

**DEPARTMENT OF HEALTH SERVICES  
NOTICE OF PUBLIC HEARING**

DHS 196 and Appendix (WI Food Code)

NOTICE IS HEREBY GIVEN That pursuant to ss. 254.74 (1) (a) and (d) Stats., the Department of Health Services will hold a public hearing to consider the amendment of rules relating to restaurants and the Wisconsin Food Code.

**Hearing Date(s) and Location(s)**

**Date and Time**

**Location**

Tuesday, October 9, 2012  
10:00 am to 2:00 pm

Board Room  
Wisconsin Department of Agriculture, Trade and  
Consumer Protection  
2811 Agriculture Drive  
Madison, WI 53708-8911

Thursday, October 11, 2012  
10:00 am to 2:00 pm

Room LL42  
Waupaca Public Courthouse  
811 Harding Street  
Waupaca, Wisconsin 54981

Friday, October 12, 2012  
10 am to 2:00 pm

Room 129  
Eau Claire State Office Building  
718 W. Clairemont Ave  
Eau Claire, WI 54701

**Accessibility**

**English**

DHS is an equal opportunity employer and service provider. If you need accommodations because of a disability or need an interpreter or translator, or if you need this material in another language or in an alternate format, you may request assistance to participate by contacting James Kaplanek at 608-261-8361. You must make your request at least 7 days before the activity.

**Spanish**

DHS es una agencia que ofrece igualdad en las oportunidades de empleo y servicios. Si necesita algún tipo de acomodaciones debido a incapacidad o si necesita un interprete, traductor o esta información en su propio idioma o en un formato alterno, usted puede pedir asistencia para participar en los programas comunicándose con James Kaplanek al número 608-261-8361. Debe someter su petición por lo menos 7 días de antes de la actividad.

## **Hmong**

DHS yog ib tus tswv hauj lwm thiab yog ib qhov chaw pab cuam uas muab vaj huam sib luag rau sawv daws. Yog koj xav tau kev pab vim muaj mob xiam oob qhab los yog xav tau ib tus neeg pab txhais lus los yog txhais ntaub ntawv, los yog koj xav tau cov ntaub ntawv no ua lwm hom lus los yog lwm hom ntawv, koj yuav tau thov kev pab uas yog hu rau James Kaplanek ntawm 608-261-8361. Koj yuav tsum thov qhov kev pab yam tsawg kawg 7 hnuv ua ntej qhov hauj lwm ntawd.

### **Copies of Proposed Rule and Fiscal Estimate-Economic Impact Analysis**

A copy of the proposed rule and the fiscal estimate-economic impact analysis may be obtained from the Department of Health Services at no charge by downloading the documents from [www.adminrules.wisconsin.gov](http://www.adminrules.wisconsin.gov) or by contacting:

James Kaplanek  
Food Safety and Recreational Licensing Section  
1 W. Wilson Street  
Room # 150  
Madison, WI 53701

### **Place Where Comments are to be Submitted and Deadline for Submission:**

Comments may be submitted to James Kaplanek or to the Wisconsin Administrative Rules Website at [www.adminrules.wisconsin.gov](http://www.adminrules.wisconsin.gov) until Friday, October 12, 2012, 4:30 p.m.

## **Analysis Prepared by the Department of Health Services**

### ***Statute interpreted***

Sections 254.61, 254.62, 254.64 to 254.72, 254.74 and 254.85, Stats.

### ***Statutory authority***

Section 254.74 (1) Stats.

### ***Explanation of agency authority***

Section 254.74 (1) Stats, gives the department the broad authority to administer and enforce this subchapter, the rules promulgated under this subchapter and any other rules or laws relating to the public health and safety in hotels, tourist rooming houses, bed and breakfast establishments, restaurants, vending machine commissaries, vending machines and vending machine locations.

DHS's authority to make rules relating to restaurants is found in s. 254.74 (1) (d), Stats., which provides that DHS may prescribe rules and fix standards, including rules covering the general sanitation and cleanliness of premises regulated under this subchapter, the proper handling and storing of food on such premises, the construction and sanitary condition of the premises and equipment to be used and the location and servicing of equipment.

