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# Chapter HFS 198

## VENDING OF FOOD

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**Note:** Chapter HSS 198 as it existed on June 30, 1985 was repealed and a new chapter HSS 198 was created effective July 1, 1985. Chapter HSS 198 was renumbered chapter HFS 198 under s. 13.93 (2m) (b) 1., Stats., correction made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, January, 1997, No. 493.

**HFS 198.01 Authority and purpose.** Section 254.74, Stats., gives the department authority to prescribe rules for vending machine commissaries and vending machines and their location and servicing, and to enforce these rules for the purpose of protecting the public health.

**History:** Cr. Register, June, 1985, No. 354, eff. 7−1−85; correction made under s. 13.93 (2m) (b) 7., Stats., Register, January, 1995, No. 469.

**HFS 198.02 Scope. (1)** APPLICABILITY. The provisions of this chapter apply to any vending machine commissary and to any self−service food vending machine offered for public use, except a vending machine which dispenses only bottled, prepackaged or canned soft drinks, candy, gum, nuts, nut meats, cookies, crackers, pastry items which have a pH level of 4.6 or below or a water activity ($a_w$) value of 0.85 or less under standard conditions, or prepackaged Grade A pasteurized milk or milk products.

**(2)** APPROVED COMPARABLE COMPLIANCE. When it appears to the department that strict adherence to a provision of this chapter appears to be impractical for a particular vending machine commissary or vending machine operator, the department may approve a modification in that rule for that facility if the department is provided with satisfactory proof that the grant of a variance will not jeopardize the public's health, safety or welfare.

**History:** Cr. Register, June, 1985, No. 354, eff. 7−1−85.

**HFS 198.03 Definitions.** In this chapter:

**(1)** "Adulterated" means the condition of a food if it bears or contains any poisonous or deleterious substance in a quantity which may be injurious to health; if it bears or contains any added poisonous or deleterious substance for which no safe tolerance has been established under U.S. food and drug administration regulations, or in excess of the tolerance if one has been established; if it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for human consumption; if it has been processed, prepared, packed or held under unsanitary conditions, whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health; if it is in whole or in part the product of a diseased animal, or an animal which has died otherwise than by slaughter; or if its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health.

**(2)** "Agent" means the city or county designated by the department to make investigations or inspections of vending machines, vending machine operations and vending machine commissaries for compliance with this chapter.

**(3)** "Approved" means acceptable to the department, based on its determination of conformance with this chapter and good public health practices.

**(4)** "Closed" means fitted together snugly, leaving no openings large enough to permit the entrance of vermin.

**(5)** "Department" means the department of health and family services.

**(6)** "Food" means any raw, cooked or processed edible substance, beverage, ice, water, or ingredient used or intended for use in whole or in part for human consumption.

**(7)** "Food contact surfaces" means those surfaces of equipment and utensils with which food normally comes in contact and those surfaces with which food may come in contact and drain back onto surfaces normally in contact with food.

**(8)** "Hot liquid food or beverage" means liquid food or beverage, the temperature of which at the time of service to the consumer is at least 150° F. (66° C.).

**(9)** "Milk and milk products" means grade A milk and grade A milk products.

**(10)** "Person" means an individual, partnership, association, firm, company, corporation, city, village, county or town, whether tenant, owner, lessee or licensee, or the agent, heir or assignee of any of these.

**(11)** "Potentially hazardous food" means any food that consists in whole or in part of milk, milk products, eggs, meat, poultry, fish, shellfish, edible crustacea or any other ingredients, including synthetic ingredients, which are in forms capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms."Potentially hazardous food" does not include clean, whole uncracked, and odor−free shell eggs or foods which have a pH level of 4.6 or below or a water activity ($a_w$) value of 0.85 or less under standard conditions.

**(12)** "Sealed" means free of cracks or other openings which permit the entry or passage of moisture.

**(13)** "Single−service article" means a cup, container, lid or closure, plate, knife, fork, spoon, stirrer, paddle, straw, place mat, napkin, doily, wrapping material, or any similar article which is constructed wholly or in part from paper, paperboard, molded pulp, foil, wood, plastic, synthetic or other readily destructible material, and which is intended by the manufacturer and generally recognized by the public as for one usage only and then to be discarded.

