

1999 DRAFTING REQUEST

Bill

Received: **10/12/98**

Received By: **traderc**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Justus**

This file may be shown to any legislator: **NO**

Drafter: **traderc**

May Contact:

Alt. Drafters:

Subject: **Agriculture - food safety**
Health - miscellaneous

Extra Copies: **DAK**
~~**DATCP**~~

Topic:

DOA:.....Justus - DATCP food and meat code

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	traderc 01/6/99	gilfokm 01/7/99	jfrantze 01/8/99	_____	lrb_docadmin 01/8/99		

FE Sent For:

<END>

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1?	traderc	1 wlj 1/6 1-1-7-99 kmg	2/1/8	26/1/8			

FE Sent For:

<END>

CORRESPONDENCE\MEMORANDUM

STATE OF WISCONSIN
Department of Administration

Date: October 8, 1998

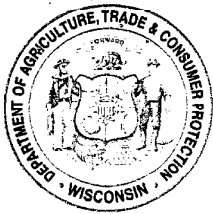
To: Steve Miller
Chief, Legislative Reference Bureau

From: Sarah Justus
State Budget Office



Subject: Drafting Request; DATCP Food and Meat Code

Attached please find a drafting request for Food Inspection Code and Meat Inspection Rules. My priority for this item is medium.
Thank you.



State of Wisconsin
Tommy G. Thompson, Governor

Department of Agriculture, Trade and Consumer Protection

Ben Brancel, Secretary

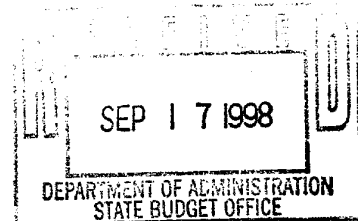


September 16, 1998

TO: Sarah Justus
State Budget Office

FROM: Susan Buroker, Administrator
Division of Management Services

RE: Biennial Budget Legislation



Attached is draft language we are requesting be included in the biennial budget bill. We have discussed this proposal with Secretary Leean and notified him that we are submitting this language. Additional discussion may be needed. The language addresses two issues - model retail food code and meat inspection rules.

- Model retail food code

The language incorporates the model retail food code from the Food and Drug Administration under state law. (See Appendix A.) This legislation would help eliminate duplicate regulation between DATCP and the Department of Health and Family Services. It would also make Wisconsin's retail food program consistent with other states. It would avoid the need for DATCP and DHFS to re-write the federal code, but give us flexibility to deviate from the federal code, if necessary.

- Meat inspection rules

The language incorporates USDA meat inspection rules under state law. (See Appendix B.) This would greatly simplify the implementation of HACCP regulations in Wisconsin, and create a strong argument for allowing sale of state-inspected meat in interstate commerce. It would avoid the need for DATCP to re-write the federal rules, but would give us flexibility to deviate from the federal rules, if necessary.

Please contact me if you would like to discuss our request.

cc: J. Matson
B. Knapp

RETAIL FOOD ESTABLISHMENTS

SECTION ____. 97.30(5) of the statutes is renumbered (5)(a).

SECTION ____. 97.30(5)(b) of the statutes is created to read:

97.30(5)(b) Except as provided by department rule under par. (a), a retail food establishment required to be licensed under this section shall comply with the model food code published by the United states department of health and human services, public health service, food and drug administration.

SECTION ____. 254.64(7) of the statutes is created to read:

254.64(7) Except as provided by department rule, restaurant operations shall comply with the model food code published by the United states department of health and human services, public health service, food and drug administration.

MEAT AND POULTRY ESTABLISHMENTS

SECTION ____. 97.42(4)(intro.) of the statutes is amended to read:

97.42(4)(intro.) **RULES.** The department shall may issue reasonable rules requiring or prescribing:

SECTION ____. 97.42(4m) of the statutes is created to read:

97.42(4m) Except as provided by department rule under sub. (4), an establishment which is required to be licensed under this section shall comply with rules that the United States department of agriculture has promulgated or may hereafter promulgate, under the federal wholesome meat act as amended (21 USC 71) or the federal poultry products inspection act as amended (21 USC 451 et seq.), for federally inspected meat and poultry establishments.



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

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MADISON, WI 53701-2037

STEPHEN R. MILLER
CHIEF

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-8522

REFERENCE SECTION: (608) 266-0341
REFERENCE FAX: (608) 266-5648

November 20, 1998

MEMORANDUM

To: Barbara Knapp, Department of Agriculture, Trade and Consumer Protection

From: Rebecca Tradewell, Legislative Reference Bureau

Subject: Food code and meat inspection budget drafting request

I have reviewed the draft language provided by DATCP for a budget item concerning the model retail food code and meat inspection regulations. The draft language would result in incorporating the Food and Drug Administration's model Food Code and certain regulations of the U.S. Department of Agriculture into Wisconsin law by reference, except that DATCP could promulgate rules that would modify the federal materials. While I understand why an administrative agency would prefer to minimize rule-making, this approach seems to have a number of problems.

