

Chapter HFS 196

RESTAURANTS

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Note: Chapter HSS 196 as it existed on June 30, 1985 was repealed and a new chapter HSS 196 was created effective July 1, 1985. 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 Chapter HFS 196 as it existed on January 31, 2001 was repealed and a new chapter HFS 196 was created effective February 1, 2001.

HFS 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 the 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 the appendix, a restaurant is a type of food service establishment.

History: Cr. Register, January, 2001, No. 541, eff. 2-1-01.

HFS 196.02 Applicability. The provisions of this chapter, including the appendix, apply to any restaurant, mobile restaurant, temporary restaurant or special organization serving meals, except that ch. 9 of the appendix applies only to mobile restaurants, ch. 10 of the appendix applies only to temporary restaurants and ch. 11 of the appendix applies only to special organizations serving meals. Chapter 12 of the 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.

HFS 196.03 Definitions. In addition to the following definitions, the definitions in part 1-2 of the 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.

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

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

- (a) A spouse.
- (b) A grandparent, parent, sibling, child, grandchild or step-child.
- (c) The spouse of a person under par. (b).

(4) "Mobile restaurant" has the meaning of "mobile food establishment" in the appendix.

(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 the appendix.

(6) "Special organization serving meals" has the meaning of "special organization serving meals" in the appendix.

(7) "Temporary restaurant" has the meaning of "temporary food establishment" in the appendix.

History: Cr. Register, January, 2001, No. 541, eff. 2-1-01.

HFS 196.04 Permits. (1) APPLICATION. (a) Before opening for business, every restaurant shall obtain a permit from the department or its agent by application made by the restaurant operator upon a form furnished by the department or its agent. An application for a permit submitted to the department shall be accompanied by fees required under sub. (2).

Note: To obtain a copy of the application form, write: Bureau of Environmental Health, P.O. Box 2659, Madison, Wisconsin 53701-2659.

(b) An incidental food service as defined in (41m) of part 1-2 of the appendix is exempt from the permit requirement under par. (a).

(c) A restaurant permit does not limit or interfere with the rights of any town, village or city, as provided or established chs. 60 to 62, Stats.

(2) DEPARTMENT FEES. (a) Definition. In this subsection, "seating capacity" means the number of seats available for use by restaurant patrons.

(b) *Annual permit fee.* The operator of a restaurant that serves meals prepared from raw, canned, dried, packaged or frozen foods shall pay an annual permit fee to the department. Except as provided in subs. 4. to 6., the annual permit fee shall be based on the permit category assigned to the restaurant under par. (d). Beginning July 1, 2002, the restaurant permit fee structure is as follows:

1. For a restaurant in the simple permit category, an annual permit fee of \$148 and, in addition, \$80 per area for any physically separate food holding, serving or preparation area.

2. For a restaurant in the moderate permit category, an annual permit fee of \$210 and, in addition, \$80 per area for any physically separate food holding, serving or preparation area.

3. For a restaurant in the complex permit category, an annual permit fee of \$290 and, in addition, \$80 per area for any physically separate food holding, serving or preparation area.

4. For a restaurant that serves only individually wrapped, hermetically sealed single food servings supplied by a licensed processor, an annual permit fee of \$75.

5. For a temporary restaurant, an annual permit fee of \$100.

6. For a mobile restaurant base with no food preparation, an annual permit fee of \$95.

(c) *Preinspection fee.* The operator of a restaurant shall pay to the department a preinspection fee before issuance of the initial permit or when there is a change of operator except when the new operator is an immediate family member. The preinspection fee shall be based on the permit category assigned under par. (d). Beginning July 1, 2002, preinspection fees are as follows:

1. For a restaurant in the simple permit category, the preinspection fee shall be \$150.

2. For a restaurant in the moderate permit category, the preinspection fee shall be \$250.

3. For a restaurant in the complex permit category, the preinspection fee shall be \$350.

(d) *Restaurant permit category assignment.* 1. A restaurant permit category shall be determined by the evaluation of the complexity of the restaurant based on the criteria specified in Table HFS 196.04.

2. Except as provided in subd. 5., a restaurant whose point value equals zero, shall be included in the simple permit category.