**(14)** "Vending machine" means any self−service device offered for public use which, upon insertion of a coin or token, or by other means, dispenses unit servings of food or beverage either in bulk or in package, without the necessity of replenishing the device between each vending operation. "Vending machine" does not include a device which dispenses only bottled, prepackaged or canned soft drinks, a one cent vending device, a vending machine dispensing only candy, gum, nuts, nut meats, cookies or crackers, or a vending machine dispensing only prepackaged grade A pasteurized milk or milk products.

**(15)** "Vending machine commissary" means any building, room or place in the state at which foods, containers, transport equipment or supplies for vending machines are kept, handled, prepared or stored by a vending machine operator, except a place

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at which the operator is licensed to manufacture, distribute or sell food products under ch. 97, Stats.

**(16)** "Vending machine location" has the meaning in s. 254.61 (9), Stats., namely, the room, enclosure, space or area where one or more vending machines are installed and operated.

**(17)** "Vending machine operator" or "operator" has the meaning prescribed in s. 254.61 (10), Stats., namely, the person maintaining a place of business in the state and responsible for the operation of one or more vending machines.

**History:** Cr. Register, June, 1985, No. 354, eff. 7−1−85; correction in (16) and (17) made under s. 13.93 (2m) (b) 7., Stats., Register, January, 1995, No. 469.

**HFS 198.04 Permit to operate. (1)** APPLICATION. No person may conduct, maintain, manage or operate one or more vending machines or a vending machine commissary who has not been issued a permit by the department. Application for a permit shall be made on a form furnished by the department. An application for a permit submitted to the department shall be accompanied by the fees required under sub. (1m) (a) to (d), as applicable.

**(1m)** DEPARTMENT FEES. (a) *Annual permit fee for the operator of a vending machine.* The operator of a vending machine shall pay an annual permit fee to the department. The annual permit fee shall be as follows:

1. For the vending machine operator, $100 beginning July 1, 2002; and

2. For each vending machine, $6.

(b) *Annual permit fee for the operator of a vending machine commissary.* The operator of a vending machine commissary shall pay an annual permit fee to the department. Beginning July 1, 2002, annual permit fees are as follows:

1. For a vending machine commissary where food is prepared, an annual permit fee of $175.

2. For a vending machine commissary where food, transport equipment and vending supplies are only stored, an annual permit fee of $85.

(c) *Preinspection fee.* Beginning July 1, 2002, the application for an initial permit to operate a vending machine commissary, shall be accompanied by a preinspection fee of $150.

(d) *Penalty fee.* Beginning July 1, 1998, if the annual permit fee is not paid within the first 15 days of the permit period, the operator of the vending machine or vending machine commissary shall pay the department a penalty fee of $75, in addition to the annual permit fee, for renewal of the permit.

(e) *Fee for duplicate permit.* 1. The department shall charge the operator of a vending machine $2 for a duplicate permit for the vending machine.

2. The department shall charge the operator of a vending machine $10 for a duplicate vending machine operator permit.

3. The department shall charge the operator of a vending machine commissary $10 for a duplicate permit.

**(2)** ACTION BY THE DEPARTMENT. Within 30 days after receiving a completed application for a permit, the department shall either approve the application and issue a permit or deny the application. If the application for a permit is denied, the department shall give the applicant reasons, in writing, for the denial. No permit may be issued without a prior inspection by the department or its agent to ensure that the vending machine operation or the vending machine commissary complies with the requirements of this chapter.

**Note:** To obtain a copy of the application form for a permit to operate vending machines or a vending machine commissary, write: Bureau of Public Health, P.O. Box 309, Madison, Wisconsin 53701.

**(3)** COMPLIANCE WITH RESTAURANT RULES. Vending machine commissaries shall also comply with the applicable provisions of ch. HFS 196. The department shall not grant a permit to a person intending to operate a new commissary or to a person intending to be the new operator of an existing commissary without a prior inspection of the commissary for compliance with the applicable provisions of this chapter and ch. HFS 196.