Food Code

The FDA Food Code is not a federal statute or regulation. It is a model that the FDA hopes will be followed by other federal agencies, states, local governments and businesses. The Food Code is published by the FDA and updated about once every two years, according to the FDA Internet site.

There are limits on a legislature's ability to delegate its law-making power. When the legislature enacts a statute that incorporates external material, including future changes to that material, the statute may be challenged as an improper delegation of legislative power. See *State v. Wakeen*, 263 Wis. 401, 57 N.W.2d 364 (1953) and *Niagara of Wis. Paper Corp. v. DNR*, 84 Wis.2d 32, 268 N.W.2d 153 (1978). It is impossible to predict how a court would react to the delegation proposed here, but it does seem to be quite a broad delegation and the fact that the Food Code is not enacted by federal statute or regulation might weigh against a finding of validity.

It is important that persons affected by laws be able to tell what the requirements of those laws are. Under this proposal, it might be difficult for persons operating retail food establishments to determine the applicable legal requirements. For one thing, they might not know how to get copies of the Food Code. The draft language provides that the Food Code applies except as it is modified by DATCP rules. It would be much easier to determine what requirements apply to the operator of a retail food establishment if the modifications and the Food Code provisions were integrated in the DATCP rules than to have to read the Food Code and then go through the DATCP rules to determine which provisions of the Food Code are actually applicable. The Food Code currently consists of eight chapters, including a chapter on compliance and enforcement, and several annexes. It might be

difficult to tell how much of this material applies. For example, would all of the provisions that seem to be directed to regulatory authorities, rather than food establishments, be inapplicable in this state? Also, when would changes to the Food Code take effect?

It is likely that some provisions in the Food Code are inconsistent with provisions in the Wisconsin Statutes. Just as an example, the definition of "potentially hazardous food" in the food code differs from that in s. 97.30 (bm). The law should not be internally inconsistent and I do not know how to avoid that problem if this proposal is adopted.

It seems to me that DATCP would have to amend its rules on retail food establishments even if the proposed approach is taken. The problem of telling whether a food code provision or a rule applies would be severe as long as DATCP's current rules are in place. It is also likely that DATCP wants some of the Food Code provisions to apply rather than provisions in the current rules. If this approach is pursued, there should be a delayed effective date to give DATCP time to amend its rules.

Meat and Poultry Inspection

The proposal would also incorporate USDA regulations under the federal wholesome meat act and the federal poultry products inspection act into state law. Because federal regulations would be incorporated, this provision might be less likely to be invalidated as an improper delegation. But the difficulty caused by having to review the federal provisions and then the state rules in order to tell which federal provisions apply would be the same. In addition, it might be difficult to tell exactly which federal regulations are meant to be incorporated. This problem could be addressed by using references to the Code of Federal Regulations rather than to the federal statutes. The USDA regulations refer to federal administrative agencies, which might be confusing, and there might be other ways in which the federal provisions would not neatly govern a state-administered program.

Please contact me if there are questions about this matter. Please let me know how the Department wishes to proceed.

cc. Jim Matson
Sarah Justus

11/30

Jim, Jerry, Steve - From DTCP

Working with DKFS (rest, hotels) DTCP - grocery stores, bakery
I have done emergency rules to ~~deal~~ elim. overlapping
licensing

also want unified body of standards - Food Code
wld be general standard we are aiming for - adopted
by lots of states - by reference - only listed FD done by reference
considerable industry support - chains - it's a good code
FDA has inspection forms keyed to code

2 depts have used it as reference
plan to repeal current rules & only have those where state
felt need to change or add to code

Meat inspection - ^{feds} have overhauled program - hazard analysis,
systems control + pathogen testing - voluminous - were going
to redraft - ours must be at least equal to - want to be able
to go interstate - logistical nightmare - don't want to have to
argue about whether we are at least equal - supplementary
rules as necessary
~~this is what we~~

Changes - when approved by FDA

~~11/2000~~ 11/2001

11/2000 For meat

↳ emergency rule-making
auth. - rule good till 11/1/2001

require DTCP to make the current Food code + any state rules modifying that
to regulated community & agents



State of Wisconsin
Tommy G. Thompson, Governor

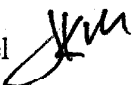


Department of Agriculture, Trade and Consumer Protection

Ben Brancel, Secretary

DATE: December 4, 1998

TO: Rebecca Tradewell, LRB

FROM: Jim Matson, DATCP Counsel 

SUBJECT: **Food Code and Meat Inspection Budget Drafting Request**

Thank you for meeting with us on November 30, 1998 to discuss this drafting request. We understand the concerns articulated in your November 20 memo. However, we believe there is a compelling need for the proposed legislation. As we discussed at our meeting, we are willing to make a number of changes to address your concerns.

