

PROPOSED ORDER OF THE
DEPARTMENT OF HEALTH AND FAMILY SERVICES
REPEALING, AMENDING, AND CREATING RULES

To repeal HFS 172.04(1m)(d), 178.05(1m)(d), 195.04(1m)(e), 197.04(1m)(e); to amend HFS 172.04(1m)(a), 175.05(3)(a), 178.05(1m)(a)2., 195.04(1m)(a)2., 195.04(1m)(d)1. and 2., and 197.04(1m)(a) and (d); to repeal and recreate HFS 196.04(2)(b) to (e) and 198.04(1) and (1m), and to create HFS 196.04(2)(f), 196.04(2m)(a) and (b) and Note, relating to permit fees for the operation of public swimming pools, recreational and educational camps, campgrounds, hotels and motels, tourist rooming houses, restaurants, bed and breakfast establishments and food and beverage vending operations and commissaries.

Analysis Prepared by the Department of Health and Family Services

The department and agent local health departments regulate all campgrounds, recreational and educational camps, the operation of swimming pools that serve the public, restaurants, hotels and motels, tourist rooming houses, bed and breakfast establishments and food vending operations in the state under the authority of ss. 254.47 and 254.61 to 254.88, Stats., to ensure that these facilities comply with the department's health, sanitation and safety standards set out in administrative rules. The department's rules for these facilities are found in chs. HFS 172, 175, 178, 195, 196, 197 and 198 of the Wisconsin Administrative Code. None of the facilities may operate without having a permit issued by the department or an agent local health department. A permit is evidence that the facility complies with the department's rules. Under the department's rules, facilities are charged permit and related fees. Fee revenue supports the department's expenses in providing statutorily-required regulatory oversight of these entities.

This rulemaking order amends the department's rules for operation of these facilities to increase permit fees an average of 30% for all program areas and to increase the pre-inspection fee for new hotels and motels, tourist rooming houses, restaurants and bed and breakfast establishments.

The fee increase will enable the department to fully staff existing position regulatory program vacancies, allowing the department to increase its frequency of routine inspections, its ability to promptly respond to public complaints, and to undertake necessary enforcement action.

This order does not affect facilities regulated by local health departments granted agent status under s. 254.69(2), Stats. Permit fees for those facilities are established by local health departments pursuant to s. 254.69(2)(d), Stats.

The department's authority to repeal, amend, repeal and recreate, and create these rules is found in ss. 254.47(4) and 254.68, Stats. The rules interpret ss. 254.47 and 254.68, Stats.

SECTION 1. HFS 172.04(1m)(a) is amended to read:

HFS 172.04(1m)(a) *Annual permit fee.* Beginning July 1, ~~1998-2002~~, the operator of a public swimming pool shall pay an annual permit fee of ~~\$430~~150 to the department.

SECTION 2. HFS 172.04(1m)(d) is repealed.

SECTION 3. HFS 175.05(3)(a) is amended to read:

HFS 175.05(3)(a) *Annual permit fee.* ~~The Beginning July 1, 2002,~~ the operator of a camp shall pay an annual permit fee of ~~\$77200~~ to the department ~~by July 1.~~

SECTION 4. HFS 178.05(1m)(a)2., is amended to read:

HFS 178.05(1m)(a)2. Beginning July 1, ~~1998-2002~~, the annual permit fee shall be as follows:

- a. For a campground with 1-25 sites, \$106;
- b. For a campground with 26–50 sites, ~~\$130~~147;
- c. For a campground with 51–100 sites, ~~\$153; and~~175;
- d. For a campground with ~~over 100-101-199~~ sites, ~~\$174~~195; and
- e. For a campground with 200 or more sites, \$225.

SECTION 5. HFS 178.05(1m)(d) is repealed.

SECTION 6. HFS 195.04(1m)(a)2. is amended to read:

HFS 195.04(1m)(a)2. Beginning July 1, ~~1998~~2002, the annual permit fee shall be as follows:

- a. For a hotel or motel with 5 to 30 rooms, \$124;
- b. For a hotel or motel with 31 to 99 rooms, ~~\$165~~ 190;
- c. For a hotel or motel with 100 ~~or more~~ to 199 rooms, ~~\$212 and~~ 250;
- cm. For a hotel or motel with 200 or more rooms, \$300; and
- d. For a tourist rooming house, ~~\$59~~85.

SECTION 7. HFS 195.04(1m)(d)1. is amended to read:

HFS 195.04(1m)(d) *Preinspection fee.* 1. 'Hotel and motel'. The operator of a hotel or motel shall pay to the department a preinspection fee. The preinspection fee shall be as follows:

- a. For a hotel or motel with 5 to 30 rooms, \$125;
- b. For a hotel or motel with 31 to 99 rooms, \$200; ~~and~~
- c. For a hotel or motel with 100 ~~or more~~ to 199 rooms, ~~\$275; and~~
- d. For a hotel or motel with 200 or more rooms, \$350.

SECTION 8. HFS 195.04(1m)(e) is repealed.

SECTION 9. HFS 196.04(2)(b) to (e) is repealed and recreated to read:

HFS 196.04(2)(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 subds. 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
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.

SECTION 10. HFS 196.04(2)(f) is created to read:

HFS 196.04(2)(f) *Fee for duplicate permit.* The department shall charge a restaurant operator \$10 for a duplicate permit.

SECTION 11. HFS 196.04(2m) is created to read:

HFS 196.04(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.

SECTION 12. HFS 197.04(1m)(a) and (d) are amended to read:

HFS 197.04(1m)(a) *Permit fee.* Beginning July 1, ~~1998~~2002, the operator of a bed and breakfast establishment shall pay a ~~biennial~~annual permit fee of ~~\$406~~65 to the department.

HFS 197.04(1m)(d) *Preinspection fee.* Beginning July 1, ~~1998~~2002, the operator of a bed and breakfast establishment shall pay to the department a preinspection fee of \$125 before issuance of the initial permit.

SECTION 13. HFS 197.04(1m)(e) is repealed.

SECTION 14. HFS 198.04(1) and (1m) are repealed and recreated to read:

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

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

1. For the vending machine operator, \$100 beginning July 1, 2002; and
2. For each vending machine, \$6.

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

1. For a vending machine commissary where food is prepared, an annual permit fee of \$175.
2. For a vending machine commissary where food, transport equipment and vending supplies are only stored, an annual permit fee of \$85.

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

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

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

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

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

The rules included in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2)(intro.), Stats.

Wisconsin Department of Health and
Family Services

Dated:

By: _____

Phyllis Dubé
Secretary

SEAL: