

# NAVIGATING PROPOSED MINNESOTA FOOD CODE REVISIONS

*A Guide for Hunger Relief Operations, Healthy Food Advocates, and Local Food Service/Retail Establishments*



**The Minnesota Departments of Health (MDH) and Agriculture (MDA) are proposing amendments to the Minnesota Food Code (the Code) which the two departments jointly administer (the Departments).**

The proposed changes to the Code are extensive and will likely impact a broad range of local food operations, including hunger-relief organizations, small food establishments, start-up food businesses, and other types of operations. This resource is intended to assist these operations and their partners in understanding how the proposed Code might impact their efforts, and how to participate in the rule-making process should they choose to do so.



## THE RULE-MAKING PROCESS

The process of making the current proposed changes to the Code started in 2010 when an advisory committee met to identify and prioritize critical issues to update. Subsequently, the advisory committee and the Departments have met numerous times and engaged with a wide range of stakeholders to identify issues and obtain feedback on anticipated rule changes. The current proposed changes to the Code represent a culmination of this work.<sup>1</sup>

The initial (post-public hearing) comment period for the current proposed changes to the Code is scheduled to close on February 1, 2018 at 4:30 p.m. In the meantime, individuals and organizations can provide comments online on specific proposed rules at <https://minnesotaoah.granicusideas.com>.

Starting February 2, 2018, there will also be a short rebuttal period—which is currently scheduled to end on February 8, 2018 at 4:30 p.m. During that period, the public may provide comments that are limited exclusively to feedback on testimony and prior comments made during the initial comment period.<sup>2</sup>

After the current revisions are finalized there will likely be additional opportunities to engage with the Departments about how the Code addresses food safety, community wellness, and economic considerations. In fact, the Departments have indicated an intent to engage in on-going review of the Code, perhaps as frequently as every other year.<sup>3</sup>

## MINNESOTA FOOD CODE 101

The Code is a set of legally enforceable administrative rules that establish requirements for retail food and food service operations. The Code is developed by MDA and MDH, who have authority from the Minnesota Legislature to establish rules to regulate different aspects of food retail and food service operations.<sup>4</sup>

Specific areas addressed by the Code include:

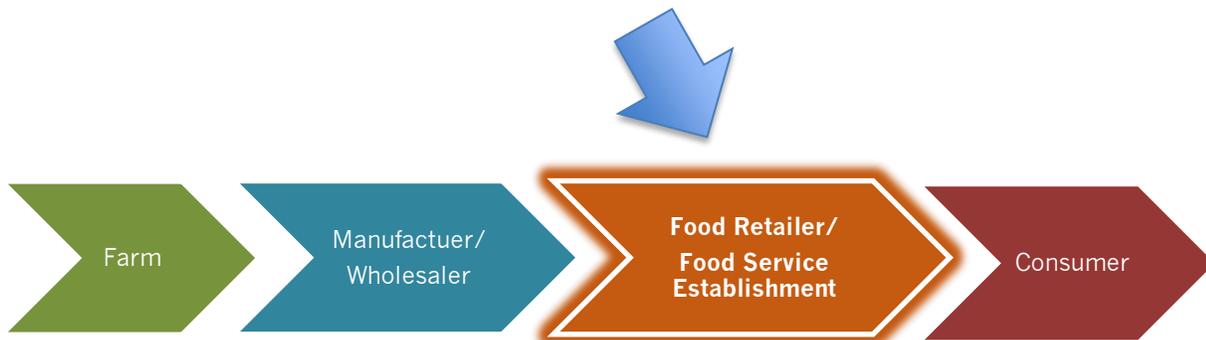
- Food handler health habits and hygiene;
- Protection against contamination and adulteration;
- Proper cooking techniques, cooling practices and holding temperatures;
- The use and quality of water;
- Storage practices;
- Equipment requirements;
- Construction, operation and maintenance requirements; and
- Licensing and inspection policies.<sup>5</sup>

The focus of the Code is preventing foodborne illness and injury. However, the Departments,<sup>6</sup> as well as hunger-relief and healthy food advocates, have become increasingly aware of the need to balance food safety with efforts to offer nutritious and culturally appropriate foods.