A large number of states have already adopted the federal model food code and federal meat inspection rules by reference. We believe that this is the most effective way to bring Wisconsin's food safety program up to date with rapidly changing national standards. There is strong industry support for this approach, especially among food businesses that do business (or aspire to do business) in interstate commerce.

There is currently precedent for this approach in the Wisconsin statutes. For example, s. 97.09, Stats., provides that federal food standards of identity, composition and quality of food are incorporated by reference under Wisconsin law, unless the department establishes different standards by rule. This law has worked extremely well. It provides reasonable clarity and certainty to regulated business, promotes consistent interstate standards, retains Wisconsin's authority to reject federal standards or establish different standards, allows the department to pursue law violations under state law, and avoids unnecessary regulatory duplication.

Congress and USDA have recently overhauled the entire federal meat inspection program. The old system, based on visual inspection, has been replaced by a new "Hazard Analysis-Critical Control Point (HACCP)" system that includes pathogen testing. Wisconsin must administer standards that are "at least equal to" the federal standards. Adopting federal standards by reference will ensure consistency with the federal program, and allow the department to take advantage of federal training, information and systems. It will also provide a strong argument for state-inspected meat establishments who wish to sell their products in interstate commerce, but are currently precluded from doing so. Of the 26 states that have their own meat inspection programs, at least 19 have already adopted the federal standards by reference (about half of them by statute).

It also makes sense to adopt the federal model retail food code by reference. The federal model code is a “state of the art” code based on the best available science, and provides strong protection for consumers. The code is equally adaptable to grocery stores (regulated by DATCP) and restaurants (regulated by DHFS). Legislation incorporating the model code by reference would help eliminate inconsistent and duplicate regulation between DATCP and DHFS (e.g., in convenience stores that combine grocery and restaurant operations), and make Wisconsin’s retail food program consistent with other states. At least 13 states have already adopted the model federal code. At least 2 states have adopted the code by reference in their state statutes. Others have reproduced the code verbatim in their administrative rules (with local substantive modifications).

DATCP and DHFS have agreed, with the support of the food industry and the department’s Food Safety Task Force, to enforce uniform retail inspection standards based on the federal model code. The proposed legislation would avoid the need for DATCP and DHFS to rewrite the federal model code, but give the state flexibility to supplement or deviate from the model code where necessary. It would also promote efficiency, by allowing DATCP and DHFS to take advantage of federal training, information and systems (including automated inspection systems keyed to the federal code).

It is preferable to adopt federal meat standards and retail food standards by legislation, rather than by administrative rule. The Legislature has broader authority than state agencies to incorporate standards by reference. Agencies may adopt standards by reference only as of a specific date, and only if the standards are of “limited public interest.” At least one Attorney General’s Opinion (59 Op. Atty. Gen. 31) has stated that agency rules may not adopt federal laws by reference, but must reproduce them in full. However, the rule drafting format required of state agencies under s. 227.14(1), Stats., is quite different from that used by the federal government. This effectively requires state agencies to rewrite complex federal rules in state language. This entails a significant waste of time and effort, and raises inevitable questions of consistency.¹ The Legislature has broader discretionary authority to incorporate federal standards by reference. The Legislature successfully used that authority when it incorporated federal food standards of identity by reference under s. 97.09, Stats.

The legislation would not unconstitutionally delegate the state’s legislative authority. The state retains its right to reject any federal standard, or to adopt different or supplementary standards by rule. We just avoid a lot of unnecessary and confusing duplication. Both the federal meat inspection regulations and the federal model food code are duly adopted by federal government agencies, not private organizations. The

¹ Although we prefer legislation to incorporate federal standards by reference, we could also settle (at least in the case of the model retail food code) for legislation like that found in s. 227.14(1m)(b), Stats. Such legislation would at least allow the department to reproduce federal language in state rules without having to redraft it completely, according to state drafting standards.

model retail food code, though not a federal law, is formally adopted with substantial input from the states. The industry is familiar with the format of the federal code, and would likely view with suspicion a costly state effort to "reinvent the wheel."

