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Proposed

Department of Agriculture, Food Safety and Lodging Program
Notice of Hearing on Proposed
Administrative Regulation, Statewide

A public hearing will be conducted at 1:00 p.m. on April 17, 2023, in the 1st floor meeting room 124 of the Kansas Department of Agriculture, 1320 Research Park Dr., Manhattan, Kansas, to consider the adoption of a proposed regulation. The public hearing will be conducted in person and via video conferencing system. Members of the public who wish to attend the public hearing virtually must pre-register at:

https://kansasag.zoom.us/join/9tZcuduuhz0pGd3f7SZjreoQ_jCw1Nn_reQ9.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments regarding the proposed regulation. All interested parties may submit written comments prior to the hearing by mail or email to Kansas Department of Agriculture, Attn: Ronda Hutton, 1320 Research Park Dr., Manhattan, Kansas 66502, or ronda.hutton@ks.gov. Comments may also be made via the Kansas Department of Agriculture's website at: <https://www.agriculture.ks.gov/document-services/public-comment>.

All interested parties will also be given a reasonable opportunity to orally present their views regarding the adoption of the proposed regulation during the hearing. To provide all parties an opportunity to present their views, it may be necessary to request that each participant limit any oral presentation to five minutes. This regulation is proposed for adoption on a permanent basis. A summary of the proposed regulation and the economic impact follows:

The Kansas Department of Agriculture (KDA) is proposing revisions to K.A.R. 4-28-8 to update the regulatory requirements for retail food establishments contained in the Kansas Food Code. The Kansas Food Code sets food safety standards for Kansas retail food establishments, and the current regulatory requirements have not been updated since 2012. These proposed regulatory revisions are based on the Model Food Code currently used by the United States Food and Drug Administration, which was adopted in 2017.

Several proposed changes to the adopt by reference document are as follows:

Amended section 2-103.11 to require the person in charge to inform employees, in a verifiable manner, of requirements to report information about their health and activities as they relate to diseases transmissible through food and to require the person in charge to ensure employees are routinely monitoring food temperatures during hot and cold holding;

Amended section 3-301.11 to specify that the prohibition of bare hand contact with ready-to-eat foods does not apply to handling ready-to-eat foods that are being added as ingredients to a food that will be cooked in the food establishment to a minimum temperature specified in the Code;

Amended section 3-502.12 to specify that a HACCP plan must be provided to KDA prior to implementation;

Amended section 3-501.19 to allow ready-to-eat produce or hermetically sealed foods that are rendered time/temperature control for safety foods upon cutting, chopping, or opening of a hermetically sealed container to begin at 21°C (70°F) or less and remain at 21°C (70°F) or less within a maximum of 4 hours;

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Amended section 3-502.11 to clarify that equivalent operating plans are only required for time/temperature control for safety foods prepared under reduced oxygen packaging methods that do not control for growth of and toxin formation by *Clostridium botulinum* and the growth of *Listeria monocytogenes*;

Amended section 6-501.115 to allow dogs in exterior areas of the premises provided certain requirements are met;

Amended section 7-203.11 to prohibit food contact items from being stored in containers previously used with poisonous or toxic materials; and

Amended section 7-206.12 to match current pesticide laws that limit when rodent bait is required to be placed in tamper-resistant bait station.

The proposed regulation is not mandated by the federal government. However, food safety agencies throughout the United States have adopted Food Codes similar to the proposed Kansas Food Code that are based on the United States Food and Drug Administration's Model Code. KDA crafts its own document that closely resembles the United States Food and Drug Administration's Model Code with adjustments to ensure that the Kansas Food Code fits the needs of regulated businesses in the state and is consistent with the Kansas Food, Drug and Cosmetics Act.

The proposed regulation does not significantly change the existing requirements imposed on retail food establishments. KDA does not anticipate that the proposed regulation will significantly enhance or restrict business activity or growth in Kansas or present significant implementation and compliance costs to any of the state's businesses, sectors, public utility ratepayers, individuals, or local governments. The proposed regulation will have no effect or a very minimal effect on the state economy as a whole.

Any direct impact on Kansas businesses as a result of the proposed regulation would be minimal. The economic situation for retail food establishments is not likely to change as a result of the proposed regulation, for the same reasons set out in the preceding paragraph.

The benefits of the proposed regulation significantly outweigh the costs because the proposed updates are based on the best and most scientifically accurate food safety research. The proposed updates to the Kansas Food Code help to ensure public health by enhancing safety practices in retail food establishments. They will also provide uniformity between the requirements imposed on retail food establishments in Kansas and other states. The implementation of this regulation will not impose any significant new costs for retail food establishments.

KDA does not anticipate that the proposed regulation will significantly increase or decrease revenues of cities, counties or school districts, or impose functions or responsibilities on cities, counties or school districts that will increase their expenditures or fiscal liability. Letters of request were sent to the League of Kansas Municipalities, the Kansas Association of School Boards, and the Kansas Association of Counties. No responses were received from those entities.