The format of the Wisconsin Food Code is different than that of most state administrative rules. DHS is authorized under s. 227.14(1s), Stats., to use the drafting format of the Federal Drug Administration (FDA) Model Food Code. This rule follows that authorized format.

### ***Related statutes or rules***

***Plain language analysis***

DHS currently licenses (issues permits to) and inspects restaurants under ch. DHS 196 and its appendix, the Wisconsin Food Code. The proposed changes updates ch. DHS 196, and 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 the Department Agriculture, Trade and Consumer Protection (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 reflects 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. DHS tries to adhere to that schedule to provide their operators the most updated rules that reflect current trends and science in food safety.

The proposed Wisconsin Food Code incorporates by reference, the U.S. Department of Health and Human Services, Public Health Service, FDA, publication *Grade "A" Pasteurized Milk Ordinance*, (2011 Revision) and the Interstate Shellfish Sanitation Conference and U.S. Department of Health and Human Services, FDA publication, *National Shellfish Sanitation Program, Guide for the Control of Molluscan Shellfish*, (2009 Revision). DHS is currently seeking the consent of the Attorney General to incorporate these standards in the final proposed rules.

The following is a summary of the changes made to ch. DHS 196 and its appendix, the Wisconsin Food Code:

**DHS 196**

- Clarifies language requiring plan review for new and extensively remodeled restaurants and additional areas.
- Updates references to the 2009 FDA Model Food Code.
- Adds a new definition for "extensively remodeled."
- Removes definitions from the Wisconsin Food Code relating to restaurant permitting and places them into ch. DHS 196, where they were previously located. The terms include "General Public", "Meal", "Occasional", and "Temporary Restaurant". The definitions are updated to provide clarity.

**DHS 196 Appendix (Wisconsin Food Code)**

**-Broad-Based Changes to the Wisconsin Food Code**

1. Errors in punctuation, spelling and use of defined terms were corrected throughout.
2. The term Potentially Hazardous Food was changed to Potentially Hazardous Food (Time/Temperature Control for Safety Food) throughout the Wisconsin Food Code.
3. The word "person" is replaced with the word "individual" throughout the Wisconsin Food Code.
4. "Of this section" follows ¶ (X) throughout the Wisconsin Code to be consistent with 2009 FDA Model Food Code language.
5. "Handwashing sink" replaces "handsink" throughout the Wisconsin Food Code.

6. The superscript (C), (N), and (S) are replaced with superscript (P) and (Pf) throughout the Wisconsin Food Code.
7. References to other federal and state codes as well as references referring to other food code sections have been updated throughout the Wisconsin Food Code.
8. Sections containing “exceptions” are now located in the first sentence to conform to 2009 FDA Model Food Code language.
9. The word “an exposure” is replaced with “a contact” throughout the Wisconsin Food Code.
10. The word “certified manager” is replaced with “certified food manager” throughout the Wisconsin Food Code.

### **-Specific Changes to DHS 196 Appendix (Wisconsin Food Code)**

#### Preface

1. Structural Nomenclature section was rewritten to provide clarity.
2. Section Designations were changed to reflect new criticality terms. The terms “C”, “N”, and “S” are replaced with “P” Priority, “Pf” Priority foundation, and unmarked sections are referred to as “Core Items”.
3. Font style section was reformatted into a table for easier reading.

#### Chapter 1 – Purpose and Definitions

1. In section 1-103.10, the “as defined in Subparagraph 210.10(B)(37) was removed.
2. In section 1-104.10, the “as defined in Subparagraph 210.10(B)(37) was removed.
3. In section 1-104.12, (D)(4) was removed as a duplicated statement.
4. In section 1-201.10, the number system was removed consistent with the 2009 FDA Model Food Code.
5. In section 1-201.10, the following new definitions have been added: “Asymptomatic”, “Balut”, “Conditional employee”, “Core Item”, “Count-mounted equipment”, “Cut leafy greens”, “Dealer”, “Egg Product”, “Enterohemorrhagic Escherichia coli”, “Handwashing sink”, “Health practitioner”, “Major Food Allergen”, “mechanically Tenderized”, “Non-Continuous Cooking”, “Priority item”, “Priority foundation Item”, “Ratite”, “Re-service”, and “Risk control plan”.
6. In section 1-201.10, the following definitions have been deleted: “Critical Item”, “General Public”, “Incidental food service”, “Meal”, “Occasional”, “Preparation”, “Processing”, and “Table mounted equipment”.