**History:** Cr. Register, June, 1985, No. 354, eff. 7−1−85; emerg. am. (1), cr. (1m), eff. 7−1−94; am. (1), cr. (1m), Register, January, 1995, No. 469, eff. 2−1−95; emerg. am. (1m) (a) 1., (b) 1., (c) and (e), eff. 7−1−96; am. (1m), Register, January, 1997, No. 493, eff. 2−1−97; am. (1m), cr. (1m) (f), Register, August, 1998, No. 512, eff. 9−1−98; **CR 01−016: r. and recr. (1) and (1m) Register May 2002 No. 557, eff. 6−1−02.**

**HFS 198.05 Approval of vending machines and related equipment. (1)** APPROVAL AUTHORITY. All vending machines and related equipment used at a vending machine location shall be approved by:

(a) The department, on the basis of construction criteria developed by the national sanitation foundation (NSF) or the national automatic merchandising association (NAMA);

(b) An agent of the department, on the basis of the criteria under par. (a); or

(c) A testing laboratory approved by the department. Testing laboratories approved by the department are the national sanitation foundation (NSF) and laboratories participating in the national automatic merchandising association (NAMA) vending machine evaluation program.

**Note:** Department or agent approval is based upon the NSF or NAMA construction criteria. Copies of the criteria can be obtained by writing the National Sanitation Foundation, 3475 Plymouth Road, Ann Arbor, Michigan 48105 or the National Automatic Merchandising Association, 7 South Dearborn Street, Chicago, Illinois 60603. The criteria may be reviewed at the offices of the Secretary of State, the Legislative Reference Bureau, or the Department's Bureau of Public Health.

**(2)** ISSUANCE OF A PERMIT. The department shall issue a permit for each vending machine approved under sub. (1).

**(3)** DISPLAY OF THE PERMIT. The vending machine operator shall ensure that each machine is identified at all times with the vending machine permit prescribed and furnished by the department. The vending machine permit shall be securely and conspicuously attached to the near center and upper front of the vending machine. The vending machine operator shall maintain the permit in a legible state. Vending machine permits are not transferable from one machine to another.

**(4)** INSPECTION FOR EVIDENCE OF APPROVAL. Whenever an authorized employee or agent of the department inspects a vending machine and finds that the vending machine does not contain an identifiable permit as required under sub. (3), the authorized employee or agent of the department shall place the vending machine in a nonvend position by sealing the coin insert slot. Failure of the operator to maintain a nonvend condition until an authorized employee or agent of the department is satisfied that the vending machine is properly approved and identified shall be cause for an action under s. 254.88, Stats.

**History:** Cr. Register, June, 1985, No. 354, eff. 7−1−85; correction in (4) made under s. 13.93 (2m) (b) 7., Stats., Register, January, 1995, No. 469.

**HFS 198.06 Vending machine location. (1)** RECORD. (a) A vending machine location record shall be maintained on file at the operator's place of business within the state. That record shall include the following location information for each machine:

1. Post office address of the building;

2. The floor level in the building; and

3. The room or area on the floor.

(b) The entry under each machine in the vending machine location record shall include the machine serial number and model number, the department's permit number, and a designation of the machine by primary vending purpose. Primary vending purposes are heated, refrigerated, beverages, food other than beverages, and a combination of any 2 of these.

**(2)** STANDARDS. (a) The area in which vending machines are placed shall be well−lighted, maintained in good repair and kept clean and free from accumulation of filth, garbage or rubbish.

(b) Each vending machine shall be located so that the space around, over and under the machine can be readily cleaned and is kept clean.

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(c) The floor area on which a vending machine is located shall be reasonably smooth and of cleanable construction.

(d) The area around a vending machine shall be free from excessive condensation.

(e) Vending machines may not be located where there is overhead leakage or under drains or waste piping.

(f) Vending machines may not be located in areas that are subjected to flooding or to the accumulation of water.

(g) The placement of a vending machine beneath exposed stairways is prohibited unless an overhead cover is provided for the machine.

(h) Vending machines may not be located in areas where there is an undue amount of air−borne dust or dirt or in areas of factories where workers must wear respirators.

