

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

RULE REVIEW CHECKLIST

File No. 1356 Docket No. 05.0009.0979

DATE RECEIVED 3/17/87
REVIEW DATE 3/26/87
DUE DATE 4/1/87

APPROVED 3-31-87 mjc
DISAPPROVED
WITHDRAWN

ADOPTED W/O HEARING ✓
EMERGENCY RULE

REVISOR APPROVED
REVISOR DISAPPROVED
FILED W/SEC. STATE 4/02
RETURNED TO AGENCY

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion
7/28/86 Date published in State Register
Comments

~~Petition for Adoption of a Rule~~

~~Board's Authorizing Resolution~~

✓ Proposed rule
OK Revisor's Certificate

✓ Notice of Intent to Adopt Rule
34.09 Statutory Authority
Yes Small business statement
No Expenditure of public money statement
Yes Signature

✓ Statement of Need and Reasonableness

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
2/4/87 Date (30/25 days before adoption

✓ Publication in State Register
2/9/87 Date (30/25 days before adoption

~~Resolution Adopting~~

✓ Findings of Fact, Conclusions & Order Adopting
3/12/87 Date

~~Written requests, submissions or comments~~

✓ Declaration of attorney
Jon Murphy Name of SAAG representing agency

~~Notice of Submission to Attorney General~~

~~Affidavit of Mailing Notice to Attorney General~~

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT

Office Memorandum

ATTORNEY GENERAL

TO: CAROL MILLIGAN
Management Analyst
Planning Division

DATE: 4/06/87

FROM: MARTHA CASSERLY
Special Assistant
Attorney General

PHONE: 6-4692

SUBJECT: In the Matter of the Adopted Rules Relating to Self-Service Beverage Dispensing into Multi-Use Bottles

The above-referenced rule has been approved as to its legality by the Attorney General on March 31, 1987.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submission or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must publish a notice of adoption in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

If you have any questions in this regard, please contact me.

MJC:nah

Enclosures

cc: Maryanne Hruby
Executive Director
Legislative Commission to Review
Adminsitrative Rules

Duane Harves
Chief Administrative Law Judge
Office of Administrative Hearings

4

Department of Agriculture

Adopted Permanent Rules Relating to Self-Service Beverage Dispensing into Multi-Use Bottles

Rules as Adopted

1550.3100 APPLICABILITY.

For the purposes of inspection or licensing by the commissioner of agriculture, parts 1550.3100 to 1550.3170 apply to the mixing, self-service dispensing, labeling, and sale of new multi-use beverage bottles and the cleaning of used beverage bottles.

1550.3110 BUILDINGS AND PREMISES.

Self-service beverage dispensing equipment must be located within an establishment licensed and inspected for the sale of food for human consumption.

1550.3120 BOTTLES AND BOTTLE CLOSURES.

Subpart 1. **New bottles.** New bottles must be dispensed in a sanitary manner with the closures attached and in a manner that will prohibit replacement of returned bottles into the bottle dispenser, or provided with tamper-evident seals.

Subp. 2. **Multi-use bottle standards.** Multi-use bottles must be made of food grade material, be brand and product use specific, and approved as refillable for beverages.

Subp. 3. **Potentially hazardous foods.** Multi-use bottles must not be used in dispensing potentially hazardous foods.

Subp. 4. **Refilling.** Multi-use bottles being refilled must have the name, address, and zip code of the responsible firm owning the beverage equipment. The filling of bottles other than those specifically provided by that firm is prohibited.

Subp. 5. **Labeling.** Bottles must be labeled to include:

A. net contents;

B. name, address, and zip code of the responsible firm;

Approved by Revisor

C. cleaning instructions for bottle and closure on refillable containers; and

D. warning statement against misuse of the container.

Subp. 6. **Separate adhesive label.** The responsible firm must provide for the convenience of the consumer a separate adhesive label for each beverage dispensed that provides the following information:

A. product identity; and

B. list of ingredients in descending order of predominance.

Subp. 7. **Bottle closure.** A bottle closure must be made of food grade material and attached to the bottle before sale to a customer.

1550.3130 BEVERAGE DISPENSING EQUIPMENT.

Subpart 1. **General requirements.** All equipment, containers, and utensils used in the handling, storage, mixing, and transfer of syrup and beverage must be smooth, impervious, corrosion resistant, nontoxic, and in good repair.

