



**Date:** September 15, 2011

**To:** City of Menasha Common Council

**From:** Todd Drew, R.S. – Sanitarian  
City of Menasha Health Department

**Re: Mobile Restaurants – Additional Information**

The following is additional information related to the licensing and operation of mobile restaurants:

- Mobile restaurant permits issued by Agent Health Departments are considered State issued permits and the area of operation of the unit is not restricted to the issuing jurisdiction. State Agents and State Inspectors honor permits issued by other State Agents (i.e. Appleton, Neenah).
- Mobile restaurants permitted by the City of Menasha operate regularly in other jurisdictions statewide.
- The applicable Food Code sections (attached) do not limit where the mobile unit may set up, other than they must set up on a paved surface and must be at least 100 feet away from any barn or other area used to house animals.
- Mobile restaurants are licensed based on the same basic criteria as restaurants of similar complexity. These criteria are consistent statewide.
- City of Menasha - Restaurant and Retail Food Establishment Licensing Ordinance Chapter 6 references Wisconsin Administrative Code DHS 196, and the Administrative Code Annex which is the Wisconsin Food Code (applicable chapter and definitions are attached), which are followed by all State Agents.

## CHAPTER 6

### Restaurant and Retail Food Establishment Licensing

#### SEC. 7-6-1                    **LICENSING OF RESTAURANTS AND RETAIL FOOD ESTABLISHMENTS.**

- (a) **PERMITS OR LICENSES REQUIRED.** Upon the authority and scope of Chapters 97, 101 and 254 of the Wisconsin Statutes, this regulation adopts by reference Chapters HFS 172, 175, 178, 195, 196, 197 and 198, ATCP 75 and Comm 26, Wisconsin Administrative Code Annex – Wisconsin Food Code and the FDA Food Code 2009 edition.
- (b) **PUBLIC EATING AND DRINKING ESTABLISHMENT.**
  - (1) No person shall conduct a business of or operate a public eating and drinking establishment or retail food establishment without obtaining a license therefor from the Health Department.
  - (2) "Public eating and drinking establishment" shall mean any premises as defined by Wisconsin Administrative Code, Section HFS 196.03, and shall also mean any restaurant, coffee shop, cafeteria, caterer, luncheonette, tavern, sandwich stand and all other catering and drinking establishments as well as kitchens and other places where food or drink is prepared, served or sold to the public for human consumption.
  - (3) "Retail food establishment" shall mean a permanent or mobile food processing facility where food processing is conducted primarily for direct retail sale to consumers at the facility, a mobile facility from which potentially hazardous food is sold to consumers at retail or a permanent facility from which food is sold to consumers at retail, whether or not that facility sells potentially hazardous food or is engaged in food processing. "Retail food establishment" does not include a restaurant or other establishment holding a permit under s. 50.51, to the extent that the activities of the establishment are covered by that permit.
- (c) **APPLICATION FOR PERMITS.**
  - (1) Applications for a permit shall be made upon such forms supplied and prescribed by the Health Department.
  - (2) Prior to approval of an application for a permit, the Health Department shall inspect the facility or retail food establishment or eating and drinking establishment to determine compliance with the requirements of this regulation.
  - (3) The fee for permits required by this regulation shall be payable before the issuance of a permit and annually before July 1 of each year. An additional penalty fee shall be required whenever the annual renewal fee is not paid prior to July 1 of each year.
  - (4) A pre-inspection fee shall be collected at the time of application from an operator of a new public facility or establishment and eating and drinking establishment or a new operator of an existing public facility or establishment and eating and drinking establishment. This pre-inspection fee shall also apply to retail food establishments.
- (d) **PERMIT ISSUANCE AND REQUIREMENTS.**
  - (1) Permit Issuance.
    - a. No person shall operate an eating and drinking establishment or a public facility or establishment covered in this regulation within the City of Menasha who does not have a valid permit issued by the Department, unless otherwise exempted in this regulation.
    - b. Only a person who complies with the requirements of this regulation shall be entitled to receive or retain such a permit.