(i) Each vending machine location where unpackaged food or ingredients are handled shall have in proximity to it adequate handwashing facilities consisting of hot and cold running water, soap and single−service drying facilities. Proper handwashing facilities in toilet rooms or in other places in the building or area where vending machines are located shall be considered satisfactory.

**History:** Cr. Register, June, 1985, No. 354, eff. 7−1−85; correction in (2) (h) made under s. 13.93 (2m) (b) 5., Stats., Register, January, 1995, No. 469.

**HFS 198.07 Inspection of vending machines and commissaries.** An authorized employee or agent of the department shall be permitted to enter at any reasonable times, upon any private or public property within the state where vending machines or commissaries are operated, or from which machines are otherwise serviced, for the purpose of determining compliance with this chapter. The operator shall make provision for the department employee or agent to have access, either in company with an employee of the operator or otherwise, to the interior of all vending machines operated by him or her.

**History:** Cr. Register, June, 1985, No. 354, eff. 7−1−85.

**HFS 198.08 Foods. (1)** APPROVED SOURCE. All foods offered for sale through vending machines, including beverages and ingredients, shall be manufactured, processed and prepared in commissaries or establishments that comply with all applicable local, state and federal laws.

**(2)** WHOLESOMENESS. All foods offered for sale through vending machines, including beverages and ingredients, shall be clean and wholesome and free from spoilage and adulteration.

**History:** Cr. Register, June, 1985, No. 354, eff. 7−1−85.

**HFS 198.09 Food protection. (1)** GENERAL. All foods, including beverages and ingredients, shall be stored, transported, displayed and dispensed in such a manner as to be reasonably protected from dust, flies, vermin, contamination by rodents, insecticides, rodenticides, unnecessary handling, droplet infection, overhead leakage and other contamination at all times. The wet storage of cartoned, bottled, canned or packaged foods is prohibited.

**(2)** PACKAGING. Potentially hazardous food offered for sale through vending machines shall be dispensed to the consumer in the individual original container or wrapper into which it was placed at the commissary or at the manufacturer's or processor's plant, except the following:

(a) Foods with natural protective coverings which are not ordinarily eaten with the food, need not be wrapped or be in containers;

(b) Foods dispensed into an approved single−service container inside the vending machine immediately prior to delivery to the customer need not be wrapped or be in covered containers.

**(3)** FOOD TEMPERATURES. Potentially hazardous foods within a vending machine shall be maintained at a temperature not higher than 40° F. (4° C.), or a temperature not lower than 150° F. (66° C.). Canned foods are not potentially hazardous foods and for this reason are exempt from these temperature requirements. Frozen food shall be kept frozen at a temperature of 0° F. (−18° C.) or below except in vending machines with automatic defrosting in which the temperature shall not exceed 10° F. (−12° C.). Vending machines dispensing potentially hazardous foods shall be provided with adequate refrigeration or heating units and thermostatic controls which ensure that these food temperatures are maintained at all times. These vending machines shall also have controls which prevent the machine from vending the potentially hazardous food in the event of power failure or other condition which permits the food to attain a temperature above 45° F. (7° C.) or below 150° F. (66° C.), whichever is applicable, until serviced by the operator. These temperature maintenance requirements do not apply to the actual time required to fill or otherwise service the machine and for a maximum period of 30 minutes following completion of filling or servicing operations.

**(4)** THERMOMETERS. A thermometer accurate to ±2° F. (1° C.) shall be provided in the vending machine to indicate the air temperature of the warmest part of the cold food storage area of the machine or the coldest part of the hot food storage area of the machine, as applicable. This thermometer shall be visible to the employee during normal filling and servicing operations.

**(5)** SINGLE−SERVICE ITEMS. (a) *Storage*. All single−service containers which receive food from machines dispensing these products in bulk, shall be purchased in sanitary cartons or packages which protect the containers from contamination, shall be stored in a clean dry place until used and shall be handled in a sanitary manner. The containers shall be stored in the original carton or package in which they were placed at the point of manufacture until introduced into the container magazine or dispenser of the vending machine. The vending machine magazine or dispenser shall protect the food contact surface of single−service articles from manual contact, dust, insects, rodents and other contamination.