## TYPES OF OPERATIONS REGULATED BY THE CODE

The Code applies to many “food establishments” licensed and inspected by the MDA, MDH, or delegated regulatory authorities that conduct licensing and inspections on behalf of the Departments.<sup>7</sup> Except when retail sales are also involved, the Code does not apply to wholesale food handlers, processors, manufacturers, or food brokers.<sup>8</sup> In addition to for-profit food establishments, the food code also applies to hunger relief operations, such as food shelves and meal programs, that provide food to clients without charge.<sup>9</sup>

**Where the food code applies in the food system (an over-simplification):**



These general categories have several specific constitutional or statutory exemptions/exclusions, including, potlucks, products of the farm, food sampling at farmers’ markets, etc.<sup>10</sup> It is important not only to be familiar with the exemptions/exclusions, but also to understand how the Departments interpret them. It is also important to understand that that statutory provisions are not controlled by the rules—rather the statutes control the rules.<sup>11</sup>

## HOW TO REVIEW THE CHANGES TO THE CODE

The proposed changes to the Code are extensive. They are also accompanied by a *Statement of Need and Reasonableness* (SONAR), written by the Departments as part of the rule-making process.<sup>12</sup> The SONAR, available at [health.state.mn.us/divs/eh/food/code/2009revision/sonar.pdf](http://health.state.mn.us/divs/eh/food/code/2009revision/sonar.pdf) and provides additional information about why different revisions or additions have been made to the Code.

The SONAR can be a useful tool to help community advocates better understand specific parts of the Code revisions. One way to start is by scanning the list of rules in the “Rule-By-Rule Analysis” section in the “Table of Contents” to identify areas that may impact your operation, organization, or community.

The list starts on page 5 of the SONAR and continues for several pages. It is organized topically, by chapter. Within the Table of Contents, you can click on any change and you will be linked to the explanatory text regarding that change.

In addition to reviewing the SONAR, you may also find it helpful to review the proposed rule revisions themselves, where you can find details not specifically addressed in the SONAR. The complete set of proposed rule changes are available here:

[health.state.mn.us/divs/eh/food/code/2009revision/draftprule/proposedrules.pdf](http://health.state.mn.us/divs/eh/food/code/2009revision/draftprule/proposedrules.pdf). This document does not contain a table of contents, but the rules are ordered numerically and correspond to the rule numbers indicated in the SONAR.

## PROPOSED RULE CHANGES

When reviewing the proposed changes to the Code, keep in mind that:

- Text that is not underlined is language that is currently included in the existing rules;
- Stricken-through text indicates language the Departments are proposing to delete; and
- Underlined text indicates language the Departments are proposing to add.

Example:

4626.0780 FOOD PREPARATION SINKS; ~~NEW OR EXTENSIVELY REMODELED ESTABLISHMENT.~~

~~For a food establishment newly licensed,~~

A. A newly licensed food establishment must have a separate food preparation sink if food will be washed or thawed using a sink.

B. If a food establishment is extensively remodeled, or adding adds a food product to the menu that requires washing or thawing in a sink, if food will be washed or thawed using a sink, the food establishment shall have a separate food preparation sink must be provided.

C. A food preparation sink must not be used for anything other than food preparation

## **SOME KEY AREAS OF POTENTIAL INTEREST IN THE PROPOSED RULE CHANGES**

As mentioned above, the changes to the Code are extensive. Therefore, for illustrative purposes only, this resource highlights just a few specific changes that may be relevant to hunger relief efforts, healthy-food-access, and opportunities for equitable participation in local food retail and service economies. However, these are merely examples and are not meant to be a comprehensive list of changes:

### **PERSONNEL HIRING AND TRAINING**

- New certified food protection manager (CFPM) requirements (Proposed Rule 4626.0033):
  - The Departments developed this part by moving the certified food protection manager (CFM) requirements currently found at Minnesota Rules parts 4626.2000-.2525 to the main body of the Code.<sup>13</sup>
  - In addition to having the term changed from CFM to CFPM, under the proposed rule, the exemption categories are being reworked.
    - Operations that will be exempted from the CFMP requirements have been identified by the Departments as presenting little to no risk to the public (in terms of foodborne illness).<sup>14</sup>
    - Several operation categories that had been specifically exempted from the previous CFM requirement will be required to comply with the new CFPM requirements.
  - TCFPM training and certification requirements will also be added.
- Changes to rule regarding bare-hand food contact (Rule 4626.0225):
  - The Departments are making these revisions to clarify inconsistent standards for employee handling of foods with bare hands.<sup>15</sup>
    - Paragraph A of the proposed rule (line 66.17) will prohibit touching ready-to-eat-food with bare hands.
      - However, there will be exceptions for foods that are combined with other foods and cooked; AND for establishments that are willing to undertake specific policy, procedural, and documentation requirements.

## EQUIPMENT

- Changes to equipment and utensil requirements (Rule 4626.0505 and Proposed Rule 4626.0506):
  - Rule 4626.0505 currently requires several pieces of equipment to meet NSF (formerly National Sanitation Foundation) standards or their equivalent. The Departments intend to repeal that rule and to add a new rule at 4626.0506.
  - Proposed rule 4626.0506 will require only 10 types of equipment and food-contact surface to be certified or classified for sanitation by an American National Standards Institute (ANSI) accredited certification program for food service equipment.
    - Exemptions to the ANSI accreditation requirements that the Departments have included in the proposed rule include:
      - Adult and child care centers that are serving only non-TCS (Time/Temperature Control for Safety) food or preparing TCS food for same day service;
      - Some kitchens meeting the newly defined category of “neighborhood kitchen”;
      - Certain small bed and breakfasts; and
      - Special event food stands, retail food vehicles, portable structures and portable carts.
- Elimination of need for manual warewashing in addition to mechanical warewashing. (Rule 4626.0680):
  - The Departments are making changes to this rule to provide clarification that equipment and utensils can be washed by either hand OR by machine.<sup>16</sup>
- Exclusive-use food preparation sink requirements (Rule 4626.0780):
  - The Departments are changing this rule to clarify that a single-purpose food preparation sink (separate from a handwashing/dishwashing sink) is required for newly licensed and extensively remodeled food establishments and for establishments that add new menu items that require washing or thawing foods in a sink.<sup>17</sup>

## INSPECTIONS

- Performance and risk-based inspections (Proposed Rule 4626.1787):
  - The Departments are adding this rule to articulate which conditions will require inspections at a greater frequency than is mandated by the minimum statutory requirements.<sup>18</sup> The proposed rule ties the frequency of inspections to risk-levels associated with foodborne illness hazards.<sup>19</sup>

## LABELING & DISCLOSURES

- Packaged food label requirements (Rule 4626.0435):
  - The Departments are changing this rule to update labeling standards for packaged foods to reflect federal requirements.<sup>20</sup>
- Consumer advisory disclosure requirements (Proposed Rule 4626.0442):
  - The Departments are adding this rule to require identification of and warnings for menu items with high risk ingredients (undercooked meats, raw eggs, etc.) through brochures, menus, table tents, labels, etc.<sup>21</sup>

## SCOPE

- Changes to definition of “food establishment” (Rule 4626.0020, subp. 35):
  - The Departments are changing the definition of “food establishment” to clarify the type of operations subject to the Code, as set forth at rule 4626.0017.<sup>22</sup> The language includes some fairly substantive changes. For example:
    - Specific examples of the types of operations that are included and excluded from the definition will be deleted.
    - The proposed revisions also explicitly indicate that the term “food establishment” includes operations that do not charge for food.
- Statutory exceptions referenced in the code remain unchanged (Rule 4626.0020, subp. 35):
  - In addition to the proposed Code changes, note that several statutory exceptions that identify operations and activities outside the scope of the Code remain unchanged.<sup>23</sup>
    - Some of these exceptions are not clearly defined in the statutes, including, for example, which activities qualify as “community events”

for purposes of food sampling and cottage food sales, as well as what types of activities qualify as “potlucks.”<sup>24</sup>

- Hunger relief organizations and others who wish to serve food for free will likely continue to need guidance in understanding how opportunities for food sharing and similar activities are impacted by the Code.

