

# Clearinghouse Rule 95-167

STATE OF WISCONSIN )  
 ) ss. Clearinghouse Rule  
DEPARTMENT OF AGRICULTURE, ) No. 95-167  
TRADE & CONSUMER PROTECTION )

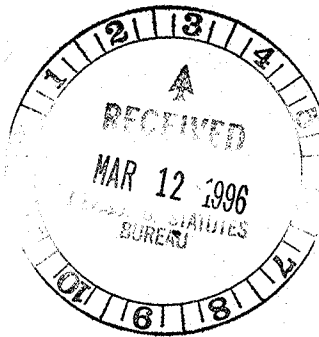
## CERTIFICATION:


I, Alan T. Tracy, Secretary of the State of Wisconsin, Department of Agriculture, Trade and Consumer Protection, and custodian of the department's official records, hereby certify that the attached rulemaking order relating to Food Processing Plants was signed and adopted by the Department on March 11, 1996.

I further certify that I have compared the attached copy to the original on file in the department, and that the attached copy is a complete and accurate copy of the original.

Signed and sealed this 11th day of March, 1996.

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION



By   
Alan T. Tracy, Secretary

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

1 The state of Wisconsin department of agriculture, trade and  
2 consumer protection adopts the following order to repeal ATCP  
3 70.20(7); to renumber ATCP 70.04(10)(c) [second occurrence]; to  
4 amend ATCP 70.02(12m), (16)(c) and (20), 70.04(6) and (10)(d),  
5 70.09(3)(a)(note) and (3)(c)1, and 70.22(3) and (5)(intro.) and  
6 (a) to (c); to repeal and recreate ATCP 70.02(22) and (23),  
7 70.05(3), 70.07(1)and (2), 70.09(6), 70.19, 70.20(1) and (6),  
8 70.21, 70.22(1)(intro.) and 70.26(1); and to create ATCP  
9 70.02(8m), (9m), (17m), (17n), (17p) and (22n), 70.04(16),  
10 70.07(3) and (4), 70.115, 70.185, 70.22(1)(h), (5)(d) and (9),  
11 and 70.225, relating to food processing plants.

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

Statutory authority: ss. 93.07(1), 97.29(5) and  
97.34(2)(a) and (c), Stats.

Statutes interpreted: ss. 97.02, 97.03, 97.10, 97.29 and  
97.34, Stats.

General Overview

The department of agriculture, trade and consumer protection currently licenses and regulates food processing plants under s. 97.29, Stats. This rule amends the department's current rules under ch. ATCP 70, Wis. Adm. Code, related to food processing plants. Among other things, this rule does the following:

- Authorizes the department to grant a variance from a food processing plant construction standard if the variance is reasonable and necessary, and will not compromise the purpose served by the construction standard.
- Updates current water supply standards for food processing plants, including bottling establishments.

- Modifies current standards for handling distressed and salvaged food (e.g, food affected by a fire, flood or other casualty).
- Requires a food processor to report any lab tests showing that ready-to-eat food contains pathogenic organisms or toxins, unless the food is identified by production lot and the processor still owns and controls the entire affected lot.
- Gives fish processors greater flexibility to package and sell fish in reduced oxygen packages if the fish are processed to eliminate botulism risks.
- Requires fish processors to prepare and follow a HACCP ("hazard analysis and critical control point") plan. Under a HACCP plan, a processor prevents food safety hazards by monitoring and controlling critical control points to ensure that critical limits are met.
- Updates current food safety standards related to:
  - Raw fish processing.
  - Smoked fish processing and labeling.
  - Caviar processing.

"Potentially Hazardous" Foods; Safe Temperatures

Under current rules, "potentially hazardous foods" must be held at "safe temperatures." A "potentially hazardous food" means a food such as milk, eggs, meat, poultry or fish, which is in a form capable of supporting rapid and progressive growth of pathogenic or toxigenic microorganisms.

This rule clarifies the current definition of "potentially hazardous food." For example, it includes certain foods of plant origin which are capable of supporting botulism growth, and excludes hard boiled eggs with intact shells. It excludes foods in hermetically sealed packages that are processed to remain commercially sterile without refrigeration.

Current rules specify the following "safe temperatures" for potentially hazardous foods:

- 150°F. (65°C.) or above for potentially hazardous heated foods.
- 40°F. (5°C.) or below for potentially hazardous refrigerated foods.
- 0° F. (-17°C.) or below for potentially hazardous frozen foods.

This rule establishes new "safe temperatures" as follows:

- 140°F. (60°C.) or above for potentially hazardous heated foods.
- 41°F. (5°C.) or below for potentially hazardous refrigerated foods, other than fish or fish products.
- 38°F. (3.4°C.) or below for refrigerated fish or fish products.
- 0° F. (-17°C.) or below for potentially hazardous frozen foods.

#### Facilities and Equipment

Current rules establish ventilation standards for food processing plants. This rule eliminates the current requirement that ventilation systems comply with standards under s. ILHR 64.67, but adds a new standard for intake filters.

This rule authorizes the department to grant a written variance from a food processing plant construction standard if the variance is reasonable and necessary, and will not compromise the purpose served by the construction standard. The administrator of the department's division of food safety may issue a waiver on behalf of the department. The department must keep a copy of the waiver on file for the duration of the waiver.

#### Personnel Sanitation

Current rules spell out sanitation standards for personnel in food processing plants. Under the current rules, if a person is infected with a disease that is communicable by food handling, that person may not work in a food processing plant in any capacity which may result in food contamination.

This rule expands and clarifies the current rules. This rule prohibits a person from working in a capacity which may result in the contamination of food, equipment or utensils if that person has any of the following:

- A communicable disease.
- Any symptoms associated with an acute gastrointestinal illness.
- A sore or lesion on the hands, arms or other exposed portion of the body.

## Water Supply

Current rules spell out standards for "operations water" (e.g., wash water) and "ingredient water" used in food processing. This rule makes non-substantive organizational and drafting changes to the current standards.

This rule also adds new provisions related to reclaimed water. Under this rule:

- Reclaimed water may not be used as operations water or ingredient water unless all of the following apply:
  - The reclaimed water meets all normal standards for operations or ingredient water.
  - The operator tests the reclaimed water for bacterial and organic content according to this rule.
  - The distribution system for the reclaimed water has no cross-connections to any municipal or private water supply system, and is effectively designed and labeled to prevent misuse of reclaimed water.
- Reclaimed water may not be used as ingredient water unless it is reclaimed by condensation (or by another reclamation process which the department approves), and is used within 24 hours after it is reclaimed.
- Reclaimed water may not be used as an ingredient in bottled water or in any soda water beverage.
- A processing plant may reuse, for certain purposes, water that was originally used to remove field soil from fruits or vegetables. The water may be reused to rinse subsequent deliveries of fruits or vegetables, or to flush floors and gutters in receiving areas, provided that the water is first properly filtered.

Under this rule, chemicals used to suppress bacterial growth in water, or to prevent off-tastes or off-odors in water, must be approved for that purpose by the federal food and drug administration. Chemicals must be used according to label directions, and may not contribute to the adulteration of food.

## Distressed and Salvaged Food

Under current rules, a food processing plant operator must notify the department whenever food is subjected to possible contamination in a fire, flood or other casualty. The "distressed food" may not be offered or reprocessed for sale as human food unless the department inspects the food and approves its disposition.

This rule modifies the current notification requirement. This rule eliminates the current provision which requires the department to inspect and approve the sale of distressed food, but spells out standards for the sale and handling of distressed food. Under this rule, an operator:

- Must notify the department within 3 days after the operator takes possession of distressed food, or after food in the operator's possession becomes distressed food.
- Must separate distressed food from other food.
- May not reprocess unwholesome or adulterated food for sale as human food.
- May not sell or distribute food in packages which are not fully labeled, or which have been damaged to the point that food may be exposed to contamination.
- Must keep records showing the source and disposition of distressed food.
- May not sell reprocessed or reconditioned distressed food at wholesale without notifying the purchaser, in writing, that the food is reprocessed or reconditioned. Notice must include the name and address of the reprocessor or reconditioner and the date on which the food was reprocessed or reconditioned.

#### Ready-to-Eat Foods; Reporting Pathogens and Toxins

Under this rule, a food processing plant operator must report to the department any lab test results showing that ready-to-eat food produced by that operator contains pathogenic organisms or toxins. However, the operator need not report the lab test results if the food is identified by a lot number and the operator retains ownership and control over that entire lot.

#### Fish Processing Plants; HACCP Plan

Under this rule, every fish processing plant must have and follow a written HACCP ("hazard analysis critical control point") plan by January 1, 1997. A plant processing fish for sale in reduced oxygen packages must have and follow a HACCP plan not later than the effective date of this rule. Under a HACCP plan, an operator prevents food safety hazards by monitoring and controlling food safety variables at critical control points in the production process.

For each fish product, a HACCP plan must identify all of the following:

- Potential food safety hazards.
- Critical control points in the production process at which the operator will monitor critical variables, such as time, temperature, pH or water activity, to ensure that critical limits are met.
- The critical limits which must be met at each critical control point to prevent unacceptable food safety hazards.
- Procedures which the operator will use to monitor critical variables at each critical control point to ensure that critical limits are met.
- Effective corrective actions which the operator will take whenever a critical limit is violated. Corrective actions must do all of the following:
  - Correct the process to restore compliance with critical limits.
  - Evaluate the safety of food processed while the critical limit was violated.
  - Prevent the sale or distribution of any food which presents an unacceptable food safety hazard.
- The methods which the operator will use to ensure that HACCP procedures are followed.
- HACCP records, including food safety monitoring records, which the operator will keep. The operator must retain HACCP records for at least 6 months.

#### Processing Raw Fish

Current rules spell out standards for handling raw fish. Fish must be inspected, eviscerated and washed before they are processed. (Small fish such as anchovies and herring sprats need not be eviscerated if processed in certain ways.) Fish must be frozen or treated for parasites unless they are cooked during processing or by the consumer. This rule makes minor changes to clarify the current rules.

#### Packaging Fish in Reduced Oxygen Packages

Under current rules, fish may not be packaged in a hermetically sealed package unless one of the following applies:

- The package is heat processed after sealing to destroy botulism bacteria and spores.
- The packaged fish product is frozen and labeled as a frozen food according to current rules.

This rule gives fish processors greater flexibility to package and sell fish in reduced oxygen packages if the fish are processed to eliminate botulism risks. Under this rule, fish products may be packaged in reduced oxygen packages if one of the following applies:

- The package is heat processed after sealing to destroy botulism bacteria and spores.
- The packaged fish product is frozen and labeled as a frozen food under this rule.
- The fish product is processed (e.g., acidified) so that it is no longer a "potentially hazardous food."
- The fish product is smoked according to standards specified in this rule.

#### Repackaging Fish

This rule prohibits a retailer or distributor from repackaging fish products that were packaged in consumer size packages at a fish processing plant. A retailer or distributor who repackages fish from containers other than consumer size packages must label the repackaged fish according to this rule.

#### Smoked Fish Processing

Under current rules, smoked fish must be processed according to the following standards:

- Fish must be dry salted or brined before it is smoked so that the finished smoked fish contains at least 3.5 percent water-phase salt.
- All smoked fish must be heated to a temperature of at least 160°F. for at least 30 minutes unless the fish is clearly labeled to indicate that the consumer must cook it.

This rule modifies current salt and temperature requirements for smoked fish. Under this rule:

- Hot-process smoked fish packaged in air permeable packages must be processed as follows:
  - It must be brined so that the finished smoked fish contains at least 2.5 percent water-phase salt.
  - It must be heated to at least 145° F. (63° C.) for at least 30 minutes.



- Hot-process smoked fish in reduced oxygen packages must be processed as follows:
  - It must be brined so that the finished smoked fish contains at least 3.5 percent water-phase salt, except that fish brined with a sodium nitrite solution may be brined to contain 3.0 percent water-phase salt.
  - It must be heated to at least 145° F. (63° C.) for at least 30 minutes.
- Cold-process smoked fish must be processed as follows:
  - It must be dry salted or brined so that the finished smoked fish contains at least 3.5 percent water-phase salt, except that fish brined in sodium nitrite may be brined to contain 3.0 percent water-phase salt and frozen fish may be brined to contain 2.5 percent water-phase salt.
  - It must be smoked at a temperature of not more than 90° F. (32° C.) for not more than 20 hours, or at a temperature of not more than 50° F. (10° C.) for not more than 24 hours.

This rule authorizes the department to approve alternative smoking procedures which are equally effective in preventing food safety hazards. The department secretary or the administrator of the division of food safety must authorize the alternative procedures in writing.

Under this rule, smoke flavorings used in processing smoked fish must be approved by the United States department of agriculture or by the federal food and drug administration.

#### Labeling and Selling Smoked Fish

Current rules spell out standards for the labeling and sale of smoked fish. This rule makes the following changes to the current rules:

- Required labeling must appear on the principal display panel of the smoked fish package.
- Cold-process smoked fish must be labeled with the statement "NOT FULLY COOKED."
- Smoked fish products must be removed from sale if, at any time prior to retail sale, they are held at a temperature above 38° F. (3.4° C.).

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

### Caviar Processing

This rule creates new standards for caviar processing. Under this rule:

- Fish roe and fish by-products containing roe must be held at a temperature of 38° F. (3.4° C.) or below during storage, transportation and processing.
- Fish roe and fish by-products containing roe must be harvested, stored and transported in covered, food grade containers.
- Containers of fish roe must be labeled with the dates and times when the roe was harvested and dressed. Roe must be separated from fish entrails within 48 hours after it is harvested from the fish, and must be separated from roe sacks within 72 hours.
- No fish processing plant may accept any fish roe which is not properly refrigerated, contained and labeled according to this rule.
- Finished caviar must be free of pathogens, and must contain at least 2.5 percent salt. No person may have direct hand contact with finished, ready-to-eat caviar.

### Standards Incorporated By Reference

The department has asked the attorney general and the revisor of statutes for permission to incorporate standards by reference in this rule.

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1           **SECTION 1.** ATCP 70.02(8m) and (9m) are created to read:

2           ATCP 70.02(8m) "Cold-process smoked fish" or "cold-process  
3 smoke flavored fish" means fish which is treated with smoke or  
4 smoke flavoring to give it a smoked flavor, but which is not  
5 fully cooked or heat treated to coagulate protein in fish loin  
6 muscle.

7           (9m) "Critical control point" means a point in food

1 processing at which a failure to monitor a food safety variable  
2 such as pH, temperature, time, or water activity ( $a_w$ ), or a  
3 failure to control any food safety variable within critical  
4 limits or according to specific criteria, may result in an  
5 unacceptable food safety risk having a potentially adverse impact  
6 on human health.

7 **SECTION 2.** ATCP 70.02(12m) and (16)(c) are amended to read:

8 ATCP 70.02(12m) "Fish processing plant" means a food  
9 processing plant ~~engaged in the production of~~ which produces  
10 processed fish or fish products.

11 (16)(c) The retail preparation and processing of meals for  
12 sale directly to consumers or through vending machines if the  
13 preparation and processing is covered under a restaurant permit  
14 or other permit issued under s. ~~50.51~~ 254.64, Stats.

15 **SECTION 3.** ATCP 70.02(17m) and (17n) are created to read:

16 ATCP 70.02(17m) "Hazard analysis and critical control point  
17 plan" or "HACCP plan" means a food processing plan under which a  
18 food processing plant operator effectively prevents food safety  
19 hazards by monitoring food safety variables at critical control  
20 points, and by controlling those variables within critical  
21 limits.

22 (17n) "Hot-process smoked fish" or "hot-process smoke  
23 flavored fish" means fish that is all of the following:

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

26 (b) Treated with smoke or smoke flavoring to give it a

1 smoked flavor.

2 **SECTION 4.** ATCP 70.02(20) is amended to read:

3 ATCP 70.02(20) "Official methods of analysis" means the  
4 official methods of analysis of the association of official  
5 analytical chemists (AOAC), ~~fourteenth edition (1984)~~ fifteenth  
6 edition (1990).

