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Chapter DHS 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Note: Chapter HSS 198 as it existed on June 30, 1985 was repealed and a new chapter HSS 198 was created effective July 1, 1985.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. **Chapter HFS 198 was renumbered chapter DHS 198 effective February 1, 2009, and corrections made under s. 13.92 (4) (b) 7., Stats., Register January 2009 No. 637.**

DHS 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; **CR 08-073; renum. from HFS 198.01 Register January 2009 No. 637, eff. 2-1-09.**

DHS 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; **CR 08-073; renum. from HFS 198.02 Register January 2009 No. 637, eff. 2-1-09.**

DHS 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 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

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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 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; **CR 08-073; renum. from HFS 198.03 and am. (5) Register January 2009 No. 637, eff. 2-1-09.**

DHS 198.04 Permits. (1) PERMIT REQUIRED. (a) No person may operate a vending machine, vending machine commissary, or vending machine commissary storage unless the person, the vending machine, vending machine commissary, or vending machine commissary storage has a permit from the department. To receive an operator's permit or a permit for a vending machine, vending machine commissary, or vending machine commissary storage, the operator shall submit an application under sub. (4) and pay the applicable fee specified in Table DHS 198.05. A separate permit is required for each vending machine, vending machine commissary, or vending machine commissary storage.

(b) If a vending machine operator sells or otherwise transfers ownership or operation of a vending machine, vending machine commissary, or vending machine commissary storage except as provided under sub. (3), a new permit is required and the vending machine, vending machine commissary, or vending machine commissary storage may not be opened until the department has issued a new permit.

(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 a vending machine, vending machine commissary, or vending machine commissary storage. 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 vending machine, vending machine commissary, or vending machine commissary storage 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. 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 s. 254.64 (4) (a) 1. and s. 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 fur-

nished by the department and shall be accompanied by all of the following:

1. The applicable fees specified under s. DHS 198.05 and any fees previously due to the department.

2. Information, as determined by the department, indicating that the vending machine, vending machine commissary, or vending machine storage will be maintained and operated in compliance with applicable federal and state laws and that rules have been implemented for the operation of the vending machine or vending machine commissary 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 vending machine or vending machine commissary, 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 permit of an establishment, the operator shall pay the department, the applicable establishment permit fee specified under s. DHS 198.05 before the permit expires. If the payment to renew the permit of an establishment is not made to the department before the expiration date of the establishment permit, the late fee specified under s. DHS 198.05 (2) (c) shall be paid in addition to the permit fee.

(5) **DEPARTMENT OR AGENT ACTION ON PERMIT APPLICATION.** (a) The department 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 subsection may be conditioned upon the requirement that the permit holder correct a violation of this chapter, ss. 254.61 to 254.88, 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 as approved by the department, the permit is void. No person may operate a vending machine, vending machine commissary, or vending machine commissary storage after the permit for the operator, vending machine, vending machine commissary, or vending machine commissary storage 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 subsection may appeal the decision under s. DHS 198.08.

(c) The department may refuse to issue or renew a permit to operate a vending machine commissary or vending machine commissary storage under any of the following circumstances:

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

2. The operator of a vending machine, vending machine commissary, or vending machine commissary storage has not corrected a condition for which the department or agent has issued a written a health or safety-related order.

3. All applicable fees under s. DHS 198.05 have not been paid, including the permit fee, preinspection fee, reinspection fee, or other applicable fees.

4. The vending machine operator has modified, repaired or maintained the vending machine, vending machine commissary, or vending machine commissary storage in a manner that is not in accordance with what the department recognizes as safe practice as outlined in this chapter.

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

6. The vending machine operator 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

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the vending machine, vending machine commissary, or vending machine commissary storage.

(d) If the department 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 198.08.

