Chapter DHS 196

RESTAURANTS

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Note: Chapter H 96 was renumbered chapter HSS 196 effective August 1, 1982. Chapter HSS 196 as it existed on June 30, 1985 was repealed and a new chapter HSS 196 was created effective July 1, 1985. Chapter HSS 196 was renumbered chapter HFS 196 under s. 13.93 (2m) (b) 1., Stats., corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, January, 1997, No. 492. Chapter HFS 196 as it existed on January 31, 2001 was repealed and a new chapter HFS 196 was created effective February 1, 2001. Chapter HFS 196 was renumbered chapter DHS 196 effective February 1, 2009.

DHS 196.01 Authority and purpose. Sections 254.71 (6) and 254.74 (1), Stats., authorize the department to prescribe rules for restaurants and to enforce those rules for the purpose of protecting public health and safety. This chapter, including ch. DHS 196 Appendix, establishes definitions; sets standards for management and personnel and for safe food operations and equipment and facilities; provides for restaurant plan review, permit issuance, inspection and enforcement actions; and requires food protection practices certification for restaurant operators and managers. For purposes of ch. DHS 196 Appendix, a restaurant is a type of food service establishment.

History: Cr. Register, January, 2001, No. 541, eff. 2−1−01; CR 08−073: renum. from HFS 196.01 Register January 2009 No. 637, eff. 2−1−09; **correction made under s. 13.92 (4) (b) 7., Stats., Register June 2013 No. 690.**

DHS 196.02 Applicability. The provisions of this chapter, including ch. DHS 196 Appendix, apply to any restaurant, mobile restaurant, temporary restaurant or special organization serving meals, except that Chapter 9 of ch. DHS 196 Appendix applies only to mobile restaurants, Chapter 10 of ch. DHS 196 Appendix applies only to temporary restaurants. Chapter 12 of ch. DHS 196 Appendix, relating to food protection practices certification of operators and managers, does not apply to temporary restaurants or to special organizations serving meals.

History: Cr. Register, January, 2001, No. 541, eff. 2−1−01; CR 04−093: am. Register June 2005 No. 594, eff. 7−1−05; CR 08−073: renum. from HFS 196.02 Register January 2009 No. 637, eff. 2−1−09; **correction made under s. 13.92 (4) (b) 7., Stats., Register June 2013 No. 690.**

DHS 196.03 Definitions. In addition to the following definitions, the definitions in part 1−2 of ch. DHS 196 Appendix apply to this chapter:

(1) "Agent" means the city, county or village designated by the department to issue permits to and make investigations or inspections of restaurants, including temporary restaurants and mobile restaurants.

(1g) "Catering" is the activity of providing food for a specific event at a location other than the licensed restaurant on a contractual, prearranged basis to a predefined subset of the general public, such as invited guests to a wedding or similar celebration, or to participants in an organized group or activity. Catering does not include the sale of individual meals directly to the consumer.

(1r) "Contract cook" is a person who specializes in a home food service and prepares food in the home of an individual only for members of that household and houseguests for private parties.

(2) "Department" means the Wisconsin department of health services.

(2g) "Extensive remodeling" means the construction or repair of an existing restaurant that significantly alters the design or operation of the food service area. Extensive remodeling does not include redecorating, cosmetic refurbishing, or altering seating design or capacity.

(2r) (a) "General public" means; any person who is served or sold a meal, except as provided under par. (c).

(b) "General public" includes, but is not limited to employees, members, guests, customers, or occupants of private clubs, industrial plants, offices, or businesses.

(c) "General public" does not include any of the following:

1. Members of a household or personal guests in a private home, who are served a meal prepared by a member of the household.

2. Persons who are served a free meal by a religious or other non−profit charitable organization, at a "soup kitchen," food pantry, or similar location where meals are served to the needy.

3. Members and guests of a religious organization, such as a church, synagogue, temple, or mosque, who are served a meal in conjunction with a religious service or celebration when the meal is prepared by members of the religious organization.

4. Members and guests of a fraternal, patriotic, or service organization who are served a meal prepared by the organization's members or affiliates, when the meal is part of, or incidental to, a meeting of the organization.

5. Employees attending an occasional meal prepared by management or their co−workers for the purpose of expressing appreciation or building workplace morale.

6. Guests attending a meal served in connection with a birthday, anniversary, or similar celebration if the food is prepared by persons participating in the celebration.

7. Residents, patients, employees, or visitors of patients or residents of a health care facility, defined in s. 150.84 (2), Stats.