(b) *Dispensing*. All single−service articles with which food normally comes in contact, including straws, spoons, forks and containers, shall be furnished to the customer in the original individual wrapper, unopened, or in a sanitary single−service dispenser approved by the department.

**History:** Cr. Register, June, 1985, No. 354, eff. 7−1−85.

**HFS 198.10 Equipment maintenance and sanitizing. (1)** MAINTENANCE. Vending machines and related equipment shall be maintained in a clean and sanitary condition and in good repair.

**(2)** REPLACEMENT PARTS. All replacement parts and tubing shall be equal to or exceed original equipment specifications. Where clear tubing is used, it shall be replaced with clear tubing. No part built in as a function of the vending machine may be removed or by−passed.

**(3)** SERVICE CONNECTIONS. (a) *Utility openings*. All service connections through an exterior wall of the machine, including water, gas, electrical and refrigeration connections, shall be grommeted or closed to prevent the entry of insects and rodents.

(b) *Closing methods*. Grommets, clamps or other effective closures may be used. Where the opening is not used until the point of installation, the closure may be shipped with the machine in packet form rather than in the installed position.

(c) *Shipping bolt holes*. Where shipping bolt holes are used, the holes shall be closed by the use of grommets, durable tapes, sealants or reusable bolts provided by the manufacturer. These closures shall be easily identifiable or adequately described in the instruction manual for their intended use.

(d) *Miscellaneous openings*. Miscellaneous openings into the cabinet and through the cabinet wall other than coin entrance, coin returns and crown pullers, but including openings for optional service connections or alternate installations, shall be provided with effective closures by the manufacturer. The closures shall be pro-

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vided for these not−in−use openings, and shall be easily identifiable, properly marked or adequately described in the instruction manual for their intended use.

(e) *Disconnection safeguards*. All service connections to utilities shall be of a type which will discourage their unauthorized or unintentional disconnection.

**(4)** CLEANING AND SANITIZING FACILITIES. Approved facilities for cleaning and sanitizing equipment shall be available for each vending machine location or at a central location. If at a central location, reasonable precautions shall be taken to protect the product contact surfaces from contamination during storage, transportation and installation. Facilities for cleaning and sanitizing shall include either permanently fixed sinks of adequate size which are used only for this or a similar purpose or there shall be portable washing facilities such as a service wagon, metal or plastic pails or another mobile device which can be satisfactorily moved from one location to another. Sinks and portable receptacles shall be large enough to submerge at least 50% of the largest single piece of equipment or part of a vending machine which is to be cleaned and sanitized. Water used for cleaning product contact surfaces shall not be less than 110° F. (43° C.), shall contain an adequate amount of effective soap or detergent and shall be kept clean by changing it frequently.

**(5)** MANUAL SANITIZING. Sanitizing of handwashed product contact surfaces shall be by one of the following methods:

(a) Submerge washed equipment for 30 seconds in clean water maintained at a temperature of 170° F. (77° C.) or more. Mechanical spray rinsing for a period of 10 seconds at 180° F. (82° C.) is also approved; or

(b) Submerge or rinse equipment following the washing operation in water at a minimum temperature of 110° F. (43° C.) to remove soap or detergent, and then submerge the equipment for at least 2 minutes in a hypochlorite solution which shall be made up with a chlorine concentration of at least 100 parts per million and shall be discarded when the chlorine concentration goes below 50 parts per million. Hypochlorite solutions shall be prepared fresh at least daily. Other sanitizing solutions may be used provided that use is at the concentration at which tested and approved by the department.

**(6)** THERMOMETERS. The employee doing the cleaning shall be equipped with a thermometer which registers from 0° F. (−18° C.) to not less than 200° F. (93° C.) and has an accuracy of ±2° F. (1° C.) and shall use this thermometer to check water temperatures.