## CONCLUSION

The proposed revisions to the Code have been several years in the making and are an important step in aligning the Code with other food safety requirements and current food handling practices. However, the Code remains a complex set of rules that can be challenging to navigate.

Local food businesses and hunger-relief organizations have unique and important perspectives to share and, as always, there will be ongoing opportunities for them to continue conversations with the Departments about how Minnesota’s Food Code addresses the needs of their operations and clients.

Food establishments and others should be aware that the changes to the Code will not take place immediately. In fact, the likely earliest date that the changes could go into effect is early 2019. In the meantime, food establishments can expect opportunities for training from the Departments and delegated authorities on how the Code revisions impact different types of food establishments. MDH has also published a helpful resource entitled *20 Questions: The Proposed Major Changes of Concern to the Minnesota Food*. That resource is available here: [health.state.mn.us/divs/eh/food/code/2009revision/20qstnchge.pdf](http://health.state.mn.us/divs/eh/food/code/2009revision/20qstnchge.pdf)

For additional information regarding food safety issues related to healthy food access, local food efforts and other topics, please visit: [publichealthlawcenter.org/topics/healthy-eating/food-safety/resources](http://publichealthlawcenter.org/topics/healthy-eating/food-safety/resources).

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## Endnotes

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- <sup>1</sup> MINN. DEPT. OF HEALTH AND MINN. DEPT. OF AGRIC., *Minnesota Food Code Statement of Need and Reasonableness* at 37-38 (November 2017).
- <sup>2</sup> *Discussion: Minnesota Departments of Agriculture and Health Notice of Hearing*, Minn. Off. of Admin. Hearings <https://minnesotaoah.granicusideas.com/discussions/minnesota-departments-of-agriculture-and-health-notice-of-hearing> (last visited Jan. 12, 2018).
- <sup>3</sup> Testimony by Stephen Diaz, *Minnesota Department of Health, Proposed Amendment to Rules, Chapter 4626, Minnesota Food Code* at Hearing Proceeding at Minnesota Office of Administrative Hearings (January 11, 2018).
- <sup>4</sup> Minn. State Legis., *Frequently Asked questions about the Minnesota Legislature: Laws, Statutes, and Rules*, <https://www.leg.state.mn.us/leg/faq/faqtoc?subject=7> (last visited Jan. 12, 2018).
- <sup>5</sup> Minn. R. chap. 4626 (2007).
- <sup>6</sup> *Id.* at 33-35.
- <sup>7</sup> MINN. R. 4626.0017 (2007).
- <sup>8</sup> Minn. R. 4626.0020 (subp. 35) (2017) (and proposed revisions to the same) (proposed Nov. 17, 2017), *Id.* at 68.
- <sup>9</sup> See proposed MINN. R. 4626.0020 (subp. 35) (proposed Nov. 17, 2017).
- <sup>10</sup> See, e.g., MINN. CONST. art. XIII, § 7; and references to MINN. STAT. 28A.14, 28A.151, 28A.152, 31.56 and 157.22 in MINN. R. 4626.0020, subp. 35.
- <sup>11</sup> See MINN. STAT. §§ 31.11; 144.07 regarding permitted scope of rulemaking.
- <sup>12</sup> MINN. DEPT. OF HEALTH AND MINN. DEPT. OF AGRIC., *Minnesota Food Code Statement of Need and Reasonableness* at 40 (November 2017).
- <sup>13</sup> *Id.* at 92.
- <sup>14</sup> *Id.* at 92-94.
- <sup>15</sup> *Id.* at 127.
- <sup>16</sup> *Id.* at 182.
- <sup>17</sup> *Id.* at 186-87.
- <sup>18</sup> *Id.* at 251-52.
- <sup>19</sup> *Id.*
- <sup>20</sup> *Id.* at 161-64
- <sup>21</sup> *Id.* at 164-65.
- <sup>22</sup> *Id.* at 68-69.
- <sup>23</sup> See MINN. R. 4626.0020 (subp. 35)(2007).
- <sup>24</sup> See MINN. STAT. §§ 28A. 151-.152 and 157.22 as referenced at Minn. R. 4626.0020 (subp. 35).