8. Residents, clients, employees, or visitors of residents or clients of a facility licensed under ch. 48, Stats.

9. Inmates, residents, employees, or guests of inmates or residents of a prison, defined in s. 302.01, Stats., a county jail, defined in s. 302.30, Stats., a juvenile correctional facility, defined in s. 938.02 (10p), Stats., or a juvenile detention facility, defined in s. 938.02 (10r), Stats.

(3) "Immediate family member" means any of the following:

(a) A spouse.

(b) A grandparent, parent, sibling, child, grandchild or stepchild.

(c) The spouse of a person under par. (b).

(3m) (a) "Meal" means any ready−to−eat food served or sold to the general public in individual or prepackaged single portions or servings for immediate on−premises consumption, or transported off−premises in individual prepackaged carryout servings for immediate consumption, or specifically preordered individual or multiple serving portions which are transported to an off−premises location for immediate consumption.

(b) "Meal" includes but is not limited to sandwiches, individual portions of cured and pickled food sold from bulk containers, hard boiled eggs, hot ready−to−eat soup, or raw or cooked processed foods sold or served in individual portions.

(c) "Meal" does not include soft drinks, ice cream, milk, milk drinks, coffee, tea, ices, confections, pastry items, or food items sold by the weight, count, or piece in individual packages which require further preparation for consumption at another location.

(4) "Mobile restaurant" has the meaning of "mobile food establishment" in ch. DHS 196 Appendix.

(4f) "Occasional" or "occasionally" means not more than 3 days during any 12−month period.

(4i) "Premises" means each individual building, space, or stand where food is prepared, served, or sold.

(4m) "Pre−packaged restaurant" means a restaurant that serves only individually wrapped single food servings that are prepared and packaged off−premise by a licensed processor with preparation on the premise limited to heating and serving.

(5) "Restaurant" means any building, room or place where meals are prepared, served or sold to transients or the general public, and all places used in connection with the building, room or place and includes any public or private school lunchroom for which food service is provided by contract. "Restaurant" does not include any of the following:

(a) Taverns that serve free lunches consisting of popcorn, cheese, crackers, pretzels, cold sausage, cured fish or bread and butter.

(b) Churches; religious, fraternal, youths' or patriotic organizations, service clubs and civic organizations that occasionally prepare, serve or sell meals to transients or the general public.

(c) Any public or private school lunchroom for which food service is directly provided by the school.

(d) Bed and breakfast establishments.

(e) A private individual selling food from a movable or temporary stand at a public farm sale.

(f) The serving of food or beverage through a licensed vending machine.

(g) Any college campus as defined in s. 36.05 (6m), Stats., institution as defined in s. 36.51 (1) (b), Stats., or technical college that serves meals only to the students enrolled in the college campus, institution or school or to authorized elderly persons under s. 36.51 or 38.36, Stats.

(h) A concession stand at a locally sponsored sporting event, such as a little league game. In this paragraph, "concession stand" means a food stand that serves meals and is operated exclusively for the benefit of a participating youth sports team or program or the governing youth sports organization, and "locally sponsored sporting event" means a competitive game, taking place inside or outside, specifically for youth, that is organized or sponsored by one or more local business, governmental or other civic organization, or by parents of the youth, including a school−sponsored interscholastic sports competition.

Note: For the purposes of this chapter, the term "restaurant" is synonymous with the term "food establishment" used in ch. DHS 196 Appendix.

(6) "Special organization serving meals" means a restaurant licensed under s. 254.64, Stats., operated by a church or a religious, fraternal, youth or patriotic organization or a service club or civic organization that prepares, serves or sells meals to which members of the general public are invited, for at least 4 but not more than 12 days during any 12−month period. "Meals", as used in this subsection, does not include a meal that is incidental to normal activities intended exclusively for members of the particular special organization nor does it include a meal served in conjunction with a church worship service, such as a funeral or wedding or to persons who attended that service.

(7) "Temporary restaurant" means a restaurant that operates at a fixed location in conjunction with a single event or celebration such as a fair, carnival, circus, public exhibition, or anniversary sale for a period of no more than 14 consecutive days or in conjunction with an occasional sales promotion.

History: Cr. Register, January, 2001, No. 541, eff. 2−1−01; CR 04−093: cr. (1g), (1r) and (4m), r. and recr. (6) Register June 2005 No. 594, eff. 7−1−05; CR 08−073: renum. from HFS 196.03 and am. (2) Register January 2009 No. 637, eff. 2−1−09; **CR 12−038: cr. (2g), (2r), (3m), (4f), (4i), am. (7) Register June 2013 No. 690, eff. 9−1−13; renumber (2r) (c) to (2r) (c) (intro.), 1. to 9. under s. 13.92 (4) (b) 1., Stats., correction in (intro.), (4), made under s. 13.92 (4) (b) 7., Stats., Register June 2013 No. 690.**

DHS 196.04 Permits. (1) PERMIT REQUIRED. (a) Except as specified in pars. (c) and (d), no restaurant may be opened to the public until the owner of the restaurant has obtained a permit from the department or its agent by submitting an application under sub. (4) and paying the applicable fee specified in s. Table DHS 196.05 B or C, whichever is applicable. A separate permit is required for each restaurant.