Subp. 2. **Cleaning and sanitizing.** Dispensing units must be constructed, installed, and located so as to permit adequate cleaning and sanitizing. Equipment and utensils must be maintained in a clean and sanitary condition.

Subp. 3. **Instructions.** Complete instructions for the beverage dispensing operation must be in full view of the customer.

Subp. 4. **Filling of bottles.** A food-grade single service disposable paper or plastic funnel or similar sanitary device must be supplied from a sanitary dispenser and used for filling of bottles.

Subp. 5. **Contamination-free transfer.** The system must include a contamination-free transfer process which cannot be bypassed by the consumer while dispensing beverages. Beverages may be filled by an establishment employee or by the customer.

Subp. 6. **Labeling.** Each individual dispensing unit at the dispensing head must be conspicuously labeled to at least

Approved by Revisor _____

include the product identity, artificial flavor, yellow #5 artificial color, and name and function of preservative when present. Fruitades or drinks must have a complete list of ingredients.

Subp. 7. **Measurement of net contents.** Net contents may be measured in the filled bottle by any of the following methods:

A. an accurate metering device located at each dispenser;

B. a bottle calibrated with a fill line;

C. a height-fill gauge provided to the customer at the dispensing unit; or

D. any other method or device which will demonstrate an accurate net contents.

1550.3140 SIGN.

A sign must be posted conspicuously within the immediate dispenser area directing consumers for health reasons to use a single service funnel or other sanitary device which has been provided when serving themselves, not to contact the beverages directly, and not to consume beverages on the premises. Establishments dispensing for consumer product promotion by store personnel is not prohibited.

1550.3150 BOTTLE WASHING.

Subpart 1. **New bottles.** New beverage bottles, if suitably protected at the container manufacturing facility and during transportation and storage, need not be washed or rinsed before use.

Subp. 2. **Multi-use bottles.** Multi-use bottles returned for refilling must be washed and sanitized before refilling by means of at least a semiautomatic bottle washer located as part of the beverage dispensing equipment

"Washed" means free from physical, chemical, and microbial substance discernible by ordinary sight, touch, or smell and free from insects, vermin, and debris. "Sanitize" means the effective bactericidal treatment of the cleaned interior surface of the bottle by a process which is effective in destroying

Approved by Revisor _____

microorganisms, including pathogens.

Subp. 3. **Bottle washer.** A bottle washer must contain instructions for its use.

1550.3160 EQUIPMENT SINK.

A three-compartment, adequate-sized equipment sink for the washing of dispensing equipment must be provided with properly plumbed hot and cold running water. Equipment sinks must be National Sanitation Foundation (NSF) approved or the equivalent.

1550.3170 CUSTOMER HAND-WASH SINK.

A facility for handwashing must be provided in the establishment with properly plumbed hot and cold running water, soap, and single service towels or a suitable air drying device. ~~Handwashing sinks must be National Sanitation Foundation (NSF) approved or the equivalent.~~

Approved by Revisor _____

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
APR 2 1987
Joan Anderson Growe
Secretary of State

10:00 AM

APPROVED AS TO FORM AND LEGALITY
March 31 1987
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY MJ Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

7845.0900 [Emergency] POSTEMPLOYMENT REPRESENTATION.

Subpart 1. **By commissioner.** A commissioner shall not represent a rate-regulated public utility or telephone company, formally or informally, before the commission for one year after leaving the commission. At no time shall a commissioner represent a party on a proceeding that was pending before the commission during that commissioner's term in office.

Subp. 2. **By employee.** For one year after leaving the commission, an employee shall not represent a rate-regulated public utility or telephone company before the commission on a proceeding that the employee participated in during that employment with the commission.

7845.1000 [Emergency] SANCTIONS.

Subpart 1. **Against commissioner.** A commissioner who intentionally fails to comply with this code is subject to disciplinary action under Minnesota Statutes, sections 15.0575 and 216A.036, and in accordance with Minnesota Statutes, section 43A.33.

Subp. 2. **Against employee.** An employee who intentionally fails to comply with this code is subject to disciplinary action under the applicable collective bargaining agreement, commissioner's or manager's plan, or in accordance with Minnesota Statutes, section 43A.33.