7. In section 1-201.10, the term “Accredited Program”, was updated to reflect the 2009 FDA Model Food Code.
8. In section 1-201.10, the term “Code of Federal Regulations” was replaced with “CFR”.
9. In section 1-201.10, “Wis Admin Code” was added to the term “Drinking Water”.
10. In section 1-201.10, the term “Egg” was updated to 2009 FDA Model Food Code language.
11. In section 1-201.10, the word “apparatuses” replaced the word “items”.
12. In section 1-201.10, the term “Exclude” was updated to meet 2009 FDA Model Food Code language.
13. In section 1-201.10, “as defined under Subparagraph 1-201.10(B)(37)” was removed from the term “Food Processing Plant”.
14. In section 1-201.10, “as defined in Subparagraph 1-201.10(B)(31)” was removed from the term “Game Animal”.
15. In section 1-201.10, “Pesticides classified for restricted use” was added to the term “General use pesticide”.
16. In section 1-201.10, “and Grade A Condensed and Dry Milk Ordinance” was removed from the term “Grade A standards”.
17. In section 1-201.10, the term “Immediate danger” was changed to “Imminent health hazard”.
18. In section 1-201.10, the term “Injected” was modified to meet 2009 FDA Model Food Code language.
19. In section 1-201.10, the term “Juice” was modified to reflect 2009 FDA Model Food Code language.
20. In section 1-201.10, “whether tenant, owner, lessee or licensee, or the agent, heir or assignee of any of these” was removed from the term “Person”.
21. In section 1-201.10, “and as defined in s. 145.01(10) Stats” was added to the term “Plumbing system”.
22. In section 1-201.10, the term “Potentially Hazardous Food” is changed to “Potentially hazardous food (time/temperature control for safety food)” and the term is updated to reflect 2009 FDA Model Food Code language.

23. In section 1-201.10, the term “Poultry” was modified to meet 2009 FDA Model Food Code language.
24. In section 1-201.10, “each individual building, space or stand where food is prepared, served or sold” is removed from the term “Premises”.
25. In section 1-201.10, statutory references were added to the term “Public water system”.
26. In section 1-201.10, the term “Ready-to-Eat Food” was modified to meet 2009 FDA Model Food Code language.
27. In section 1-201.10, the term “Reduced Oxygen Packaging” was modified to meet 2009 FDA Model Food Code language.
28. In section 1-201.10, the term “Shiga toxin-producing Escherichia coli” was modified to meet 2009 FDA Model Food Code language.
29. In section 1-201.10, the word “spinach” is replaced by the word “shrimp” for the term “Slacking”.

#### Chapter 2 – Management and Personal

1. In section 2-101.11, language was added to ensure that a person in charge is present during all hours of operation.
2. In section 2-102.11(A), the term “priority items” replaced the term “risk factor”.
3. In section 2-102.11(C)(9), language was added referring to the person in charge requirements to demonstrate knowledge about major food allergens.
4. In section 2-102.11(C)(15), additional language was added to this section requiring the person in charge to understand and demonstrate knowledge on approved procedures and risk control plans.
5. In section 2-102.11(C)(16), “Conditional employee” was added.
6. In section 2-102.11(C)(17), language was added to the person in charge demonstration of knowledge responsibilities for understanding reporting requirements for ill employees and the actions taken by the person in charge.
7. In section 2-102.20, language was added to indicate a Wisconsin certified food manager satisfies the demonstration of knowledge requirements.
8. In section 2-103.11(L), allergy awareness was added to the training responsibilities of the person in charge.