(b) If any permit holder sells or otherwise transfers ownership or operation of a restaurant to another person, except as provided in sub. (3), a new initial permit is required, and the restaurant may not be opened to the public until the department has issued a new permit.

(c) A contract cook who adheres to all of the following is exempt from the permit requirement under par. (a):

1. The contract cook is paid for his or her service, culinary skills, technique, or expertise.

2. The contract cook either uses food provided by the person employing the cook's services or the cook shops for food from a list provided by the person.

3. The contract cook uses only the home kitchen of the person requesting the food service to prepare food for the person.

4. The contract cook does not prepare or store food in bulk quantities for use at multiple sites or for meals served to the general public. If a contract cook prepares or stores food in bulk quantities for use at multiple sites or for meals served to the general public, the contract cook shall obtain a restaurant permit.

5. The contract cook does not transport any portion of a meal prepared by the contract cook from one location to another location. If a contract cook transports any portion of a meal prepared by the contract cook from one location to another location, the contract cook shall obtain a restaurant permit.

(d) A caterer operating from the caterer's permitted restaurant is not required to obtain a restaurant permit for the locations where the caterer serves food.

(2) PERMIT DURATION AND RENEWAL. (a) Each permit issued under this chapter expires on June 30, except that a permit initially issued during the period beginning on April 1 and ending on June 30 expires on June 30 of the following year.

(b) Each permit shall be renewed annually as provided in sub. (4) (b).

(3) TRANSFERABILITY OF PERMITS. An individual may transfer a permit to an immediate family member, as defined in s. 254.64 (4) (a) 2, Stats., if the individual is transferring operation of the restaurant. A sole proprietorship that reorganizes as a business entity, as defined in s. 179.70 (1), Stats., or a business entity that reorganizes as a sole proprietorship or a different type of business entity may transfer a permit to the newly formed business entity or sole proprietorship if the restaurant remains at the location for which the permit was issued and at least one individual who had an ownership interest in the sole proprietorship or business entity to which the permit was issued has an ownership interest in the newly formed sole proprietorship or business entity. Except as provided in this subsection, no permit issued under this chapter is transferable from one premise to another or from one person or entity to another.

Note: Under s. s. 254.64 (4) (a) 2., Stats., "Immediate family member" means a spouse, grandparent, parent, sibling, child, stepchild, or grandchild or the spouse of a grandparent, parent, sibling, child, stepchild, or grandchild. Under ss. 254.64 (4) (a) 1. and 179.70 (1), Stats., a "business entity" means: a corporation, as defined in s. 180.0103 (5), Stats., a limited liability company, as defined in s. 183.0102 (10),

Stats., a limited partnership, or a corporation, as defined in s. 181.0103 (5), Stats., a foreign limited liability company, as defined in s. 183.0102 (8), Stats., a foreign limited partnership, a foreign corporation, as defined in s. 180.0103 (9), Stats., or a foreign corporation, as defined in s. 181.0103 (13), Stats.

(4) PERMIT APPLICATION. (a) *Initial permit.* Application for an initial or new permit shall be made on an application form furnished by the department or its agent and shall be accompanied by all of the following:

1. The applicable fees specified under s. DHS 196.05 and any fees previously due to the department or its agent.

2. Documentation that the department of safety and professional services has approved plans and specifications for the restaurant, if required.

3. Information, as determined by the department or its agent, indicating that the restaurant will be maintained and operated in compliance with applicable federal and state laws and that rules have been implemented for the operation of the restaurant that will protect the health, safety, and welfare of the public.

Note: To obtain a copy of the application form for a permit to operate a restaurant or to determine which agent to contact for an application form, write or phone: Bureau of Environmental and Occupational Health (BEOH), P.O. Box 2659, Madison, Wisconsin 53701−2659 (608−266−2835). You may also contact the BEOH at www.dhs.wi.gov/fsrl.

(b) *Renewal permit.* To renew the license of a restaurant, the owner shall pay the department, the license fee specified under s. Table DHS 196.05 B or C, as applicable, before the license expires. If the payment to renew the license of an establishment is not made to the department before the expiration date of the establishment license, the late fee specified under s. DHS 196.05 (4) (c) shall be paid in addition to the license fee.

Note: Local health departments that are agents for the department have authority under s. 254.69 (2) (d), Stats., to establish and collect fees for licenses issued by the local health department. If your establishment was licensed by a local health department, contact the local health department for its license fee schedule.