- c. Permits are not transferable.
  - d. A valid permit shall be posted in plain public view in every public facility and/or public establishment as required in this Ordinance.
- (2) Permit Requirements. The Menasha Common Council shall establish all pre-inspection fees and permit fees for all public facilities and establishments. Facilities and establishments requiring permits covered in this regulation are listed below:
- a. Public indoor and outdoor swimming pools each are subject to an annual permit fee (HFS 172).
  - b. Restaurants are subject to an annual permit fee (HFS 196).
  - c. Mobile home parks are subject to an annual permit fee [ADM 65, 85.5(3)].
  - d. Eating and drinking establishments are subject to an annual fee.
  - e. Hotels, motels and tourist rooming houses are subject to an annual permit fee (HFS 195).
  - f. Bed and breakfast establishments are subject to an annual permit fee (HFS 197).
  - g. Vending machine operations shall be licensed and fees shall be issued, assessed and collected by the State of Wisconsin under the Wisconsin Administrative Code (HFS 198).
  - h. Mobile restaurants are subject to an annual permit fee.
  - i. Retail food establishments are subject to an annual permit fee unless specifically exempted by s. 97.30(1)(c) Wis. Stats.
  - j. Temporary non-profit, non-licensed food stands are subject to an annual fee (up to three events per year).
  - k. Recreational and educational camps are subject to an annual permit fee established by the Director of Public Health and approved by the Common Council (HFS 175).
  - l. Campgrounds are subject to an annual permit fee established by the Director of Public Health and approved by the Common Council (HFS 178).

(e) **INSPECTIONS.**

- (1) Inspection Frequency. An inspection of public facilities and establishments and eating and drinking establishments shall be performed at least once per year. All eating and drinking establishments shall be assigned a risk category based on the FDA Food Code 2009 Annex 5 – Table 1. Additional inspections over and above the one annual inspection shall be based on the risk category for each establishment. All category 2 and 3 establishments shall receive at least two inspections per year.
- (2) Report of Inspections. Whenever an inspection of a facility or establishment is made, the findings shall be recorded on an inspection report form. The inspection report form shall summarize the requirements of this regulation. A copy of the completed inspection report form shall be furnished to the holder of the permit, or his/her agent in charge of the facility or establishment, at the conclusion of the inspection.
- (3) Correction of Violations. The completed inspection report form shall specify a reasonable period of time for the correction of the violations found. Correction of the violations shall be accomplished within the period specified.
- (4) Access. Representatives of the Department, after proper identification, shall be permitted to enter any facility or establishment at any reasonable time for the purpose of determining compliance with this regulation.
- (5) Hours of Inspection. Inspections shall be made during the regular operating hours of the establishment and primarily during the regular office hours of the Health Department (8:00 AM – 4:00 PM Monday – Friday), unless circumstances necessitate conducting an inspection at a time other than normal Health Department operating hours. In the case of temporary permits, an inspection will be made coinciding with the hours of operation, i.e., the Sanitarian will be available for an evening or weekend inspection to determine compliance with the regulations.

- (f) **PERMIT DENIAL.** Permits issued under this Section may be denied by the Health Officer upon annual application for renewal for continued violations of this Code of the applicable provisions of Wisconsin Administrative Codes or Wisconsin Statutes. Permits may also be denied until payment of re-inspection fees issued in the prior license year.
- (g) **REINSTATEMENT OF PERMIT.** The permittee of any establishment addressed in this Section whose permit has been suspended may, at any time, make application for the reinstatement of the permit within three (3) business days of the receipt of a written application accompanied by a written statement signed by the applicant to the effect that all violations have been corrected. The Health Officer, or his/her designee, shall make a re-inspection to determine whether all violations have been corrected and if the findings of the inspection indicate compliance, the permit may be reinstated.
- (h) **PERMIT REVOCATION.** Permits issued under this Section may be revoked after an opportunity for hearing by the Health Officer. The Health Officer may determine that permit revocation is necessary if a permit is suspended twice in any two (2) year period or if the health violations are of a nature as to have caused serious injury or illness to persons.
- (i) **APPEAL.** Whenever a permit is suspended or revoked, the person to which the permit was issued shall be afforded the opportunity of a hearing before the Common Council within fifteen (15) days of the receipt of a written request for such hearing, unless both parties agree to a later date. Opportunity for a hearing before the Common Council will be provided if the written request is submitted by the person issued the permit and received by the Department within ten (10) days of the suspension or revocation.
- (j) **PERMIT REQUIREMENTS AND FEES.** The application for permit or the request for renewal of permit covered in this Section shall be accompanied with an appropriate fee to be established annually by the Common Council. A list of fees shall be maintained by the City Clerk and the Health Department.
  - (1) Any establishment required by this section to pay any fee may, in addition to any other penalties, also be required to pay a permit fee equal to twice the amount of the normal fee if the failure is due to a late payment, insufficient funds or account closed checks, or for any other reason the City has not received the proper payment.
  - (2) Any establishment required by this section to pay any fee may, in addition to any other penalties, also be required to pay a permit fee equal to twice the amount of the normal fee if such establishment opens for business without paying the required fee. The Public Health Director, or designee, may also order such establishment to close until the fee is paid.