9. In section 2-103.11(M), language was added for the person in charge to inform employees their reporting requirements regarding information about their health and activities as they relate to diseases that are transmissible through food.
10. In section 2-201.11, the format was substantially modified to reflect 2009 FDA Model Food Code language. Norovirus has been added as reportable illness to the person in charge.
11. In section 2-201.12, the format was substantially modified to reflect 2009 FDA Model Food Code language. Exclusions and restrictions concerning Norovirus were added.
12. In section 2-201.13, the format was substantially modified to reflect 2009 FDA Model Food Code language for removal, adjustment or retention of exclusions and restrictions for ill food employees. Additional language for Norovirus was added.
13. Section 2-201.14 was removed.
14. Section 2-201.15 was removed.
15. In section 2-301.12(A), Subpart 6-301 was added for clarity.
16. In section 2-301.12(B)-(D), language was reformatted to meet 2009 FDA Model Food Code language.
17. In section 2-301.15, the approval was removed for handwashing in pre-wash sinks in new food establishments and provisions established for existing food establishments.
18. In section 2-301.16, “hand sanitizer” was changed to “hand antiseptic” and language was reformatted to meet 2009 FDA Model Food Code language.
19. In section 2-403.11, the subparagraph reference was changed from 6-501.115(B)(2)-(4) to 6-501.115(B)(2)-(5).

### Chapter 3 – Food

1. In section 3-201.11, “all law relating to food and food labeling” was removed and replaced with “laws”.
2. In section 3-201.11(D), removes the term molluscan shellfish and leaves the section only applying to fish and those fish specified in subparagraph 3-402.11(B) and adds “or undercooked form”.
3. In section 3-201.11(G), removed the word “shell” when referring to eggs.
4. In section 3-201.13, removed “in ch. ATCP 80” and replaced with “law”.

5. In section 3-201.11(G), Cheese curds may be received at temperatures other than 41oF was added.
6. In section 3-202.13, the word “shell” was removed from egg and “ch. ATCP 88” was removed and replaced with “Law”.
7. In section 3-202.14(A), the words “liquid, frozen and dry eggs” were removed when referring to eggs.
8. In section 3-202.14(B), the format was restructured to conform to 2009 FDA Model Food Code language.
9. In section 3-202.110, a note was added at the end providing clarification for pre-packaged juice for sale at retail and juice packaged in a food establishment.
10. In section 3-203.11(D), language was modified to include additional language regarding labeling requirements for shucked shellfish.
11. In section 3-203.12, language was restructured to meet 2009 FDA Model Food Code language.
12. In section 3-301.11, language was restructured to meet 2009 FDA Model Food Code language.
13. In section 3-302.11(A)(1)(c), language was added allowing commercially packaged raw frozen animal food to be stored with commercially packaged frozen ready-to-eat food.
14. In section 3-304.11, Single-service and single-use items were added as food contact surfaces and language was reformatted to meet 2009 FDA Model Food Code language.
15. In section 3-304.14, this section on wiping cloths and working containers was reformatted to 2009 FDA Model Food Code language.
16. In section 3-401.11(A)(2), the defined term “mechanically tenderized” is added.
17. In section 3-401.11(B), language was reformatted to meet 2009 FDA Model Food Code language.
18. In section 3-401.11(D)(2), added that undercooked comminuted meat be removed from the children’s menu.
19. In section 3-401.14, new language is added on non-continuous cooking of raw animal foods.
20. In section 3-402.11, this language was reformatted to meet 2009 FDA Model Food Code language.

21. In section 3-402.12, language is added for uncooked fish served in a ready-to-eat form and the documentation required of the fish is received from a supplier or aquaculturist.
22. In section 3-403.11(D), language was reformatted to meet 2009 FDA Model Food Code language and reheating time is extended to 2-hours.
23. In section 3-403.11(E), “roasts of beef” was changed to “meat roasts”.
24. In section 3-404.11(B)(2), warning label was modified to meet 2009 FDA Model Food Code language.
25. In section 3-501.14, language was reformatted to meet 2009 FDA Model Food Code language. Language for cheese curds was added.
26. In section 3-501.16(C), language was removed and added under 3-501.19. New language was added regarding potentially hazardous foods in a homogenous liquid form.
27. In section 3-501.17, language was reformatted to meet 2009 FDA Model Food Code language. Includes additional language for those food items that do not require date marking.
28. In section 3-501.19, language was reformatted to 2009 FDA Model Food Code language and additional sections now include provisions for time as a public health control for holding potentially hazardous foods out of temperature control for 4-hours, 6-hours, and for cheese curds.
29. In section 3-502.11(D), language was modified to 2009 FDA Model Food Code language. *Listeria monocytogenes* was added to section.
30. In section 3-502.11(G), the wording “serving or transporting” was removed.
31. In section 3-502.11(H), the wording “in a food establishment” was removed.
32. In section 3-502.11(I), language was added requiring a variance if slaughter and evisceration is done in a food establishment.
33. In section 3-502.12, language was modified to 2009 FDA Model Food Code language regarding reduced oxygen packaging.
34. In section 3-602.11(B)(5), language added that the name of the major food allergen be on the label to meet 2009 FDA Model Food Code language.
35. In section 3-602.11(D), Language was modified to 2009 FDA Model Food Code language regarding bulk unpackaged foods.