(5) DEPARTMENT ACTION ON PERMIT APPLICATION. (a) The department or its agent shall issue or deny a permit within 30 days after receiving a complete application, all applicable fees, and the other information required under sub. (4).

(b) Except as provided in ss. 250.041 and 254.115, Stats., the initial issuance, renewal or continued validity of a permit issued under this paragraph may be conditioned upon the requirement that the permit holder correct a violation of this chapter, s. 254.64, Stats., or ordinances adopted under s. 254.69 (2) (g), Stats., within a period of time specified. If the condition is not met within the specified time or after an extension of time approved by the department, the permit is void. No person may operate a restaurant after a permit has been voided under this paragraph, and any person who does so shall be subject to the penalties under s. 254.88, Stats. An owner whose permit is voided under this paragraph may appeal the decision under s. DHS 196.08.

(c) The department or its agent may refuse to issue or renew a permit to operate a restaurant under any of the following circumstances:

1. The department or its agent has not conducted a preinspection of a restaurant for which an initial or new permit is required under sub. (1).

2. The owner of a restaurant has not corrected a condition for which the department or agent has issued a written health or safety−related order.

3. All applicable fees under s. DHS 196.05 have not been paid, including the permit fee, preinspection fee, reinspection fee, or other applicable fees.

4. The owner has modified, repaired or maintained the restaurant in a manner that is not in accordance with what the department recognizes as safe practice as outlined in this chapter.

5. The owner, applicant, or permit holder has failed to provide the department or its agent with information required under sub. (4).

6. The owner or applicant has violated ch. 254, Stats., this chapter, or any order, ordinance, or regulation created by a village, city, county, or local board of health having jurisdiction, provided such violation is related to the operation of the restaurant.

(d) If the department or its agent denies an application for a permit, the applicant shall be given reasons, in writing, for the denial and information regarding appeal rights under s. DHS 196.08.

(6) VOIDED PERMIT FOR FAILURE TO PAY FEES. If an applicant or owner fails to pay all applicable fees, late fees and processing charges under s. DHS 196.05 within 15 days after the applicant or owner receives notice of an insufficiency under s. DHS 196.05 (6), or within 45 days after the expiration of the permit, whichever occurs first, the permit is void. An owner whose permit is voided under this subsection may appeal the decision under s. DHS 196.08. In an appeal concerning a voided permit under this subsection, the burden is on the permit applicant or owner to show that the entire applicable fees, late fees and processing charges have been paid. During any appeal process concerning a payment dispute, operation of the restaurant is deemed to be operation without a permit and is subject to the fees under s. DHS 196.05 (4) (e) in addition to the fees otherwise due, unless the applicant or owner meets its burden of proof under this subsection.

(7) PERMIT POSTING. A current permit issued by the department shall be posted in a place visible to the public. A permit may not be altered or defaced.

History: Cr. Register, January, 2001, No. 541, eff. 2−1−01; CR 01−016: r. and recr. (2) (b) to (e), cr. (f) and (2m) Register May 2002 No. 557, eff. 6−1−02; CR 04−093: am. (1) (b), (2) (b) 4. and table HFS 196.04, cr. (1) (d) and (e) Register June 2005 No. 594, eff. 7−1−05; CR 08−073: renum. from HFS 196.04, r. and recr. Register January 2009 No. 637, eff. 2−1−09; corrections in (4) (b) and (6) made under s. 13.92 (4) (b) 7., Stats., Register January 2009 No. 637; correction in (4) (a) 2. made under s. 13.92 (4) (b) 6., Stats., Register January 2012 No. 673.

DHS 196.05 Department fees. (1) DEFINITION. In this subsection, "seating capacity" means the number of seats available for use by restaurant patrons.

(2) RESTAURANT PERMIT CATEGORY ASSIGNMENT. (a) 1. Except with respect to a prepackaged restaurant, a temporary restaurant, or a mobile restaurant base with no food preparation, the department shall assign a restaurant to a permit category by evaluating the complexity of the restaurant based on the criteria specified in Table DHS 196.05 A.

2. A restaurant whose point value equals zero, shall be included in the simple permit category.

3. A restaurant whose point value is at least one but not greater than 4 shall be included in the moderate permit category.

4. A restaurant whose point value equals 5 or greater shall be included in the complex permit category.

5. A restaurant that has been ordered closed by a state or local health department or that has caused a foodborne outbreak within the previous licensing year shall be included in the complex category.

Note: Cause of foodborne outbreaks are determined using standard epidemiological practices.

(b) The operator of a restaurant may ask the department to reconsider the restaurant's permit category assignment within 30 days of the category assignment.

