION

97 01	Definitions.	97 38	Confectionary license.
97 02	Standards; adulterated food	97 40	Bakery and confectionary license requirements.
97 03	Standards; misbranding	97 41	Retail food: agent status for cities and counties
97 07	Interpretation	97 415	Department review of certain fees.
97 09	Rules.	97 42	Compulsory inspection of animals, poultry and carcasses
97 10	Prohibited acts	97 43	Meat from dead or diseased animals.
97 12	Enforcement.	97 44	Identification of meat for animal feed; registration and records of buyers.
97 13	Sale of fish flour regulated	97 45	Labeling of horsemeat.
97 17	Buttermaker and cheesemaker license.	97 46	Sale of certain foods regulated and restricted
97 175	Butter and cheese grader license requirements.	97 47	Benzoic acid in foods.
97 176	Butter; grading; label.	97 48	Dairy products, adding foreign fats; oleomargarine permitted.
97 177	Cheese; grading; labeling	97 50	Adulterated, insanitary milk.
97 18	Oleomargarine regulations	97 52	Insanitary or adulterated milk and cream; sale; delivery prohibited.
97 20	Dairy plants and receiving stations	97 53	Adulteration of meats
97 22	Licensing of grade A milk distributors.	97 56	Kosher meat.
97 24	Grade A milk and grade A milk products.	97 72	Penalties
97 26	Counter freezers licensed.	97 73	Injunction.
97 28	Food processor's license.		
97 32	Special dairy and food inspectors.		
97 34	Bottled drinking water and soda water beverage.		
97 36	Bakery license.		

Cross Reference: See definitions in 93 01

97.01 Definitions. In this chapter, unless inconsistent with context:

(1) "Butter" means the clean, nonrancid product made by gathering in any manner the fat of fresh or ripened milk or cream into a mass, which also contains a small portion of the other milk constituents, with or without salt or added coloring matter, and contains not less than 80% of milk fat. Renovated or process butter is the product made by melting butter and reworking, without the addition or use of chemicals or any substances except milk, cream or salt, and contains not more than 16% of water and at least 80% of milk fat.

(2) "Color additive" includes as colors black, white and intermediate grays and means a material which is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated or otherwise derived, with or without intermediate or final change of identity from a vegetable, animal, mineral or other source and which, when added or applied to a food or any part thereof, is capable, alone or through reaction with other substance, of imparting color thereto; except that such term does not include any material which has been or hereafter is exempted under the federal act.

(3) "Contaminated with filth" applies to any food not securely protected from dust, dirt and, as far as may be necessary by all reasonable

means, from all foreign or injurious contaminations.

(4) "Department" means the department of agriculture, trade and consumer protection.

(4m) "Distressed food" means food, or packages or containers of food, that may have been damaged, or rendered unsafe or unsuitable for sale or use as food while being transported, stored, handled or sold or the food the label of which has been lost, defaced or obliterated.

(5) "Federal act" means the federal food, drug and cosmetic act, as amended (Title 21 USC 301 et seq.) or the federal wholesome meat act, as amended (Title 21 USC 71 et seq.), or the federal poultry products inspection act, as amended (Title 21 USC 451 et seq.), or the federal fair packaging and labeling act (Title 15 USC 1451 et seq.) which may be applicable.

(6) "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).

(7) "Food additive" means any substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food, (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting or holding food; and including any source of radiation intended for any such use), if such

substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use; except that such term does not include a pesticide chemical in or on a raw agricultural commodity, or a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity, or a color additive, or any substance used in accordance with a sanction or approval granted prior to the enactment of the food additives amendment of 1958, pursuant to the federal act.

(8) "Label" means a display of written, printed or graphic matter upon the immediate container of any article. A requirement made under this chapter that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement or other information also appears on the outside container or wrapper if any, of the retail package of such article, or is easily legible through the outside container or wrapper. "Immediate container" does not include package liners.

(9) "Labeling" means all labels and other written, printed or graphic matter 1) upon an article or any of its containers or wrappers, or 2) accompanying such article.

(10) (a) "Milk" means the whole, fresh, clean, lacteal secretion obtained by the complete milking of one or more healthy cows. Milk shall contain not less than 3% of milk fat, and not less than 8.25% of milk solids not fat. Milk may be standardized by the addition or removal of cream or by the addition of skim milk. When so standardized milk sold in final package form shall contain not less than 3.25% of milk fat, and not less than 8.25% [8.7%] of milk solids not fat.

(b) "Lowfat milk" means milk from which sufficient milk fat has been removed to produce a food having a milk fat content of either 0.5%, 1%, 1.5% or 2% and a milk solids not fat content of not less than 10%.

(c) "Skim milk" means milk from which sufficient milk fat has been removed to reduce its milk fat content to less than 0.5% and which has a milk solids not fat content of not less than 9%.

NOTE: Sub. (10), as renumbered, is shown as affected by 1983 Wis. Act 536. Act 536 amends (a) by deleting "8.25%" and inserting "8.7%", here shown in brackets. Act 536 also creates (b) and (c). The effective date of Act 536 is shown in Section 4 as follows:

Section 4. Effective date. This act takes effect on the first day of the 3rd month commencing after the governor certifies, by executive order directed to the secretary of agriculture, trade and consumer protection and published in the official state newspaper, that all states contiguous to the borders of this state have in effect milk content requirements identical to those requirements created by this act.

(11) "Nonfat dry milk" means the product resulting from the removal of fat and water from milk, and contains the lactose, milk proteins and milk minerals in the same relative proportions as in the fresh milk from which made. It contains not over 5% by weight of moisture. The fat content is not over 1 1/2% by weight unless otherwise indicated.

(12) "Package" means any container or wrapper in which any food is enclosed for use in the delivery or display of that food to retail purchasers, but does not include:

(a) Shipping containers or wrappings used solely for the transportation of any food in bulk or in quantity to manufacturers, packers or processors, or to wholesale or retail distributors.

(b) Shipping containers or outer wrappings used by retailers to ship or deliver any food to retail customers if such containers and wrappings bear no printed matter pertaining to any particular commodity.

(13) "Pesticide chemical" means any substance which, alone, in chemical combination, or in formulation with one or more other substances is a "pesticide" within the meaning of s. 94.67 (25) and which is used in the production, storage or transportation of raw agricultural commodities.

(14) "Raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored or otherwise treated in their unpeeled natural form prior to marketing.

(14m) "Salvaging distressed food" means reconditioning or preparing distressed food for sale or use as food, including cleaning, culling, sorting, scouring, labeling, packaging, processing or treating the food.

(15) "Sell", "sale" or "sold" includes delivering, shipping, consigning, exchanging, offering or exposing for sale, or having in possession with intent to sell.

(16) "Whey cream" means that portion of whey rich in milk fat which is separated from whey by centrifugal force, is fresh and clean and contains not less than 18% of milk fat.

History: 1975 c. 94 s. 91 (10); 1975 c. 308; 1977 c. 29 s. 1650m (4); 1977 c. 106 s. 15; 1983 a. 189, 261, 536.

97.02 Standards; adulterated food. A food is adulterated:

(1) If it bears or contains any poisonous or deleterious substance which may render it inju-

rious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this paragraph if the quantity of such substance in such food does not ordinarily render it injurious to health.

(2) If it bears or contains any added poisonous or added deleterious substance, other than one which is a pesticide chemical in or on a raw agricultural commodity, a food additive or a color additive, which is unsafe within the meaning of the federal act or any deleterious substance not a necessary ingredient in its manufacture.

(3) If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of the federal act.

(4) If it is or it bears or contains any food additive which is unsafe within the meaning of the federal act, but where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or tolerance prescribed under the federal act and the raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating or milling, the residue of the pesticide chemical remaining in or on the processed food shall, notwithstanding other provisions in this section, not be deemed unsafe if the residue in the processed food when ready-to-eat is not greater than the tolerance prescribed for the raw agricultural commodity.

(5) If it is or bears or contains any color additive which is unsafe within the meaning of the federal act or other provisions in this section.

(6) If it consists in whole or in part of a diseased, contaminated, filthy, putrid or decomposed substance, or if it is otherwise unfit for food.

(7) If it has been produced, prepared, packed or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome or injurious to health.

(8) If it is the product of a diseased animal or an animal which has died otherwise than by slaughter, or that has been fed upon the uncooked offal from a slaughterhouse.

(9) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

(10) If any valuable constituent has been in whole or in part omitted or abstracted therefrom.

(11) If any substance has been substituted wholly or in part therefor.

(12) If damage or inferiority has been concealed in any manner.

(13) If any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength or make it appear better or of greater value than it is.

(14) If it is confectionary, and

(a) Has partially or completely imbedded therein any nonnutritive object: provided, that this clause shall not apply in the case of any nonnutritive object if, in the judgment of the department as provided by regulations, such object is of practical functional value to the confectionary product and would not render the product injurious or hazardous to health;

(b) Bears or contains any alcohol in excess of one-half of one per cent by volume derived solely from the use of flavoring extracts; or

(c) Bears or contains any nonnutritive substance; but this clause shall not apply to a safe nonnutritive substance which is in or on confectionary by reason of its use for some practical functional purpose in the manufacture, packaging, or storing of the confectionary if the use of the substance does not promote deception of the consumer or otherwise result in adulteration or misbranding in violation of this chapter. The department may, for the purpose of avoiding or resolving uncertainty as to the application of this clause, promulgate rules allowing or prohibiting the use of particular nonnutritive substances.

History: 1971 c. 156; 1979 c. 89.

97.03 Standards; misbranding. (1) A food is misbranded:

(a) If its labeling is false or misleading in any particular.

(b) If it is offered for sale under the name of another food.

(c) If its container is so made, formed or filled as to be misleading.

(d) If in package form, unless it bears a label containing a) the name and place of business of the manufacturer, packer or distributor; and b) an accurate statement of the quantity of the contents in terms of weight, measure or numerical count.

(e) If any word, statement or other information required to appear on the label or labeling is not prominently placed thereon with such conspicuousness and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(f) If it is represented as a food for which a definition and standard of identity has been prescribed under s. 97.09 unless it conforms to such definition and standard and its label, except when its label complies with the federal act, bears the name of the food specified in the

97.03 FOOD REGULATION

2452

definition and standard and the common names of ingredients present in such food.

(g) If it is represented as:

1. A food for which a standard of quality has been prescribed under s. 97.09 and its quality falls below such standard unless its label bears, in the manner and form as such regulations specify, a statement that it falls below such standard.

2. A food for which a standard or standards of fill of container have been prescribed under s. 97.09 and it falls below the standard of fill of container applicable thereto, unless its label bears, in the manner and form as such regulations specify, a statement that it falls below such standard.

(h) If it is a food for which no definition or standard of identity has been prescribed unless it bears a label clearly giving the common or usual name of the food if any, and in case it is fabricated from 2 or more ingredients, the common or usual name of each such ingredient; provided that to the extent that compliance with this subdivision is impractical or results in deception or unfair competition, exemptions shall be established by departmental rule.

(i) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral and other dietary properties as the department determines to be, and prescribes as, necessary in order to fully inform purchasers as to its value for such uses.

(k) If it bears or contains any artificial flavoring, artificial coloring or chemical preservative, unless it bears a label stating that fact.

(m) If it is a product intended as an ingredient of another food and when used according to the directions of the purveyor will result in the final food product being adulterated or misbranded.