# Chapter 9

## Mobile Food Establishments

**Parts**

- 9-1 GENERAL REQUIREMENTS
- 9-2 WATER SUPPLY
- 9-3 LIQUID WASTE
- 9-4 PUSHCARTS
- 9-5 OPERATION AND INSTALLATION

9-1	<b>GENERAL REQUIREMENTS.</b>
	<b>Subparts</b>
	9-101 Applicable Rules
	9-102 Restricted Operation
	9-103 Service Base
	9-104 Boundary of Operation

**9-101.10 Applicable Rules.**

In addition to the specific requirements of this chapter, Chapter 1 through Chapter 7 apply to MOBILE FOOD ESTABLISHMENTS as applicable.

**Warewashing**

**9-102.11 Restricted Operation.**

MOBILE FOOD ESTABLISHMENTS meeting the following conditions are not required to have WAREWASHING EQUIPMENT as specified in Chapter 4 if:

- (A) FOOD is limited to PREPACKAGED FOOD items and BEVERAGES dispensed in single servings from covered urns or other protected EQUIPMENT.
- (B) Handwash facilities are available on the mobile unit.
- (C) Required WAREWASHING EQUIPMENT is available at the SERVICE BASE; and
- (D) UTENSILS and serving EQUIPMENT are limited to SINGLE-SERVICE ARTICLES only.

**9-103.11 Service Base.**

Every MOBILE FOOD ESTABLISHMENT shall have a SERVICE BASE of operations consisting of:

- (A) Except as provided in ¶(D) of this section, an enclosed building of sufficient size to accommodate mobile units for servicing, cleaning, inspection and maintenance.
- (B) An APPROVED water supply as specified in §§5-101.11 and 5-104.11 and 5-104.12.
- (C) APPROVED facilities for liquid waste disposal as specified in §5-403.11.
- (D) If APPROVED by the DEPARTMENT, an enclosed building as specified in ¶(A) of this section, may not be required as a SERVICE BASE if it can be demonstrated that the lack of such a building will not interfere with the sanitary operation or servicing, cleaning, inspection

and maintenance of the MOBILE FOOD ESTABLISHMENT.

**9-104.11 Boundary Of Operation.**

(A) Except as in (D) of this section, each MOBILE FOOD ESTABLISHMENT shall return to its SERVICE BASE not less than once in each 24 hours for servicing and maintenance and more often if necessary.

(B) Itineraries of each MOBILE FOOD ESTABLISHMENT shall be available at the SERVICE BASE.

(C) On request of a representative of the DEPARTMENT, each MOBILE FOOD ESTABLISHMENT shall be made available for inspection for a pre-arranged period of not less than one hour between 8 a.m. and 5 p.m. at the SERVICE BASE. A MOBILE FOOD ESTABLISHMENT shall also be open to inspection by a DEPARTMENT representative at any time while it is in operation.

(D) If APPROVED by the DEPARTMENT, a MOBILE FOOD ESTABLISHMENT may not be required to return to the base every 24 hours if it can be shown that the FOOD ESTABLISHMENT can operate in a safe and sanitary manner for a longer period of time.

**9-2 WATER SUPPLY**

**Subparts**

**9-201 Watering Point**  
**9-202 Storage Tank**

**Water Supply**

**9-201.11 Water Point.**

(A) DRINKING WATER for the MOBILE FOOD ESTABLISHMENT shall be obtained from the SERVICE BASE and the vehicle shall return to the SERVICE BASE whenever the amount of water in storage does not equal at least 3.8 liters (1 gallon).

(B) The watering point for the MOBILE FOOD ESTABLISHMENT shall consist of a threaded tap installed and maintained in a manner that will assure protection against contamination.

(C) Hoses used for conveying DRINKING WATER shall be constructed and maintained as specified in §5-302.16.

**Capacity**

**9-202.11 Water Storage Tank.**

(A) Every MOBILE FOOD ESTABLISHMENT shall be equipped with a gravity or pressurized water storage tank.

(B) The water storage tank shall be sized as specified in §5-103.11, but no smaller than the following:

(1) A MOBILE FOOD ESTABLISHMENT that serves BEVERAGES or FOOD or reheats PREPARED FOODS shall have a water storage tank with a capacity of at least 38 liters (10 gallons) for FOOD EMPLOYEE handwashing.

(2) A FOOD pushcart shall have a water storage tank with a minimum capacity of 19 liters (5 gallons) for handwashing.

(3) A MOBILE FOOD ESTABLISHMENT that PREPARES FOOD or BEVERAGES on the unit shall have a water storage tank with a capacity of at least 151 liters (40 gallons) for handwashing, UTENSIL washing and SANITIZING purposes.

(C) The water storage tank shall be constructed and maintained as specified in subchapter 5-3 and shall be:

- (1) Constructed of at least 14-gauge metal or other durable FOOD grade material.
- (2) Provided with a glass-sight gauge graduated to read water volume in gallons or liters.
- (3) Equipped with a threaded opening on the inlet line or on the tank with a locking device for flushing and SANITIZING the tank.
- (4) Flushed and SANITIZED as specified §5-304.11.

<b>9-3</b>	<b>LIQUID WASTE</b>
	<b>Subpart</b>
<b>9-301</b>	<b>Waste Storage Tank</b>
<b>9-302</b>	<b>Construction and Maintenance</b>
<b>9-303</b>	<b>Disposal</b>

**Storage Tank**      **9-301.11**      **Waste Storage Tank.**

Every MOBILE FOOD ESTABLISHMENT shall have a wastewater storage tank as specified in part 5-4.

**9-302.11**      **Construction and Maintenance.**

A MOBILE FOOD ESTABLISHMENT waste storage tank shall be:

- (A) Constructed of metal of at least 14-gauge thickness, or other durable smooth surface material.
- (B) Equipped with a discharge connection having a tight closing valve consisting of a minimum of 1½ inch half-union attachment for gravity draining.
- (C) The valve specified in ¶(B) of this section shall be located between the attachment and tank proper.
- (D) The waste storage tank shall be maintained in a sanitary condition.

**9-303.11**      **Disposal.**

(A) Every SERVICE BASE shall have an APPROVED sanitary septic system for sanitary disposal of liquid waste from the from the MOBILE FOOD ESTABLISHMENT wastewater collection tank.

(B) When liquid waste cannot be discharged directly to sanitary sewers, a hose with a minimum 1½ inch half-union type attachment for connection to the MOBILE FOOD ESTABLISHMENT waste water tank shall be provided.

(C) The hose used for disposal of liquid waste shall be maintained in a clean and serviceable condition and when not in use shall be stored in a separate cabinet labeled "for waste water hose only."

<b>9-4</b>	<b>PUSHCART</b>
	<b>Subpart</b>
<b>9-401</b>	<b>Locations</b>
<b>9-402</b>	<b>Restricted Use</b>

**Located**

**9-401.11 Locations.**

Outdoor pushcarts shall be located on a paved surface. Indoor pushcarts shall be located on permanent flooring material which is smooth and easily cleanable.

**9-402.11 Restricted Use.**

No pushcart may be used to sell or PROCESS a POTENTIALLY HAZARDOUS FOOD unless the following apply:

(A) POTENTIALLY HAZARDOUS FOOD PREPARED or PROCESSED on an outdoor pushcart shall be entirely contained in an enclosed system that precludes any contamination of the FOOD. Indoor pushcarts shall have adequate shielding to protect display and FOOD PREPARATION areas from contamination.

(B) Pushcart serving POTENTIALLY HAZARDOUS FOOD shall be mechanically equipped to keep FOOD at temperatures as specific in 3-501.16.