Note: To request reconsideration of permit category assignment call the Bureau of Environmental Health at 608−266−2835 or send your written request to the Bureau of Environmental Health, P.O. Box 2659, Madison, WI 53701−2659.

Table DHS 196.05 A
Determination of Restaurant Permit Category

Complexity Factors	Point(s)
Food is not prepared until an order is placed.	0
Food items are held hot for one meal period or for a maximum of 4 hours, whichever is less.	0

Food preparation is limited to mixing together prepackaged products that do not need to be cooked further except for aesthetic reasons (such as frozen soup concentrate with milk), or to condiment preparation (such as slicing pickles and onions).	0
The restaurant contains a self−service salad or food bar.	1
The restaurant handles raw poultry, meat, or seafood.	1
The seating capacity of the restaurant or operation is 50 or more.	1
Food is served through a drive through window for food pickup.	1
The restaurant promotes delivery of ready−to−eat food products to customers.	1
Potentially hazardous foods are cooled, reheated, or hot or cold held for service longer than 4 hours.	1
Food is prepared in one location and then transported to be served in another location.	1
The restaurant contains or uses banquet facilities as well as main dining area.	1
Food is served that requires preparation activities such as chopping, dicing, slicing, boiling, and blanching in order for that product to be served.	1

(3) FEE SCHEDULES. The fees listed in Table DHS 196.05 B shall apply to permits issued from April 1, 2009 through March 31, 2011. The fees listed in Table DHS 196.05 C shall apply to permits issued on or after April 1, 2011.

Note: Local health departments that are agents for the department have authority under s. 254.69 (2) (d), Stats., to establish and collect fees for permits issued by the local health department. If your establishment was permitted by a local health department, contact the local health department for its permit fee schedule.

(4) TYPES OF FEES. (a) *Preinspection fee.* The owner of a restaurant shall, pursuant to sub. (4), pay the applicable preinspection fee listed in Table DHS 196.05 B or C to the department before an initial or new permit is issued under s. DHS 196.04.

(b) *Permit fee.* The operator of a restaurant that serves meals prepared from raw, canned, dried, packaged or frozen foods shall, pursuant to sub. (4), pay an annual permit fee to the department as listed in Table DHS 196.05 B or C for each restaurant that the operator applies for a permit to operate under s. DHS 196.04 (1) or (2). Except for a prepackaged restaurant, a temporary restaurant, or a mobile restaurant base with no food preparation, the annual permit fee shall be based on the permit category assigned to the restaurant under sub. (2). In addition, $100.00 shall be charged per area for any physically separate food holding, serving, or preparation area.

(c) *Late fee.* If the permit fee for a permit renewal is not paid before the expiration date of the permit, the owner of the restaurant shall pay to the department a late fee of $85.00 in addition to the renewal permit fee.

(d) *Reinspection fee.* If the department conducts a reinspection of a restaurant under s. DHS 196.06 (1) (b) the owner shall, pursuant to sub. (4), pay to the department the applicable reinspection fee listed in Table DHS 196.05 B or C. The department shall assess an additional reinspection fee as listed in Table DHS 196.05 B or C, whichever is applicable. for any additional reinspection conducted under s. DHS 196.06 (1) (b) 4.

(e) *Fees for operating without a permit.* Any restaurant found to be operating without a permit shall pay to the department a fee of $749.00, in addition to all applicable fees and any processing charges under s. DHS 196.04 (6).

Note: Anyone operating a restaurant without a permit is also subject to a fine of not less than $100 nor more than $1,000 under s. 254.88, Stats.

(f) *Duplicate permit.* The department shall charge the operator of a restaurant $15 for a duplicate permit.

(g) *Fees for special condition inspections.* For inspection or consultation activities that are not directly related to the department's permitting and licensing responsibilities, the departments shall charge the operator or the entity requesting the inspection or consultation $175.

(h) *Fee for operating without a Wisconsin certified food manager.* The department shall charge the operator of a restaurant $150 for operating without a Wisconsin certified food manager.

Note: Requirements for certified food managers may be found in Chapter 12 of ch. DHS 196 Appendix.

(5) METHOD OF PAYMENT. If the payment for an initial or renewal permit is by check or other draft drawn upon an account containing insufficient funds, the applicant or owner shall, within 15 days after receipt of notice from the department of the insufficiency, pay all applicable fees under sub. (4) and the financial institution's processing charges by cashier's check or other certified draft, money order, or cash.

(6) CHANGE OF OPERATOR. The operator of a restaurant shall promptly notify the department in writing of his or her intention to cease operations and shall supply the department with the name and mailing address of any prospective new operator.

