Chapter HSS 196

RESTAURANTS

Note: Chapter HSS 196 as it existed on June 30, 1985 was repealed and a new chapter HSS 196 was created effective July 1, 1985.

HSS 196.01 Authority and purpose. Section 50.57, Stats., gives the department authority to prescribe rules for restaurants, and to enforce these rules for the purpose of protecting public health and safety.

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

HSS 196.02 Scope. (1) APPLICABILITY. The provisions of this chapter apply to any restaurant, mobile restaurant, temporary restaurant or special organization serving meals, except that ss. HSS 196.05 to 196.15 apply only to restaurants, mobile restaurants and temporary restaurants, s. HSS 196.16 applies only to mobile restaurants, s. HSS 196.17 applies only to temporary restaurants and s. HSS 196.18 applies only to special organizations serving meals.

(2) APPROVED COMPARABLE COMPLIANCE. When it appears to the department that strict adherence to a provision of this chapter is impractical for a particular restaurant, 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; r. and recr. (1), Register, September, 1991, No. 429, eff. 10-1-91.

HSS 196.03 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, county or village designated by the department to issue permits to and make investigations or inspections of restaurants, including temporary restaurants and mobile restaurants.

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

(4) "Corrosion-resistant material" means a material which maintains its original surface characteristics under prolonged contact with food, cleaning compounds and sanitizing solutions.

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

(6) "Easily cleanable" means readily accessible and made of a kind of material and finish and so fabricated that residue may be completely removed by normal cleaning methods.

(7) "Employe" means any person working in a restaurant.

(8) "Equipment" means, in connection with the operation of a restaurant, stoves, ranges, hoods, counter freezers, meatblocks, counters, refrigerators, sinks, ice-making machines, dishwashing machines, steamtables, blenders, meat grinders and slicers and similar items other than utensils.

(9) "Existing", in reference to a restaurant, means operating with a permit from the department before January 1, 1990.

(10) "Furnishings" means, in connection with the operation of a restaurant, linens, chairs, tables, shelves, drapes, curtains, decorations, fixtures and similar items.

(11) "General public" means persons who are served a meal but are not part of the household. "General public" includes but is not limited to members and guests of churches, religious, fraternal, youth or patriotic organizations, and members, guests, employes, customers and occupants of public or private service clubs, civic organizations, industrial plants, office buildings and businesses. "General public" does not include personal guests in private homes; residents or employes of governmental institutions; residents, patients or employes of health care facilities or of community-based residential facilities, defined in s. 50.01 (1), Stats.; residents, clients or employes of facilities licensed under ch. 48, Stats.; visitors of patients or of residents of health care facilities, community-based residential facilities, defined in s. 50.01 (1), Stats., or governmental institutions; and visitors of residents or clients of facilities licensed under ch. 48, Stats.

(11m) "Hot water" means water at a temperature of 110° F. (43°C.) or higher.

(11r) "Incidental food service" means meals offered to the general public that are not a primary activity of the establishment licensed by the department of agriculture, trade and consumer protection under ch. Ag 97, comprise no more than 25% of gross annual food sales and do not entail full service food preparation. Incidental food service includes:

(a) Sale of a beverage with a bakery item for carry-out only.

(b) Individually-wrapped, hermetically-sealed single food servings obtained from an approved source located off premises, with preparation limited to heating and serving with single service utensils.

(c) Self-service prewrapped sandwiches for carry-out prepared in an on-premises delicatessen licensed by the department of agriculture, trade and consumer protection under ch. Ag 97.

(12) "Limited food service" means the serving of food which is prepared and packaged off the premises with preparation on the premises limited to heating and serving with single-service articles.

(13) "Meal" means food that is served, except soft drinks, ice cream, milk, milk drinks, ices and confections. "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, individual pastry items generally sold with a beverage, raw or cooked processed foods sold or served in individual portions, or ingredients prepared, served or sold at retail for human consumption by any fixed or mobile restaurant or pushcart, coffee shop, cafeteria, cafe, luncheonette, grill, tearoom, sandwich shop, drive-in restaurant, caterer, whether the caterer sells meals or lunches at a stated price or is contracted by the meal or on an hourly basis, commissary, delicatessen, industrial feeding establishment, private organization operating a food service in a hospital, or temporary restaurant.

(14) "Mobile restaurant" means a restaurant operating from a movable vehicle, pushcart, trailer or boat which periodically or continuously changes location and wherein meals or lunches are prepared or served or sold to the general public, excepting those vehicles used in delivery of pre-ordered meals or lunches prepared in a licensed restaurant. "Mobile restaurant" does not include a common carrier regulated by the state or federal government.