The department can, and will, supplement the proposed legislation with administrative rules. Department rules can refine and clarify the statutory provisions incorporating federal standards by reference. Where necessary, rules can also reproduce federal standards and establish standards which differ from the federal provisions. If the proposed legislation is enacted, the department will repeal its current inconsistent rules and will adopt whatever new rules may be necessary. The department is proposing a delayed effective date of January 1, 2000 for the meat legislation, and January 1, 2001 for the model retail food code, to allow reasonable time for rulemaking.

You also expressed concern about possible inconsistencies with current state law under ch. 97, Stats. We will review the current statutes for possible inconsistencies, although we expect that those inconsistencies will be quite limited. Where the proposed federal standard is preferable to the current state statute, we will suggest a modification to the state statute. In other cases, the legislation could simply provide that, in the event of a conflict between a state statute and a federal standard that would otherwise be incorporated by reference, the state statute prevails.

The intent of the proposed legislation is to incorporate substantive food safety standards applicable to businesses in this state -- not administrative or operational procedures that apply only to the enforcing agency. The department proposes to use the license and enforcement procedures provided under state law, and does not propose to create any new or inconsistent enforcement machinery. We have attached a more specific identification of the federal provisions that we hope to incorporate by reference. We will also adopt administrative rules, as necessary, to clarify the legislation.

We agree that persons affected by the federal rules should have access to them. We would welcome a provision, in the proposed legislation, which directs us to make applicable standards available to those regulated (i.e., licensed retail food establishments and meat establishments). With or without such a directive, we will of course make compliance information available to regulated persons. In our experience, regulated businesses rely more heavily on "user friendly" compliance information, manuals, and inspection contacts than on direct reference to statutes or administrative codes. One of the reasons for using the federal standards is that FDA and USDA have already prepared a substantial amount of high quality compliance information keyed to the federal standards.

Thanks for working with us on this major project. We will soon provide you with the additional information promised. If you have any other questions or concerns, feel free to call me at 224-5022.

cc: Secretary Ben Brancel
Linda Dawson, DHFS
Sarah Justus, DOA
Barb Knapp
Steve Steinhoff

MEAT INSPECTION

We propose to incorporate the following chapters of the Code of Federal Regulations (CFR):

9 CFR 307-311, 313-315, 317-319, 381 (Subparts G,H,I,J,K,L,O and P), 416 and 417

MODEL RETAIL FOOD CODE

We propose to incorporate chapters 1-7 of the model retail food code (not chapter 8 or appendices).



STEPHEN R. MILLER
CHIEF

State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
P. O. BOX 2037
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LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-8522

REFERENCE SECTION: (608) 266-0341
REFERENCE FAX: (608) 266-5648

December 7, 1998

MEMORANDUM

To: Jim Matson, DATCP counsel

From: Rebecca C. Tradewell, Assistant Chief Counsel, (608) 266-7290

Subject: Food Code and Meat Inspection Budget Drafting Request

I have received your memo dated December 4, 1998, concerning the DATCP proposal to adopt the federal model food code and federal meat inspection regulations by reference in the Wisconsin statutes. I do not wish to belabor this matter, but I do have a few comments.

You mention that there is precedent for adopting federal material in the Wisconsin statutes by reference. I am unaware that the example which you present, s. 97.09, has been subject to legal challenge as an unlawful delegation. Even if it had been, that delegation seems to me to be much less broad than the delegations proposed by the department. Wisconsin courts have held that the legislature may delegate fact-finding to other entities, including the federal government. A court might uphold s. 97.09 as a delegation of fact-finding authority. Please let me know if you are aware of any delegations similar to those proposed that have been upheld against constitutional challenge.

Your memo indicates that the legislature has broader authority than state agencies to incorporate by reference. The rule that agencies may only adopt by reference standards of "limited public interest" comes from s. 227.21 (2) (b). If that limitation is only statutory, the legislature may make exceptions to it. In the Attorney General's Opinion at 59 OAG 31, Attorney General Warren wrote: "My predecessors in 50 OAG 107 and 10 OAG 648 concluded that publication in full of the federal laws is required in our *legislative acts* and that incorporation by reference or citation is invalid." 32 OAG at 33 (emphasis added). He went on to conclude that the principle concerning legislative acts is equally applicable to state administrative rules. It does not appear that this opinion supports the conclusion that state agencies have less constitutional authority than the state legislature to incorporate by reference.

