

CERTIFICATE


STATE OF WISCONSIN)
) SS
DEPARTMENT OF HEALTH AND FAMILY SERVICES)

I, Joseph Leean, Secretary of the Department of Health and Family Services and custodian of the official records of the Department, do hereby certify that the annexed rules relating to the exemption of food service operations providing "incidental food service" from being regulated as restaurants were duly approved and adopted by this Department on October 14, 1998.

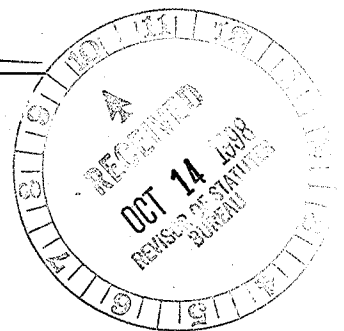
I further certify that this copy has been compared by me with the original on file in the Department and that this copy is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 14th day of October, 1998.

SEAL:



Joseph Leean, Secretary
Department of Health and Family Services



ORDER OF THE
DEPARTMENT OF HEALTH AND FAMILY SERVICES
AMENDING A RULE

To amend HFS 196.03 (11r), relating to the exemption of food service operations providing "incidental food service" from being regulated as restaurants.

Analysis Prepared by the Department of Health and Family Services

Many retail food establishments, that is, grocery stores, convenience stores, delicatessens and bakeries, have in recent years added a food service operation to their business, in effect establishing a restaurant within the store, often with sit-down dining and full service food preparation. Also, some restaurants have added retail food sales, a bakery operation, for instance, to their business. A retail food establishment that also operates a restaurant on the same premises and a restaurant that also operates a retail food establishment on the same premises may be subject to regulation by both the Department of Agriculture, Trade and Consumer Protection (DATCP), which regulates retail food establishments under s. 97.30, Stats., and ch. ATCP 75, and the Department of Health and Family Services (DHFS), which regulates restaurants under subch. VII of ch. 254, Stats., and ch. HFS 196. This means that if under current regulations a business is found to be both a retail food establishment and a restaurant, the business must have two annual approvals (a license, permit), pay two annual approval (license, permit) fees, be subject to two inspections on the basis of two sets of rules that will not always require the same thing although both sets of rules are directed at protecting the public's health, and perhaps have to deal with two different inspection agencies.

Section HFS 196.04 (1) (b) currently exempts "incidental food services" from the requirement to have a restaurant permit. "Incidental food service" is defined in s. HFS 196.03 (11r) as meals offered to the general public that are not a primary activity of a retail food establishment, comprise no more than 25% of the gross annual food sales of the business and do not involve full service food preparation. This order changes that definition to exclude more food service operations in retail food establishments from being regulated separately as restaurants, as one measure being taken to eliminate "double licensing," that is, two different approval processes, both directed at protecting the public's health. The principal modification increases the percentage of the gross annual food sales of the business that may be derived from the sale of meals from at most 25% to less than 50%. The language relating to meals that do not involve "full service food preparation" is being deleted because the term which, like the definition of incidental food service, dates from 1990, has never been operationalized so that it is not a factor in deciding if a food service operated by a retail food establishment is an incidental food service for purposes of exempting it from the requirement that it have a permit to operate a restaurant.

The change in the definition of "incidental food service" in ch. HFS 196 will be effective, by emergency order, for permits issued by the Department starting with the permit period beginning July 1, 1998, and for permits issued by local health departments serving as

agents of the Department, pursuant to s. 254.69 (2), Stats., and ch. HSS 192, starting with the permit period beginning July 1, 1999.

The Department's authority to amend this rule is found in ss. 254.64 (1) (d) and 254.74, Stats. The rule interprets s. 254.64 (1) (d), Stats.

SECTION 1. HFS 196.03 (11r) is amended to read:

HFS 196.03 (11r) "Incidental food service" means meals offered to the general public that are not a primary activity of ~~the~~ an establishment licensed by the department of agriculture, trade and consumer protection as a retail food establishment under ch. 97 s. 97.30, Stats., or by a local health department serving under s. 97.41, Stats., as an agent of the department of agriculture, trade and consumer protection for this purpose, and that comprise ~~no more than 25%~~ less than 50% of gross annual food sales of the establishment, excluding sales of alcoholic beverages and do not entail full service food preparation. "Incidental food service" does not include a restaurant that operates within an establishment licensed under s. 97.30 or 97.41, Stats., as an independent business with its own separate kitchen facilities. ~~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. 97, Stats.~~

The rule contained 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.

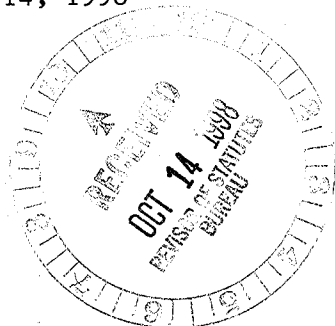
Wisconsin Department of Health and
Family Services

Dated: October 14, 1998

By: 

Joseph Lee
Secretary

SEAL:





State of Wisconsin
Department of Health and Family Services

Tommy G. Thompson, Governor
Joe Lean, Secretary



October 14, 1998

Mr. Bruce E. Munson
Revisor of Statutes
131 W. Wilson St., Suite 800
Madison, WI 53703

Dear Mr. Munson:

As provided in s. 227.20, Stats., there is hereby submitted a certified copy of s. HFS 196.03 (11r), administrative rules relating to the exemption of food service operations providing "incidental food service" from being regulated as restaurants..

The rules are also being submitted to the Secretary of State as required by s. 227.20, Stats.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Joe Lean', with a long horizontal line extending to the right.

Joseph Lean
Secretary

Enclosure