7 **SECTION 5.** ATCP 70.02(22) is repealed and recreated to  
8 read:

9 ATCP 70.02(22) "Potentially hazardous food" means a natural  
10 or processed food, consisting wholly or in part of milk, milk  
11 products, eggs, meat, poultry, fish, shellfish, edible crustacea,  
12 or other foods of animal origin, or consisting wholly or in part  
13 of heat-treated foods of plant origin, raw seed sprouts, cut  
14 melon, or any garlic and oil mixture, which is capable of  
15 supporting the rapid and progressive growth of infectious or  
16 toxigenic microorganisms, the growth of *Clostridium botulinum*, or  
17 the production of *Clostridium botulinum* toxins. "Potentially  
18 hazardous food" does not include any of the following:

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

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

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

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

1 distribution.

2 **SECTION 6.** ATCP 70.02(22n) is created to read:

3 ATCP 70.02(22n) "Reduced oxygen packaging" means packaging  
4 that reduces the amount of oxygen in a package by mechanically  
5 evacuating the oxygen, displacing the oxygen with another gas or  
6 combination of gases, or otherwise controlling the oxygen content  
7 in a package to a level below the level of 21 percent normally  
8 found in the surrounding atmosphere. "Reduced oxygen packaging"  
9 includes altered atmosphere, modified atmosphere, controlled  
10 atmosphere, low oxygen and vacuum packaging.

11 **SECTION 7.** ATCP 70.02(23) is repealed and recreated to  
12 read:

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

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

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

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

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

22 **SECTION 8.** ATCP 70.04(6) and (10)(d) are amended to read:

23 ATCP 70.04(6) VENTILATION. All There shall be adequate  
24 ventilation in all areas in which where food is processed or  
25 handled, in all areas in which where equipment or utensils are  
26 cleaned or sanitized, and in all dressing rooms, locker rooms,

1 toilet rooms, employe break rooms, and garbage or rubbish storage  
2 areas ~~shall be adequately ventilated.~~ Ventilation shall be  
3 adequate to remove excessive heat, steam, condensation, vapors,  
4 obnoxious odors, smoke and fumes. Ventilation systems shall be  
5 positioned so that exhaust air is not vented onto exposed food,  
6 or onto clean food packages, equipment or utensils. Intake fans  
7 shall be equipped with filters that are readily removable for  
8 cleaning and replacement. Intake filters shall be capable of  
9 removing at least 85 percent of particulate matter that is 5  
10 microns or larger in size. Exhaust fans, intake fans, and  
11 ventilation ducts and filters shall be kept clean and in good  
12 repair, and shall be screened or louvered to prevent  
13 contamination of food by dust, dirt, insects or other  
14 contaminants. Ventilation systems, if used to ventilate any area  
15 of a food processing plant where exposed potentially hazardous  
16 food is handled, shall be capable of maintaining positive  
17 pressures in ~~food processing areas~~ that area. Ventilation  
18 ~~systems in processing areas shall comply with s. ILHR 64.67,~~  
19 ~~enforced by the Wisconsin department of industry, labor and human~~  
20 ~~relations.~~

21 (10) (d) Brushes and cleaning tools shall be kept clean and  
22 in good repair. ~~Cloths and sponges~~ Wiping cloths used to clean  
23 equipment and utensils shall be cleaned and sanitized frequently  
24 daily, and shall be stored in an approved sanitizing solution  
25 between uses. Sanitizing solutions for wiping cloths shall be  
26 changed at least daily. ~~Cloths and sponges~~ Wiping cloths used to

1 clean food contact surfaces of equipment and utensils shall not  
2 be used for any other purpose. Single service disposable towels  
3 may be used in place of re-usable cloths ~~and sponges~~ if they are  
4 discarded after each use.

5 **SECTION 9.** ATCP 70.04(10)(c) [second occurrence under sub.  
6 (10), fifth paragraph] is renumbered sub. (10)(e).

7 **SECTION 10.** ATCP 70.04(16) is created to read:

8 ATCP 70.04(16) VARIANCES. The department may issue a  
9 written waiver granting a variance from a construction standard  
10 under this section if the department finds that the variance is  
11 reasonable and necessary under the circumstances, and that it  
12 will not compromise the purpose served by the construction  
13 standard. The administrator of the department's division of food  
14 safety may issue a waiver on behalf of the department. The  
15 department shall issue a waiver in writing, and shall keep a copy  
16 of the waiver on file for as long as the waiver remains in  
17 effect.