<b>9-5</b>	<b>OPERATION AND INSTALLATION</b>
	<b>Subpart</b>
<b>9-501</b>	<b>Restrictions</b>
<b>9-502</b>	<b>Bottled Or Liquefied Gas</b>
<b>9-503</b>	<b>Toilet Facilities</b>

**9-501.11 Restrictions.**

(A) No MOBILE FOOD ESTABLISHMENT may be used for living or sleeping purposes.

(B) MOBILE FOOD ESTABLISHMENT shall not be used for any non-FOOD ESTABLISHMENT purposes or business.

(C) Non-FOOD EMPLOYEES are not permitted in the vehicle where FOOD is PREPARED, stored and served.

(D) No FOOD, FOOD containers, wrappers, PACKAGING materials or UTENSILS may be kept in the driver's compartment of any MOBILE FOOD ESTABLISHMENT.

(E) The driver's compartment shall be separated by a partition from the area for FOOD PREPARATION, service or storage.

**9-502.11 Bottled Or Liquefied Gas.**

If bottled or liquefied gas is used within a MOBILE FOOD ESTABLISHMENT, the OPERATOR shall have it securely installed.

Note: The Department of Commerce has rules that govern bottled and liquefied gas. For information contact the Safety and Buildings Division at the Department of Commerce, P.O. Box 2509, Madison, WI 53701, telephone 608-266-3151 and 711 (TTY) or <http://www.commerce.state.wi.us/SB/>

**9-503.11 Toilet Facilities**

The operator of a MOBILE FOOD ESTABLISHMENT shall arrange for use by personnel operating the MOBILE FOOD ESTABLISHMENT public or private toilet facilities during all hours the MOBILE FOOD ESTABLISHMENT is in operation.

(b) To combine SHUCKED SHELLFISH from containers with different container codes or different shucking dates.

(14) **Comminuted.**

(a) “**Comminuted**” means reduced in size by methods including chopping, flaking, grinding, or mincing.

(b) “**Comminuted**” includes FISH or MEAT products that are reduced in size and restructured or reformulated such as gefilte FISH, gyros, ground beef, and sausage; and a mixture of 2 or more types of MEAT that have been reduced in size and combined, such as sausages made from 2 or more MEATS.

(15) “**Confirmed disease outbreak**” means a FOODBORNE DISEASE OUTBREAK in which laboratory analysis of appropriate specimens identifies a causative agent and epidemiological analysis implicates the FOOD as the source of the illness.

(16) “**Consumer**” means a PERSON who is a member of the public, takes possession of FOOD, is not functioning in the capacity of an OPERATOR of a FOOD ESTABLISHMENT or FOOD PROCESSING PLANT, and does not offer the FOOD for resale.

(17) “**Corrosion-resistant material**” means a material that maintains acceptable surface cleanability characteristics under prolonged influence of the FOOD to be contacted, the normal use of cleaning compounds and SANITIZING solutions, and other conditions of the use environment.

(18) “**Critical control point**” means a point or procedure in a specific FOOD system where loss of control may result in an unacceptable health RISK.

(19) **Critical item.**

(a) “**Critical item**” means a provision of this Code that, if in noncompliance, is more likely than other violations to contribute to FOOD contamination, illness, or environmental health HAZARD.

(b) “**Critical item**” is an item that is denoted in this Code with an asterisk <sup>c</sup>.

(20) “**Critical limit**” means the maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a CRITICAL CONTROL POINT to minimize the RISK that the identified FOOD safety HAZARD may occur.

(20m) “**Department**” means the department of health and family services or the department of agriculture, trade and consumer protection.

(21) “**Disclosure**” means a written statement that clearly identifies the animal-derived foods which are, or can be ordered, raw, undercooked, or without otherwise being processed to eliminate pathogens in their entirety, or items that contain an ingredient that is raw, undercooked, or without otherwise being processed to eliminate pathogens.

(22) **Drinking Water.**

(a) “**Drinking water**” means water that meets the requirements of Safe Drinking Water chp. NR 809.

(b) “**Drinking water**” is traditionally known as “potable water.”

(c) “**Drinking water**” includes the term “water” except where the term used connotes that the water is not potable, such as “boiler water,” “mop water,” “rainwater,” “wastewater,” and “nondrinking” water.