I question whether authorizing DATCP and DHFS to promulgate rules that "reject" or modify federal requirements solves the delegation problem. Under the proposal, federal changes would take effect unless and until the state agency acted. Whenever it delegates, the state has the power to cancel or modify the delegation, albeit that this might usually require action by the legislature. Giving an administrative agency this power does not solve the fundamental problem.

As I indicated in my memo of November 20, there does seem to be a difference between the proposed delegation involving the food code and that involving meat inspection regulations. When

the federal government essentially requires states to comply with its standards, the Supremacy Clause may come into play and “trump” state constitutional delegation concerns. The federal agency may change its regulations at any time, making it difficult or impossible for a state to remain in compliance with the federal requirement. No such federal requirement exists with respect to the food code, which is approved by the FDA but does not go through formal administrative procedure and does not have the force of law.

My understanding is that the food code is revised about once every two years. It would not seem to be an unreasonable burden to ask the agencies to update their rules every two years if they wished to adopt any of the revisions. While the proposal related to the food code would, as a practical matter, make the requirements applicable to restaurants and other retail food establishments more similar, it does not ensure consistency of regulation because DATCP and DHFS would have the authority to modify the food code’s requirements in different ways. Given these considerations and the practical concerns raised in my earlier memo, a reasonable approach to the food code issue might be for the agencies to adopt the food code by rule, incorporating any desired changes. A provision similar to s. 227.14 (1m) (b) could make the task easier.

cc. Sarah Justus

Food Code	Statute 97
<p>(1) Additive. (a) "Food additive" has the meaning stated in the Federal Food, Drug, and Cosmetic Act, § 201(s) and 21 CFR 170. (b) "Color additive" has the meaning stated in the Federal Food, Drug, and Cosmetic Act, § 201(t) and 21 CFR 70.</p>	<p>97.01 (2) "Color additive" includes as colors black, white and inter-mediate grays and means a material which is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated or otherwise derived, with or without inter-mediate or final change of identity from a vegetable, animal, mineral or other source and which, when added or applied to a food or any part thereof, is capable, alone or through reaction with other substance, of imparting color thereto; except that such term does not include any material which has been or hereafter is exempted under the federal act. (7) "Food additive" means any substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food, (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting or holding food; and including any source of radiation intended for any such use), if such sub-stance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use; except that such term does not include a pesticide chemical in or on a raw agricultural commodity, or a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity, or a color additive, or any substance used in accordance with a sanction or approval granted prior to the enactment of the food additives</p>

No

Yes

Keep

	<p>amendment of 1958, pursuant to the federal act.</p>
<p>(2) "Adulterated" has the meaning stated in the Federal Food, Drug, and Cosmetic Act, § 402.</p> <p><i>No</i></p>	<p>97.02 Standards; adulterated food. A food is adulterated:</p> <p>(1) If it bears or contains any poisonous or deleterious sub-stance which may render it injurious to health; but in case the sub-stance is not an added substance such food shall not be considered adulterated under this paragraph if the quantity of such substance in such food does not ordinarily render it injurious to health.</p> <p>(2) If it bears or contains any added poisonous or added deleterious substance, other than one which is a pesticide chemical in or on a raw agricultural commodity, a food additive or a color additive, which is unsafe within the meaning of the federal act or any deleterious substance not a necessary ingredient in its manufacture.</p> <p>(3) If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of the federal act. confectionery if the use of the substance does not promote deception of the consumer or otherwise result in adulteration or misbranding in violation of this chapter. The department may, for the purpose of avoiding or resolving uncertainty as to the application of this clause, promulgate rules allowing or prohibiting the use of particular nonnutritive substances. History: 1971 c. 156; 1979 c. 89.</p> <p><i>Y92</i></p> <p><i>Keep</i></p> <p><i>I have it now + 97.02</i></p>
<p>(5) "Beverage" means a liquid for drinking, including water.</p> <p><i>Does this include mineral water?</i></p> <p><i>OK</i></p>	<p>97.29(1)</p> <p>(i) "Soda water beverage" means all beverages commonly known as soft drinks or soda water, whether carbonated, uncarbonated, sweetened or flavored.</p>
<p>(6) "Bottled drinking water" means water that is SEALED in bottles, packages, or other containers and offered for sale for human consumption, including bottled mineral water.</p> <p><i>No way Deal</i></p>	<p>97.34 Bottled drinking water and soda water beverage; standards; sampling and analysis. (1) In this section:</p> <p>(a) "Bottled drinking water" means all water packaged in bottles or similar containers and sold or distributed for drinking purposes. This term includes distilled water, artesian water, spring water and</p> <p><i>No Deal</i></p> <p><i>Keep</i></p>