36. In section 3-603.11, language was modified to 2009 FDA Model Food Code language regarding consumer advisories.

37. In section 3-801.11, language regarding highly susceptible populations was modified regarding re-service of food and reformatted to 2009 FDA Model Food Code language.

#### Chapter 4 – Equipment, Utensils, and Linens

1. In section 4-101.13, (B) and (C) were added replacing sections on pewter alloys and solder and flux containing lead.

2. In section 4-101.14(B), wording was changed to italics.

3. In section 4-101.17, “lead and pewter alloys, use limitation” was removed and replaced with “wood, use limitation”.

4. In section 4-101.18, language regarding “lead in solder and flux” was removed and replaced with “nonstick coating, use limitation”.

5. In section 4-101.19, “wood, use limitation” was removed and replaced with “nonfood-contact surfaces”.

6. Section 4-101.110 was removed

7. Section 4-101.111 was removed.

8. In section 4-203.13, language was modified to 2009 FDA Model Food Code language regarding pressure gauge readings.

9. In section 4-204.13(E), language was modified to 2009 FDA Model Food Code language for dispensing equipment used to hold potentially hazardous food in a homogenous fluid.

10. In section 4-204.115(B) the word “hot water” was added for clarity.

11. In section 4-204.118(B) the word “hot water” was added for clarity.

12. In section 4-204.122, the word “equipment” was removed and replaced with “apparatuses”.

13. In section 4-205.11, language was reformatted into subparagraphs (A) and (B).

14. In section 4-301.11, the entire section was deleted and replaced with a single statement regarding equipment used for heating and cooling shall be sufficient in number and capacity to provide safe temperatures.

15. In section 4-301.12, language regarding manual warewashing sink requirements was modified to 2009 FDA Model Food Code language.
16. In section 4-301.13, the word “self-draining tables” was replaced with “drainboards” and the word “drainboards” was replaced with “tables”.
17. In section 4-301.16, wording was modified requiring the use and installation of a food preparation sink.
18. In section 4-402.11(B), the word “table-mounted” was replaced with “counter-mounted”. This same change is made throughout this section.
19. In section 4-501.113, the wording for pressure reading on gauges has been modified to current 2009 FDA Model Food Code language. 100 kilopascals was changed to 35 as a minimum pressure and 170 kilopascals was changed to 200 as a maximum pressure.
20. In section 4-501.114, wording for EPA registered label use instructions has been added and the section is modified to 2009 FDA Model Food Code language.
21. In section 4-703.11(C), wording was added referring that chemical contact times shall be consistent with those on EPA registered label use instructions.
22. In section 4-802.11(B), the words “or poultry” have been added to the use of cloth gloves.
23. In section 4-901.11(A), language was modified to 2009 FDA Model Food Code language by adding CFR 180.940 reference.
24. In section 4-904.13, was reformatted to 2009 FDA Model Food Code language.
25. In section 4-904.14, language was added with respect to rinsing after sanitation of equipment and utensils and section was modified to 2009 FDA Model Food Code language.

#### Chapter 5 – Water, Plumbing, and Waste

1. In section 5-101.12, language was provided from the department of safety and professional services regarding a drinking water system and the section was reworded from those recommendations.
2. In section 5-102.12(B), the word “and irrigation” was removed.
3. In section 5-102.14, language was modified to 2009 FDA Model Food Code language for water sample reports.