(n) If it is a color additive unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive prescribed under the federal act.

(2) (a) Packages of fresh fruits and vegetables, the contents of which are plainly visible to the purchaser shall be exempt from a declaration of numerical count and identity under this section if the package contains 6 units or less, except that when the quantity of the food is customarily expressed in terms of weight or measure, as distinguished from numerical count, the food shall bear a label declaring the quantity.

(b) A food is exempt from labeling requirements under this section if the food, having been received in bulk containers by a retailer, is packaged by the retailer and displayed to the purchaser with a counter card, sign or other

appropriate device bearing prominently and conspicuously the label information required by this section.

(c) Sausage enclosed in a casing is exempt from labeling requirements under this section if it is displayed to the purchaser with a counter card, sign or other appropriate device bearing prominently and conspicuously the label information required by this section; but if the sausage is weighed at the time of sale a statement of weight is not required. If encased sausage is placed in another package, labeling requirements of this section apply.

(d) Bakery products enclosed in transparent containers or enclosed in containers which provide a transparent opening to afford a clear view of the product are exempt from labeling requirements under this section when such products are sold at retail by the bakery operator or his employe direct to the consumer at the baker's own retail bakery service counter operated by the baker who has produced these products, and when displayed to the purchaser with a counter card, sign or other appropriate device bearing conspicuously the label information required under this section.

(e) A food shall be exempt from the labeling requirements under this chapter if the food, in accordance with the practice of the trade, is to be processed, labeled or repacked in substantial quantities by the buyer, on condition that such food is not adulterated or misbranded under this chapter upon completion of such processing, labeling or repacking by the buyer.

(3) No person shall use the term "butter" in the name or in connection with the name, designation, advertising or description of any article of food prepared and offered for sale or served with any meal for which a charge is made unless all of the fat contained in such article of food is butterfat, but nothing herein shall be construed as prohibiting any representation that a food is flavored with butter if at least 12% of the fat in such food is butterfat or if the food contains the concentrated flavor elements derived from natural butterfat in sufficient quantities to impart a characteristic butter flavor.

History: 1971 c. 156 ss. 2, 3, 5; 1977 c. 216.

97.07 Interpretation. If an article is alleged to be misbranded because the labeling is misleading, then in determining whether the labeling is misleading, there shall be taken into account not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which the labeling fails to reveal facts material in the light of such representations or material with respect to consequences which may result

from the use of the article to which the labeling relates under the conditions of use prescribed in the labeling or under such conditions of use as are customary or usual.

97.09 Rules. (1) Definitions and standards of identity, composition, quality and fill of container for foods, and amendments thereto, now or hereafter adopted under the federal act or this chapter are definitions and standards of identity, composition, quality and fill of container under s. 97.03. However, when such action will promote honesty and fair dealing in the interest of consumers, the department may amend, stay or reject such federal regulations or make rules establishing definitions and standards of identity, composition, quality and fill of container for foods where no federal regulations exist, or which differ from federal regulations.

NOTE: Sub. (1) is shown as affected by 1983 Wis. Act 536, which adds "or this chapter". The effective date of Act 536, is shown in Section 4 as follows:

Section 4. Effective date. This act takes effect on the first day of the 3rd month commencing after the governor certifies, by executive order directed to the secretary of agriculture, trade and consumer protection and published in the official state newspaper, that all states contiguous to the borders of this state have in effect milk content requirements identical to those requirements created by this act.

(2) Temporary permits granted under the federal act for interstate shipment of experimental packs of food varying from the requirements of federal definitions and standards of identity are automatically effective in this state under conditions set forth in such permits.

(3) The department may also issue temporary marketing permits upon a convincing showing of need to continue a market study where the interests of consumers are safeguarded. Such permits are subject to terms and conditions prescribed by departmental rules but may not be issued for a period exceeding 6 months plus one renewal period of 6 months after departmental review.

(4) The department may, by rule, establish and enforce standards governing the production, processing, packaging, labeling, transportation, storage, handling, display, sale, including retail sale, and distribution of foods that are needed to protect the public from the sale of adulterated or misbranded foods.

History: 1971 c. 156; 1983 a. 261, 536.

97.10 Prohibited acts. (1) The sale of any food that is adulterated or misbranded is prohibited.

(2) It is unlawful to manufacture, prepare for sale, store, or sell food unless the food is protected from filth, flies, dust or other contamination or unclean, unhealthful or insanitary conditions.

(3) No person shall be subject to the penalties of s. 97.72 for having violated sub. (1), if he or she establishes a guaranty or undertaking signed by, and containing the name and address of the person residing in this state from whom the article was received in good faith, to the effect that such article is not adulterated or misbranded within the meaning of ss. 97.02 and 97.03.

History: 1971 c. 156; 1983 a. 261.

97.12 Enforcement. (1) For the purpose of enforcing this chapter, the department and its agents may, at reasonable hours, enter and inspect any farm, factory, warehouse, building, room, establishment or place at or in which foods are manufactured, processed, packed, packaged, stored or held for sale, and may enter any vehicle used to transport or hold foods in commerce. The department and its agents may also secure samples or specimens of food and any product or substance that may affect food, examine and copy relevant documents and records and obtain photographic and other evidence needed to enforce this chapter. The department shall examine any samples secured and shall conduct other inspections and examinations needed to determine whether there is a violation of this chapter. The department shall pay or offer to pay the market value of samples taken.

(2) (a) Whenever any duly authorized inspector of the department has reasonable cause to believe that any food examined by him or her is adulterated or misbranded and is dangerous to health or misleading to the injury or damage of the purchaser or consumer, the inspector shall issue and deliver to the owner or custodian of the food a holding order prohibiting the sale or movement of the food for any purpose until the analysis or examination of the sample obtained has been completed. A holding order may be effective for a period of not longer than 14 days from the time of its delivery, but it may be reissued for one additional 14-day period if necessary to complete the analysis or examination of the food.

(b) No food described in any such holding order so issued and delivered shall be sold or moved for any purpose without the approval of the department until such analysis or examination has been completed within the time specified in par. (a). If the department upon completed analysis or examination determines that the food described in such holding order is not adulterated or misbranded, then the owner or custodian thereof shall be promptly so notified in writing, and such holding order shall terminate upon such notification.

(c) Where the analysis or examination shows that the food is adulterated or misbranded and is dangerous to health or misleading to the injury or damage of the purchaser or consumer, the owner or custodian of the food shall be so notified in writing within the effective time of the holding order. Such notice has the effect of a special order issued under s. 93.18. Upon receipt of a notice the food subject to the holding order may not be sold, moved, disposed of or brought into compliance with applicable standards without the approval of the department. If such food is not brought into compliance, sold, moved or disposed of within 30 days, or other agreed upon period of time, from the date the owner or custodian received notice that the food was adulterated or misbranded, the department may issue an order directing the disposition of the food. Such an order has the effect of a special order issued under s. 93.18.

(d) 1. Any person violating an order issued under this section may be fined not more than the maximum amount under subd. 2 or imprisoned not more than one year in the county jail or both.

2. The maximum fine under this paragraph equals \$10,000 plus the retail value of the product moved, sold or disposed of in violation of the order issued under this section.

(3) (a) The department may issue a special order as provided under s. 93.18 to any person engaged in the production, processing, sale or distribution of food if the department finds a violation of this chapter or the rules promulgated under this chapter. An order shall state the violations found and shall specify a fixed period of time for correction. If the department finds that a piece of equipment, a facility or a practice used is a danger to public health, it may order that the situation be abated or eliminated immediately and that the equipment, facility or practice not be used until the violation is corrected and the correction is confirmed by the department. The department may, instead of issuing an order, accept written agreements of voluntary compliance which have the effect of an order.

(b) The department may, by summary order and without prior notice or hearing, suspend a license or permit issued under this chapter if the department finds that there has been a substantial failure to comply with the applicable requirements of this chapter and the rules promulgated under this chapter and that the continuation of the violations constitutes a serious danger to public health. The order shall be in writing, have the force and effect of an order issued under s. 93.18, and is subject to right of hearing before the department, if requested within 10 days after date of service. Hearings, if

requested, shall be conducted within 10 days after receipt of a request for a hearing. Enforcement of the order shall not be stayed pending action on the hearing.

(4) Any person who does either of the following may be fined not more than \$5,000 or imprisoned not more than one year in the county jail or both:

(a) Assaults, restrains, threatens, intimidates, impedes, interferes with, or otherwise obstructs a department inspector, employe or agent in the performance of his or her duties.

(b) Gives false information to a department inspector, employe or agent with the intent to mislead the inspector, employe or agent in the performance of his or her duties.

History: 1971 c. 156; 1983 a. 261

97.13 Sale of fish flour regulated. No person shall sell any food product for human consumption within this state containing whole fish flour, except fish flour made from the normally edible portions of fish or fish protein concentrate. No package containing fish flour or fish protein concentrate shall be sold by any person unless it bears a statement declaring that the contents thereof are made only from the edible portions of fish.

97.17 Buttermaker and cheesemaker license. (1) In this section the terms "buttermaker" and "cheesemaker" mean a person employed or who may be employed in a butter or a cheese factory who has charge of and supervision over the actual process of manufacturing butter or cheese, and shall not include a person employed in a butter or cheese factory for the purpose of assisting in the manufacture of such product. This section shall not affect a person making up a product produced on his own farm, nor shall it be unlawful for a licensed cheesemaker employed in a licensed cheese factory to make butter or whey cream butter for the use or consumption only of the patrons thereof.

(2) No person shall engage as a buttermaker or cheesemaker unless he has a license from the department. Such license shall be issued by the department under such regulations as the department shall prescribe relating to the qualifications of applicants for licenses. Such qualifications shall include among other things: Previous record in operating and keeping in sanitary condition the butter or cheese factory in which he has been employed.

(3) Application for a buttermaker's or cheesemaker's license shall be made upon a blank furnished by the department. Upon receipt of such application the department shall issue a permit to such applicant to carry on the

work of a buttermaker or cheesemaker. Such permit shall have the force and effect of a license to a buttermaker or cheesemaker until a license shall have been issued to the applicant or until such applicant shall have been notified of the denial of such application. At the time such permit is issued, the department shall furnish him the regulations incident to securing a license and also suggestions relating to the proper method of operating butter or cheese factories.

(4) Each application for a license shall be accompanied by a fee of \$20 payable to the department and no license may be issued until the fee is paid. In case license is refused, the fee shall be returned by the department to the applicant with notification of refusal.

(6) The license shall expire on the first day of January of the 2nd year commencing after the date of issuance or renewal. Renewal applications shall be submitted on department forms and be accompanied by a biennial license fee of \$20.

History: 1977 c. 216; 1979 c. 342

97.175 Butter and cheese grader license requirements. (1) In this section and ss. 97.176 and 97.177, "butter grader" or "cheese grader" means a person who grades butter or cheese.

(2) No person may act as a butter grader or a cheese grader without a license granted by the department. A person desiring a license shall apply on a form furnished by the department and shall pay to the department a fee of \$25. Prior to issuing a license, the department shall require the applicant to demonstrate his or her competence to act as a butter grader or a cheese grader in a manner determined by the department. A license expires on September 30 of the 2nd year commencing after the date of issuance.

(3) Butter graders and cheese graders must act in accordance with the standards and requirements established under ss. 93.07, 97.176 and 97.177.

(4) The department may deny, suspend or revoke a license under this section by an order if the department finds that the applicant or licensee is not qualified to act as a butter grader or cheese grader or that the applicant or licensee has applied inaccurate grades or has obtained the license by fraud, perjury or through error. The department shall notify the applicant or licensee of the order and shall follow the procedures for issuing a special order under s. 93.18.

History: 1983 a. 131

97.176 Butter; grading; label. (1) It is unlawful to sell, offer or expose for sale, or have in possession with intent to sell, any butter at retail

unless it has been graded. Butter shall be graded as follows:

- (a) Grade, Wisconsin, AA—93 score;
- (b) Grade, Wisconsin, A—92 score;
- (c) Grade, Wisconsin, B—91-90 score;
- (d) Grade, Wisconsin, undergrade—all butter below Wisconsin B.

(2) United States AA, A, and B grades shall be accepted in lieu of the corresponding Wisconsin AA, A, and B grades, but all United States grades below B shall, for the purpose of this section, correspond to Wisconsin undergrade.

(3) As used in this section, score or grade means the grading of butter by its examination for flavor and aroma, body and texture, color, salt, package and by the use of other tests or procedures approved by the department for ascertaining the quality of butter in whole or in part.

(4) Details for methods and procedures to be used for ascertaining quality, for labeling, and for arbitrating disputes with respect to grades, shall be developed by the department as a result of public hearings to be held at a convenient location in the state.

(5) Butter from outside of the state sold within the state shall be provided with a label which indicates that it complies with the state grade standards as provided in this section and which indicates the grade in a manner equivalent to the requirements for butter manufactured and sold within the state.

(6) Butter which carries the state grade labels shall be graded by butter graders licensed under s. 97.175 and under the supervision of the department.

(7) No person, for himself, or as an agent, shall advertise the sale of any butter at a stated price, unless the grade of the butter is set forth in such advertisement in not less than 10-point type.

History: 1977 c. 29 s. 1650m (4); 1983 a. 131 s. 2

97.177 Cheese; grading; labeling. (1) The department shall by rule adopt standards for grades of cheese manufactured in Wisconsin.

(2) Cheese which carries a state grade must be graded by a cheese grader licensed under s. 97.175 and must conform to the standards for the grade. Graded cheese must be plainly labeled to indicate the grade of the cheese and the license number of the cheese grader.

(3) Cheese manufactured in Wisconsin must be labeled on either the cheese itself or the container at the factory where it is manufactured. The label must remain on the cheese until the cheese is used in a different food manufacturing process or relabeled by the buyer for later

97.177 FOOD REGULATION

2456

sale The label must contain all of the following:

- (a) The type or variety of cheese.
- (b) The word Wisconsin or the code number 55.
- (c) The factory number designated by the department.
- (d) The date of manufacture.
- (e) The number of the vat in which the cheese was manufactured if more than one vat of cheese was manufactured in the factory on the same day.

(4) The department may adopt rules for the administration of this section.

History: 1983 a 131.

97.18 Oleomargarine regulations. (1) (a) For the purposes of this section "oleomargarine" or "margarine" includes oleomargarine, margarine, butterine and other similar substances, fats and fat compounds sufficiently adaptable to the ordinary uses of butter, to lead readily to use as an alternative to butter, but this section shall not apply to lard, cream cheese, cheese food compounds, nor to any other dairy product made exclusively of milk or milk solids with or without added vitamins, if such product is sold or distributed in such manner and form as will clearly distinguish it from butter. Nor shall this section apply to shortenings not churned or emulsified in milk or cream or having a melting point of 112 degrees Fahrenheit or more as determined by the capillary tube method unless there is sold or given away with such shortening any compound which, when mixed with such shortening, makes oleomargarine, butterine or similar substances. Colored oleomargarine or margarine shall be made of domestic fats or oils and shall not be made of imported oils which include, without restriction because of enumeration, whale oil, coconut oil and palm oil.

(b) "Colored oleomargarine" or "colored margarine" is oleomargarine or margarine having a tint or shade containing more than 1-6/10 degrees of yellow or of yellow and red collectively but with an excess of yellow over red, as measured in terms of Lovibond tintometer scales or its equivalent.

(3) No person shall sell, offer or expose for sale at retail any oleomargarine or margarine unless:

- (a) Such oleomargarine or margarine is packaged;
- (b) The net weight of the contents of any package sold in a retail establishment is one pound;
- (c) There appears on the label of the package 1) the word oleomargarine or margarine in type or lettering at least as large as any other type or lettering on such label in a color of print which

clearly contrasts with its background, and 2) a full accurate statement of the ingredients contained in such oleomargarine or margarine; and

(d) Each part of the contents of the package is contained in a wrapper or separate container which bears the word "oleomargarine" or "margarine" in type or lettering not smaller than 20-point type.

(4) The serving of colored oleomargarine or margarine at a public eating place as a substitute for table butter is prohibited unless it is ordered by the customer.

(5) The serving of oleomargarine or margarine to students, patients or inmates of any state institutions as a substitute for table butter is prohibited, except that such substitution may be ordered by the institution superintendent when necessary for the health of a specific patient or inmate, if directed by the physician in charge of the patient or inmate.

(5m) The department of health and social services shall assist the department in the enforcement of this section and, in connection with inspections of food service operations at institutions and establishments under its inspectional jurisdiction, conduct compliance inspections and surveys, and report violations directly to the department.

(6) Any person who violates any provision of this section may be fined not less than \$100 nor more than \$500 or imprisoned not more than 3 months or both; and for each subsequent offense may be fined not less than \$500 nor more than \$1,000 or imprisoned in the county jail not less than 6 months nor more than one year.

History: 1971 c 125; 1973 c 90; 1975 c 41; 1977 c 289 ss. 3m, 11

97.20 Dairy plants and receiving stations. (1) In this section, unless the context otherwise requires:

(a) "Dairy plant" means any premises where a dairy product is manufactured or processed for commercial purposes and shall include a receiving or transfer station, and a grade A dairy plant.

(b) "Dairy product" means milk, cream, any product or by-product of either or any commodity among the principal constituents or ingredients of which is one or a combination of 2 or more of them including goat milk.

(c) "Grade A dairy plant" means any dairy plant, including a receiving or transfer station, manufacturing, processing, receiving and shipping or transferring grade A milk or grade A milk products as defined in s. 97.24 (1).

(d) "Receiving or transfer station" means any premises used in receiving and shipping milk or cream, except to the ultimate consumer, and any premises used for transferring milk or

cream from one truck transport tank directly into another.

(2) No person shall operate a dairy plant without an annual license from the department for the operation conducted, as defined by department rules. This subsection does not apply to a business defined in s. 97.26, to a bakery or confectionary licensed under ss. 97.36 to 97.40, or to a farm from which milk or cream produced on such farm is sold only for manufacturing or processing in a dairy plant, and where no dairy products are manufactured or processed except for the exclusive use of the owner or operator of the farm and members of the household and nonpaying guests and employees; or to restaurants, vending machine commissaries or catering establishments licensed or inspected under subch. III of ch. 50 using processed dairy products in the further preparation and serving of meals or lunches. A separate license is required for each plant. The premises shall be suitably located, constructed and equipped for the operation for which the license is issued, the premises and equipment shall be kept clean and sanitary and operations shall be conducted and materials and products handled and stored in a sanitary manner in accordance with rules of the department. The license certificate shall be displayed conspicuously in the plant. When a new dairy plant is started or an established plant is transferred or moved to another location, plans and specifications of the new plant and location shall be submitted to the department for approval before a license shall be issued.

(3) Applications for a new or renewal license shall give in writing the name and address of the applicant, exact location of the premises for which license is desired, operations desired to be conducted, and such other pertinent information, in such form, as the department shall require, and be accompanied by a fee of \$50 which shall be retained whether or not the license or permit is issued.

(4) Upon receiving an application and fee for a new license the department, unless it has good reason to believe that an essential requirement is lacking, shall issue a permit to the applicant to operate, which shall have the effect of a license for 3 months or until such earlier time as he is issued a license or is notified of the denial of the application.

(5) A dairy plant licensee desiring to conduct during the current license period an operation not covered by a permit or license shall make application therefor similar to the original application for the same license period but without payment of additional fees. A license shall be issued thereon as on a new application, and

license shall be issued including the additional operation in the same way and under the same conditions as on any other application.

(6) (a) As soon as convenient after receiving an application, the department or, with respect to a counter freezer, a city or county granted agent status under s. 97.41, shall investigate the sanitary condition and the construction and equipment. The license shall be granted when construction, equipment and sanitary conditions are found upon inspection to be in accordance with law and regulations.

(b) If the department or, with respect to a counter freezer, a city or county granted agent status under s. 97.41, at any time determines that an alteration, change or addition is required in premises or equipment, the department shall serve as provided in s. 93.18 (5) upon the applicant, permit holder or licensee written notice of what alteration, change or addition is required and within what reasonable time it shall be made. The licensee shall promptly comply with the notice.

(c) Each licensee shall file with the department or, with respect to a counter freezer, a city or county granted agent status under s. 97.41, any reports and information it requires.

(7) (a) The department may divide persons required to be licensed under this section into such groups by geographical location, type of operation, or other method of classification as it believes will best promote the economical, effective and convenient execution of this section, and shall determine on what day of each year licenses in each group shall expire. The department may change such groups or the method of classification from time to time. A licensee, the license period of whose group is shortened by such grouping or change thereof, shall pay only such proportion of the annual fee as the shortened period bears to one year, and receive credit on the fee for the next license year for any overpayment; and if the period of a group is lengthened a permit holder or licensee shall pay additional fees proportionate to the time by which it is lengthened. A license may be renewed without sanitary inspection upon application and payment of fee before expiration.

(b) No license is transferable. A license becomes void and a certificate shall be surrendered to the department when the licensee discontinues use of the premises covered by the license for all operations covered thereby, or when another person becomes owner or operator of the business.

(9) Actions to enjoin violation of this section or any order thereunder may be commenced and prosecuted by the department in the name

97.20 FOOD REGULATION

of the state in any court having equity jurisdiction. This remedy is not exclusive.

(10) No person may be excused from testifying, from making answer or a report, or from producing any paper, record, document or other evidence, in any examination, inspection, proceeding or requirement in pursuance or enforcement of this section, including contempt of court, on the ground of tendency to incriminate; but no person complying with this section may be prosecuted in any criminal or forfeiture proceeding for or on account of any transaction, matter or thing as to which he or she may have testified, answered, reported or otherwise produced evidence tending to incriminate the person, except for perjury, false swearing, false report or false answer in such examination, inspection, proceeding or requirement.

History: 1971 c. 125, 156, 211; 1975 c. 39, 199; 1977 c. 203 s. 106; 1979 c. 257; 1983 a. 189, 203.

97.22 Licensing of grade A milk distributors.

(1) "Grade A milk distributor" is any person who distributes and sells grade A milk or grade A milk products as defined in s. 97.24; except that the term shall not include a grade A dairy plant licensed under s. 97.20, or a person who sells grade A milk or grade A milk products at retail only at a restaurant, store or other fixed location.

(2) No person shall engage as a grade A milk distributor without a license therefor from the department. Such license shall expire annually on July 31. The license fee shall be \$50, which shall accompany each application for license and shall be retained whether or not a license is issued. No license shall be transferable.