18 **SECTION 11.** ATCP 70.05(3) is repealed and recreated to  
19 read:

20 ATCP 70.05(3) EMPLOYEE HEALTH. No person who by medical  
21 examination or supervisory observation has or is reasonably  
22 suspected of having any of the following conditions may work in a  
23 food processing plant in any capacity that may result in the  
24 contamination of food, or in the contamination of equipment or  
25 utensils used to process or handle food:

26 (a) A communicable disease.

1 (b) Any symptom of an acute gastrointestinal illness.

2 (c) A discharging or open wound, sore or lesion on the  
3 hands, arms or other exposed portions of the body.

4 **SECTION 12.** ATCP 70.07(1) and (2) are repealed and  
5 recreated to read:

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

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

12 (c) If a food processing plant operator obtains operations  
13 water from a privately owned water system, the operator shall  
14 sample that water at least once annually. The operator shall  
15 have each sample tested by a laboratory certified under  
16 s. 252.22, Stats., for compliance with the microbiological  
17 standards under s. NR 809.30.

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

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

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



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

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

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

13           (c) If a food processing plant operator obtains ingredient  
14 water from a privately owned source, the operator shall sample  
15 that ingredient water at least once annually. The operator shall  
16 have each sample tested by a laboratory certified under  
17 s. 252.22, Stats., for compliance with the microbiological  
18 standards under s. NR 809.30.

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

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

26           2. Provide documentation to the department, at the

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

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

9 **SECTION 13.** ATCP 70.07(3) and (4) are created to read:

10 ATCP 70.07(3) RECLAIMED WATER. (a) Water reclaimed from  
11 food processing operations may not be used as ingredient water  
12 unless all of the following apply:

- 13 1. The water is reclaimed by condensation, or by another  
14 reclamation process approved by the department.
- 15 2. The water complies with applicable standards under sub.  
16 (2) and par. (b).
- 17 3. The water is used within 24 hours after it is reclaimed.

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

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

- 25 2. The food processing plant operator collects daily  
26 samples of reclaimed water for the first 2 weeks after the

1 operator first uses the reclamation system.

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

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

8 5. A laboratory certified under s. 143.15, Stats., tests  
9 the samples collected under subds. 2 to 4 for compliance with the  
10 microbiological standards under s. NR 809.30, the bacterial  
11 standard under subd. 6 and the organic matter standard under  
12 subd. 7.

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

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

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

24 9. Vessels used to hold or distribute reclaimed water are  
25 constructed of easily cleanable material that will not  
26 contaminate the water. Reclaimed operations water held for more

1 than 24 hours shall be held at a temperature of at least 145° F.  
2 (63° C.), or shall be treated under sub. (4) to suppress  
3 bacterial growth.

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

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

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

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

26 **SECTION 14.** ATCP 70.09(3) (a) (NOTE) is amended to read:

1 NOTE: One way to comply with this requirement is to ~~monitor~~  
2 ~~physical factors such as~~ follow a HACCP plan which  
3 monitors and controls food safety variables at critical  
4 control points in the manufacturing process. ~~physical~~  
5 ~~factors~~ Monitoring and controlling food safety  
6 variables such as time, temperature, humidity, water  
7 activity (a<sub>w</sub>), pH, pressure, and flow rate ~~and~~  
8 ~~manufacturing operations such as freezing, dehydration,~~  
9 ~~heat processing, acidification and refrigeration, to at~~  
10 critical control points can ensure that mechanical  
11 breakdowns, time delays, temperature fluctuations, and  
12 other conditions do not contribute to the decomposition  
13 or contamination of food.

14 SECTION 15. ATCP 70.09(3)(c)1 is amended to read:

15 ATCP 70.09(3)(c)1. ~~In~~ By placing the frozen food in a  
16 refrigerated space at a temperature of not more than 40° F (4° C)  
17 41° F (5° C).

18 SECTION 16. ATCP 70.09(6) is repealed and recreated to  
19 read:

20 ATCP 70.09(6) SALVAGING DISTRESSED FOOD. (a) In this  
21 subsection:

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

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

31 3. "Reprocessed food" means distressed food that is  
32 subsequently processed in accordance with the requirements under

1 this chapter and distributed or offered for sale as human food.