KDA consulted with and solicited information from the Kansas Restaurant and Hospitality Association and the Department of Education's Child Nutrition and Wellness

Advisory Council. A webinar was also held wherein the general public had the opportunity to provide comments and ask questions about the proposed regulation.

Any individual with a disability may request accommodations to participate in the public hearing and may request the proposed regulation and the economic impact statement in an accessible format. Requests for accommodations should be made at least five working days in advance of the hearing by contacting Ronda Hutton, via telephone at (785) 564-6715 or via fax at (785) 564-6777. Handicapped parking is located on the west side of the building at 1320 Research Park Drive, Manhattan, and is accessible to individuals with disabilities.

Copies of the regulation, the updated Kansas Food Code, and the economic impact statement may be obtained by contacting the KDA via mail at Kansas Department of Agriculture, Attn: Ronda Hutton, 1320 Research Park Drive, Manhattan, KS 66502, via telephone at (785) 564-6715, or via the Department's website at: agriculture.ks.gov.

Michael M. Beam
Secretary
Kansas Department of Agriculture

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K.A.R. 4-28-8. Adoption of Kansas food code. The document titled "Kansas food code," dated ~~July 1, 2012~~ October 20, 2022 and published by the ~~division of Kansas department of agriculture's~~ food safety and lodging program ~~of the Kansas department of agriculture,~~ is hereby adopted by reference, except for the preface and the index. (Authorized by and implementing K.S.A. 2011 Supp. 65-688, K.S.A. 65-689, as amended by L. 2012, ch. 145, sec. 23, K.S.A. 65-691, and K.S.A. 2011 Supp. 74-581; effective Feb. 29, 2008; amended June 4, 2010; amended April 26, 2013; amended P-_____.)

APPROVED

OCT 26 2022

DEPT. OF ADMINISTRATION

APPROVED

JAN 03 2023

ATTORNEY GENERAL

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Kansas Administrative Regulations Economic Impact Statement (EIS)

Kansas Department of Agriculture
Agency

Ronda Hutton
Agency Contact

785-564-6715
Contact Phone Number

K.A.R. 4-28-8
K.A.R. Number(s)

☒ Permanent ☐ Temporary

Is/Are the proposed rule(s) and regulation(s) mandated by the federal government as a requirement for participating in or implementing a federally subsidized or assisted program?

- ☐ Yes If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.
- ☒ No If no, do the total annual implementation and compliance costs for the proposed rule(s) and regulation(s), calculated from the effective date of the rule(s) and regulation(s), exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024 (as calculated in Section III, F)?
- ☐ Yes If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration, the Attorney General, AND the Division of the Budget. The regulation(s) and the EIS will require Budget approval.
- ☒ No If no, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.

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Section I

Brief description of the proposed rule(s) and regulation(s).

The Kansas Department of Agriculture ("KDA") is proposing revisions to K.A.R. 4-28-8 in order to update the regulatory requirements for retail food establishments contained in the Kansas Food Code. The Kansas Food Code sets food safety standards for Kansas retail food establishments, and the current regulatory requirements have not been updated since 2012. These proposed regulatory revisions are based on the Model Food Code currently used by the United States Food and Drug Administration, which was adopted in 2017.

Several proposed changes to the adopt by reference document are as follows:

Amended section 2-103.11 to require the person in charge to inform employees, in a verifiable manner, of requirements to report information about their health and activities as they relate to diseases transmissible through food and to require the person in charge to ensure employees are routinely monitoring food temperatures during hot and cold holding;

Amended section 3-301.11 to specify that the prohibition of bare hand contact with ready-to-eat foods does not apply to handling ready-to-eat foods that are being added as ingredients to a food that will be cooked in the food establishment to a minimum temperature specified in the Code;

Amended 3-502.12 to specify that a HACCP plan must be provided to KDA prior to implementation;

Amended section 3-501.19 to allow ready-to-eat produce or hermetically sealed foods that are rendered time/temperature control for safety foods upon cutting, chopping, or opening of a hermetically sealed container to begin at 21°C (70°F) or less and remain at 21°C (70°F) or less within a maximum of 4 hours;

Amended section 3-502.11 to clarify that equivalent operating plans are only required for time/temperature control for safety foods prepared under reduced oxygen packaging methods that do not control for growth of and toxin formation by *Clostridium botulinum* and the growth of *Listeria monocytogenes*;

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Amended section 7-206.12 to match current pesticide laws that limit when rodent bait is required to be placed in tamper-resistant bait station.