History: 1975 c. 39

97.24 Grade A milk and grade A milk products. (1) DEFINITIONS The following definitions shall apply to the interpretation and enforcement of this section:

(a) Dairy plant is a grade A dairy plant as defined in s. 97.20 (1) (c).

(b) Grade A milk is milk which is produced, processed and distributed as required by this section and the rules issued thereunder. It shall be interpreted to include goat milk.

(c) Grade A milk products include cream, sour cream, half and half, whipped cream, concentrated milk, concentrated milk products, skim milk, flavored milk, buttermilk, cultured buttermilk, cultured milk, vitamin and mineral fortified milk or milk products, and any other product made by the addition of any substance to milk, or to any of these products, and used for similar purposes, and produced, processed and distributed as required by this section and the rules issued thereunder, but does not include

any product which is heat sterilized and in a hermetically sealed container.

(d) Milk distributor is a grade A milk distributor as defined in s. 97.22.

(e) Milk hauler is any person, other than a milk producer hauling his own milk only, who transports grade A milk or grade A milk products to or from a dairy plant or a collecting point.

(f) Milk producer is any person who owns or controls one or more cows, a part or all of the milk or milk products from which is sold as grade A milk or grade A milk products.

(2) **PROHIBITIONS.** (a) No milk or milk products listed in sub. (1) shall be sold to the final consumer, or to restaurants, soda fountains, grocery stores, or similar establishments, except grade A milk and grade A milk products which have been pasteurized.

(b) No person shall sell any milk or milk product listed in sub. (1) labeled "Grade A", or otherwise represented in a manner which might induce the purchaser to believe that it is grade A milk or a grade A milk product, if such milk or milk product fails to conform to any of the requirements in this chapter or the rules issued under this section.

(c) This section does not apply to incidental sales of milk directly to consumers at the farm where the milk is produced or to incidental sales of pasteurized milk and cream at any dairy plant licensed under s. 97.20.

(3) **PERMITS.** Every milk producer and milk hauler shall secure a grade A permit from the department unless he is the holder of a valid "Grade A permit" issued by a governmental unit referred to in sub. (6). Only a person who complies with the requirements of this section and the rules issued thereunder shall be entitled to receive and retain such a permit. Applications for permit shall be on a form prescribed and furnished by the department. A separate milk producer permit shall be required for each dairy farm location. Permits shall not be transferable with respect to persons or locations. Dairy plants and milk distributors shall secure license authority under ss. 97.20 and 97.22, respectively.

(4) **RULES.** The department, in consultation with the department of health and social services, shall issue rules governing the production, transportation, processing, pasteurization, handling, identity, sampling, examination, labeling and sale of grade A milk and grade A milk products; the inspection of dairy herds, dairy farms and dairy plants; the issuing and revocation of permits to milk producers and milk haulers, and of licenses to dairy plants and milk distributors. Insofar as permitted by the

laws of this state, such rules shall be in reasonable accord with the minimum standards and requirements for milk and milk products currently recommended and published by the U.S. public health service as a milk ordinance and code, except that the requirements for bottling and sterilization of bottles in such standards shall not apply to milk sold by a producer, selling only milk produced by the producer on the producer's farm under the producer's own supervision, and selling such milk only in the producer's own milk house, which milk meets the requirements of grade A standards as set forth by the department of agriculture, trade and consumer protection, to a purchaser who has provided his or her own container, which has been sanitized in a manner comparable to the sanitizing of the utensils used in the production of milk by the producer, if the purchaser is purchasing milk for his or her own consumption.

(5) **INSPECTION AND CERTIFICATION FEES.** (a) *Generally.* The department shall collect uniform fees for the inspection and certification of grade A milk and milk products and grade A dairy farms and plants.

(b) *Dairy plants:* Dairy plants which are under the continuous grade A inspection of the department shall pay the following inspection and certification fees annually:

1. *Plant fees.* \$345 for each dairy plant, except that the plant fee is \$230 for each receiving station and each transfer station;

2. *Producer fees.* \$35 for each milk producer from whom milk is received, except that the producer fee is \$20 for each producer inspected at least once annually by an approved field person of the dairy plant under inspection procedure prescribed by the department.

(c) *Producers.* A producer who does not sell or deliver milk to a dairy plant licensed under s. 97.20 shall pay the \$20 farm inspection fee on or before April 30 each year, unless the fee is paid by the out-of-state plant receiving the milk. A producer regularly pasteurizing and selling any milk to consumers at the farm, and who is not licensed as a dairy plant shall pay an additional equipment and product inspection fee of \$50 annually.

(d) *Payment, partial fees.* Payment of inspection and certification fees shall be made at the time of license application or, if inspection is requested during a license year, payment shall accompany the request. When the period of inspection remaining in a license year is 6 months or less, one-half the fee shall be paid.

(e) *Failure to pay fee.* The department shall revoke or deny the license of any dairy plant for which inspection and certification fees are not paid when due.

(6) **LEGISLATIVE PURPOSE; UNIFORMITY; RECIPROCALITY.** (a) Regulation of the production, processing and distribution of grade A milk and grade A milk products under minimum sanitary requirements which are uniform throughout the state and the United States is essential for the protection of consumers and the economic well-being of the dairy industry, and is therefore a matter of state-wide concern; however, nothing in this section shall impair or abridge the power of any municipality or county to regulate milk or milk products under sanitary requirements and standards which are in reasonable accord with those issued under this section or the power to impose reasonable license permit and inspection fees which combined shall not exceed the cost of necessary inspection. A municipality or county shall not impose fees for its inspection of milk producers, dairy plant facilities or dairy products which are under the inspection supervision of another governmental unit within or without the state with a valid certification rating made or approved by the department of health and social services. No governmental unit shall impose or collect a fee directly from the producer. A license or permit fee not to exceed \$25 annually may be imposed on milk distributors licensed under s. 97.22 and on dairy plants under the inspection supervision of another governmental unit which are engaged in the distribution of milk within a municipality or county.

(b) No sanitary requirement or standard issued under this section or contained in any ordinance shall prohibit the sale of grade A milk or grade A milk products which are produced and processed under laws or rules of any governmental unit, within or without this state, which are substantially equivalent to the requirements of the rules issued under this section, and which are enforced with equal effectiveness, as determined by a milk sanitation rating made or approved by the department of health and social services, in accordance with the rules issued under this section.

History: 1971 c. 125, 156, 228; 1973 c. 333; 1975 c. 39, 199; 1977 c. 29; 1979 c. 221; 1981 c. 390 s. 252; 1983 a. 189 ss. 128, 329 (20)

97.26 Counter freezers licensed. (1) No person may operate premises on which there is manufactured ice cream, sherbet, milk sherbet, ice, fruit ice or water ice, or similar frozen or partially frozen food, for commercial purposes, for distribution only at such premises directly to the consumer, who has not been issued an annual license by the department or a city or county granted agent status under s. 97.41. A separate license is required for each such place of business. The premises shall be suitably

constructed and equipped, and the equipment shall be kept clean and sanitary and operations conducted and materials and products handled and stored in a sanitary manner in accordance with rules or ordinances of the department or agent city or county. The license certificate shall be displayed conspicuously in the place of business. No license is required under this section or s. 97.20 for the manufacture of the products governed by this section in a licensed restaurant or hotel, if those products are used exclusively for service at meals in the restaurant or hotel.

(2) An applicant for a license under this section shall complete the application prepared by the department or a city or county granted agent status under s. 97.41, and provide, in writing, any additional information the department or city or county issuing the license requires. If the license is issued by the department, the application shall be accompanied by a fee of \$10 which shall be retained by the state whether or not a license is issued.

(3) All licenses issued under this section by the department or a city or county granted agent status under s. 97.41 expire on June 30. Section 97.20 (6), (7) (b), (9) and (10) applies to this section.

History: 1983 a. 203

97.28 Food processor's license. (1) Except as provided in sub. (2m), no person may operate a food processing plant without a license from the department or a city or county granted agent status under s. 97.41. The license shall be granted under any reasonable rules or ordinances the department or city or county granted agent status under s. 97.41 prescribes pertaining to the proper handling and storing of food and the construction and sanitary condition of the building and equipment to be used for food processing.

(2) (a) "Food processing plant" means any place where food is manufactured or prepared for sale through the process of canning, extracting, fermenting, distilling, pickling, freezing, drying, smoking, grinding, mixing, stuffing, packing, bottling, cutting and packaging, or otherwise treating or preserving it for sale as food or where distressed food is received for the purpose of salvaging it for sale or use as food.

(b) "Retail food processing plant" means a fixed or established place of business in this state where a retail merchant does any of the following:

1. Sells at wholesale any food manufactured or prepared by the retail merchant through the process of canning, extracting, fermenting, distilling, pickling, freezing, drying, smoking, grinding, mixing, stuffing, packing, bottling,

cutting, packaging or otherwise treating or preserving the food for sale as food.

2. Grinds, mixes, stuffs or cooks meat, fish or poultry products for sale directly to consumers or processes ready-to-eat delicatessen foods for sale directly to consumers.

3. Engages in the salvaging of distressed food.

(2m) No license under this section may be required of any of the following:

(a) Any person licensed as a bakery, confectionary, soda water bottler, meat or poultry processor, dairy plant or counter freezer as to business covered by the license.

(b) A retail merchant having a fixed or established place of business in this state unless the merchant operates a retail food processing plant.

(c) An establishment engaged in the processing of products inspected under the federal meat, poultry or egg products inspection acts, or a restaurant, vending machine commissary or catering establishment licensed and inspected under subch. III of ch. 50 if processing operations are limited to the retail preparation and processing of meals or lunches for sale directly to consumers or through vending machines.

(d) A beekeeper engaged in an agricultural pursuit under s. 94.761, or engaged in farming under s. 94.761 or 102.04 (3), if the beekeeper markets only honey extracted from the comb, which is deemed to be raw honey, or naturally produced raw bee products, substantially all of which have been produced by the beekeeper.

(e) A charitable organization that receives distressed food for the purpose of salvaging it for use as food. For the purposes of this section "charitable organization" has the meaning specified in s. 71.04 (5) (d) 2.

(3) (a) An applicant for a license under this section shall complete the application prepared by the department or the city or county granted agent status under s. 97.41 and provide, in writing, any additional information the department or city or county issuing the license requires. If the license is issued by the department, the application shall be accompanied by a graduated fee, which shall be retained whether or not a license is issued. The fee shall be based on the dollar volume of output for the preceding license year, as follows: For less than \$100,000 a fee of \$20; for \$100,000 or more but less than \$250,000, a fee of \$40; and for \$250,000 or more, a fee of \$60. Dollar volume of output shall be determined by gross sales of product processed plus inventory value of any portion of the product not sold.

(b) If the plant of the applicant has not operated during the preceding year, the fee under par. (a) shall be estimated by the depart-

ment from pertinent facts, at not less than the minimum fee. One year after the filing of the application the licensee shall report to the department the dollar volume of output, at which time the fee shall be computed and the licensee shall pay the balance due or receive credit upon the fee for the next license period for overpayment.

(4) Before any license may be issued by the department or a city or county granted agent status under s. 97.41 to any food processing plant operator who buys or otherwise takes title to farm products from the producer of the products, except by payment to the producer of the full agreed price at the time of obtaining possession or control of the products, the applicant shall comply with s. 100.03.