Note: To notify the Department of a change in operator, write: Bureau of Environmental Health, P.O. Box 2659, Madison, Wisconsin 53701−2659.

(7) PLAN REVIEW. An operator of a new or extensively remodeled restaurant shall submit equipment layout plans, equipment schedules, detailed descriptions of food processing operations, and menus to the department or its agent for review as requested. The department or its agent may require an operator to submit this documentation when a change of ownership has occurred. Submission of plans under this subsection does not replace or supersede plan review requirements of the Wisconsin department of safety and professional services, division of building and safety.

Table DHS 196.05 B
Fee Schedule — SFY 2010
For permits issued April 1, 2009 through March 31, 2011

Permit Category	Permit Fee	Preinspection Fee	First Reinspection Fee	Second and Subsequent Reinspection Fee
Prepackaged Restaurant	$90	$115	$86	$115
Simple Restaurant	$195	$265	$199	$265
Moderate Restaurant	$300	$425	$319	$425
Complex Restaurant	$430	$610	$458	$610
Temporary Restaurant	$165			
Mobile Restaurant Base with no food preparation	$90	$115	$86	$115
Additional Area	$100			

Table DHS 196.05 C
Fee Schedule — SFY 2012
For permits issued on or after April 1, 2011

Permit Category	Permit Fee	Preinspection Fee	First Reinspection Fee	Second and Subsequent Reinspection Fee
Prepackaged Restaurant	$105	$130	$98	$130
Simple Restaurant	$230	$320	$240	$320
Moderate Restaurant	$330	$470	$353	$470
Complex Restaurant	$540	$770	$578	$770
Temporary Restaurant	$170			
Mobile Restaurant Base with no food preparation	$105	$165	$98	$130
Additional Area	$80			

History: CR 08−073: cr. Register January 2009 No. 637, eff. 2−1−09; correction in (7) made under s. 13.92 (4) (b) 6., Stats., Register January 2012 No. 673; **CR 12−038: am. Table A, (7) Register June 2013 No. 690, eff. 9−1−13.**

DHS 196.06 Enforcement. (1) INSPECTIONS AND ACCESS TO THE PREMISES. (a) *Inspections.* Under ss. 254.69 (2) and 254.85 (1), Stats., an authorized employee or agent of the department, upon presenting proper identification, may enter any restaurant at any reasonable time, for any of the following purposes:

1. To inspect the restaurant.

2. To determine if there has been a violation of this chapter or ss. 254.61 to 254.88, Stats.

3. To determine compliance with previously written violation orders.

4. To secure samples or specimens.

5. To examine and copy relevant documents and records provided such information is related to the operation of the restaurant.

6. To obtain photographic or other evidence needed to enforce this chapter.

(b) *Reinspections.* 1. The department or its agent may reinspect a restaurant whenever an inspection or the investigation of a complaint reveals the existence of a violation that is potentially hazardous to the health and welfare of patrons or employees of the restaurant.

2. A reinspection shall be scheduled to allow the owner a reasonably sufficient time to correct the deficiencies.

3. A reinspection fee shall be charged for the reinspection according to Table DHS 196.05 B or C, whichever is applicable, or the applicable charges as determined by an agent of the department.

4. If an additional reinspection is required because a violation has not been corrected in the scheduled time, the department shall assess the owner an additional reinspection fee according to Table DHS 196.05 B or C, whichever is applicable, as authorized under s. DHS 196.05. The department may order the owner to show just cause why the permit should not be suspended or revoked under s. DHS 196.07.

(2) GENERAL ORDERS TO CORRECT VIOLATIONS. (a) If upon inspection of a restaurant, the department or agent finds that the restaurant is not designed, constructed, equipped or operated as required under this chapter, the department or agent shall issue a written order to correct the violation. The order shall specify the correction needed for compliance and the time period within which the correction should be made. The time period specified in the order may be extended at the discretion of the department or agent.

(b) If the order to correct violations is not carried out by the expiration of the time period stated in the order, or any extension of time granted for compliance, the department or agent may issue an order under s. DHS 196.07 to suspend or revoke the permit to operate the restaurant.

(c) Under s. 254.88, Stats., any person who fails to comply with an order of the department shall forfeit $50 for each day of noncompliance after the order is served upon or directed to him or her. A person may appeal a forfeiture under s. DHS 196.08.

(3) TEMPORARY ORDERS. (a) As provided in s. 254.85, Stats., whenever the department or agent has reasonable cause to believe

that an immediate danger to health or safety exists as a result of an inspection under sub. (1), the department or agent may issue a temporary order without advance notice or hearing to do any of the following:

1. Prohibit the continued operation or method of operation of specific equipment.

2. Require the premises to cease operations and close until remedies are applied which eliminate the immediate danger to health or safety.