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Department of Agriculture
Food Inspection Division

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing the Manufacture, Sale or Dispensing of Soft Drinks

Notice is hereby given that the Minnesota Department of Agriculture is seeking information or opinions from sources outside the agency in preparing to propose rules governing the manufacture, sale or dispensing of soft drinks. The adoption of these rules is authorized by M.S. sec. 34.09.

The rules must include, but are not limited to, sanitary practices involving beverage manufacturing plants, beverage dispensing equipment, and the use of sterile containers in packaging beverages for home consumption.

The Department requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements of information and comment may be addressed to:

Ms. Carol Milligan
Minnesota Department of Agriculture
90 West Plato Boulevard
St. Paul, MN 55107

Oral statements of information and comment will be received during regular business hours over the telephone at (612) 296-6906, and in person at the above address.

All statements of information and comment must be received by August 25, 1986. Any written material received by the Department shall become part of the rulemaking record.

July 8, 1986

Jim Nichols
Commissioner

Department of Agriculture
Food Inspection Division

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing the Manufacture, Sale or Dispensing of Soft Drinks.

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All statements of information and comment must be received by August 25, 1986. Any written material received by the Department shall become part of the rulemaking record.

July 8, 1986

Jim Nichols
Commissioner

Department of Agriculture

Proposed Permanent Rules Relating to Self-Service Beverage Dispensing into Multi-Use Bottles

Rules as Proposed (all new material)

1550.3100 APPLICABILITY.

For the purposes of inspection or licensing by the commissioner of agriculture, parts 1550.3100 to 1550.3170 apply to the mixing, self-service dispensing, labeling, and sale of new multi-use beverage bottles and the cleaning of used beverage bottles.

1550.3110 BUILDINGS AND PREMISES.

Self-service beverage dispensing equipment must be located within an establishment licensed and inspected for the sale of food for human consumption.

1550.3120 BOTTLES AND BOTTLE CLOSURES.

Subpart 1. **New bottles.** New bottles must be dispensed in a sanitary manner with the closures attached and in a manner that will prohibit replacement of returned bottles into the bottle dispenser, or provided with tamper-evident seals.

Subp. 2. **Multi-use bottle standards.** Multi-use bottles must be made of food grade material, be brand and product use specific, and approved as refillable for beverages.

Subp. 3. **Potentially hazardous foods.** Multi-use bottles must not be used in dispensing potentially hazardous foods.

Subp. 4. **Refilling.** Multi-use bottles being refilled must have the name, address, and zip code of the responsible firm owning the beverage equipment. The filling of bottles other than those specifically provided by that firm is prohibited.

Subp. 5. **Labeling.** Bottles must be labeled to include:

A. net contents;

B. name, address, and zip code of the responsible firm;

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

C. cleaning instructions for bottle and closure on refillable containers; and

D. warning statement against misuse of the container.

Subp. 6. **Separate adhesive label.** The responsible firm must provide for the convenience of the consumer a separate adhesive label for each beverage dispensed that provides the following information:

A. product identity; and

B. list of ingredients in descending order of predominance.

Subp. 7. **Bottle closure.** A bottle closure must be made of food grade material and attached to the bottle before sale to a customer.

1550.3130 BEVERAGE DISPENSING EQUIPMENT.

Subpart 1. **General requirements.** All equipment, containers, and utensils used in the handling, storage, mixing, and transfer of syrup and beverage must be smooth, impervious, corrosion resistant, nontoxic, and in good repair.

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Subp. 3. **Instructions.** Complete instructions for the beverage dispensing operation must be in full view of the customer.

Subp. 4. **Filling of bottles.** A food-grade single service disposable paper or plastic funnel or similar sanitary device must be supplied from a sanitary dispenser and used for filling of bottles.

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Subp. 6. **Labeling.** Each individual dispensing unit at the dispensing head must be conspicuously labeled to at least

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

include the product identity, artificial flavor, yellow #5 artificial color, and name and function of preservative when present. Fruitades or drinks must have a complete list of ingredients.

Subp. 7. **Measurement of net contents.** Net contents may be measured in the filled bottle by any of the following methods:

A. an accurate metering device located at each dispenser;

B. a bottle calibrated with a fill line;

C. a height-fill gauge provided to the customer at the dispensing unit; or

D. any other method or device which will demonstrate an accurate net contents.

1550.3140 SIGN.

A sign must be posted conspicuously within the immediate dispenser area directing consumers for health reasons to use a single service funnel or other sanitary device which has been provided when serving themselves, not to contact the beverages directly, and not to consume beverages on the premises. Establishments dispensing for consumer product promotion by store personnel is not prohibited.