**(7)** CLEANED IN PLACE. In machines designed so that food−contact surfaces are not readily removable, all surfaces intended for in−place cleaning shall be designed and fabricated so that:

(a) Cleaning and sanitizing solutions can be circulated throughout a fixed system using an effective cleaning and sanitizing regimen;

(b) Cleaning and sanitizing solutions will contact all food−contact surfaces;

(c) The system is self−draining or capable of being completely evacuated; and

(d) The procedures used result in thorough cleaning and sanitizing of the equipment.

**History:** Cr. Register, June, 1985, No. 354, eff. 7−1−85.

**HFS 198.11 Water supply. (1)** APPROVED SOURCE. Water used in vending machines shall be of safe and sanitary quality. Where a public water supply is available, connection and use are required. Where a public water supply is not available, the well or wells supplying the machines shall comply with ch. NR 812, rules of the department of natural resources concerning well construction and pump installation.

**(2)** TRANSPORTATION AND PLUMBING. Water used as a product ingredient shall be piped into the vending machine under pressure or brought to the vending machine in portable containers which have been filled directly from an approved water supply outlet. Portable containers shall be designed and maintained as food contact surfaces and shall be cleaned and sanitized, using the procedures established in s. HFS 198.10 (4) and (5), at the commissary or other approved facility before each use. These containers and their contents shall be continuously protected against contamination during filling, transporting to the location and sale of the product. All plumbing connections and fittings shall be installed in accordance with chs. Comm 82 and 83.

**(3)** WATER FILTERS. If used, water filters or other water−conditioning devices shall be of a type which may be disassembled for periodic cleaning or replacement of the active element. Replacement elements shall be handled in a sanitary manner.

**History:** Cr. Register, June, 1985, No. 354, eff. 7−1−85; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, January, 1995, No. 469.

**HFS 198.12 Waste disposal. (1)** REMOVAL. All trash and other food product waste material shall be removed from the machine location as frequently as may be necessary to prevent a nuisance and unsightliness, and shall be disposed of in a manner that will not cause an insect or rodent problem.

**(2)** CONTAINERS. Self−closing, leakproof and easily cleanable refuse containers shall be provided in the vicinity of each machine or machines to receive cartons, wrappers and other items of refuse.

**(3)** WASTE COLLECTION. (a) Containers shall be provided within all machines dispensing liquid products in bulk for the collection of drip, spillage, overflow and other internal wastes.

(b) An automatic shut−off device shall be provided which will place the vending machine out of operation before a container overflows. The cut−off mechanism shall be set at a point to permit removal of the waste container from the machine without spillage.

(c) Containers and surfaces on which wastes may accumulate shall be readily removable for cleaning, easily cleanable and corrosion−resistant.

**(4)** WASTE CONNECTIONS. Liquid waste drainage pipes from a vending machine may not be connected to plumbing unless an air gap meeting the requirements of s. Comm 82.33 (7) (a) is provided.

**History:** Cr. Register, June, 1985, No. 354, eff. 7−1−85; **correction in (4) made under s. 13.93 (2m) (b) 7., Stats., Register May 2002 No. 557.**

**HFS 198.13 Delivery of foods. (1)** PROTECTION. Foods, including beverages and ingredients, in transit to vending machine locations shall be protected from the elements, dirt, dust, insects, rodents and other contamination. Similar protection shall be provided for single−service containers and for the product contact surfaces of equipment, containers and devices in transit to machine locations.

**(2)** FOOD TEMPERATURES. Readily perishable foods, including beverages and ingredients, in transit to vending machine locations shall be maintained at a temperature of not more than 40° F. (4° C.) or at a temperature of not less than 150° F. (66° C), as appropriate.

**History:** Cr. Register, June, 1985, No. 354, eff. 7−1−85.

**HFS 198.14 Personnel. (1)** HEALTH. (a) No person who is known to be infected with a disease in a form that is communicable by food handling may be employed in activities involving food handling in a vending machine operation or a vending machine commissary.

(b) If the vending machine operator or the operator of a vending machine commissary suspects that any employee has contracted any disease in a communicable form that may be transmitted by food handling, the operator shall exclude the employee from any activities involving food handling and, in the case of a reportable communicable disease defined under s. HFS 145.03 (2), shall notify the local health authority immediately.