	<p>mineral water, whether carbonated or uncarbonated.</p> <p>(b) "Soda water beverage" means and includes all beverages commonly known as soft drinks or soda water, whether carbon-ated, uncarbonated, sweetened or flavored. This term does not in-clude alcohol beverages.</p>
<p>(18) Drinking Water.</p> <p>(a) "Drinking water" means water that meets 40 CFR 141 National Primary Drinking Water Regulations.</p> <p>(b) "Drinking water" is traditionally known as "potable water."</p> <p>(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.</p>	<p>97.2(1)(f) "Drinking water" means water used or intended for use for human consumption. "Drinking water" includes distilled water, artesian water, spring water and mineral water, whether carbon-ated or uncarbonated, if consumed by humans or intended for hu-man consumption.</p> <p>70.29 (1)(f) 70.02(5) R B DW →</p> <p>97.34</p> <p>?</p> <p>Keep</p>
<p>(26) "Food" means a raw, cooked, or processed edible substance, ice, BEVERAGE, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.</p>	<p>(6) "Food" means:</p> <p>(a) Articles used for food or drink by persons.</p> <p>(b) Chewing gum.</p> <p>(c) Articles used for components of matters specified in pars. (a) and (b).</p>
<p>(30) Food Establishment.</p> <p>(a) "Food establishment" means an operation that stores, prepares, packages, serves, vends, or otherwise provides FOOD for human consumption:</p> <p>(i) Such as a restaurant, satellite or catered feeding location; catering operation if the operation provides FOOD directly to a CONSUMER or to a conveyance used to transport people; market; vending location; conveyance used to transport people; institution; or FOOD bank; and</p> <p>(ii) That relinquishes possession of FOOD to a CONSUMER directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.</p> <p>(b) "Food establishment" includes:</p> <p>(i) An element of the operation such as a</p>	<p>97.01</p> <p>97.30(1)</p> <p>(c) "Retail food establishment" means 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 con-sumers 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 establish-ment holding a permit under s. 254.64, to the extent that the activi-ties of the establishment are covered by that permit.</p> <p>Yes</p>

Doesn't Conflict

Neal Not Harry

(No)

transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is PERMITTED by the REGULATORY AUTHORITY; and

(ii) An operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the PREMISES; and regardless of whether there is a charge for the FOOD.

(c) "Food establishment" does not include:

(i) An establishment that offers only prepackaged FOODS that are not POTENTIALLY HAZARDOUS;

(ii) A produce stand that only offers whole, uncut fresh fruits and vegetables;

(iii) A FOOD PROCESSING PLANT;

(iv) A kitchen in a private home if only FOOD that is not POTENTIALLY HAZARDOUS is prepared for sale or service at a function such as a religious or charitable organization's bake sale if allowed by LAW and if the CONSUMER is informed by a clearly visible placard at the sales or service location that the FOOD is prepared in a kitchen that is not subject to regulation and inspection by the REGULATORY AUTHORITY;

(v) An area where FOOD that is prepared as specified in Subparagraph (c)(iv) of this definition is sold or offered for human consumption; 8

(vi) A kitchen in a private home, such as a small family day-care provider; or a bed-and-breakfast operation that prepares and offers FOOD to guests if the home is owner occupied, the number of available guest bedrooms does not exceed 6, breakfast is the only meal offered, the number of guests served does not exceed 18, and the CONSUMER is informed by statements contained in published advertisements, mailed brochures, and placards posted at the registration area that the FOOD is prepared in a kitchen that is not regulated and inspected by the