(15) "New", in reference to a restaurant, means operating with a permit from the department for the first time on or after January 1, 1990.

(16) "Occasional" means fewer than 4 days during any 12-month period.

(17) "Operator" means the owner or person responsible to the owner for the operation of the restaurant.

(18) "Person" means an individual, partnership, association, firm, company, corporation, organization, municipality, county, town, or state agency, whether tenant, owner, lessee or licensee, or the agent, heir or assignee of any of these.

(19) "Potentially hazardous food" means any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, or other ingredients, including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. "Potentially hazardous food" does not include foods which have a pH level of 4.6 or below or a water activity (a_w) value of 0.85 or less.

(20) "Pre-wash" means the process of water scraping of utensils prior to washing.

(21) "Premises" means each individual building, space or stand where meals or lunches are prepared, served or sold.

(22) "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:

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

(b) Churches, religious, fraternal, youth or patriotic organizations, service clubs and civic organizations which occasionally prepare, serve or sell meals to the general public;

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

(d) Any food service provided solely for needy persons;

(e) Bed and breakfast establishments; or

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

(23) "Sanitize" means effective bactericidal treatment of clean surfaces of equipment utensils by a process which has been approved by the department as being effective in destroying micro-organisms, including pathogens.

(23m) "School lunchroom" means the room or rooms where meals are served to students, faculty or staff of a school and their guests. In this subsection, "school" means any of the following:

(a) A public school as described in s. 115.01 (1), Stats.;

(b) A private school as described in s. 115.001 (3r), Stats.;

(c) A vocational, technical or adult education school; or

(d) A college or university.

(24) "Secretary" means the secretary of the department of health and social services.

(25) "Service base" means an enclosed building for servicing, cleaning, inspection and maintenance of the mobile restaurant.

(26) "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 constructed wholly or in part from paper, paperboard, molded pulp, foil, wood, plastic, synthetic or other readily destructible material, and intended by the manufacturer and generally recognized by the public as for one usage only after which it is to be discarded.

(27) "Special organization serving meals" means a restaurant 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 no 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, to persons who attended that service.

(28) "Tempered water" means water ranging in temperature from 85°F. (29°C.) to less than 110°F. (43°C.).

(29) "Temporary restaurant" means a restaurant that operates at a fixed location in conjunction with a single event such as a fair, carnival, circus, public exhibition, anniversary sale or occasional sales promotion.

(30) "Utensil" means any kitchenware, tableware, glassware, cutlery, container or similar item with which food or drink comes in contact during storage, preparation or serving.

(31) "Wholesome" means in sound condition, clean, free from adulteration and otherwise suitable for use as human food.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; am. (2), (9), (15) and (19), cr. (11m), (11r), (22) (f), (23m) and (26m), r. and recr. (22) (intro.), (c) to (e), Register, January, 1990, No. 409, eff. 2-1-90; renum. (26m) to (29) to be (28) to (31), cr. (27), Register, September, 1991, No. 429, eff. 10-1-91.

HSS 196.04 Permits. (1) APPLICATION. (a) Before opening for business, every restaurant operator shall obtain a permit from the department or its agent by application made upon a form furnished by the department or agent.

(b) Incidental food services are exempt from the permit requirement under par. (a).

Note: To obtain a copy of the application form, write: Bureau of Environmental Health, P.O. Box 309, Madison, Wisconsin 53701.

(2) ACTION BY THE DEPARTMENT. Within 30 days after receiving a complete application for a permit, the department or its agent shall either approve the application and issue a permit or deny the application. If the application for a permit is denied, the department or its agent shall give the applicant reasons, in writing, for the denial. A permit shall not be issued to an operator of a new restaurant without prior inspection of the restaurant by the department or its agent to ensure that the restaurant complies with the requirements of this chapter.

(3) DISPLAY OF PERMIT. The permit issued by the department or its agent shall be conspicuously displayed in the restaurant.

(4) 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.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; renum. (1) to be (1) (a), cr. (1) (b), Register, January, 1990, No. 409, eff. 2-1-90.

HSS 196.05 Food supplies. (1) GENERAL. Food shall be in sound condition, free from spoilage, filth or other contamination, not adulterated, and shall be safe for human consumption. Food shall be obtained from sources that comply with all laws relating to food and food labeling. The use of food in hermetically sealed containers that was not prepared in an approved food processing establishment is prohibited.

(2) SPECIAL REQUIREMENTS. (a) Fluid milk and fluid milk products used or served shall be pasteurized and shall meet the grade A quality standards under s. 97.24, Stats., and ch. Ag 80. Dry milk and dry milk products shall be made from pasteurized milk and milk products.