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APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

microorganisms, including pathogens.

Subp. 3. **Bottle washer.** A bottle washer must contain instructions for its use.

1550.3160 EQUIPMENT SINK.

A three-compartment, adequate-sized equipment sink for the washing of dispensing equipment must be provided with properly plumbed hot and cold running water. Equipment sinks must be National Sanitation Foundation (NSF) approved or the equivalent.

1550.3170 CUSTOMER HAND-WASH SINK.

A facility for handwashing must be provided in the establishment with properly plumbed hot and cold running water, soap, and single service towels or a suitable air drying device. Handwashing sinks must be National Sanitation Foundation (NSF) approved or the equivalent.

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Self-Service Beverage Dispensing into Multi-Use Bottles

AGENCY: Department of Agriculture

MINNESOTA RULES: Chapter 1550

The attached rules are approved for publication in the State Register

Craig E. Lindeke
Senior Assistant Revisor

Department of Agriculture
Food Inspection Division

In the Matter of the Proposed Rules
of the Department of Agriculture
Governing Self-Service Beverage
into Multi-Use Bottles

NOTICE OF INTENT TO
ADOPT RULES WITHOUT
A PUBLIC HEARING

Notice is hereby given that the Minnesota Department of Agriculture intends to adopt the above-entitled rules without a public hearing, following the procedures set forth in the Administrative Procedures Act for adopting rules without a public hearing in Minnesota Statutes, Sections 14.22-14.28. The statutory authority to adopt these rules is Minnesota Statutes, Section 34.09.[1]

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rules or any part or subpart of the rules. Comment is encouraged.[2] Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.[3]

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing.[4] Any person requesting a public hearing should state their name and address, and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any proposed change.[6] If a public hearing is required, the department will proceed according to Minnesota Statutes, Sections 14.131 to 14.20.[7]

Comments or written requests for a public hearing must be submitted to:[5] Carol Milligan, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-6906.

The proposed rules may be modified if the modifications are supported by the data and views submitted to the department and do not result in a substantial change in the proposed rules as noticed.[8]

A copy of the proposed rules is attached to this Notice.[11]

A Statement of Need and Reasonableness[12] that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available upon request from Ms. Milligan.

The proposed rules will not have a negative impact upon small business[14] as defined in Minnesota Statutes, Section 14.115, because they apply only to retail food markets that choose to install self-service beverage dispensing units. In addition, the sanitation requirements of the rule are minimum requirements, and any alternatives that would lessen their impact could jeopardize public health.

If no hearing is required, upon adoption of the final rules, the rules and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality.[9] Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rules must submit a written request to Ms. Milligan.

STATE OF MINNESOTA

Date: Jan. 19, 1987

Jim Nichols
Commissioner, Department of Agriculture

STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED RULE OF THE DEPARTMENT OF AGRICULTURE GOVERNING SELF-SERVICE BEVERAGE DISPENSING INTO MULTI-USE BOTTLES

STATEMENT OF NEED AND REASONABLENESS

I. INTRODUCTION

The subject of this rulemaking is the proposed adoption by the Minnesota Department of Agriculture (MDA) of new rules governing the requirements for self-service beverage dispensing into multi-use bottles. The new rule is proposed for adoption pursuant to Minnesota Statutes, Section 34.09, which requires the MDA to adopt rules covering persons licensed under section 28A.04 who manufacture, sell or dispense soft drinks and other non-alcoholic beverages. As provided in Minnesota Statute, Section 31.002, when practicable and consistent with state law, these rules shall conform with those promulgated under Federal Law.

The Department has determined that the proposed new rule is noncontroversial in nature because it is supported by industry and in conformity with federal regulations. Because of the noncontroversial nature of these rules, the Department directed that the rulemaking proceedings be conducted in accordance with the statutory provisions governing the adoption of noncontroversial rules, Minnesota Statutes, Section 14.22 to 14.28. Accordingly, the rulemaking proceedings on the new rule are governed by that statute and no hearing will be conducted on the new rule unless, on or before March 11, 1987, 25 or more persons submit to the Department a written request for such hearing.

