



## MN Food Code Rule Revision Adoption Process

This document describes the steps that the MN Department of Health (MDH) and the MN Department of Agriculture (MDA) took to adopt the 2013 version of the FDA Model Food Code. By laying out this process in a step-by-step format, the MDA provides a flow that other agencies may follow when looking to adopt a newer version of the Food Code. Questions to consider when adopting a new regulation are described first, followed by a chart outlining the rule-making process.

### Questions to Consider:

<p><u>How much time will need to be dedicated to the rule adoption process?</u></p> <ul style="list-style-type: none"> <li>• Which staff member(s) will be involved in the process and how much time will they need to dedicate?</li> <li>• What additional resources will be needed (i.e. an outside “rule coordinator” if not an internal staff member)?</li> </ul>	<p><u>What follow-up training will my inspection staff need?</u></p> <ul style="list-style-type: none"> <li>• Is there a Food Code classroom training that will need to be updated based on revisions?</li> <li>• Is there a field training procedure that includes specific Food Code citations that will need to be revised?</li> </ul>
<p><u>What updates will be needed to our current inspection system?</u></p> <ul style="list-style-type: none"> <li>• Is there an inspection “cover sheet” that will need to be updated?</li> <li>• Are there standard orders in an electronic inspection system that will need to be updated?</li> <li>• Are there other documents that will need to be updated? (i.e.-Standardization inspection reports)</li> </ul>	<p><u>What updates will be needed to our internal inspection procedures?</u></p> <ul style="list-style-type: none"> <li>• Are there inspection protocols/procedures that will need to be updated based on the new rule?</li> <li>• Are there other documents that will need to be updated? (i.e.-evaluation forms)</li> </ul>
<p><u>What types of outreach activities will need to be conducted to educate regulated businesses and the public?</u></p> <ul style="list-style-type: none"> <li>• What outreach activities are currently conducted where we could incorporate training on the new Food Code requirements?</li> <li>• Are there current handouts related to the Food Code that will need to be updated?</li> </ul>	<p><u>Other questions/items to consider:</u></p> <ul style="list-style-type: none"> <li>• If the food inspection program is enrolled in the Voluntary National Retail Food Regulatory Program Standards (VNRFRPS), how will the program ensure that the new rule meets the standards?</li> <li>• Have draft language for the new rule available as soon as possible in the process to help expedite comment periods.</li> </ul>

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- **Determine Need for Updating Current Rule.** MDA and MDH have been using the 1997 version of the FDA Food Code. On average, the FDA updates their Food Code or adds appendices every 2-3 years.
  - **Request for Comments.** The Request for Comments initiates the rulemaking process. For this project, a Request was published in the December 21, 2009 State Register and mailed to the respective mailing lists. Due to the extended time period of this rulemaking process, another request for comments was published in August of 2015.
  - **Selection of an Advisory Committee.** MDA and MDH selected Committee members from a pool of volunteers and nominees representing regulated businesses, regulators and others interested in retail food safety.
  - **Statement of Need and Reasonableness (SONAR).** The Departments were required to justify that each rule requirement is needed and reasonable. “Needed” means that there are problems or a legislative directive that requires us to adopt or amend rules. “Reasonable” means that a proposed requirement is a reasonable solution to a problem. The justification will be in a document called the (SONAR). Along with our analysis of each requirement in the rules, the SONAR also sets out our statutory authority for the rules and contains a modified cost/benefit analysis.
  - **Amendment of Current Rule.** Department staff worked with the State Revisor of Statutes to prepare the draft revisions to the rule. After the public hearing, the review by the Office of Administrative Hearings and the Governor's approval, the Revisor prepared the final adopted version of the rule.
  - **Notice of Intent to Adopt Rules.** When the rules have been written, they are published in the State Register as a Notice of Intent to Adopt Rules, along with the proposed rules. The Notice and proposed rules are mailed to interested persons and to certain legislative committees.
  - **30-Day Comment Period.** After the Notice of Intent to Adopt Rules is published, there is a 30-day comment period, during which persons may submit written comments on the proposed rules. Persons may also request a hearing on the rules during the 30-day comment period.
  - **Review by Administrative Law Judge.** Whether or not there is a hearing, an ALJ review the proposed rules and all the documents from the rulemaking. The ALJ will approve the rules if the Departments have statutory authority for the rules, have shown the rules to be needed and reasonable, have given proper notice of the proposed rules, and has complied with all other rulemaking requirements.
  - **Governor Veto.** After the rules are adopted by the Departments and approved by the ALJ, the Governor has 14 days to review them. The Governor may veto the rule amendments or let them become effective.
  - **Notice of Adoption.** After the Governor's review period, MDA and MDH will publish a Notice of Adoption in the State Register.
  - **Effective Date.** The amendments to the rules become effective the following January 1 or June 1, whichever comes first, after the Notice of Adoption is published.