4. In section 5-202.11(B) language was modified that plumbing fixtures shall be easily cleanable. Language was modified to 2009 FDA Model Food Code language.
5. In section 5-203.12, Wisconsin language was replaced with 2009 FDA Model Food Code language regarding toilet and urinal requirements.
6. In section 5-203.13(B), language was added that toilets and urinal shall not be used as a service sink. And (C) was added that alternative methods may be approved by the department.
7. In section 5-203.15, the word “double” is replaced by the word “dual”.
8. In section 5-402.11, backflow prevention language was modified to 2009 FDA Model Food Code language.
9. In section 5-402.13, language was modified to reflect SPS 382-384 administered by the department of safety and professional services and NR 113 as administered by the department of natural resources.

#### Chapter 6 – Physical Facilities

1. In section 6-102.11(A), the language “and refuse storage” was removed.
2. In section 6-102.11(C), the reference to 5-501.11 is added.
3. Section 6-202.110 was added regarding outdoor refuse areas, curbed and graded to drain.
4. In section 6-301.12(C) and (D) we added providing alternative hand drying devices.
5. In section 6-303.11(A), the wording “in walk-in refrigeration units” was added to section on light intensity.
6. In section 6-303.11(B)(3), the wording “in walk-in refrigeration units” was deleted.
7. In section 6-501.18, language was reformatted to 2009 FDA Model Food Code language.
8. In section 6-501.111, language was added that the premise shall be maintained free of insects, rodents, and other pests.

#### Chapter 7 – Poisonous or Toxic Materials

1. In section 7-202.12(B)(1), language was added that pesticides must be applied so as not to create a hazard to employees.

2. In section 7-204.11(B), new language was added removing 21 CFR reference and replacing with 40 CFR reference.
3. In section 7-204.12, wording for “treatment, storage and processing” was added to the title. New language was added to (B) for ozone as an antimicrobial agent.
4. In section 7-206.11, the specific CFR reference was inserted.

#### Chapter 8 – Public Toilet Rooms

1. Section 8-101.10 was added providing information that this section refers to toilet rooms provided for the general public.
2. In section 8-201.12, the language and title for “enclosures” was removed and replaced with wording and title for “location”.
3. Sections 8-201.14 to 8-201.17 are renumber to 8-201.13 to 8-201.16.
4. In section 8-301.11(D), wording for reference 5-201.12(C) was added.

#### Chapter 9 – Mobile Food Establishments

1. Section 9-102, “restricted operation” was reworded to “warewashing operation”
2. In section 9-102.11, language was modified to reflect what conditions need to be met if warewashing is not provided on a mobile food establishment.
3. In section 9-104.11(C), the word “department” is replaced with “regulatory authority”.
4. In section 9-104.11(C), the wording “at a temporary event” was added for clarification.
5. Section 9-4 was deleted and the space “reserved” for future use.
6. Section 9-501.11, the title and wording for “restrictions” was replaced with the title and new wording for “bottled or liquefied gas”.
7. Section 9-502.11 was renamed from “bottled and liquefied gas” to “toilet facilities” and section 9-503.11 referring to toilet facilities was deleted.

#### Chapter 12 – Certified Food Manager

1. In section 12-101.11, the language was reformatted for clarification.
2. In section 12-1001-12(A), wording was clarified that certified food manger means an individual.

3. In section 12-301.11(M), wording is provided for clarification that the exam for food manager certification conforms to the Conference for Food Protection Standards for Accreditation of Food Protection Manager Certification Programs.

4. In section 12-301.11(O), the wording “testing service” is added to provide clarification.

***Summary of, and comparison with, existing or proposed federal regulations***

Federal law generally prohibits the sale of adulterated or misbranded food. There are no federal regulations that specifically address retail food operations. However, the FDA publishes a Model Food Code that is based on the best available science and information related to retail food safety.

The 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 FDA Model Food Code. The existing Wisconsin Food Code reflects the 2005 FDA Model Food Code. This proposed order updates the Wisconsin Food Code to incorporate changes in the 2009 FDA Model Food Code.