3. Except as provided in subd. 5., 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.

Table HFS 196.04	
Determination of Restaurant Permit Category	
Complexity Factors	Point(s)
Food is not prepared until an order is placed.	0
No more than 2 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 potential for cross-contaminating food is low.	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

Table HFS 196.04 – Continued	
Determination of Restaurant Permit Category	
Complexity Factors	Point(s)
Delivery of ready-to-eat products to the homes or workplaces of customers comprises at least 25% of food sales volume.	1
Potentially hazardous foods are cooled or reheated.	1
Food is prepared in one location and then transported to be served in another location.	1
The restaurant contains or uses banquet facilities.	1
Food is served that requires preparation that is beyond the definition of “limited” as defined above. Activities such as chopping, dicing, slicing, boiling, cooling, blanching, reheating occur in order for that product to be served.	1

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

(f) *Fee for duplicate permit.* The department shall charge a restaurant operator \$10 for a duplicate permit.

(2m) RECONSIDERATION OF PERMIT CATEGORY ASSIGNMENTS.

(a) The operator of a restaurant may request reconsideration of the restaurant permit category assignment made under sub. (2) (d).

(b) A request made under par. (a) shall be made to the department 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.

(3) 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. The department may not issue a permit to an operator of a new restaurant or at the time of a change of operator, unless the new operator is an immediate family member, without prior inspection of the restaurant by the department or its agent to ensure that the restaurant complies with the requirements of this chapter.

(4) DISPLAY OF PERMIT. The restaurant operator shall conspicuously display in the restaurant the permit issued by the department or its agent.

(5) 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.

(6) PLAN REVIEW. The department or its agent, when it deems necessary, may request the operator of a new or extensively remodeled restaurant to submit equipment layout plans, equipment schedules, detailed descriptions of food processing operations or menus to determine if the restaurant is complying with this chapter. A request for plans under this subsection does not replace or supersede plan review requirements of the Wisconsin department of commerce, division of buildings and safety.

History: Cr. Register, January, 2001, No. 541, eff. 2-1-01; **CR 01-016: r. and rec. (2) (b) to (e), cr. (f) and (2m) Register May 2002 No. 557, eff. 6-1-02.**

HFS 196.05 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 limited food establishment, as defined in s. 1-201.10 (45m) of the appendix, at least once every 12 months.

(b) The department or its agent may increase the interval between inspections specified in par. (a) for a limited food establishment, as defined in s. 1-201.10 (45m) of the appendix, if the limited food establishment 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 limited food establishment 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.

HFS 196.06 Enforcement. **(1) PERMIT DENIAL, SUSPENSION OR REVOCATION, OR THE IMPOSITION OF CONDITIONS ON A PERMIT.** The department or its agent may deny, suspend or revoke a permit or, as provided under s. 254.64 (1p), Stats., may impose conditions on a permit. Except as otherwise provided by statute, rule or local ordinance, the suspension or revocation of a permit shall comply with the prior notice requirements of s. 227.51, Stats.

(2) ENFORCEMENT POLICY. (a) *Notification.* If, upon inspection of a restaurant, the authorized employee or agent of the department finds that the restaurant is not planned, operated or equipped as required by this chapter, the employee 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 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 public

health, and without advance written notice, issue a temporary order to remove the immediate danger to health. The 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 the prohibitions and requirements, except that if a more limited order will not remove the immediate danger to health, the order may direct that all operation 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 a hearing is not needed.

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 may request a hearing to challenge the order. A temporary order shall remain in effect until a final decision is issued under s. 254.85 (3), Stats. An operator shall request a hearing within 15 days after issuance of the order. Receipt of notice is presumed within 5 days of the date the notice was mailed. An operator shall file his or her request for a fair hearing in writing with the division of hearings and appeals in the department of administration. A request is considered filed when received by the division of hearings and appeals. 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, WI 53707. Hearing requests may be delivered in person to that office at 5005 University Ave., Room 201, Madison WI.

(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. 254.69 (2) (g) and 66.0417, Stats., which shall supersede subs. (2) and (3).

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.

HFS 196.07 Adoption of Wisconsin food code. As permitted by s. 227.14 (1s), Stats., an amended version of the 1999 U.S. food and drug administration (FDA) recommended model food code adopted as the appendix of this chapter 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 and family 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.