(6) VOIDED PERMIT FOR FAILURE TO PAY FEES. If an applicant or vending machine operator fails to pay all applicable fees, late fees and processing charges under s. DHS 198.05 within 15 days after the applicant or operator receives notice of an insufficiency under s. DHS 198.05 (3), or within 45 days after the expiration of the permit, whichever occurs first, the permit is void. An operator whose permit is voided under this subsection may appeal the decision under s. DHS 198.08. In an appeal concerning a voided permit under this subsection, the burden is on the permit applicant or operator 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 vending machine, vending machine commissary, or vending machine commissary storage is deemed to be operation without a permit and is subject to the fees under s. DHS 198.05 (2) (e) in addition to the fees otherwise due, unless the applicant or operator 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, 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; **CR 08-073: renum. from HFS 198.04, r. and recr. Register January 2009 No. 637, eff. 2-1-09; corrections in (3) and (4) (b) made under s. 13.92 (4) (b) 7., Stats., Register January 2009 No. 637.**

DHS 198.05 Department fees. (1) FEE SCHEDULES. The fees listed in Table DHS 198.05 A shall apply to permits issued from April 1, 2009 through March 31, 2011. The fees listed in Table DHS 198.05 B shall apply to permits issued on or after April 1, 2011.

(2) TYPES OF FEES. (a) Preinspection fee. The operator of a vending machine commissary or vending machine commissary storage shall, pursuant to sub. (1), pay the applicable preinspection fee listed in Table DHS 198.05 A or B to the department before an initial or new permit is issued under s. DHS 198.04.

(b) Permit fee. The operator of a vending machine, vending machine commissary, or vending machine commissary storage shall, pursuant to sub. (1), pay the applicable permit fee listed in Table DHS 198.05 A or B to the department for each vending machine, vending machine commissary, or vending machine

commissary storage that the operator applies for a permit to operate under s. DHS 198.04 (1) or (2).

(c) Late fee. If the permit fee for an operator's, vending machine commissary, or vending machine commissary storage permit renewal is not paid before the expiration date of the permit, the operator of the vending machine commissary or vending machine commissary storage shall pay to the department a late fee of \$85.00 in addition to the renewal permit fee for each permit for which the department receives after the expiration date of the permit.

(d) Reinspection fee. If the department conducts a reinspection of a vending machine commissary or vending machine commissary storage under s. DHS 198.06 (1) (b) 1. and 2., the vending machine operator shall pursuant to sub. (1), pay to the department the applicable reinspection fee listed in Table DHS 198.05 A or B. The department shall assess an additional reinspection fee equal to the reinspection fee listed in Table DHS 198.05 A or B, whichever is applicable, for any additional reinspection conducted under s. DHS 198.06 (1) (b) 4.

(e) Fees for operating without a permit. 1. For any operator, or vending machine commissary, or vending machine commissary storage found to be operating without a permit, the operator shall pay to the department \$749 in addition to all applicable fees and processing charges under s. DHS 198.04 (6).

2. For any vending machine found to be operating without a permit, the operator shall pay to the department 3 times the annual vending machine permit fee listed in Table DHS 198.05, in addition to all applicable fees and processing charges under s. DHS 198.04 (6).

Note: Anyone operating a vending machine, vending machine commissary, or vending machine commissary storage 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 vending machine commissary or vending machine commissary storage \$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.

(3) 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. (1) and the financial institution's processing charges by cashier's check or other certified draft, money order, or cash.

**Table DHS 198.05 A
Fee Schedule — SFY 2010
For permits issued April 1, 2009 through March 31, 2011**

Type of Permit	Permit Fee	Preinspection Fee	First Reinspection Fee	Second and Subsequent Reinspection Fee
Vending Machine Commissary	\$230	\$455	\$252	\$335
Vending Machine Commissary — Storage	\$150	\$285	\$158	\$210
Vending Machine Operator	\$125			
Vending Machine permit (each machine)	\$8			

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Table DHS 198.05 B
Fee Schedule — SFY 2012
For permits issued on or after April 1, 2011

Type of Permit	Permit Fee	Preinspection Fee	First Reinspection Fee	Second and Subsequent Reinspection Fee
Vending Machine Commissary	\$280	\$675	\$300	\$400
Vending Machine Commissary — Storage	\$215	\$515	\$233	\$310
Vending Machine Operator	\$125			
Vending Machine permit (each machine)	\$9			

History: CR 08-073: cr. Register January 2009 No. 637, eff. 2-1-09; correction in (2) (e) 2. made under s. 13.92 (4) (b) 7., Stats., Register January 2009 No. 637.