(5) As soon as convenient after the filing of an application under this section, the department or a city or county granted agent status under s. 97.41 shall investigate the construction and the sanitary condition of the plant and equipment. A renewal license may be issued before the sanitary inspection is completed. When the application is for a new license and in all cases where such action appears advisable, the department or the city or county may issue to the applicant an interim permit. The interim permit shall have the effect of a license for 3 months or until any earlier time at which the department or the city or county has completed its investigation and issued the license or notified the applicant of the denial of his or her application. When the application is denied the permit shall be void.

(6) Except as provided in sub. (6m), licenses issued to processors of farm produce expire on March 31 of each year. No such license shall be granted or renewed unless the applicant certifies that all growers who have supplied or contracted to supply farm produce to the licensee in any previous year of operation have been fully paid in cash at the agreed price.

(6m) Licenses issued under this section by the department or a city or county granted agent status under s. 97.41 to persons operating retail food processing plants expire on June 30.

(7) Except as provided in subs. (6) and (6m), the department may divide persons required to be licensed by it under this section into groups by geographical location, type of operation or other method of classification to promote the economical, effective and convenient execution of this section and determine on what day of each year licenses in each group shall expire. The department may change the groups or the methods of classification from time to time. A licensee, the license period of whose group is shortened by a grouping or change in grouping,

shall pay only that proportion of the annual license fee as the shortened period bears to one year and receive credit on the fee for the next license year for any overpayment. If the period of a group is lengthened, a permit holder or licensee shall pay additional fees proportionate to the time by which it is lengthened.

(8) No license issued under this section is transferable. A transfer of the business or the discontinuance of its operation by the licensee in the premises covered by the license voids the license, and the certificate of license shall be surrendered to the department or issuing city or county immediately.

(9) The regulation of food processing plants involved in the manufacture, processing or sale of smoked fish within this state under uniform requirements is a matter of statewide concern. No municipality or county may impose restrictions or requirements on the manufacture, processing or sale of smoked fish which are inconsistent with the requirements of this section or rules promulgated by the department.

History: 1975 c. 39, 199; 1977 c. 26 s. 75; 1977 c. 198; 1979 c. 221; 1983 a. 203, 261, 538.

97.32 Special dairy and food inspectors. (1) Special dairy and food inspectors may be appointed by the department for any factory, plant, receiving station, or group thereof, which buys or receives milk or cream for the purpose of manufacturing, processing or any other purpose whatsoever, upon petition therefor signed by more than two-thirds of the regular patrons of such factory, plant, receiving station, or group thereof, or by the officers of such factory, plant, receiving station or group thereof, or of the officers of any association organized under ch. 185 representing patrons of such factory, plant, receiving station or group thereof, and upon receiving satisfactory proof that such special dairy and food inspectors will be compensated in full for all services rendered and traveling expenses incurred upon and pursuant to such appointment as provided in this section. If the inspector is appointed pursuant to petition signed by the officers of an organization, such compensation and expenses shall be paid by such organization; and any factory, plant, receiving station or group thereof shall pay to the association the check-off as contracted for between the member and the association. If appointed pursuant to petition signed by patrons, each patron of the factory, plant, receiving station or group thereof shall pay such proportion of the total amount of such compensation and expenses as the amount of milk or cream delivered thereto by him bears to the total amount delivered thereto by all patrons.

The state shall not be liable for any such compensation or expenses.

(3) Each such special dairy and food inspector shall have all powers conferred by law upon dairy and food inspectors and shall at all times be under the supervision of the department and he shall make such reports to the department as the said department may require. He shall supervise and inspect the weighing and testing of and shall inspect all milk, cream, butter or cheese delivered to such factory, plant, receiving station or group thereof, except that if he be appointed upon petition by an association organized under ch. 185, he shall perform his duties only for its members, and for such purpose he may use any or all weighing or testing apparatus in such factory, plant, receiving station or group thereof. In addition to the duties herein specifically prescribed he shall perform such duties as the patrons or organization compensating him or the department may direct.

(4) An appointment of a special dairy and food inspector may be denied, suspended or revoked by the department as provided in s. 93.06 (7). Rehearing and judicial review shall be as provided in ch. 227.

History: 1975 c. 308; 1975 c. 414 s. 28.

97.34 Bottled drinking water and soda water beverage. (1) In this section:

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

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

(2) No person, firm or corporation may engage in the business of manufacturing or bottling or distributing at wholesale or selling at wholesale to retail establishments for the purpose of resale any soda water beverages or bottled drinking water without a license from the department. No license may be required for any of the operations of any person, firm or corporation conducted at any plant engaged wholly or partially in the manufacture of malt beverages. The license shall be granted under reasonable rules promulgated by the department and pertaining to the proper handling and storing of soda water beverages or bottled drinking water and the construction and sanitary condition of buildings and to the proper cleaning and sterilizing of all machinery, bottles or other containers used in or about the factory

or premises and all containers in which the product is sold.

(3) (a) The department shall promulgate by rule standards of purity for all ingredients used in the manufacture or bottling of soda water beverages or bottled drinking water which ensure a pure and unadulterated product.

(b) No person may manufacture or bottle bottled drinking water for sale or distribution in this state unless the bottled drinking water complies with state drinking water standards adopted by the department of natural resources under s. 144.025 or 162.03 and with health-related enforcement standards adopted by the department of natural resources under ch. 160.

(c) The department may require testing of bottled drinking water for substances subject to any standard under par. (b) and for any other substance if the department determines that the water supply used as the source of the bottled drinking water has a potential of being contaminated, based on contamination of other water supplies or groundwater in the vicinity. The department shall adopt by rule requirements for periodic sampling and analysis for the purposes of this subsection. The department shall require all analyses to be conducted by a laboratory certified under s. 144.95.

(d) No person may manufacture or bottle bottled drinking water for sale or distribution in this state unless the location and construction of the water supply and the pump installation used by the manufacturer or bottler comply with rules promulgated by the department of natural resources under s. 162.03.

(e) The department shall publish an annual report summarizing the results of bottled drinking water sampling and analysis.

(4) Each application for such license shall be made upon a blank furnished by the department upon request and shall state the applicant's name and address and the exact location of the factory or other premises for which license is requested and such other information as the department may reasonably require, and the department shall furnish to the applicant the rules and regulations incident to securing a license.

(5) Each application shall be accompanied by a fee of \$50 payable to the department, and no license shall be issued until such fee is so paid. In case license is refused, the fee accompanying the application shall be returned by the department to the applicant with notification of refusal.

(6) Such licenses shall expire on December 31 next following the date of issue but may be renewed without inspection each year upon the application of the licensee and upon the pay-

ment of \$50 received by the department prior to January 1.

(7) Such license shall be deemed void and shall be surrendered to the department when the person, firm or corporation to whom it was granted discontinues using the premises described in the application therefor, or when another person, firm or corporation becomes owner, manager or operator of such business.

(8) No soda water beverage or bottled drinking water shall be prepared for sale, sold or offered for sale in bottles or other closed containers unless the name and principal location of the manufacturer, bottler or distributor appears plainly and conspicuously on the container or on the cap. If the container or cap bears the name and address of the actual manufacturer, bottler or dealer the beverage is not misbranded because of the permanent imprint on the container or cap of the name or address, or the name and address of any other person, firm or corporation purporting to be the manufacturer, bottler, distributor or container owner if there is also embossed, impressed or otherwise permanently printed on the container the name, trademark or brand name of a nationally known soda water beverage which is sold only in limited areas by franchised dealers and the product conforms to the name on the container.

(9) No soft drink or other nonalcoholic beverage, except apple cider, not manufactured in this state shall be sold or offered for sale in this state unless the person, firm or corporation manufacturing such drink shall first obtain a regular Wisconsin state license as provided for in this section and shall otherwise comply with all the provisions of this section.

(10) No license is required under this section for the sale of soda water beverages or bottled drinking water in any public park operated by any county, city, town or village when sold by an officer or employe of the municipality pursuant to any ordinance, resolution, rule or regulation enacted by the governing body of the municipality.

(11) No license is required under this section for the manufacture or distribution of uncarbonated soda water beverages or bottled drinking water by a grade A dairy plant licensed under s. 97.20 or distributed by a grade A milk distributor licensed under s. 97.22.

History: 1973 c 126; 1981 c 79 s. 17; 1983 a. 410.

97.36 Bakery license. No person may operate a bakery without obtaining a license under s. 97.40 from the department or a city or county granted agent status under s. 97.41. "Bakery" means any place where bread, crackers, pies, macaroni, spaghetti, or any other food product for which flour or meal is the principal ingredi-

ent are baked, cooked or dried, or prepared or mixed for baking, cooking or drying, for sale as food. "Bakery" does not include a restaurant, hotel or other place where such products are prepared and sold exclusively with meals or lunches.

History: 1983 a. 203

97.38 Confectionary license. No person may operate a confectionary without obtaining a license under s. 97.40 from the department or a city or county granted agent status under s. 97.41. "Confectionary" means any place where candy, fruit, nut meats or any other food product, except a bakery product defined in s. 97.36, is manufactured, coated or filled with saccharine substances for sale as food.

History: 1983 a. 203

97.40 Bakery and confectionary license requirements.

(1) An applicant for a license to operate a bakery or a confectionary shall complete the application prepared by the department or a city or county granted agent status under s. 97.41 and provide, in writing, any additional information the department or city or county issuing the license requires. If the license is issued by the department, the application shall be accompanied by a graduated fee based on dollar volume of output for the preceding licensing year, as follows: For less than \$50,000, a fee of \$20; for \$50,000 or more but less than \$150,000, a fee of \$40; and for \$150,000 or more, a fee of \$60. Dollar volume of output shall be determined by gross sales of product processed plus inventory value of any portion of the product not sold. Fees applicable to bakeries and confectionaries not operated during the preceding licensing year shall be determined in the manner prescribed for food processing plants under s. 97.28 (3) (b).

(2) Licenses shall be granted under any reasonable rules or ordinances the department or the city or county granted agent status under s. 97.41 prescribes pertaining to the proper handling and storing of food and the construction and sanitary condition of the place and equipment to be used.

(3) All licenses issued under this section by the department or a city or county granted agent status under s. 97.41 expire on June 30 following the effective date. No license issued under this section is transferable. A transfer of the business or the discontinuance of its operation by the licensee at the place covered by the license voids the license and the license certificate shall be surrendered to the department or issuing city or county immediately.

(4) Sections 97.36 and 97.38 and this section shall apply to any person operating a bakery or

97.40 FOOD REGULATION

2464

a confectionary in a vehicle or in any portable structure at a fair, carnival or other temporary location, but a separate license shall be required for each vehicle or portable structure so used. No such license shall be void on account of operation by the licensee at different locations, providing each location and the period of its occupancy by the licensee is registered with and approved by the department.

History: 1975 c. 39; 1983 a. 203.

97.41 Retail food: agent status for cities and counties.

(1) In the administration of this chapter, the department may enter into a written agreement with a city or county which designates the city or county as its agent for issuing licenses to and making investigations or inspections of counter freezers under s. 97.26, retail food processing plants as defined in s. 97.28 (2) (b), bakeries as defined in s. 97.36, and confectionaries as defined in s. 97.38. When the designation is made, no license other than the license issued by the city or county under this section may be required by the department, the city or the county for the same operations. The department shall coordinate the designation of agents under this section with the department of health and social services to ensure that, to the extent feasible, the same city and county agencies are granted agent status under this section and under s. 50.535 (2).