<p>REGULATORY AUTHORITY; or (vii) A private home that receives catered or home-delivered FOOD.</p>	<p>97.29 (1)(h) ↓</p>
<p>(31) Food Processing Plant. (a) "Food processing plant" means a commercial operation that manufactures, packages, labels, or stores FOOD for human consumption and does not provide FOOD directly to a CONSUMER. (b) "Food processing plant" does not include a FOOD ESTABLISHMENT as defined under Subparagraph 1-201.10(B)(30).</p>	<p>(h) "Food processing plant" means any place where food processing is conducted. "Food processing plant" does not include any establishment subject to the requirements of s. 97.30 or any restaurant or other establishment holding a permit under s. 254.64, to the extent that the activities of that establishment are covered by s. 97.30 or the permit under s. 254.64.</p>
<p>(33) "Grade A standards" means the requirements of the United States Public Health Service/FDA "Grade A Pasteurized Milk Ordinance" and "Grade A Condensed and Dry Milk Ordinance" with which certain fluid and dry milk and milk products comply.</p>	<p>97.24 Milk and milk products. (1) DEFINITIONS. In this section: (b) "Grade A milk" means milk which is produced, processed and distributed in compliance with grade A standards established by the department by rule under this chapter. (c) "Grade A milk product" means a fluid milk product which is produced, processed and distributed in compliance with grade A standards established by the department by rule under this chapter. (cm) "Milk" means the lacteal secretion of cows, sheep or goats, and includes skim milk and cream.</p>
<p>(34) "General use pesticide" means a pesticide that is not classified by EPA for restricted use as specified in 40 CFR 152.175.</p>	<p>94.67 (25) "Pesticide" means any substance or mixture of sub-stances labeled or designed or intended for use in preventing, destroying, repelling or mitigating any pest, or as a plant regulator, defoliant or desiccant.</p>
<p>(45) "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(A)(3) and (4).</p>	<p>97.42(1) (g) "Meat food products" means any article capable of use as human food which is derived or prepared in whole or in substantial and definite part from meat products or poultry products. (h) "Meat products" and "poultry products" means the car-casses or any parts of carcasses of animals and poultry capable of use as human food.</p>
<p>(48) Packaged. (a) "Packaged" means bottled, canned, cartoned, securely bagged, or securely</p>	<p>97.01 (12) "Package" means any container or wrapper in which any food is enclosed for</p>

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Food Code - Tom Leitzke
Bureau Director Food & Drug
224-4711

wrapped, whether PACKAGED in a FOOD ESTABLISHMENT or a FOOD PROCESSING PLANT.

(b) "Packaged" does not include a wrapper, carry-out box, or other nondurable container used to containerize FOOD with the purpose of facilitating FOOD protection during service and receipt of the FOOD by the CONSUMER.

use in the delivery or display of that food to retail purchasers, but does not include:

(a) Shipping containers or wrappings used solely for the transportation of any food in bulk or in quantity to manufacturers, packers or processors, or to wholesale or retail distributors.

(b) Shipping containers or outer wrappings used by retailers to ship or deliver any food to retail customers if such containers and wrappings bear no printed matter pertaining to any particular commodity.

(59) Potentially Hazardous Food.

(a) "Potentially hazardous food" means a FOOD that is natural or synthetic and that requires temperature control because it is in a form capable of supporting:

(i) The rapid and progressive growth of infectious or toxigenic microorganisms;

(ii) The growth and toxin production of *Clostridium botulinum*; or

(iii) In raw shell eggs, the growth of *Salmonella enteritidis*.

(b) "Potentially hazardous food" includes an animal FOOD (a FOOD of animal origin) that is raw or heat-treated; a FOOD of plant origin that is heat-treated or consists of raw seed sprouts; cut melons; and garlic and oil mixtures that are not acidified or otherwise modified at a FOOD PROCESSING PLANT in a way that results in mixtures that do not support growth as specified under Subparagraph (a) of this definition.

(c) "Potentially hazardous food" does not include:

(i) An air-cooled hard-boiled egg with shell intact;

(ii) A FOOD with an a value of 0.85 or less;

(iii) A FOOD with a pH level of 4.6 or below when measured at 24 C (75 F);

o o

(iv) A FOOD, in an unopened HERMETICALLY SEALED CONTAINER, that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and

97.30(1)

(bm) "Potentially hazardous food" means any food that is ca-pable of supporting rapid and progressive growth of infectious or toxicogenic microorganisms.

YES

NO

distribution;
(v) A FOOD for which laboratory evidence demonstrates that the rapid and progressive growth of infectious or toxigenic microorganisms or the growth of *S. enteritidis* in eggs or *C. botulinum* can not occur, such as a FOOD that has an a and a pH that are above the levels specified under Subparagraphs (c)(ii) w and (iii) of this definition and that may contain a preservative, other barrier to the growth of microorganisms, or a combination of barriers that inhibit the growth of microorganisms; or
(vi) A FOOD that does not support the growth of microorganisms as specified under Subparagraph (a) of this definition even though the FOOD may contain an infectious or toxigenic microorganism or chemical or physical contaminant at a level sufficient to cause illness .

(60) Poultry.
(a) "Poultry" means:
(i) Any domesticated bird (chickens, turkeys, ducks, geese, or guineas), whether live or dead, as defined in 9 CFR 381 Poultry Products Inspection Regulations; and
(ii) Any migratory waterfowl, game bird, or squab such as pheasant, partridge, quail, grouse, or guineas, whether live or dead, as defined in 9 CFR 362 Voluntary Poultry Inspection Program.
(b) "Poultry" does not include ratites.

meat

(67) "Regulatory authority" means the local, state, or federal enforcement body or authorized representative having jurisdiction over the FOOD ESTABLISHMENT.