In accordance with the requirement of Minnesota Statutes, Section 14.23, this Statement of Need and Reasonableness was prepared and completed prior to the date that the notice of proposed adoption of a rule was published by the State Register.

II. GENERAL OVERVIEW

Minnesota Statutes, Section 34.09 was amended by the 1985-86 Legislature to require the Commissioner of Agriculture to promulgate rules governing persons who manufacture, sell or dispense soft drinks and other non-alcoholic beverages establishing minimum standards necessary to protect the public health and interest.

The Department has received a request from a manufacturer of beverage dispensing equipment to sell self-service beverage dispensers to retail markets in Minnesota. Since Minnesota Statute, Section 34.09 requires the Department to establish rules to govern those operations a compromise rule draft acceptable to all parties affected was written to meet the requirements of that Statute.

III. NEED FOR AND REASONABLENESS OF THE PROPOSED AMENDMENT TO THE RULE

The need for and reasonableness of the proposed new rule governing self-service beverage dispensing into multi-use bottles follows:

Minnesota Rules, part 1550.3100 to 1550.3170.

1550.3100 Applicability

This rule is necessary and reasonable in that it defines the extent of its coverage.

1550.3110 Buildings and Premises

This rule is necessary and reasonable because the Minnesota Consolidated Licensing Statute found in Chapter 28A, Section 28A.04 requires a person who engages as a food handler to first obtain a license. That person must be determined to be fit to engage in any mode of food handling prior to the issuance of that license. Since this equipment dispenses a food product, it must, therefore, be located in an establishment licensed and inspected for food.

1550.3120 Bottles and Bottle Closures

1550.3130 Beverage Dispensing Equipment

These two rules are necessary in that they clearly define the minimum state requirements which a food handler must meet to remain in sanitary compliance in order to protect the public health. These rules clarify the sanitation and label requirements found in Minnesota Food Statutes, Chapter 31, and, therefore, are reasonable. The rules also are in conformity with Federal Regulations which this Department has adopted.

1550.3140 Sign

This rule is necessary and reasonable in that its purpose is to require a business to post a sign with instructions for the sanitary operation of the dispensing equipment.

1550.3150 Bottle Washing

This rule provides the necessary and reasonable minimum requirements for the handling of beverage bottles and defines the use of "sterile containers in packaging beverages for home consumption" as found in Minnesota Statute, Section 34.09. Instructions are necessary to provide the consumer information regarding the proper operation of the bottle washer.

1550.3160 Equipment Sink

All equipment must be maintained in a sanitary condition for it to provide a wholesome food product. This rule, therefore, is necessary and reasonable in that it requires a firm to provide an adequate size sink with hot and cold running water with three compartments for periodic washing, rinsing and sanitizing of equipment.

1550.3170 Customer Hand-wash Sink

It is reasonable and necessary that a food handler which provides self-service beverage equipment to also provide a hand-wash sink where a consumer can wash their hands prior to and following the filling of bottles.

The adoption of these new rules will meet the minimum requirements required by Minnesota Statute, Section 34.09 which requires rules to protect the public health. These rules must include but are not limited to, sanitary practices involving beverage plants, beverage dispensing equipment and the use of sterile containers in packaging beverages for home consumption.

The rules also are in conformity to federal regulations and, therefore, do not pose any barrier to trade between states.

IV. SMALL BUSINESS IMPACT OF THE PROPOSED RULE

As prescribed by Minnesota Statutes, Section 14.115, subdivisions 1 and 2, the Department has considered the degree of impact the proposed rule will have on small businesses and the alternative methods for lessening that impact.

The Department has determined there will be no impact on small businesses through the implementation of these rules since a food handler must first purchase the self-service beverage dispensing equipment prior to entering this form of business and the purchase of such equipment is not a direct requirement to be in food handling nor a requirement to be licensed as a food handler.

Also, since the requirements set by these rules are minimum requirements to protect the public health and interest, any alternative method to reduce any impact would be contrary to the objectives set by Minnesota Statute, Section 34.09 which requires rules to be promulgated by the Department to include sanitary practices involving beverage manufacturing plants, beverage dispensing equipment and the use of sterile containers in packaging beverages for home consumption.