(47) **“Injected”** means manipulating a MEAT so that infectious or toxigenic microorganisms may be introduced from its surface to its interior through tenderizing with deep penetration or injecting the MEAT such as by PROCESSES which may be referred to as “injecting,” “pinning,” or “stitch pumping.

(48) **“Juice”**, when used in the context of FOOD safety, means the aqueous liquid expressed or extracted from one or more fruits or vegetables, purées of the edible portions of one or more fruits or vegetables, or any concentrate of such liquid or purée. Juice includes juice as a whole BEVERAGE, an ingredient of a BEVERAGE and a purée as an ingredient of a BEVERAGE.

(49) **“Kitchenware”** means FOOD PREPARATION and storage UTENSILS.

(50) **“Law”** means applicable local, state, and federal statutes, regulations, and ordinances.

(51) **“Linens”** means fabric items such as cloth hampers, cloth napkins, table cloths, wiping cloths, and work garments including cloth gloves.

(51m) **“Meal”** means any READY TO EAT FOOD served or sold to the GENERAL PUBLIC in individual or prePACKAGED single portions or servings for immediate on-PREMISES consumption, or transported off-PREMISES in individual prePACKAGED carryout servings, or specifically preordered individual or multiple serving portions which are transported to an off-PREMISES location for immediate consumption with or without further PREPARATION. A MEAL may or may not consist wholly or in part of POTENTIALLY HAZARDOUS FOOD.

(a) **“Meal”** includes but is not limited to sandwiches, individual portions of cured and pickled FOOD sold from bulk containers, hard boiled EGGS, hot READY-TO-EAT soup, raw or cooked PROCESSED FOODS sold or served in individual portions, or ingredients PREPARED, service or served or sold at retail for human consumption by any fixed or MOBILE FOOD ESTABLISHMENT or pushcart, coffee shop, cafeteria, cafe, luncheonette, grill, tearoom, sandwich shop, drive-in RESTAURANT, caterer, whether the caterer sells MEALS or lunches at a stated price or is contracted by the MEAL or on an hourly basis, commissary, delicatessen, industrial feeding establishment, private organization operating a FOOD service in a hospital, or TEMPORARY FOOD ESTABLISHMENT.

(b) **“Meal”** does not include soft drinks, ice cream, milk, milk drinks, ices and confections or free lunches served by taverns consisting of popcorn, cheese, crackers, pretzels, cold sausage, cured FISH or bread and butter. Nor does a MEAL include FOOD items sold by the weight, count or piece in individual PACKAGES requiring further PREPARATION for consumption at another location.

(52) **“Meat”** means the flesh of animals used as FOOD including the dressed flesh of cattle, swine, sheep, or goats and other edible animals, *except FISH, POULTRY, and wild GAME ANIMALS as specified under Subparagraphs 3-201.17.*

(53) **“mg/L”** means milligrams per liter, which is the metric equivalent of parts per million (ppm).

(53m) **“Mobile food establishment”** means a:

(a) Restaurant or retail FOOD ESTABLISHMENT where FOOD is served or sold from a movable vehicle, push cart, trailer or boat which periodically or continuously changes location and requires a service base to accommodate the unit for servicing, cleaning, inspection and maintenance or except as specified in 9-103.11(D).

(b) “Mobile food establishment” does not include a vehicle which is used solely to transport or deliver FOOD or a common carrier regulated by the state or federal government, or a movable concession stand designed to operate as a TEMPORARY FOOD ESTABLISHMENT or a traveling retail FOOD ESTABLISHMENT.

(54) **“Molluscan shellfish”** means any edible species of fresh or frozen oysters, clams, mussels, and scallops or edible portions thereof, *except when the scallop product consists only of the shucked adductor muscle.*

Unofficial Text (See Printed Volume). Current through date and Register shown on Title Page.

## Chapter HFS 196

### RESTAURANTS

HFS 196.01	Authority and purpose.
HFS 196.02	Applicability.
HFS 196.03	Definitions.
HFS 196.04	Permits.

HFS 196.05	Inspections.
HFS 196.06	Enforcement.
HFS 196.07	Adoption of Wisconsin food code.

**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 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.