(68) "Restricted use pesticide" means a pesticide product that contains the active ingredients specified in 40 CFR 152.175 Pesticides classified for restricted use, and that is limited to use by or under the direct supervision of a certified applicator.

ARM

97.42 (1)
(L) "Poultry" means any domesticated fowl, including but not limited to chickens, turkeys, geese, ducks or guineas, but shall not include commercially produced game birds.

97.01
(4) "Department" means the department of agriculture, trade and consumer protection. (a) and (b).)

94.67
(31) "Restricted-use pesticide" means a pesticide for which certain or all of its uses are classified as being for restricted use under the federal act.

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State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0567/1

RCT: f...
WJ: zkmq
1

SOON

DOA:.....Justus - DATCP food and meat code

FOR 1999-01 BUDGET — NOT READY FOR INTRODUCTION

DO NOT
GEN CAT

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

AGRICULTURE ✓

Under current law, the department of agriculture, trade and consumer protection (DATCP) regulates establishments where animals are slaughtered and where meat is processed if those establishments are not federally licensed. Current law requires DATCP to promulgate rules regulating slaughtering and meat processing.

* This bill requires ^{slaughtering and meat processing} establishments where ~~animals are slaughtered and where meat is processed~~ that are not federally licensed to comply with federal regulations applicable to federally licensed establishments, except as otherwise provided in rules promulgated by DATCP.

Under current law, DATCP regulates retail food establishments, such as grocery stores, and the department of health and family services (DHFS) regulates restaurants. Also under current law, a state agency is generally required to use the form and style used for the statutes when it promulgates rules.

Under this bill, if DATCP or DHFS promulgates a rule based on the model food code, the rule may use the format of the model food code. The model food code is

published by the federal food and drug administration as a model for state and local regulation of retail food establishments and restaurants.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 97.30 (1) (bm) of the statutes is repealed and recreated to read:
2 97.30 (1) (bm) Except as provided by the department by rule, "potentially
3 hazardous food" means a food that requires temperature control because it is in a
4 form capable of supporting any of the following:

- 5 1. Rapid and progressive growth of infectious or toxigenic microorganisms.
- 6 2. ~~The~~ growth and toxin production of Clostridium botulinum.
- 7 3. In raw shell eggs, ~~the~~ growth of Salmonella enteritidis.

8 **SECTION 2.** 97.42 (4) (intro.) of the statutes is amended to read:

9 97.42 (4) RULES. (intro.) The department ~~shall~~ may issue reasonable rules
10 requiring or prescribing any of the following:

History: 1971 c. 270 s. 104; 1973 c. 206; 1975 c. 308, 421; 1977 c. 196 s. 131; 1977 c. 216, 365; 1979 c. 110, 154; 1981 c. 314; 1983 a. 189, 261; 1983 a. 500 s. 44; 1985 a. 29; 1987 a. 399; 1989 a. 174; 1991 a. 39, 175, 269; 1993 a. 16, 37, 144, 492; 1995 a. 79, 225.

11 **SECTION 3.** 97.42 (4m) of the statutes is created to read:

12 97.42 (4m) FEDERAL REQUIREMENTS. Except as provided in rules promulgated
13 under sub. (4), the operator of an establishment that is required to be licensed under
14 ~~this section shall comply with 9 CFR parts 307 to 311, 313 to 315, 381 subparts G,~~
15 ~~H, I, J, K, L, O and P,~~ 416 and 417 ^{and part} as they apply to federally licensed establishments.

16 **SECTION 4.** 227.14 (1s) of the statutes is created to read:

17 227.14 (1s) EXCEPTION; ^{no initial cap} PREPARATION OF CERTAIN RULES BASED ON FEDERAL FOOD
18 CODE. Notwithstanding sub. (1), if the department of agriculture, trade and
19 consumer protection or the department of health and family services prepares a

1 proposed rule based on the model food code published by the federal food and drug
2 administration, the proposed rule may be in the format of the model food code.

3 **SECTION 9404. Effective dates; agriculture, trade and consumer**
4 **protection.**

5 (1) MEAT AND POULTRY INSPECTION. The treatment of section 97.42 (4) and (4m)
6 of the statutes takes effect on January 1, 2000.

7 (2) POTENTIALLY HAZARDOUS FOOD. The treatment of section 97.30 (1) (bm) of the
8 statutes takes effect on January 1, 2001.

9 (END)

(intro.)



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0567/1
RCT:wlj&kmg:jf

DOA:.....Justus - DATCP food and meat code

FOR 1999-01 BUDGET -- NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

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9 (END)