In the Matter of the proposed
Adoption of Rules of the
Department of Agriculture Governing
Self-Service Beverage Dispensing
into Multi-Use Bottles

AFFIDAVIT OF MAILING
THE NOTICE OF INTENT
TO ADOPT A RULE
WITHOUT A PUBLIC
HEARING AND
CERTIFICATE OF
MAILING LIST

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Carol Milligan, being sworn, says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minn. State § 14.14, subd. 1a, and 14.22 or 14.30, that their names be placed on the Minnesota Department of Agriculture rulemaking mailing list is accurate, complete and current as of this 4th day of February, 1987.

That on the 4th day of February, 1987, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt Rules Without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

Carol Milligan
(Name)

Management Analyst
(Title)

DIANE M. WINDHAM
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES NOVEMBER 1, 1990

Subscribed and sworn to before me
this 4th day of February, 1987.

Diane M. Windham

.5700; .5800; .5900 (adopted) 1311

HEALTH DEPARTMENT

4700.1900; .2000; .2210; .2300; .2400; .2500; .2600 (proposed) 1305
4700.2200; .2400 s.3 (proposed repealer) 1305

HIGHER EDUCATION COORDINATING BOARD

4850.0017 (adopted) 1276

NURSING BOARD

6310.2800; .3400; .3500; .7600; .7700; .8000; .8100; 6315.0400; .0500 (adopted) 1331

PODIATRY BOARD

6900.0200; .0250 (adopted) 1408

POLLUTION CONTROL AGENCY

7046.0031; .0040; .0050; .0070 (proposed) 1273
7046.0030; .0050 s.2 (proposed repealer) 1273

CHARITABLE GAMBLING CONTROL BOARD

7860.0010; .0030; .0040; .0100; .0120; .0160; .0190; .0200; .0220; .0230; .0240; .0250; .0260; .0270; .0280; .0400 (adopted) 1310
7860.0070 s.1; .0220 s.2 (repealed) 1310

WATER RESOURCES BOARD

9300.0010; .0020; .0030; .0040; .0050; .0060; .0070; .0080; .0090; .0100; .0110; .0120; .0130; .0140; .0150; .0160; .0170; .0180; .0190; .0200; .0210 (adopted) 1408

HUMAN SERVICES DEPARTMENT

9525.2700; .2710; .2720; .2730; .2740; .2750; .2760; .2770; .2780; .2790; .2800; .2810 (proposed) 1355

PROPOSED RULES

Pursuant to Minn. Stat. of 1982, §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Agriculture

Proposed Permanent Rules Relating to Self-Service Beverage Dispensing into Multi-Use Bottles

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Department of Agriculture intends to adopt the above-entitled rules without a public hearing, following the procedures set forth in the Administrative Procedures Act for adopting rules without a public hearing in Minnesota Statutes, Sections 14.22-14.28. The statutory authority to adopt these rules is Minnesota Statutes, Section 34.09.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rules or any part or subpart of the rules. Comment is encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state their name and address, and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any proposed change. If a public hearing is required, the department will proceed according to Minnesota Statutes, Sections 14.131 to 14.20.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Comments or written requests for a public hearing must be submitted to: Carol Milligan, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-6906.

The proposed rules may be modified if the modifications are supported by the data and views submitted to the department and do not result in a substantial change in the proposed rules as noticed.

A copy of the proposed rules is attached to this Notice.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available upon request from Ms. Milligan.

The proposed rules will not have a negative impact upon small business as defined in Minnesota Statutes, Section 14.115, because they apply only to retail food markets that choose to install self-service beverage dispensing units. In addition, the sanitation requirements of the rule are minimum requirements, and any alternatives that would lessen their impact could jeopardize public health.

If no hearing is required, upon adoption of the final rules, the rules and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rules must submit a written request to Ms. Milligan.

Dated: 19 January 1987

Jim Nichols, Commissioner
Department of Agriculture

Rules as Proposed (all new material)

1550.3100 APPLICABILITY.

For the purposes of inspection or licensing by the commissioner of agriculture, parts 1550.3100 to 1550.3170 apply to the mixing, self-service dispensing, labeling, and sale of new multi-use beverage bottles and the cleaning of used beverage bottles.

1550.3110 BUILDINGS AND PREMISES.

Self-service beverage dispensing equipment must be located within an establishment licensed and inspected for the sale of food for human consumption.