DHS 198.06 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 vending machine, vending machine commissary, or vending machine commissary storage at any reasonable time, for any of the following purposes:

1. To inspect the vending machine, vending machine commissary, or vending machine commissary.
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 vending machine, vending machine commissary, or vending machine commissary.
6. To obtain photographic or other evidence needed to enforce this chapter.

(b) *Reinspections.* 1. The department or its agent may reinspect a vending machine, vending machine commissary, or vending machine commissary storage 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 vending machine, vending machine commissary, vending machine commissary storage.

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

3. A reinspection fee shall be charged for the reinspection according to Table DHS 198.05 A or B, or 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 operator an additional reinspection fee equal to the reinspection fee in Table DHS 198.05 A or B, as applicable, as authorized under s. DHS 198.05 (2) (d), and the department may order the owner to show just cause why the permit should not be suspended or revoked under s. DHS 198.07.

(2) GENERAL ORDERS TO CORRECT VIOLATIONS. (a) If upon inspection of a vending machine, vending machine commissary, or vending machine commissary storage, the department or agent finds that the vending machine, vending machine commissary, vending machine commissary storage 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 198.07 to suspend or revoke the permit to operate the vending machine or vending machine commissary.

(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 198.08.

(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. 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 198.08. The notice shall include a statement that the facility has a right to request a

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hearing under s. DHS 198.08 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 08-073: cr. Register January 2009 No. 637, eff. 2-1-09.

DHS 198.07 Suspension or revocation of permit.

The department may, after a hearing under s. DHS 198.08, 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 198.08 (1).

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

DHS 198.08 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 198.06 (1) (b) 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 198.06 (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 198.04 (6), the vending machine operator 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.

DHS 198.09 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.

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.

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

DHS 198.10 Compliance with restaurant rules. An operator shall ensure that each vending machine commissary or vending machine commissary storage that is operated is in compliance with the provisions of ch. DHS 196. The department shall not grant a permit to a person intending to operate a new vending machine commissary or vending commissary storage or to a person intending to be the new operator of an existing vending machine commissary or vending machine commissary storage without a prior inspection of the commissary for compliance with the applicable provisions of this chapter and ch. DHS 196.

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

DHS 198.11 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; CR 08-073: renum. from HFS 198.05 Register January 2009 No. 637, eff. 2-1-09.

DHS 198.12 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;

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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.

(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; **CR 08-073: renum. from HFS 198.06 Register January 2009 No. 637, eff. 2-1-09.**

DHS 198.13 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; **CR 08-073: renum. from HFS 198.07 Register January 2009 No. 637, eff. 2-1-09.**

DHS 198.14 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; **CR 08-073: renum. from HFS 198.08 Register January 2009 No. 637, eff. 2-1-09.**

HFS 198.15 Enforcement. 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; **CR 08-073: r. Register January 2009 No. 637, eff. 2-1-09.**

DHS 198.15 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 pro-

tected 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; **CR 08-073: renum. from HFS 198.09 Register January 2009 No. 637, eff. 2-1-09.**

DHS 198.16 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.

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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 grommets 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 provided 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; CR 08-073: **renum. from HFS 198.10 Register January 2009 No. 637, eff. 2-1-09.**

DHS 198.17 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. DHS 198.16 (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; CR 08-073: **renum. from HFS 198.11 Register January 2009 No. 637, eff. 2-1-09; correction in (2) made under s. 13.92 (4) (b) 7., Stats., Register January 2009 No. 637.**

DHS 198.18 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

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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; **CR 08-073: renum. from HFS 198.12 Register January 2009 No. 637, eff. 2-1-09.**

DHS 198.19 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; **CR 08-073: renum. from HFS 198.13 Register January 2009 No. 637, eff. 2-1-09.**

DHS 198.20 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. DHS 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 beverages 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; **CR 08-073: renum. from HFS 198.14 Register January 2009 No. 637, eff. 2-1-09; correction in (1) (b) made under s. 13.92 (4) (b) 7., Stats., Register January 2009 No. 637.**