(2) A city or county granted agent status under this section shall meet standards adopted, by rule, by the department. The department shall annually evaluate the licensing, investigation and inspection program of each city or county granted agent status. If, at any time, a city or county granted agent status fails to meet the standards, the department may revoke its agent status.

(3) The department shall provide education and training to agents designated under this section to ensure uniformity in the enforcement of this chapter and rules adopted under this chapter.

(4) A city or county granted agent status under this section shall establish and collect the license fee for each type of establishment. The city or county may establish separate fees for preinspections of new establishments, for preinspections of existing establishments for which a person intends to be the new operator or for the issuance of duplicate licenses. No fee may exceed the city's or county's reasonable costs of issuing licenses to, making investigations and inspections of, and providing education, training and technical assistance to the establishments, plus the state fee established under sub.

(5) A city or county which is granted agent status under this section or under s. 50.535, may

issue a single license and establish and collect a single fee which authorizes the operation on the same premises of more than one type of establishment with respect to which it is granted agent status under this section or under s. 50.535 (2).

(5) The department shall establish state fees for its costs related to setting standards for counter freezers, retail food processors, bakeries and confectionaries, setting standards for agents under this section and monitoring and evaluating the activities of, and providing education and training to, agent cities and counties. Agent cities and counties shall include the state fees in the license fees established under sub. (4), collect the state fees and reimburse the department for the state fees collected. For each type of establishment, the state fee may not exceed 20% of the license fees charged under ss. 97.26 (2), 97.28 (3) and 97.40 (1) in cities and counties where the department issues licenses.

(6) If, under this section, a city or county becomes an agent or its agent status is discontinued during a licensee's license year, the department and the city or county shall divide any license fee paid for that license year according to the proportions of the license year occurring before and after the city's or county's agent status is granted or discontinued. No additional fee may be required during the license year due to the change in agent status.

(7) Except as provided in s. 97.28 (9), a city or county may impose regulations on licensees and premises for which it is the designated agent under this section, which are stricter than this chapter or rules adopted by the department under this chapter. No such regulation may conflict with this chapter or rules adopted by the department.

(8) This section does not limit the authority of the department to inspect establishments in cities and counties where agent status is granted if it inspects in response to an emergency, for the purpose of monitoring and evaluating the city's or county's licensing, inspection and enforcement program or at the request of the city or county.

(9) The department shall hold a hearing under ch. 227 if any interested person, in lieu of proceeding under ch. 68, appeals to the department alleging either of the following:

(a) A permit fee established by a city or county granted agent status exceeds the reasonable costs described under sub. (4).

(b) The person issuing, refusing to issue, suspending or revoking a permit or making an investigation or inspection of the appellant has a financial interest in a regulated establishment

which may interfere with his or her ability to properly take that action.

History: 1983 a. 203.

97.415 Department review of certain fees.

The department shall hold a hearing under ch. 227 if, in lieu of proceeding under ch. 68, any interested person in a city or county not granted agent status under s. 97.41 appeals to the department alleging that a permit fee for a counter freezer, retail food processor, bakery or confectionary exceeds the permit issuer's reasonable costs of issuing permits to, making investigations and inspections of, and providing education, training and technical assistance to the establishment.

History: 1983 a. 203.

97.42 Compulsory inspection of animals, poultry and carcasses. (1) DEFINITIONS. In this section:

(a) "Animal" means cattle, sheep, swine, goats, horses, mules, and other equines.

(b) "Capable of use as human food" applies to any carcass or part of a carcass of any animal or poultry or animal or poultry product unless it is denatured or otherwise identified as required by department rules, or is naturally inedible by humans.

(c) "Carcass" means all parts, including the viscera, of slaughtered animals and poultry that are capable of being used for human food.

(d) "Establishment" means a plant or premises, including retail premises, where animals or poultry are slaughtered for human consumption, or a plant or premises, including retail premises, where meat or poultry products or meat food products are processed, but shall not include:

1. Establishments subject to the federal meat inspection act (21 U.S.C. 71 et seq.) or the federal poultry products inspection act (21 U.S.C. 451 et seq.)

2. Establishments subject to county or municipal meat and poultry inspection if such inspection is conducted pursuant to ordinances and regulations which are substantially equivalent to this section and which are enforced with equal effectiveness, and the inspection service is specifically approved by the department; however, sub. (2) shall apply to establishments subject to county or municipal meat and poultry inspection.

3. Premises of a person who is the owner of the animals to be slaughtered or of carcasses to be processed, and the resulting product is for exclusive use by him or her and members of his or her household and his or her nonpaying guests and employes.

(e) "Inspector" means any person employed by the department or any cooperating agency who is authorized by the department to do any work or perform any duty in connection with the department's meat and poultry inspection program.

(f) "Meat broker" means any person engaged in the business of buying or selling meat and poultry products, or meat and poultry food products on commission, or otherwise negotiating purchases or sales of such articles other than for his own account or as an employe of another person.

(g) "Meat food products" means any article capable of use as human food which is derived or prepared in whole or in substantial and definite part from meat products or poultry products.

(h) "Meat products" and "poultry products" means the carcasses or any parts of carcasses of animals and poultry capable of use as human food.

(i) "Mobile processor" means a person who provides a meat processing service to the general public for compensation other than the trading of services on an exchange basis, and conducts the meat processing at the premises of the owner of the carcasses being processed.

(j) "Mobile slaughterer" means a person who provides a slaughtering service to the general public for compensation other than the trading of services on an exchange basis, and conducts such slaughtering at the premises of the owners of the animals being slaughtered.

(k) "Official inspection mark" means the symbol formulated under the rules of the department to state that the meat, poultry or product was inspected pursuant to such rules.

(l) "Poultry" means any domesticated fowl, including but not limited to chickens, turkeys, geese, ducks or guineas, but shall not include commercially produced game birds.

(m) "Unwholesome" means:

1. Unsound, injurious to health or otherwise rendered unfit for human food.

2. Consisting in whole or in part of any filthy, putrid or decomposed substance.

3. Processed, prepared, packed or held under unsanitary conditions whereby a carcass or parts thereof, or any meat or poultry product, may have become contaminated with filth or become injurious to human health.

4. Produced in whole or in part from diseased animals or poultry, except when such disease does not ordinarily render the carcasses of such animals or poultry unfit for human consumption, or from animals or poultry which have died otherwise than by slaughter.

(n) "Veterinarian" means a graduate veterinarian of an accredited school of veterinary

97.42 FOOD REGULATION

medicine who is qualified on the basis of training and experience, as determined by the department.

(o) "Wholesome" means sound, healthful, clean and otherwise fit for human food.

(2) **LICENSE.** (a) No person shall operate an establishment as defined in sub. (1) (d) without an annual license issued by the department for each such establishment. Licenses shall expire on June 30 of each year. No license shall be issued unless the applicant has complied with the requirements of this section. The annual fee is \$100, except the fee shall be \$40 annually for those establishments engaged only in slaughtering uninspected animals or poultry or processing uninspected meat as a custom service, and not in other operations subject to a license under this section. No person shall be required to obtain a license under s. 97.28 or 99.30, for operation of any establishment licensed under this section or which is inspected under the federal meat or poultry inspection acts.

(b) Paragraph (a) shall not apply to persons processing meat or poultry products, or meat or poultry food products for sale directly to consumers at retail on the premises where such products were processed if only inspected meat is permitted on the premises, and sales to restaurants and institutions are restricted to 25% of the volume of meat sales or \$28,800 annually, whichever is less. No person exempt from license under this paragraph shall sell any cured, smoked, seasoned, canned or cooked meat food products produced by that person to restaurants or institutions.

(c) No person may operate as a mobile slaughterer or as a mobile processor without registering his or her name and business address with the department. The department shall prescribe rules applicable to mobile slaughterers regulating the conduct of slaughtering operations and rules applicable to mobile processors regulating the conduct of processing operations, including facilities, sanitation, identification of carcasses and record-keeping.

(3) **STATE INSPECTION.** (a) *Examination before slaughter.* For the purpose of preventing the sale and use in this state of meat products and poultry products which are unwholesome or otherwise unfit for human food, the department shall cause to be made, by inspectors who may be veterinarians on either a full or part-time basis under supervision of the department, examination and inspection of all animals and poultry (except as provided in par. (d)) before they are slaughtered in any establishment. All animals and poultry found on such inspection to show symptoms of disease shall be condemned or set apart and slaughtered separately from all other animals and poultry, and when so

slaughtered the carcasses thereof shall be subject to careful examination, inspection and disposition, in accordance with rules issued by the department.

(b) *Examination after slaughter.* For the same purpose the department shall cause to be made, by inspectors (who may be veterinarians on either a full or part-time basis) under supervision of the department, an examination and inspection of the carcasses and parts thereof of all animals and poultry, except as provided in par. (d), slaughtered at any establishment. The carcasses and parts thereof of all such animals and poultry found to be wholesome and fit for human food shall be marked, stamped, tagged or labeled by inspectors as "Wis. inspected and passed". Inspectors shall mark, stamp, tag or label as "Wis. inspected and condemned" all carcasses and parts thereof of such animals and poultry found to be unwholesome or otherwise unfit for human food, and all carcasses and parts thereof so inspected and condemned shall be destroyed, in accordance with rules issued by the department. Inspection marks, stamps, tags and labels shall be prescribed by the department and shall include thereon the identification number of the establishment assigned by the department.

(c) *Reexaminations.* Inspectors shall, when deemed advisable, reinspect carcasses, parts thereof or meat food products to determine whether the same have become unwholesome or in any other way unfit for human food. If any carcasses, parts thereof or meat food products, upon a reexamination, are found to be unwholesome or otherwise unfit for human food, they shall be destroyed, in accordance with rules issued by the department.

(d) *Custom service slaughtering.* This subsection shall not apply to animals and poultry slaughtered as a custom service for the owner exclusively for use by him and members of his household and his nonpaying guests and employees, unless department inspection is specifically requested and performed at establishments where examinations before and after slaughter are required. The rules of the department shall make provision for the furnishing of such inspection service, subject to availability of inspector personnel, and for the identification of all animals and poultry custom slaughtered for the owners thereof without department inspection.

(e) *Periodic inspections.* The department shall make periodic inspections of construction, operation, facilities, equipment, labeling, sanitation and wholesomeness of meat and poultry products, and meat food products at establishments or any other premises, including vehicles engaged in transportation of such products.

Inspection of products and plant operations shall cover such operations as cutting and boning, curing and smoking, grinding and fabrication, manufacturing, packaging, labeling, storage and transportation. Periodic inspections of processing operations shall be conducted as uniformly as possible among establishments subject to overtime inspection under sub. (4) (f) to avoid the imposition of undue inspection fees against any establishment. Inspections at overtime rates shall only be held where necessary to assure wholesomeness and safety of products and compliance with the requirements of this section and rules of the department.

(f) *Label requirements.* In addition to label requirements otherwise provided by law, meat food products shall bear a label, stamp, mark or tag including thereon the official inspection mark and identification number of the establishment where processed. Meat and poultry products processed and sold at retail to household consumers on the premises shall not require official inspection marks and identification numbers.

(4) RULES. The department shall issue reasonable rules requiring or prescribing:

(a) The inspection before and after slaughter of all animals and poultry killed or dressed for human consumption at any establishment.