(b) 1. A temporary order shall take effect upon delivery to the operator or responsible supervisor. Except as provided in par. (c), the temporary order shall remain in effect for 14 days from the date of delivery, but a temporary order may be re−issued for one additional 14−day period if necessary to complete any analysis or examination of samples, specimens, or other evidence.

2. No operation or method of operation prohibited by the temporary order may be resumed without the approval of the department or agent until the order has terminated or the time period specified in subd. 1. has expired, whichever occurs first. If, upon completed analysis or examination, the department or agent determines that construction, sanitary condition, operation or method of operation of the premises or equipment does not constitute an immediate danger to health or safety, the department or agent shall immediately notify the owner, operator or responsible supervisor in writing and the temporary order shall terminate upon receipt of the written notice.

(c) If the analysis or examination shows that the construction, sanitary condition, operation or method of operation of the premises or equipment constitutes an immediate danger to health or safety, the department or agent, within the effective period of the temporary order specified in par. (b) 1., shall provide written notice of the findings to the owner, operator or responsible supervisor. Upon receipt of the notice, the temporary order remains in effect until a final decision is issued under s. DHS 196.08. The notice shall include a statement that the facility has a right to request a hearing under s. DHS 196.08 within 15 days after issuance of the notice.

(d) Any person who fails to comply with a temporary order issued by the department may be fined not more than $10,000 or imprisoned not more than one year in the county jail, or both, under s. 254.85 (5) (a), Stats.

History: Cr. Register, January, 2001, No. 541, eff. 2−1−01; correction in (4) made under s. 13.93 (2m) (b) 7., Stats., Register May 2002 No. 557; CR 08−073: renum. from HFS 196.06, r. and recr. Register January 2009 No. 637, eff. 2−1−09.

DHS 196.07 Suspension or revocation of permit. The department may, after a hearing under s. DHS 196.08, suspend or revoke a permit for violation of ss. 254.61 to 254.88, Stats., this chapter or an order issued by the department. The suspension or revocation order shall take effect 15 days after the date of issuance unless a hearing is requested under s. DHS 196.08.

History: CR 08−073: cr. Register January 2009 No. 637, eff. 2−1−09.

DHS 196.08 Appeals of actions by the department. **(1)** (a) Except as provided in sub. (2) or (3), a request for a hearing for denial of a permit, a voided permit, suspension, revocation, forfeiture, or an order given under s. DHS 196.06 (1) (a) 4. or (2) shall be submitted in writing to the department of administration's division of hearings and appeals within 15 days after receipt of the notice of the department's action.

(b) A request for hearing that is mailed to the division of hearings and appeals shall be considered filed with the division on the date of the postmark.

(c) A request for hearing that is hand−delivered to the division of hearings and appeals shall be considered filed on the date the request is received by the division of hearings and appeals.

(d) A request for hearing transmitted by facsimile to the division of hearings and appeals shall be considered filed on the date and time imprinted by the division's facsimile machine on the transaction report that accompanies the document. Documents received by facsimile after midnight local time shall be deemed filed on the first following business day.

Note: A request for hearing can be submitted by mail or hand−delivered to the Division of Hearings and Appeals, at 5005 University Ave., Room 201, Madison, WI 53705−5400, or faxed to the Division at (608) 264−9885.

(e) As a condition for requesting a hearing under this subsection to appeal the voiding of a permit, an applicant or owner shall comply with sub. (3). In an appeal concerning voiding a permit, the burden is on the applicant or owner to show that the entire applicable fees, late fees and processing charges have been paid.

(2) A request for hearing on a temporary order given by the department under s. DHS 196.06 (3) shall be made in writing to the department within 15 days of receipt of the order. The department shall hold a hearing within 15 days after the department receives the written request for hearing, unless the department and the owner agree to a later date, the immediate danger to health is removed, the order is not contested or the owner and the department mutually agree that no purpose would be served by a hearing. A final decision shall be issued under s. 227.47, Stats., within 10 days following the conclusion of the hearing. The decision may order any of the following to remove the danger to health:

(a) Changes to or replacement of equipment or construction.

(b) Changes in or cessations of any operation or method of operation of the equipment or premises.

Note: A request for a hearing under sub. (2) may be submitted by mail or hand−delivered to the Department of Health Services, at 1 W. Wilson St., Room 650, P.O. Box 7850, Madison, WI, 53707−7850, or faxed to the Department at (608) 266−7882. The hearing may be conducted by the department secretary, the secretary's designee, or a hearing examiner under s. 227.43 (1) (bu), Stats.

(3) If the department voids a permit under s. DHS 196.04 (6), the owner shall submit, within 15 days after receipt of the notice of the department's action, documentary evidence that all applicable fees, late fees and processing charges have been paid and that there are no outstanding payments due to the department.