(b) Fresh and frozen shucked shellfish, including oysters, clams, and mussels, shall be packed in nonreturnable packages indentified with the name and address of the original shell stock processor, shucker-packer, or repacker, and the interstate certification number. Shell stock and shucked shellfish shall be kept in the container in which they were received until they are used. Each container of unshucked shell stock, oysters, clams or mussels shall be identified by an attached tag that states the name and address of the original shell stock processor, the kind and quantity of shell stock, and an interstate certification number issued by the state or foreign shellfish control agency.

(c) Only clean whole eggs, with shell intact and without cracks or checks, or pasteurized liquid, frozen, or dry eggs or pasteurized dry egg products may be used, except that hard-boiled, peeled eggs, commercially prepared and packaged, may be used.

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

HSS 196.06 Food protection. (a) GENERAL. At all times, including while being stored, prepared, displayed, served, or transported, food shall be protected from potential contamination, including dust, insects, rodents, unclean equipment and utensils, unnecessary handling, coughs and sneezes, flooding, drainage, and overhead leakage or overhead drippage from condensation. The temperature of potentially hazardous food shall be 40°F. (4°C.) or below or 150°F. (66°C.) or above, as appropriate, at all times, except as otherwise provided in this chapter.

(2) EMERGENCY OCCURRENCES. In the event of a fire, flood, power outage, or similar event that might result in the contamination of food, or that might prevent potentially hazardous food from being held at required temperatures, the person in charge shall immediately notify the department or the public health professional who directs the local environmental health program. Upon receiving notice of this occurrence, the department or the public health professional who directs the local environmental health program shall take whatever action that he or she deems necessary to protect the public health.

Note: To notify the department, phone the bureau of environmental health, 608-266-2835. To notify the public health professional who directs the local environmental health program, contact the office of the local health officer.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; reprinted to correct note, Register, August, 1985, No. 356.

HSS 196.07 Food storage. (1) GENERAL. (a) Food, whether raw or prepared, if removed from the container or package in which it was obtained, shall be stored in a clean covered container except during necessary periods of preparation or service. Container covers shall be impervious and non-absorbent, except that linens or napkins may be used for lining or covering bread or roll containers. Solid cuts of meat shall be protected by being covered in storage, except that quarters or sides of meat may be hung uncovered on clean sanitized hooks if no food product is stored beneath the meat.

(b) Containers of food shall be stored a minimum of 6 inches (152 mm) above the floor in a manner that protects the food from splash and other contamination, and that permits easy cleaning of the storage area, except that:

1. Metal pressurized beverage containers need not be elevated; and

2. Containers may be stored on easily cleanable dollies, racks or pallets, if this equipment is easily movable.

(c) Food and containers of food shall not be stored under exposed or unprotected sewer lines or water lines, except for automatic fire protection sprinkler heads that may be required by law. The storage of food in toilet rooms or vestibules is prohibited.

(d) Food not subject to further washing or cooking before serving shall be stored in a way that protects it against cross-contamination from food requiring washing or cooking.

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(7) SANITARY WASTE DISPOSAL. Connection shall be made to an approved sewage collection system when such a system is available. When it is not available, a container for liquid waste storage shall be provided and shall be emptied when necessary into a public sewer. If a public sewer is not available, disposal shall be at a location which will not create a fly, odor or nuisance problem.

(8) MANUAL DISHWASHING. (a) A 3-compartment sink plus pre-wash sink for pre-washing, washing, rinsing and sanitizing multi-use utensils shall be provided when water is available under pressure. The pre-wash sink may be used as an employe handwashing sink.

(b) When water is not available under pressure, food service shall be limited in terms of the number of persons served, the kinds of utensils used or the food that is served, as determined by the department. In making its determination, the department shall consider the types of food served, whether the food is potentially hazardous or not, the method of its preparation, and the amount and kind of utensils and equipment used in the operation. Three dish-pans may be substituted for the 3-compartment sink when water is not available under pressure and food service is limited as determined by the department.

(c) A facility for air-drying utensils shall be provided.

(d) Except for the pre-wash sink, utensil washing facilities may not be used for employes' handwashing, counter cloth washing or any other use.

(9) EMPLOYES' HANDWASHING FACILITIES. (a) When water is available under pressure, handwashing facilities with approved liquid waste disposal shall be provided for employes.

(b) When water is not available under pressure, a minimum of 2 pans or basins for handwashing and rinsing shall be provided. A single basin with 2 compartments may be substituted for 2 pans or basins.

(c) Soap and single-service towels for handwashing and drying hands shall be provided for employes' handwashing facilities.