***Comparison with rules in adjacent states***

All the states adjacent to Wisconsin have adopted restaurant regulations based on some version of the FDA Model Food Code:

**Illinois:** Illinois’ current regulations are based on the 2005 FDA Model Food Code.

**Iowa:** Iowa’s current regulations are based on the 2005 FDA Model Food Code.

**Michigan:** Michigan’s current regulations are based on the 2005 FDA Model Food Code.

**Minnesota:** Minnesota’s current regulations are based on the 1997 FDA Model Food Code. Like Wisconsin, Minnesota is proposing this year to update its regulations based on the 2009 FDA Model Food Code.

***Summary of factual data and analytical methodologies***

The existing Wisconsin Food Code is based on the 2005 FDA Model Food Code. This proposed order updates the Wisconsin Food Code based to the 2009 FDA Model Food Code. DHS and DATCP developed this rule in consultation with an advisory committee that included local health agencies (urban and rural), the Wisconsin Restaurant Association, the Tavern League of Wisconsin, the Wisconsin Grocers Association, Wisconsin Technical Colleges, Wisconsin department of public instruction, and the University of Wisconsin Extension-Food Service.

***Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis***

The FDA developed and published the Model Food Code based on the best available science and information related to food safety. The FDA Model Food Code encourages consistent state and local regulation of food establishments. Numerous states have adopted state food regulations based on the FDA Model Food Code. The FDA Model Food Code and the subsequent changes to the Wisconsin Food Code represent minimum requirements for safe food handling. DHS drafted the proposed changes in consultation with DATCP and an advisory committee included local health agencies (urban and rural), the Wisconsin Restaurant Association, the Tavern League of Wisconsin, the Wisconsin Grocers

Association, Wisconsin Technical Colleges, Wisconsin Department of Public Instruction, and the University of Wisconsin Extension-Food Service.

### **Small Business Considerations**

(a) *The establishment of less stringent compliance or reporting requirements for small businesses*

The proposed rule contains the minimum requirements for safe food handling. DHS is unable to lessen or exempt small business from the requirements of this proposed rule offer the option for a variance or comparable compliance.

(b) *The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses*

The proposed rule contains the minimum requirements for safe food handling. DHS is unable to lessen or exempt small business from the requirements of this proposed rule or offer the option for a variance or comparable compliance.

(c) *The consolidation or simplification of compliance or reporting requirements for small businesses*

The changes contain the minimum requirements for safe food handling. The proposed rule contains minimal reporting requirements mainly centered on alternative procedures that validate if a product or process is maintained safe.

(d) *The establishment of performance standards for small businesses to replace design or operational standards required in the rule*

The Wisconsin Food Code is based on the FDA Model Food Code which is a performance based code. This allows small business the opportunity to prepare foods many different ways as long as they can show that the processes and the product are maintained safe.

(e) *The exemption of small businesses from any or all requirements of the rule*

The proposed rule contains the minimum requirements for safe food handling to protect the general public. DHS is unable to lessen or exempt small business from the requirements of this proposed rule. The department does offer the option for a variance or comparable compliance.

### ***Effect on small business***

The rule adds some minor new requirements for some restaurants, but these requirements are not expected to impose any burdens. This rule will benefit businesses that have combined restaurant and grocery operations, because it will maintain consistency with DATCP retail food establishment rules.

### ***Statement on the Quality of the Agency Data***

DHS relied on the 2009 FDA Model Food Code to make changes to the Wisconsin Food Code. DHS also developed the proposed changes in consultation with local health agencies (urban and rural), the Wisconsin Restaurant Association, the Tavern League of Wisconsin, the Wisconsin Grocers Association, Wisconsin Technical Colleges, Wisconsin Department of Public Instruction, and the University of Wisconsin Extension-Food Service.

### **Initial Regulatory Flexibility Analysis**

Please refer to the “*Analysis and supporting documents used to determine the effect on small businesses or in preparation of an economic impact analysis*” subsection of this hearing notice for the initial regulatory flexibility analysis.

### **Fiscal Estimate-Economic Impact Analysis**

The Fiscal Estimate-Economic Impact Analysis is attached to this hearing notice.

### **Agency contact person**

James Kaplanek

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**Text of the Proposed Rule**

Please refer to the “*Plain language analysis*” subsection of this hearing notice for a summary of the proposed rule.