History: CR 08−073: cr. Register January 2009 No. 637, eff. 2−1−09.

DHS 196.09 Appeals of actions by agent health departments. If an agent issues a permit under this chapter, the agent shall create enforcement and appeal procedures under ss. 66.0417 and 254.69 (2) (g), Stats.

History: CR 08−073: cr. Register January 2009 No. 637, eff. 2−1−09.

DHS 196.10 Special organizations serving meals. **(1)** APPLICABLE RULES. In addition to the specific requirements of this chapter, Chapter 1 to Chapter 7 in ch. DHS 196 Appendix apply to special organizations serving meals as applicable.

(2) SUPERVISION. An individual who has successfully completed a department−approved food handler training course or who has been trained in food handling by the department or agent staff shall personally supervise meal preparation and serving.

(3) APPROVED COURSES. (a) A department approved food handler training course shall consist of a minimum of 2 hours instruction time in all of the following subjects:

1. Temperature control of potentially hazardous food during preparation.

2. Storage.

3. Transportation and serving.

4. Effective cleaning and sanitizing of utensils and equipment.

5. Storage of utensils and equipment.

6. Food worker personal hygiene; effective handwashing techniques.

7. Food worker health.

8. Prevention of foodborne illness.

9. Safe food sources.

10. The storage and the use of toxic products.

(b) The department, or its agent, may require that additional subjects be addressed relating to the particular food service operation.

(5) EQUIPMENT AND UTENSILS. Residential sinks, refrigerators, freezers and mechanical dishwashing machines for washing multi−use eating and drinking utensils and pots, pans and other cooking utensils may be used. Dishpans may be used to accomplish the final sanitizing rinse.

History: CR 04−093: cr. Register June 2005 No. 594, eff. 7−1−05; CR 08−073: renum. from HFS 196.045 Register January 2009 No. 637, eff. 2−1−09; **correction in (1) made under 13.92 (4) (b) 7., Stats., Register June 2013 No. 690.**

DHS 196.11 Inspections. (1) ACCESS. An authorized employee or agent of the department, upon presenting proper identification, shall be permitted to enter, at any reasonable hours, any premises for which a permit is required under this chapter to inspect the premises, secure samples or specimens, examine and copy relevant documents and records or obtain photographs or other evidence needed to enforce the requirements of this chapter.

(2) FREQUENCY. (a) The department or its agent shall perform a food safety inspection of every restaurant that does not function as a pre−packaged restaurant at least once every 12 months.

(b) The department or its agent may increase the interval between inspections specified in par. (a) for a pre−packaged restaurant, if the pre−packaged restaurant is assigned an inspection frequency based on a written department–approved risk–based inspection schedule that assigns a lower risk to the establishment and that is being uniformly applied by the department or its agent. Every pre−packaged restaurant shall be inspected at least once every 18 months.

(c) If the inspection frequency assigned under par. (b) is less than once every 12 months, the department or its agent shall contact the food establishment by telephone or other means at least once every 12 months to ensure that the food establishment operator and the nature of food operation have not changed.

(3) PREINSPECTION. (a) Except as provided under par. (b), the department or its agent may not grant a permit to a person intending to operate a restaurant without a preinspection of the restaurant.

(b) A preinspection is not required for a temporary restaurant, to a special organization serving meals or when a permit is transferred to an immediate family member.

History: Cr. Register, January, 2001, No. 541, eff. 2−1−01; CR 04−093: am. (2) (a) and (b) Register June 2005 No. 594, eff. 7−1−05; CR 08−073: renum. from HFS 196.05 Register January 2009 No. 637, eff. 2−1−09.

DHS 196.12 Adoption of Wisconsin food code. As permitted by s. 227.14 (1s), Stats., an amended version of the 2009 U.S. food and drug administration (FDA) recommended model food code adopted as ch. DHS 196 Appendix and retitled the Wisconsin Food Code is in the format of the FDA−recommended food code to ensure uniformity between the Wisconsin department of health services and the Wisconsin department of agriculture, trade and consumer protection in the application and enforcement of food safety requirements.

History: Cr. Register, January, 2001, No. 541, eff. 2−1−01; CR 04−093: am. Register June 2005 No. 594, eff. 7−1−05; CR 08−073: renum. from HFS 196.07 Register January 2009 No. 637, eff. 2−1−09; correction made under s. 13.92 (4) (b) 6., Stats., Register January 2009 No. 637; **CR 12−038: am. Register June 2013 No. 690, eff. 9−1−13; correction made under s. 13.92 (4) (b), Stats., Register June 2013 No. 690.**