(10) DISPENSING OF CONDIMENTS. Sugar, cream, mustard, catsup and other condiments shall be individually packaged or served from an approved dispensing device.

(11) FOOD STORAGE. Wet storage of packaged foods and beverages is prohibited except that bottled or canned beverages may be stored in ice water, provided that the tops of bottles are not submerged and that a chlorine residual of at least 50 parts per million is maintained in the ice water.

(12) SINGLE-SERVICE ARTICLES. (a) Single-service articles shall be used in serving all foods and beverages unless the restaurant has hot and cold potable water under pressure and a suitable sewage collection system serving all fixtures with connection to an acceptable sewage disposal system.

(b) Single-service articles shall be stored in the original closed container at least 6 inches (152 mm) above the floor.

(c) Straws, knives, forks, spoons and toothpicks shall be individually wrapped or, if unwrapped, served through an approved dispenser. Single-service cups shall be dispensed by means of a covered dispenser which

provides protection of the interior and lip contact surfaces from dust and handling.

(13) HOUSEKEEPING. (a) The roof, sidewalls, counters, floors and all equipment and utensils shall be maintained in a clean and sanitary condition. The grounds immediately surrounding the restaurant, including the refuse and garbage storage area, shall be kept free of food scraps, paper and other debris.

(b) In areas where flies are prevalent, an effective and acceptable insecticide shall be used in a manner which will not contaminate food or food equipment.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; am. (1) (c), Register, January, 1990, No. 409, eff. 2-1-90.

HSS 196.18 Special organizations serving meals. (1) SUPERVISION. For a special organization serving meals, an individual who successfully completed a department-approved food handler training course or who has been trained in food handling by department or agent staff shall be present and supervise meal preparation and serving.

(2) APPROVED COURSES. For approval by the department a food handler training course shall consist of a minimum of 2 hours instruction time and include the following subjects: temperature control of potentially hazardous food during preparation, storage, transportation and serving; effective cleaning and sanitizing of utensils and equipment; storage of utensils and equipment; food worker personal hygiene; effective handwashing techniques; food storage; identification of potentially hazardous food; food worker health; prevention of foodborne illness; safe food sources; and the storage and use of toxic products. The department, or its agent, may require that additional subjects be addressed, related to the particular food service operation, to provide assurance that the public's health and safety will be protected.

(3) STORAGE. All food storage facilities shall be kept clean and free of insects and rodents. Storage facilities approved by the department shall be provided.

(4) FOOD SUPPLIES. (a) Food, including milk and milk products, shall be clean, wholesome, free from spoilage, free from filth or contamination, free from adulteration and misbranding and safe for human consumption. Milk of only pasteurized grade "A" quality may be used.

(b) Any potentially hazardous food shall be prepared on the premises.

(c) No home canned food may be served, except for jams and jellies.

(5) FOOD PROTECTION. (a) 1. Foods shall be protected from contamination while being stored, prepared and served, and during transportation. Perishable foods shall be stored at temperatures that will protect them against spoilage.

2. Potentially hazardous food shall be maintained at safe temperatures of 40°F. (4°C.) or below, or 150°F. (66°C.) or above, as appropriate, except during necessary periods of preparation and serving. Frozen food shall be kept frozen and shall be stored at a temperature of 0°F. (-18°C.), except when being thawed for preparation or use. Potentially hazardous frozen food shall be thawed at refrigerator temperatures of 40°F. (4°C.) or below, quick-thawed as part of the cooking process, or thawed by an-

other method approved by the department. An easily readable, numerically scaled indicating thermometer, accurate to ± 2°F. (1°C.), shall be located in the warmest part of each refrigerator.

3. Raw fruits and vegetables shall be washed thoroughly before use.

4. Stuffings, poultry, stuffed meats and poultry, and pork and pork products shall be cooked to heat all parts of the food to at least 165°F. (74°C.) before being served.

5. Salads made in whole or in part of meat, poultry, potatoes, fish, shellfish or eggs, and other potentially hazardous prepared food, shall be prepared from chilled products, with a minimum of manual contact.

6. Once served to an individual, portions of leftover food may not be served again, except that packaged food, other than potentially hazardous food, that is still packaged and is still in sound condition, may be reserved.

(b) Containers of food shall be stored above the floor, on clean racks, shelves or other clean surfaces, in such a manner as to be protected from splash and other contamination.

(c) An approved handwashing facility shall be provided in or readily accessible to the food preparation area.

(6) EMPLOYE HEALTH. (a) No person with a communicable disease that may be transmitted by food handling may work as a food handler.