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Section II

Statement by the agency if the rule(s) and regulation(s) exceed the requirements of applicable federal law, and a statement if the approach chosen to address the policy issue(s) is different from that utilized by agencies of contiguous states or the federal government. *(If the approach is different or exceeds federal law, then include a statement of why the proposed Kansas rule and regulation is different.)*

The proposed regulation is not mandated by the federal government. However, food safety agencies throughout the United States have adopted Food Codes similar to the proposed Kansas Food Code that are based on the United States Food and Drug Administration's Model Code. KDA edits the United States Food and Drug Administration's Model Code to ensure that the Kansas Food Code fits the needs of regulated businesses in the state and is consistent with the Kansas Food, Drug and Cosmetics Act.

Section III

Agency analysis specifically addressing the following:

- A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;

Because the proposed regulation does not significantly change the existing requirements imposed on retail food establishments, KDA does not anticipate the proposed regulation will significantly enhance or restrict business activity or growth in Kansas.

- B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule(s) and regulation(s) and on the state economy as a whole;

Because the proposed regulation does not significantly change the existing requirements imposed on retail food establishments, KDA does not anticipate that the proposed regulation will present significant implementation and compliance costs to any of the state's businesses, sectors, public utility ratepayers, individuals, or local governments. The proposed regulation will have no effect or a very minimal effect on the state economy as a whole.

- C. Businesses that would be directly affected by the proposed rule(s) and regulation(s);

Any direct impact on Kansas businesses as a result of these proposed regulation would be minimal. The economic situation for retail food establishments is not likely to change as a result of the proposed regulation, for the same reasons set out in the preceding paragraph.

- D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;

The benefits of the proposed regulation significantly outweigh the costs because the proposed updates are based on the best and most scientifically accurate food safety research. The proposed updates to the Kansas Food Code help to ensure public health by enhancing safety practices in retail food establishments. They will also provide uniformity between the requirements imposed on retail food establishment in Kansas and other states

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- E. Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;

Because the proposed regulation does not significantly change the existing requirements imposed on retail food establishments in any way that would require those establishments to incur additional costs, the proposed regulation does not impose any new or additional mandatory provisions on businesses, local governments, or individuals.

- F. An estimate of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to businesses, local governments, or members of the public.

Note: Do not account for any actual or estimated cost savings that may be realized.

Costs to Affected Businesses – \$0

Costs to Local Governmental Units – \$0

Costs to Members of the Public – \$0

Total Annual Costs – \$0

(sum of above amounts)

Give a detailed statement of the data and methodology used in estimating the above cost estimate.

Because the proposed regulation does not substantially change the requirements imposed on retail food establishments, the implementation of this regulation will not impose any significant new costs.

- ☐ Yes If the total implementation and compliance costs exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024, and prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.
- ☒ No
- ☐ Not Applicable

If applicable, click here to enter public hearing information.

Provide an estimate to any changes in aggregate state revenues and expenditures for the implementation of the proposed rule(s) and regulation(s), for both the current fiscal year and next fiscal year.

Because the proposed regulation does not substantially change the requirements imposed on retail food establishments, the implementation of this regulation will not impose any changes in aggregate state revenues and expenditures for both the current and next fiscal year.

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Provide an estimate of any immediate or long-range economic impact of the proposed rule(s) and regulation(s) on any individual(s), small employers, and the general public. If no dollar estimate can be given for any individual(s), small employers, and the general public, give specific reasons why no estimate is possible.

Because the proposed regulation does not substantially change the requirements imposed on retail food establishments, the implementation of this regulation will not impose any immediate or long-range economic impact on individuals, small employers, or the general public.

- G. If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability, describe how the state agency consulted with the League of Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.

KDA does not anticipate that the proposed regulation will significantly increase or decrease revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase their expenditures or fiscal liability. Letters of request were sent to the League of Kansas Municipalities, the Kansas Association of School Boards, and the Kansas Association of Counties. No responses were received from those entities.

- H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).

KDA consulted with and solicited information from the Kansas Restaurant and Hospitality Association and the Department of Education's Child Nutrition and Wellness Advisory Council. A webinar was also held wherein the general public had the opportunity to provide comments and ask questions about the proposed draft.

Section IV

Does the Economic Impact Statement involve any environmental rule(s) and regulation(s)?

- ☐ Yes If yes, complete the remainder of Section IV.
☒ No If no, skip the remainder of Section IV.

- A. Describe the capital and annual costs of compliance with the proposed rule(s) and regulation(s), and the persons who would bear the costs.

[Click here to enter agency response.](#)

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- B. Describe the initial and annual costs of implementing and enforcing the proposed rule(s) and regulation(s), including the estimated amount of paperwork, and the state agencies, other governmental agencies, or other persons who would bear the costs.

[Click here to enter agency response.](#)

- C. Describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons who would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).

[Click here to enter agency response.](#)

- D. Provide a detailed statement of the data and methodology used in estimating the costs used.

[Click here to enter agency response.](#)

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