

**ADMINISTRATIVE RULES  
FISCAL ESTIMATE AND  
ECONOMIC IMPACT ANALYSIS**

Type of Estimate and Analysis

Original    X Updated    Corrected

Administrative Rule Chapter, Title and Number

DHS 196 Restaurants

Subject

The proposed rules update ch. DHS 196 and its appendix, the Wisconsin Food Code to the 2009 FDA Model Food Code to reflect current trends, science and policy. The FDA Model Food Code provides practical, science-based guidance and enforceable provisions for mitigating risk factors known to cause foodborne illness. The FDA Model Food Code is a reference document for regulatory agencies that oversee food safety in restaurants, retail food stores, and other food establishments at the retail level.

In addition to making revisions to the Wisconsin Food Code, the Department proposes changes to ch. DHS 196, to clarify language requiring plan reviews for new and extensively remodeled restaurants and additional areas; update references to the 2009 federal FDA Model Food Code; add a new definition for "extensively remodeled"; to update and relocate the definitions "general public", "meal", "occasional" and "temporary restaurant" from the Wisconsin Food Code to ch. DHS 196, where they were previously located.

Fund Sources Affected

Chapter 20 , Stats. Appropriations Affected

GPR    FED    X PRO    PRS    SEG    SEG-S

Fiscal Effect of Implementing the Rule

X No Fiscal Effect  
Indeterminate

Increase Existing Revenues  
Decrease Existing Revenues

Increase Costs  
Could Absorb Within Agency's Budget  
Decrease Costs

The Rule Will Impact the Following (Check All That Apply)

State's Economy  
X Local Government Units

X Specific Businesses/Sectors  
Public Utility Rate Payers

Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes    X No

Policy Problem Addressed by the Rule

The policy problem addressed by this rulemaking is outdated science with respect to food safety practices. The proposed changes updates the existing Wisconsin Food Code to the 2009 FDA Model Food Code. DHS last revised the Wisconsin Food Code in 2006 when it adopted the 2005 FDA Model Food Code in a joint effort with DATCP which administers the Wisconsin Food Code (appendix to ch. ATCP 75) with respect to licensing and inspection of retail food establishments such as grocery stores. Since that time food safety practices have advanced and the new 2009 FDA Model Food Code reflect the current science regarding food safety practices, procedures, and policies. The FDA Model Food Code is a living breathing document that is updated every 4-years to reflect current thinking and science in the areas of food safety. Wisconsin tries to adhere to that schedule to provide their operators the most updated rules that reflect current trends and science in food safety.

Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The proposed rule was posted for comment for 14 days from July 16, 2012 to July 30, 2012 in accordance with s. 227.137, Stats., and Executive Order #50 to solicit comments on the economic impact of the proposed rule for preparation of this economic impact analysis. One person provided comments in response to the

department's solicitation. The commenter commented on the layout of the proposed rule and requested clarification as to some of the changes.

There were no comments received from businesses, associations representing businesses, local governmental units, or individuals that suggest that the proposed changes would adversely affect, in a material way, such businesses, business sectors, local governmental units, individuals, the economy, productivity, jobs, or the overall competitiveness of the state.

The Department does not expect any increase in costs with the implementation of this rule by business. The rule in fact gives operators wider latitude in implementing various food safety requirements. The proposed rule also incorporates other process and procedures that were previously only an option through the variance process, thereby decreasing the paperwork required to implement various procedures or processes. These processes include, but are not limited to Sous Vide, Reduced Oxygen Packaging, and Partial Cooking.

The Department does not expect any increase in costs with the implementation of this rule by local government. The proposed rule does not change the inspection process or the way in which inspections are conducted. The rule provides inspectors alternatives that can be shared with operators to assist them in meeting compliance with the rule.

#### Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The proposed changes will positively affect operators of food service operations, state and local food safety inspectors, and the general public throughout the state by simplifying and clarifying the language of ch. DHS 196 and the Wisconsin Food Code. This rule will benefit businesses that have combined restaurant and grocery operations, because it will maintain consistency with DATCP retail food establishment rules. This rule will benefit affected businesses by clarifying existing regulatory requirements. In some cases, this rule gives affected businesses wider latitude to choose a preferred method of compliance. The proposed code reflects current science with respect to food processes and food safety practices. The alternative is not to adopt current rules, thereby denying restaurant operators the opportunity to take advantage of new and emerging trends in the areas of food preparation and processing.

#### Long Range Implications of Implementing the Rule

This rule affects restaurants. Many of these businesses are small businesses. This rule will benefit affected businesses by clarifying existing regulatory requirements. In some cases, this rule gives affected businesses wider latitude to choose a preferred method of compliance.

#### Compare With Approaches Being Used by Federal Government

There are no federal regulations that specifically address retail food operations. However, FDA publishes a model food code that is based on the best available science and information related to retail food safety.

FDA, the United States Department of Health and Human Services, and the United States Department of Agriculture encourage state and local governments to adopt retail food safety regulations that are consistent with the federal Model Food Code. The current Wisconsin Food Code reflects the 2005 edition of the federal model food code. This rule updates the Wisconsin Food Code to incorporate changes in the 2009 edition of the federal model food code.

#### Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

All the states adjacent to Wisconsin have adopted restaurant regulations based on some version of the federal model food code:

Illinois: Illinois' current regulations are based on the 2005 edition of the federal model food code.

Iowa: Iowa's current regulations are based on the 2005 edition of the federal model food code.

Michigan: Michigan has recently adopted the 2009 edition of the federal model food code.

Minnesota: Minnesota's current regulations are based on the 1997 edition of the federal model food code. Like Wisconsin, Minnesota is proposing this year to update its regulations based on the 2009 edition of the federal model food code.

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