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

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

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

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

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

23 (e) No food processing plant operator may sell or  
24 distribute reprocessed or reconditioned food at wholesale unless  
25 the operator gives the purchaser or recipient written notice that  
26 the food is reprocessed or reconditioned. The notice shall also

1 include the name and address of the person who reprocessed or  
2 reconditioned the distressed food. The notice may be included on  
3 an invoice, bill of lading, or other writing which documents the  
4 sale or distribution of the food.

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

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

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

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

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

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

23 **SECTION 17.** ATCP 70.115 is created to read:

24 **ATCP 70.115 READY-TO-EAT FOODS; REPORTING PATHOGENS AND**  
25 **TOXINS.** (1) REQUIREMENT. Except as provided under sub. (2), a  
26 food processing plant operator shall report to the department the

1 results of any microbiological test or laboratory analysis which  
2 indicates that any ready-to-eat food produced by that operator  
3 contains pathogenic organisms or toxins. The operator shall  
4 report to the department within 24 hours after the operator  
5 obtains the test results. The operator may report orally,  
6 electronically or in writing.

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

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

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

16 **SECTION 18.** ATCP 70.185 is created to read:

17 **ATCP 70.185 HACCP PLAN.** (1) PLAN REQUIRED. Every fish  
18 processing plant operator shall have and follow a HACCP plan by  
19 January 1, 1997, except that the operator of a plant processing  
20 smoked fish in reduced oxygen packages shall have and follow a  
21 HACCP plan beginning not later than the effective date of this  
22 chapter [revisor inserts date]. An operator shall, upon request,  
23 provide the department with a copy of the HACCP plan. The  
24 department may require an operator to modify a HACCP plan to  
25 comply with this section.

26 (2) PLAN CONTENTS. A HACCP plan required under sub. (1)



1 shall clearly and accurately identify, for each type of fish  
2 product, all of the following:

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

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

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

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

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

23 1. Correct the process to restore compliance with critical  
24 limits.

25 2. Evaluate the safety of food processed while the critical  
26 limit was violated.

1           3. Prevent the sale or distribution of any food which  
2 presents an unacceptable food safety hazard.

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

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

8           **SECTION 19.** ATCP 70.19 is repealed and recreated to read:

9           **ATCP 70.19 RAW MATERIALS; PREPARATION.** (1) A fish  
10 processing plant operator shall inspect fish and fish products  
11 before they are processed. Fish and fish products used in  
12 processing shall be sound, wholesome, free of organoleptically  
13 detectable spoilage, and free of visible parasites and extraneous  
14 matter.

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

20           (3) Fish may not be eviscerated in the same room where fish  
21 are processed unless, pursuant to a HACCP plan under s. ATCP  
22 70.185, all food contact surfaces and non-food contact surfaces  
23 in the room are effectively cleaned and sanitized after the room  
24 is used for evisceration and before it is used for processing.

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

1 being processed.

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

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

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

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

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

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

1           **SECTION 20.** ATCP 70.20(1) and (6) are repealed and  
2           recreated to read:

3           ATCP 70.20(1) No person may offer for sale, sell or  
4           distribute any fish or fish product in a reduced oxygen package  
5           unless one of the following applies:

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

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

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

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

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

25          **SECTION 21.** ATCP 70.20(7) is repealed.

26          **SECTION 22.** ATCP 70.21 is repealed and recreated to read:

1            ATCP 70.21 SMOKED FISH PROCESSING.    (1) SALTING OR BRINING

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

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

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

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

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

22           (b) Each fish shall be heated so that the entire fish is  
23    held at a continuous internal temperature of at least 145°F.  
24    (63°C.) for at least 30 minutes.

25           (3) HOT-PROCESSED SMOKED FISH IN REDUCED OXYGEN PACKAGES.  
26    Hot-processed smoked fish packaged in reduced oxygen packages

1 shall be processed as follows:

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

9 (b) Each fish shall be heated so that the entire fish is  
10 held at a continuous internal temperature of at least 145°F.  
11 (63°C.) for at least 30 minutes.

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

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

17 1. Fish brined with a sodium nitrite solution containing  
18 not less than 100 parts per million nor more than 200 parts per  
19 million of sodium nitrite may be brined so that the finished  
20 smoked fish contains at least 3.0 percent water-phase salt.