**(2)** CLEANLINESS. Employees shall wash their hands immediately prior to engaging in any vending machine servicing operation which may bring them in contact with foods, including bever-

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ages or ingredients, or with product contact surfaces of utensils, containers or equipment. While engaged in the servicing operations, employees shall wear clean outer garments.

**(3)** TOBACCO USE. No employee while engaged in filling, emptying or in any way servicing the food contact surfaces of vending machines may use tobacco in any form.

**History:** Cr. Register, June, 1985, No. 354, eff. 7−1−85; correction in (1) (b) made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1998, No. 512.

**HFS 198.15 Enforcement. (1)** ACCESS. An authorized employee or agent of the department, upon presenting proper identification, shall be permitted to enter any vending machine commissary or vending machine at any reasonable time for the purpose of inspecting the vending machine commissary or vending machine to determine compliance with this chapter. The representative shall be permitted to examine records of the vending machine commissary or vending machine to obtain information about food and supplies purchased, received or used.

**(2)** ENFORCEMENT POLICY. (a) *Notification.* If upon inspection of a vending machine commissary or vending machine the authorized employee or agent of the department finds that the vending machine commissary or vending machine is not operated or equipped as required by this chapter, the employee or agent shall, except as provided under par. (b), notify the owner in writing and shall specify the changes required to make the vending machine commissary or vending machine conform to the standards established in this chapter and the time period within which compliance must be effected. If the order to correct violations is not carried out by the expiration of the time period stipulated in the order, or any extension of time granted for compliance, the department may issue an order suspending or revoking the permit to operate the vending machine commissary or vending machine. The suspension or revocation order shall take effect 15 days after the date of issuance unless a request for a hearing has been received under sub. (3).

(b) *Order to deal with an immediate danger to health.* Where there is reasonable cause to believe that any construction, sanitary condition, operation or method of operation of the premises of a vending machine commissary or of a vending machine or of equipment used on the premises creates an immediate danger to health, an authorized employee or agent of the department may, pursuant to s. 254.85, Stats., acting as the designee of the administrator of the department's division of health, and without advance written notice, issue a temporary order to remove the immediate danger to health. That order shall take effect on delivery to the operator or other person in charge of the vending machine commissary or vending machine. The order shall be limited to prohibiting the sale or movement of food, prohibiting the continued operation or method of operation of specific equipment, requiring the premises to cease other operations or methods of operation, or a combination of these, except that if a more limited order will not remove the immediate danger to health the order may direct that all operations authorized by the permit shall cease. If before scheduled expiration of the temporary order, the department determines that an immediate danger to health does in fact exist, the temporary order shall remain in effect. The department shall then schedule and hold the hearing required under s. 254.85 (3), Stats., unless the immediate danger to health is removed or the order is not contested and the operator and the department mutually agree that no purpose would be served by a hearing.

**Note:** Under s. 254.85, Stats., the temporary order is effective for 14 days and may be extended for another 14 days to permit the department to complete its examination. The order expires at the end of the 14−day or 28−day period unless it is terminated by the department by notice to the operator within that period, or is kept in effect beyond that period, pending a hearing, by department notification to the operator. The hearing is to be held by the department no later than 15 days after the notice is served on the operator unless the department and the operator agree on a later date, and the department must issue a final decision on the matter within 10 days after the hearing.

**(3)** APPEAL BY THE OPERATOR. Any operator aggrieved by an order of the department under this chapter, except for an order issued pursuant to s. 254.85, Stats., and sub. (2) (b), may request a hearing to challenge the order. A request for a hearing under this subsection shall be submitted to the department of administration's division of hearings and appeals and shall be received by that office within 15 days after issuance of the order. Procedures for the hearing shall be in accordance with ch. 227, Stats. After the hearing, the department shall affirm, set aside or modify the order. The final decision of the department may be appealed to the circuit court as provided in ch. 227, Stats.

**Note:** The mailing address of the Division of Hearings and Appeals is P.O. Box 7875, Madison, Wisconsin 53707.

**History:** Cr. Register, June, 1985, No. 354, eff. 7−1−85; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, January, 1995, No. 469.