1550.3120 BOTTLES AND BOTTLE CLOSURES.

Subpart 1. **New bottles.** New bottles must be dispensed in a sanitary manner with the closures attached and in a manner that will prohibit replacement of returned bottles into the bottle dispenser, or provided with tamper-evident seals.

Subp. 2. **Multi-use bottle standards.** Multi-use bottles must be made of food grade material, be brand and product use specific, and approved as refillable for beverages.

Subp. 3. **Potentially hazardous foods.** Multi-use bottles must not be used in dispensing potentially hazardous foods.

Subp. 4. **Refilling.** Multi-use bottles being refilled must have the name, address, and zip code of the responsible firm owning the beverage equipment. The filling of bottles other than those specifically provided by that firm is prohibited.

Subp. 5. **Labeling.** Bottles must be labeled to include:

A. net contents;

B. name, address, and zip code of the responsible firm;

C. cleaning instructions for bottle and closure on refillable containers; and

D. warning statement against misuse of the container.

Subp. 6. **Separate adhesive label.** The responsible firm must provide for the convenience of the consumer a separate adhesive label for each beverage dispensed that provides the following information:

A. product identity; and

B. list of ingredients in descending order of predominance.

Subp. 7. **Bottle closure.** A bottle closure must be made of food grade material and attached to the bottle before sale to a customer.

1550.3130 BEVERAGE DISPENSING EQUIPMENT.

Subpart 1. **General requirements.** All equipment, containers, and utensils used in the handling, storage, mixing, and transfer of syrup and beverage must be smooth, impervious, corrosion resistant, nontoxic, and in good repair.

Subp. 2. **Cleaning and sanitizing.** Dispensing units must be constructed, installed, and located so as to permit adequate cleaning and sanitizing. Equipment and utensils must be maintained in a clean and sanitary condition.

Subp. 3. **Instructions.** Complete instructions for the beverage dispensing operation must be in full view of the customer.

Subp. 4. **Filling of bottles.** A food-grade single service disposable paper or plastic funnel or similar sanitary device must be supplied from a sanitary dispenser and used for filling of bottles.

Subp. 5. **Contamination-free transfer.** The system must include a contamination-free transfer process which cannot be bypassed by the consumer while dispensing beverages. Beverages may be filled by an establishment employee or by the customer.

Subp. 6. **Labeling.** Each individual dispensing unit at the dispensing head must be conspicuously labeled to at least include the product identity, artificial flavor, yellow #5 artificial color, and name and function of preservative when present. Fruitades or drinks must have a complete list of ingredients.

Subp. 7. **Measurement of net contents.** Net contents may be measured in the filled bottle by any of the following methods:

A. an accurate metering device located at each dispenser;

B. a bottle calibrated with a fill line;

C. a height-fill gauge provided to the customer at the dispensing unit; or

D. any other method or device which will demonstrate an accurate net contents.

1550.3140 SIGN.

A sign must be posted conspicuously within the immediate dispenser area directing consumers for health reasons to use a single service funnel or other sanitary device which has been provided when serving themselves, not to contact the beverages directly, and not to consume beverages on the premises. Establishments dispensing for consumer product promotion by store personnel is not prohibited.

1550.3150 BOTTLE WASHING.

Subpart 1. **New bottles.** New beverage bottles, if suitably protected at the container manufacturing facility and during transportation and storage, need not be washed or rinsed before use.

Subp. 2. **Multi-use bottles.** Multi-use bottles returned for refilling must be washed and sanitized before refilling by means of at least a semiautomatic bottle washer located as part of the beverage dispensing equipment

"Washed" means free from physical, chemical, and microbial substance discernible by ordinary sight, touch, or smell and free from insects, vermin, and debris. "Sanitize" means the effective bactericidal treatment of the cleaned interior surface of the bottle by a process which is effective in destroying microorganisms, including pathogens.

Subp. 3. **Bottle washer.** A bottle washer must contain instructions for its use.

1550.3160 EQUIPMENT SINK.

A three-compartment, adequate-sized equipment sink for the washing of dispensing equipment must be provided with properly plumbed hot and cold running water. Equipment sinks must be National Sanitation Foundation (NSF) approved or the equivalent.