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

26 (b) Each fish shall be smoked at a temperature of not more

1 than 90°F. (32°C.) for not more than 20 hours, or at a  
2 temperature of not more than 50°F. (10°C.) for not more than 24  
3 hours.

4 (5) TEMPERATURE RECORDS. Every smokehouse shall be  
5 equipped with a temperature recording device which is designed,  
6 installed and maintained to make a continuous record of the  
7 internal temperatures of smoked fish. The temperature recording  
8 device shall record the internal temperature of the loin muscle  
9 of fish which are located in the coldest portion of the  
10 smokehouse. For every lot of fish smoked, a fish processing  
11 plant operator shall keep a time-temperature recording chart that  
12 identifies the specific oven or chamber load and the processing  
13 date. Time and temperature records shall be kept on file in the  
14 smoked fish processing plant for at least 6 months. Temperature  
15 recording devices shall be accurate to within one degree  
16 Fahrenheit or 0.5 degree Celsius.

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

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

1 administration.

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

5 **SECTION 23.** ATCP 70.22(1)(intro.) is repealed and recreated  
6 to read:

7 ATCP 70.22(1)(intro.) Every food package containing smoked  
8 fish shall be clearly and conspicuously labeled, on the principal  
9 display panel of that package, with all of the following  
10 information:

11 **SECTION 24.** ATCP 70.22(1)(h) is created to read:

12 ATCP 70.22(1)(h) If the contents of the package include  
13 cold-process smoked fish, the statement "NOT FULLY COOKED" in  
14 letters at least the size of those used for the name of the food.

15 **SECTION 25.** ATCP 70.22(3) is amended to read:

16 ATCP 70.22(3) Smoked fish processed on different dates  
17 shall may not be commingled in the same container, either at the  
18 processing plant or while the fish is being stored, distributed  
19 or offered for sale at wholesale or retail.

20 **SECTION 26.** ATCP 70.22(5)(intro.) and (a) to (c) are  
21 amended to read:

22 ATCP 70.22(5)(intro.) ~~Smoked fish~~ Food consisting of or  
23 containing smoked fish shall be immediately removed from sale,  
24 and shall be destroyed or treated to render ~~the smoked fish~~ it  
25 unattractive and unfit for human consumption, if any of the  
26 following occurs:



1 (a) The ~~smoked fish~~ food package is not labeled with a  
2 processing date.

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

6 (c) The ~~smoked fish are~~ food is not sold at retail within  
7 ~~17~~ 21 days after ~~their processing~~ the date on which its smoked  
8 fish contents were smoked, unless the smoked fish are exempt  
9 under sub. (1) (g).

10 **SECTION 27.** ATCP 70.22(5) (d) is created to read:

11 ATCP 70.22(5) (d) The food is held at a temperature above  
12 38° F. (3.4° C.) at any time prior to retail sale. This  
13 paragraph does not apply to a food which the department  
14 specifically exempts in writing because it is not a potentially  
15 hazardous food.

16 **SECTION 28.** ATCP 70.22(9) is created to read:

17 ATCP 70.22(9) Cold-process smoked fish may not be used as  
18 an ingredient in any other perishable, ready-to-eat food.

19 **SECTION 29.** ATCP 70.225 is created to read:

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

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

26 (3) Fish roe and fish by-products containing roe shall be

1 harvested, stored and transported in covered food grade  
2 containers. Each container shall be conspicuously labeled or  
3 tagged to indicate the date and time when each of the following  
4 operations, if performed, was performed:

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

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

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

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

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

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

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

26 **SECTION 30.** ATCP 70.26(1) is repealed and recreated to

1 read:

2 ATCP 70.26(1) Operations water and ingredient water used in  
3 a bottling establishment shall comply with standards specified  
4 under s. ATCP 70.07.

5 **EFFECTIVE DATE.** The rules contained in this order shall  
6 take effect on the first day of the month following publication  
7 in the Wisconsin administrative register, as provided under s.  
8 227.22(2)(intro), Stats.

Dated this 11th day of March, 1996.

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By   
Alan T. Tracy, Secretary