(b) If the person in charge of a special organization serving meals suspects that a person working as a food handler has a communicable disease that may be transmitted by food handling, the person working as a food handler shall be immediately excluded from working.

(c) Persons preparing or serving food or washing equipment or utensils shall wear clean outer garments, maintain a high degree of personal cleanliness and conform to hygienic practices. They shall wash their hands thoroughly before starting work and as often as necessary while working, in order to remove soil and contamination. After visiting a toilet room, they shall wash their hands thoroughly in a lavatory but never in a sink used for utensil washing and food preparation. No one while preparing or serving food or involved in cleaning utensils and equipment may use tobacco in any form.

(7) EQUIPMENT AND UTENSILS. (a) All equipment and utensils shall be of an easily cleanable design and constructed of safe, durable materials. Surfaces with which food or drink comes into contact shall be easily accessible for cleaning and shall be nontoxic, corrosion-resistant, nonabsorbent and free of defects. Disposable articles shall be made from nontoxic materials.

(b) All equipment shall be installed in a way that facilitates the cleaning of the equipment and all adjacent areas.

(c) Equipment shall be kept clean and in good repair.

(8) UTENSIL SANITATION. (a) Utensils shall be kept clean and in good repair.

(b) Multi-use eating and drinking utensils shall be washed, rinsed and sanitized after each use. Facilities needed for the operations of washing,

rinsing and sanitizing shall be provided. Directions for proper washing and sanitizing procedures shall be posted at the utensil washing facility location.

(c) Pots, pans and other utensils used in the preparation or serving of food or drink and all food storage utensils shall be thoroughly cleaned and sanitized after each use. Cooking surfaces of equipment shall be cleaned at least once each day. To prevent cross-contamination, kitchenware and food contact surfaces of equipment shall be washed, rinsed and sanitized after use.

(d) Nonfood contact surfaces of equipment shall be cleaned at intervals that will keep them in a clean and sanitary condition.

(e) Residential sinks and home-style mechanical dishwashing machines are acceptable facilities for washing multi-use eating and drinking utensils and pots, pans and other cooking utensils.

(f) Immediately following either manual or mechanical washing and rinsing of eating and drinking utensils and pots, pans and other cooking utensils, these utensils shall be sanitized by being submerged in a hypochlorite solution with a chlorine concentration continuously maintained at 100 parts per million or another approved sanitizing solution which shall be used at the concentration at which tested and approved by the department. Dishpans may be used to accomplish the final sanitizing rinse.

(9) SINGLE-SERVICE UTENSILS. The reuse of single-service utensils is prohibited.

(10) MAINTENANCE. Floors, walls and ceilings of food preparation, storage and utensil washing areas shall be maintained in a clean and sanitary condition and in a good state of repair.

(11) INSECT AND RODENT CONTROL. Effective measures intended to minimize the presence of rodents, flies, cockroaches, and other insects on the premises shall be employed. The premises shall be kept in a condition which will prevent the harborage or feeding of insects or rodents.

(12) PLUMBING. All plumbing shall be installed and maintained in accordance with chs. ILHR 82 to 86.

History: Cr. Register, September, 1991, No. 429, eff. 10-1-91.

HSS 196.19 Enforcement. (1) ACCESS. Authorized employes or agents of the department, upon presenting proper identification, shall be permitted to enter any restaurant at any reasonable time for the purpose of inspecting the restaurant to determine compliance with this chapter. The representatives shall be permitted to examine the records of the restaurant to obtain information about food and supplies purchased, received or used.

(2) ENFORCEMENT POLICY. (a) *Notification.* If upon inspection of a restaurant the authorized employe or agent of the department finds that the restaurant is not planned, operated or equipped as required by this chapter, the employe or agent shall, except as provided under par. (b), notify the operator in writing and shall specify the changes required to make the restaurant conform to the standards established in this chapter and the time period within which compliance shall take place. 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 restaurant. 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 restaurant or of equipment used on the premises creates an immediate danger to health, an authorized employe or agent of the department may, pursuant to s. 50.575, 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 restaurant. 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. 50.575 (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. 50.575, 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. 50.575, Stats., may request a hearing to challenge the order. A request for a hearing under this subsection shall be submitted to the department's office of administrative hearings 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 office of administrative hearings is P.O. Box 7875, Madison, Wisconsin 53707.

(4) LOCAL ENFORCEMENT. Notwithstanding subs. (2) and (3), if an agent issues permits directly under this chapter, the agent shall create enforcement and appeal procedures in accordance with ss. 50.535 (2) (g) and 66.124, Stats., which shall supersede subs. (2) and (3).

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; renum. from HSS 196.18, Register, September, 1991, No. 429, eff. 10-1-91.