1550.3170 CUSTOMER HAND-WASH SINK.

A facility for handwashing must be provided in the establishment with properly plumbed hot and cold running water, soap, and single service towels or a suitable air drying device. Handwashing sinks must be National Sanitation Foundation (NSF) approved or the equivalent.

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STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED
ADOPTION OF RULES OF THE
MINNESOTA DEPARTMENT OF AGRICULTURE
GOVERNING SELF-SERVICE BEVERAGE
DISPENSING INTO MULTI-USE BOTTLES

FINDINGS OF FACT,
CONCLUSIONS AND ORDER
ADOPTING RULE WITHOUT
PUBLIC HEARING

Notice of the Commissioner's intent to adopt the above-entitled rule was published in the State Register on February 9, 1987, and was sent by United States mail to all persons on the list maintained by the department pursuant to Minnesota Statutes, section 14.14, subd. 1a and 14.22 on February 4, 1987. The Statement of Need and Reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public.

All persons were given the opportunity to submit comments on the rule for 30 days after notice of proposed rulemaking. No requests for a public hearing on the rule were received by the department.

One oral comment was received on the rule by the department.

Charles Schneider, Section Chief, Minnesota Department of Health, commented that the Department of Health requires NSF approved hand-wash sinks only in surgical units of hospitals, not in food service establishments. The department, therefore, feels it is reasonable to strike the requirement that hand-wash sinks be NSF approved from 1550.3170.

No requests for notice of submission to the Attorney General were received by the department.

The above-captioned rule is needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that this rule identified as the Rule Governing Self-Service Beverage Dispensing into Multi-Use Bottles is adopted this 12th day of March, 1987, pursuant to authority vested in me by Minnesota Statutes, section 34.09.

STATE OF MINNESOTA

Jim Nichols

JIM NICHOLS
COMMISSIONER OF AGRICULTURE

In the Matter of the Adoption of
Rules of the Minnesota Department of
Agriculture Governing Self-Service Beverage
Dispensing Into Multi-Use Bottles

DECLARATION
OF COUNSEL

I, Jon Murphy, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, Chapter 2010 have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four-digit docket client code is 0979.

Jon Murphy
Special Assistant Attorney General

Date: 3/13/87

SF-00006-05 (4/86)

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT : OF AGRICULTURE

DATE : March 17, 1987

TO : Rita Desmond
Administration - Finance Division
Office of the Attorney General

FROM : Carol Milligan, Management Analyst
Planning Division

PHONE : 296-6909

SUBJECT : Review of Rules Governing Self-Service Beverage Dispensing into Multi-Use Bottles

The Department of Agriculture adopted the above-mentioned rules pursuant to Minnesota Statutes, sections 14.22-14.28. Enclosed with this memorandum are the documents which are required to be submitted to the Attorney General for review prior to final approval of the rule. A list of the documents is attached for your convenience.

The Department has fulfilled the requirements of Minnesota Statutes, section 14.115, subd. 4, by notifying small businesses of the expected impact of the rule in the Notice of Intent to Adopt Rules Without a Public Hearing.

The Department did not receive any written comments or requests for a public hearing.

If you have questions, please contact me.

CM:cb

Attachment

cc: Jim Nichols, Commissioner
Anne Kanten, Assistant Commissioner
Jon Murphy, Special Assistant Attorney General
Craig Lindeke, Office of Revisor of Statutes
Gerald Heil, Director, Planning Division
Tom Masso, Director, Food Inspection
Howard Anderson, Assistant Director, Food Inspection

RECEIVED
ATTORNEY GENERAL'S OFFICE

MAR 17 1987

204 ADMINISTRATION BLDG.
50 SHERBURNE AVENUE
ST. PAUL, MN 55155

PLANNING DIVISION
DEPARTMENT OF AGRICULTURE

LIST OF ATTACHED DOCUMENTS

A. Rule as Adopted (Original and three copies).

B. Findings of Fact and Conclusions, and Order Adopting.

C. Notice of Solicitation of Outside Opinion.

D. Notice of Intent to Adopt a Rule Without Public Hearing.

E. Affidavit of Mailing Notice of Intent to Adopt a Rule Without Public Hearing.

F. Rule as Proposed.

G. Statement of Need and Reasonableness.

H. Declaration of Counsel.

Rule ✓

Notice of Exhibit ✓
34.09 SD