(b) The inspection and marking of carcasses or parts thereof intended for human consumption, and prohibiting the unauthorized use of any official inspection mark or simulation or counterfeit thereof.

(c) The use of the official inspection mark by county and municipal inspection services approved by the department.

(d) The seizure, retention and destruction for human consumption of any animal or poultry, carcasses, parts thereof, or meat food products which have not been inspected or passed or are unwholesome or adulterated or misbranded.

(e) The hours and days in each week when slaughtering or processing may be conducted in any establishment subject to a license under sub. (2). The schedules so fixed shall be as nearly as possible in accord with existing industry standards of establishments subject to inspection. However, in order to avoid excessive costs for inspection and stay within the limit of appropriations, the schedules may require that:

1. Slaughtering or processing be conducted continuously during successive days and hours of the regular work week for state employees;

2. The rate of slaughter for the different classes of animals and poultry conform to reasonable minimums per hour;

3. Inspection of animals and poultry slaughtered as a custom service be restricted to the

time of the regular slaughter schedule fixed for the establishment. When inspection is provided for custom slaughtering and custom processing the inspection shall be conducted in accordance with sub. (3) (a) to (c) and rules prescribed under this subsection; and

4. The department be notified a reasonable time in advance of any deviation from existing schedules or when slaughtering or processing is to be conducted at times other than those specified under regularly established schedules.

(f) Overtime agreements with the department whereby the operator of any establishment subject to a license under sub. (2), agrees to pay the cost for salaries, at overtime rates, and other expenses of department inspectors whenever slaughtering, carcass preparation, or the processing of meat or poultry products or meat food products is conducted beyond hours or days limited under par. (e), or on Saturdays, Sundays or holidays for state employees under s. 230.35 (4), or before 6 a. m. or after 6 p. m., or in excess of 40 hours in any week. Overtime charges for periodic inspections under sub. (3) (e) shall, insofar as possible, be limited to the minimum number of hours reasonably required for the conduct of such inspections.

(g) Specifications and standards for location, construction, operation, facilities, equipment and sanitation for any premises, establishment or mobile facility where slaughter or processing is carried on, including custom slaughtering of animals or poultry and custom or retail processing of meat and poultry products.

(h) Conditions of sanitation under which carcasses, parts of carcasses, poultry and meat and poultry products shall be stored, transported or otherwise handled by any person engaged in the business of buying, selling, freezing, storing, transporting or processing such products.

(i) Record-keeping requirements for persons engaged in slaughtering or processing operations, or in the storage or transportation of meat, poultry, or meat food products, including record-keeping requirements for meat brokers and the registration of meat brokers with the department.

(j) Any other rules reasonably necessary to the administration and enforcement of this section.

(5) COUNTY AND MUNICIPAL INSPECTIONS. (a) The department may enter into cooperative agreements with counties and municipalities for inspection and enforcement services required by this section and by approved meat and poultry inspection ordinances and regulations. Employees of counties and municipalities while performing such inspection and enforcement work shall have the same enforcement authority,

97.42 FOOD REGULATION

2468

within such counties or municipalities, as that granted to the department and its authorized agents.

(b) No county or municipality may collect any fees or charges for meat or poultry inspection or enforcement from any licensee under this section, except for overtime inspection work. Such charges for overtime shall be on the same basis as and shall not exceed charges for overtime work prescribed by this section.

(6) **PROHIBITIONS.** (a) No person shall slaughter any animals or poultry for the purpose of selling the meat products or poultry products thereof for human food, or sell, offer for sale or have in his possession with intent to sell, such meat products or poultry products for human food, unless such animals and poultry and the carcasses thereof have been first inspected and approved as provided by: 1. this section and the rules issued thereunder, or 2. the federal meat inspection act or under the federal poultry products inspection act, or 3. county or municipal ordinances or regulations which are substantially equivalent to this section and which are enforced with equal effectiveness, if the inspection service is specifically approved by the department.

(b) No person shall sell, offer for sale or have in possession with intent to sell any meat or poultry products, or meat food products unless they have been processed in accordance with this section, the federal meat inspection act, or county or municipal ordinances approved by the department.

(c) No person shall slaughter horses, mules or other equines or process equine carcasses or meat at establishments where other animals or poultry are slaughtered or where other meat or poultry products are processed.

(d) No county or municipality shall prohibit the sale of any meat products or poultry products if such meat products or poultry products are inspected and passed by the department, or by the U.S. department of agriculture, or by a county or municipal inspection service approved by the department, provided such meat products and poultry products are wholesome and not misbranded at the time of sale.

(7) **RIGHT OF ACCESS.** No person shall prevent or attempt to prevent an inspector or other officer or agent of the department from entering, at any time, any establishment or any other place where meat products or poultry products, or foods derived therefrom, are processed, sold or held for sale, for the purpose of any examination, inquiry or inspection in connection with the administration and enforcement of this section. The examination, inquiry or inspection may include taking samples, pictures and docu-

mentary and physical evidence pertinent to enforcement of this section.

(8) **INTERFERENCE WITH INSPECTION.** Any person who forcibly assaults, threatens, obstructs, impedes, intimidates or interferes with any person while engaged in the performance of his official duties under this section shall be fined not more than \$5,000 or imprisoned in the county jail not to exceed one year, or both.

(9) **TAGGING OF FACILITIES, EQUIPMENT AND PRODUCT.** (a) When in the opinion of the department, the use of any equipment, compartment, room or facilities which is unclean or unsanitary or improperly constructed could lead to contamination of the product, the department may attach a "Rejected" tag to it. No equipment, utensil, container, compartment, room or facility so tagged may be used until made acceptable and released by a department representative, or until such equipment is replaced with acceptable equipment.

(b) 1. When in the opinion of the department any carcass, meat or poultry product, meat food product, or supplies or ingredients used in the processing thereof may be unwholesome, adulterated or misbranded, or otherwise fail to meet standards or requirements of this section or rules adopted under this section, the department may tag them with a "Retained" tag to hold them for further inspection, analysis or examination. No carcass, meat or poultry product, meat food product, or supplies or ingredients so tagged may be used, removed from the premises or otherwise disposed of unless released by a department representative. Such products may not be retained for more than 30 days without prior notice to the owner or custodian and the right to an immediate hearing.

2. When in the opinion of the department any carcass, meat or poultry product, or supplies or ingredients used in the processing thereof is unwholesome, adulterated or misbranded, or otherwise fail to meet standards or requirements of this section or rules adopted under this section, the department may tag them with a "Detained" tag to hold them for destruction or other disposition. No carcass, meat or poultry product, meat food product, or supplies or ingredients so tagged may be used, removed from the premises or otherwise disposed of unless released by a department representative. Such products may not be destroyed or detained for more than 30 days without prior notice to the owner or custodian and the right to an immediate hearing.

(c) No person may alter, deface or remove any tag from facilities, equipment, products or supplies to which it has been attached by a department inspector without the express con-

sent or approval of the inspector or other department representative.

(10) SUSPENSION. The department may, upon written notice, summarily suspend the operations in whole or in part at any establishment for substantial violations of this section or rules issued hereunder when, in the opinion of the department, a continuation of the operation would constitute an imminent danger to public health. The department may summarily suspend inspection at any establishment for acts punishable under sub. (8) where such acts substantially impair an inspector's ability to conduct an orderly inspection. Upon suspension of operations or inspection, the operator of the establishment may demand a hearing to determine whether the suspension should be vacated. The department shall, within 5 days after receipt of such demand, hold a hearing and adjudicate the issues as provided in ch. 227. A demand for hearing shall not, however, operate to stay the suspension pending the hearing.

(11) EXEMPTION. This section shall not apply to owners of poultry with respect to poultry produced on the owner's farm, provided his or her sales do not exceed 1,000 fowl annually, and the birds are labeled and tagged to identify the name and address of the producer and are marked "NOT INSPECTED". Persons processing more than 1,000 fowl but less than 20,000 fowl shall be fully subject to the provisions of this section relating to licensing, sanitation, facilities and wholesomeness of product. If the department determines that the protection of consumers from unwholesome poultry products will not be impaired, it may exempt such persons from sub. (3) (a) and (b) provided the birds are labeled or tagged to identify the name and address of the producer and are marked "NOT INSPECTED".

(12) The department may deny, revoke or suspend the license of any person for substantial or repeated violations of this section.

History: 1971 c. 270 s. 104; 1973 c. 206; 1975 c. 308, 421; 1977 c. 196 s. 131; 1977 c. 216, 365; 1979 c. 110, 154; 1981 c. 314; 1983 a. 189, 261; 1983 a. 500 s. 44.

97.43 Meat from dead or diseased animals.

(1) No meat from any diseased animal, or any dead animal as defined under s. 95.72 (1) (c), may be sold or used for human consumption, or dismembered or stored at premises where other food is sold or prepared for sale.

(2) No carcass meat or other part of any animal shall be fed to food-producing animals or to animals used for human consumption unless it has been thoroughly rendered or cooked.

(3) Subsection (1) shall not apply to meat from animals affected by any disease which

does not ordinarily render such meat unfit for human consumption, provided the animals so affected have been slaughtered in establishments where meat inspection is maintained under s. 97.42 or the federal meat inspection act.

History: 1971 c. 40 s. 93; 1979 c. 129 s. 6; 1981 c. 66.

This section is not unconstitutionally vague. *State v. Ehlenfeldt*, 94 W (2d) 347, 288 NW (2d) 787 (1980)

97.44 Identification of meat for animal feed; registration and records of buyers. **(1)** No person shall buy, sell or transport any carcasses, parts thereof or meat or meat food products of any animals which are not intended for use as human food, unless they are denatured or otherwise identified as required by rules of the department or are naturally inedible by humans.

(2) Animal feed manufacturers and operators of fur farms, exempt from s. 95.72, shall register their names and business locations with the department if they engage in slaughtering animals or in buying dead animals or parts of the carcasses of such animals. The department, by rule, may require that they keep records of their purchase and disposition of such animals and carcass parts.

(3) As used in this section "animals" means cattle, sheep, goats, swine, equines and poultry, except in the phrase "animal feed manufacturers".

History: 1975 c. 308.

97.45 Labeling of horsemeat. No person shall sell any horsemeat, unless it is conspicuously labeled, marked, branded or tagged "horsemeat" or, in case horsemeat is used as an ingredient in any animal or human food, unless such food is conspicuously labeled to show the presence of horsemeat.

History: 1977 c. 216.

97.46 Sale of certain foods regulated and restricted. **(1)** No person may, by himself or herself, or by his or her agents or servants,

manufacture, sell, ship, consign, offer for sale, expose for sale or have in his or her possession with intent to sell for use or consumption within this state, any article of food within the meaning of s. 97.01, which contains formaldehyde, sulfurous acid or sulfites, boric acid or borates, salicylic acid or salicylates, saccharin, dulcin, glucin, beta naphthol, abrostol, asaprol, fluorides, fluoborates, fluosilicates or other fluorine compounds, or any other preservatives injurious to health. Nothing contained in this section prohibits the use of common salt, saltpeter, wood smoke, sugar, vinegar and condimental preservatives, such as turmeric, mustard, pep-

per and other spices. No person by himself or herself, or by agents or servants, may manufacture, sell, ship, consign, offer for sale, expose for sale or have in his or her possession with intent to sell for use or consumption within this state, any article of food within the meaning of s. 97.01, containing any added substance, article or ingredient possessing a preservative character or action other than the common salt, salt-peter, wood smoke, sugar, vinegar and condimental preservatives such as turmeric, mustard, pepper and other spices, unless the presence, name and proportionate amount of the added substance, article or ingredient is plainly disclosed to the purchaser.

(2) This section shall not be construed to prohibit the sale of dietary foods containing saccharin in containers labeled in accordance with s. 97.03, nor the use of sulfur dioxide or sulfites as anti-oxidants in the processing of potatoes, frozen apples, grape juice, reconstituted lemon juice or reconstituted lime juice provided such foods contain not more than 350 parts per million SO_2 ; nor the use of sulfur dioxide in molasses or in the processing of dried fruits, dried vegetables, pickled vegetables or fruit pectin in amounts no more than may be necessary in good manufacturing practice. Any person who refreezes or offers for sale any refrozen fruit containing sulfur dioxide or sulfites as anti-oxidants in not more than 350 parts per million, may be fined not less than \$100 nor more than \$500 or imprisoned not more than 3 months or both, and for each subsequent offense may be fined not less than \$500 nor more than \$1,000 or imprisoned in the county jail not less than 6 months nor more than one year. The department may promulgate rules limiting the quantity therein for any such dried fruit, dried vegetables, pickled vegetables, fruit pectin or molasses.

History: 1971 c. 156, 286, 307; 1979 c. 89.

97.47 Benzoic acid in foods. No person shall sell, offer or expose for sale or have in possession with intent to sell for use or consumption in this state, any meat products or dairy products, which contain added benzoic acid or benzoates; or any other article of food as defined in s. 97.01 which contains added benzoic acid or benzoates in excess of one-tenth of one per cent. The presence shall be stated on the label. When in the preparation of food products for shipment they are preserved by any external application of benzoic acid or benzoates in such a manner that the preservative is necessarily removed mechanically, or by maceration in water, or otherwise, and directions for the removal of said preservative shall be printed on the covering or the package, this section shall be con-

strued as applying only when said products are ready for consumption.

History: 1971 c. 156, 286, 307

97.48 Dairy products, adding foreign fats; oleomargarine permitted. (1) (a) In this subsection "dairy product" means all of the following:

1. A product, except mellorine, described in 21 CFR 131 to 135.

2. "Butter" as described in s. 97.01 (1).

3. "Yogurt", "lowfat yogurt" and "skim milk yogurt" or "nonfat yogurt" as described by rule by the department.

(b) No person may sell any food product that is made to resemble a dairy product unless:

1. The food product bears a statement on the main display panel of the package or container stating that the food is an artificial product in letters not less than one-half the size of the product name, but in no case may the letters be smaller than 18 point type size; and

2. The label on the food product clearly states the major differences in ingredients and nutritional value between the artificial product and the dairy product it is made to resemble.

(c) A food product is made to resemble a dairy product if any of the following occurs:

1. The food physically resembles a dairy product.

2. The packaging used resembles the packaging used for a dairy product.

3. The food is displayed in a retail establishment in the same manner as a dairy product.

4. Verbal or pictorial expressions are used on the food's labeling or in advertisements or other similar devices used to promote the food that state or imply that the food is a dairy product.

(d) The department may adopt rules that are needed to implement and administer this subsection.

(2) This section does not prohibit the manufacture or sale of proprietary foods containing milk or skim milk to which have been added any fat or oil other than milk fat when such foods are clearly labeled to show their composition and the fact that they are to be sold exclusively for use as directed by physicians.

(3) This section does not prohibit the manufacture or sale of oleomargarine or margarine.

(4) The sale or serving of any product for use as a coffee cream or whitener in any restaurant or public eating establishment, other than cream, half and half or lighter varieties of cream, is prohibited. This subsection shall not apply to coffee whitener sold or dispensed by a vending machine provided such machine bears a prominently affixed label or legend stating

that the coffee whitener sold or dispensed is not a dairy product or is an imitation dairy product.

History: 1971 c. 212; 1977 c. 83; 1981 c. 345; 1983 a. 189 s. 329 (20)

Although (4) achieves the legitimate state interest of preventing fraudulent substitution of nondairy whiteners for cream without the knowledge or assent of the restaurant consumer, the statute imposes a clearly excessive burden upon interstate commerce because: (1) The total dollar volume of sales eliminated by the statute is substantial and (2) labeling constitutes a reasonable and effective alternative means of preventing the deception with which the legislature is rightfully concerned. *Coffee-Rich, Inc. v Dept. of Agriculture*, 70 W (2d) 265, 234 NW (2d) 270.

97.50 Adulterated, insanitary milk. (1) INSANITARY MILK. Milk which is drawn from cows kept in a filthy or unclean condition; or milk drawn from any sick cow or cow having running sores; or milk drawn from cows fed unwholesome food or on refuse or slops from distilleries or vinegar factories, unless such refuse or slop is mixed with other dry sanitary grain or feed to a consistency of thick mash; or milk drawn from cows within 15 days before or 5 days after calving; or milk which is drawn from cows that are kept in barns or stables which are not reasonably well lighted and ventilated, or that are kept in barns or stables that are filthy from an accumulation of animal feces and excreta or from any other cause; or milk to which has been added or into which has been introduced any coloring matter or chemical or preservative or deleterious or filthy substance; or milk kept or transported in dirty, rusty or open-seamed cans or other utensils; or milk that is stale, putrescent or putrid; or milk to which has been added any unclean or unwholesome substance; or milk contaminated by being kept in stables or barns occupied by animals, or kept exposed in dirty, foul or unclean places or conditions, is declared to be insanitary milk.

(2) INSANITARY CREAM. Cream produced from insanitary milk; or cream produced by the use of a cream separator, which had not been thoroughly cleansed and scalded after last previous use; or cream produced by the use of a cream separator placed or stationed in any unclean or filthy place or in any building containing a stable wherein animals are kept, unless such separator is so shielded by partition from the stable portion of such building as to be free from all foul or noxious air or gases which issue or may issue from such place or stable; or cream that is stale, putrescent or putrid; or cream that is kept or transported in dirty, rusty or open-seamed cans or other utensils; or cream that has been kept exposed to foul or noxious air or gases in barns occupied by animals, or in foul or unclean places or conditions, is hereby declared to be insanitary cream.

(3) ADULTERATED MILK. Any insanitary milk or any milk containing less than 3% of milk fat;

or milk containing less than 8.25% of milk solids not fat; or milk which contains or to which has been added or into which has been introduced any foreign substance is adulterated milk.

(4) ADULTERATED CREAM. Any insanitary cream or any cream containing less than 18% of milk fat; or any cream produced from adulterated milk; or any cream which contains or to which has been added or into which has been introduced any foreign substance is adulterated cream.

(5) SALE OF CERTAIN PASTEURIZED MILK OR CREAM NOT PROHIBITED. This section does not prohibit the sale of pasteurized milk or cream to which viscogen or sucrate of lime has been added solely for the purpose of restoring the viscosity, if the same be distinctly labeled in such manner as to advise the purchaser of its true character.

(6) SALE OF CERTAIN SKIM MILK NOT PROHIBITED. This section does not prohibit the sale of skim milk when the same is sold as and for "skim milk".

97.52 Insanitary or adulterated milk and cream; sale; delivery prohibited. It is unlawful to sell or offer for sale, furnish or deliver, or have in possession or under control with intent to sell or offer for sale, or furnish, or deliver as food for persons, or to any dairy plant any adulterated or insanitary milk or cream. The department shall establish sanitary standards for the production, handling and transportation of milk, and prescribe rules whereby the intake of each producer of milk shall be inspected, sampled and tested by the sediment, methylene blue, or other tests, and insanitary milk or cream shall be rejected as food for persons or to be processed or manufactured for food for persons, and shall be identified, in a manner that will not prevent its use as food for animals, and rules for the keeping of the test records, the prevention of further delivery of insanitary milk or cream by such producer, and the correction of the insanitary condition.

History: 1975 c. 94 s. 91 (10).

97.53 Adulteration of meats. No person shall offer or expose for sale, take offers for, or sell, or have in his possession with intent to sell for consumption within the state any sausage or chopped meat compound containing any artificial coloring, or chemical preservative or anti-septic, except common salt, sodium or potassium nitrate, sodium or potassium nitrite, sodium ascorbate, ascorbic acid, spices or wood smoke. Ascorbic acid and sodium ascorbate shall be limited to use in cooked cured comminuted meat food products in the amount of

three-fourths of an ounce of ascorbic acid or seven-eighths of an ounce of sodium ascorbate for each 100 pounds of fresh uncured comminuted meat or meat by-products and, when used, they shall be included in the statement of ingredients either as "ascorbic acid" or "sodium ascorbate" as the case may be.

97.56 Kosher meat. (1) Under this section "kosher" means prepared in accordance with the Jewish ritual and sanctioned by Hebrew orthodox religious requirements.

(2) No person shall, with intent to defraud, sell or expose for sale any meat or meat preparation, whether the same be raw or prepared for human consumption, and falsely represent the same to be kosher, and as having been prepared under and of a product or products sanctioned by the orthodox Hebrew religious requirements; nor shall any person falsely represent any food product or the contents of any package or container to be so constituted and prepared, by having or permitting to be inscribed thereon the word "kosher" in any language; nor shall any person sell or expose for sale in the same place of business both kosher and nonkosher meat or meat preparations, either raw or prepared for human consumption, unless he indicates on his window signs and all display advertising, in block letters at least four inches in height, "Kosher and Nonkosher Meat Sold Here;" nor shall any person expose for sale in any show window or place of business both kosher and nonkosher meat or meat preparations, either raw or prepared for human consumption, unless he displays over each kind of meat or meat preparation so exposed a sign in block letters at least four inches in height reading "Kosher Meat," or "Nonkosher Meat," as the case may be.

(3) No person, with intent to defraud, shall sell or expose for sale in any restaurant or other place where food products are sold for con-

sumption on the premises, any article of food or food preparations and falsely represent the same to be kosher and as having been prepared in accordance with the orthodox Hebrew religious requirements; nor shall any person sell or expose for sale in any such restaurant or other place both kosher and nonkosher food or food preparations for consumption on the premises when not prepared in accordance with the Jewish ritual and not sanctioned by the Hebrew orthodox religious requirements, unless he displays on his window signs and display advertising in block letters at least 4 inches in height "Kosher and Nonkosher Food Served Here".

97.72 Penalties. (1) Any person who violates any of the provisions of this chapter for which a specific penalty is not prescribed shall be fined not less than \$100 nor more than \$1,000 or imprisoned not more than 6 months, for the first offense; and for each subsequent offense, fined not less than \$500 nor more than \$5,000, or imprisoned not less than 30 days nor more than one year in the county jail or both. In addition to other penalties, a court may order a violator to pay restitution to any person injured by a violation of this chapter regardless of whether the violator is placed on probation under s. 973.09.

(2) Whoever violates s. 97.43 or 97.45 may be fined not less than \$500 nor more than \$5,000, or imprisoned not more than 5 years, or both.

History: 1977 c. 216; 1979 c. 129; 1983 a. 261.

97.73 Injunction. In addition to penalties applicable to this chapter, the department may apply to any court of competent jurisdiction for a temporary or permanent injunction restraining any person from violating provisions of this chapter and rules or orders issued under this chapter.

History: 1971 c. 156 s. 10; 1983 a. 261.