

Department : Agriculture

STATE OF MINNESOTA
Office Memorandum

Date : March 4, 1993

To : Maryanne Hruby, Director
LCRAR

From : Carol Milligan *CM*
Agriculture Planning Division

Phone : 296-6906

Subject : **Rule Governing Bottled Water and Water Vending Machines**

As required by Minnesota Statutes, sections 14.131 and 14.23, attached is the Statement of Need and Reasonableness for the above-captioned rule. The Notice of Intent to Adopt and the rule will be published in the *State Register* on 3/22/93.

Attachment

The Legislative Commission to
Review Administrative Rules

MAR - 5 1993



STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED)	
RULES OF THE DEPARTMENT OF)	
AGRICULTURE GOVERNING BOTTLED)	STATEMENT OF NEED
WATER AND WATER VENDING MACHINES)	AND REASONABLENESS
MINNESOTA RULES PART 1550.3200)	
- 1550.3320)	

I. INTRODUCTION

The subject of this rulemaking is the proposed adoption by the Minnesota Department of Agriculture (MDA) of a rule governing bottled water standards and sanitary requirements for bottled water plants and water vending machines. This rule is proposed for adoption pursuant to Minnesota Statutes, section 31.11 which authorizes the MDA to promulgate and amend rules for the efficient administration and enforcement of the Minnesota Food Law. As provided in Minnesota Statute, section 31.002, when practicable and consistent with state law, these rules must conform with those promulgated under federal law.

The Department has determined that the proposed rules are non-controversial in nature because they are supported by the industry as providing statewide uniform bottled water and vended water standards and sanitary requirements for the operation of bottled water plants and water vending machines and will maintain Minnesota's requirements in conformity with the Code of Federal Regulations, (CFR's). Because of the non-controversial nature of this rule, the Department directed that the rulemaking proceedings be conducted in accordance with the statutory provisions governing the adoption of non-controversial rules, Minnesota Statutes, section 14.21 - 14.28. Accordingly, the rulemaking proceeding on the proposed rules are governed by that statute and no hearing will be conducted unless twenty-five (25) or more persons submit to the Department a written request for such a hearing.

II. GENERAL OVERVIEW

The proposed bottled water and vended water rules will provide for a comprehensive set of requirements to cover bottled water standards, labeling requirements and overall sanitary operating procedures for the bottling of water and the sale of water through water vending machines. Minnesota Statute, section 34.01, subd. 2, defines water, whether carbonated or not, as a soft drink. Minnesota Rules for the Manufacture of

Nonalcoholic Beverages, Beer and Malt Beverages includes some basic operating requirements for bottled water but no standards of identity nor requirements for laboratory analysis of the water products.

The MDA has also adopted the Code of Federal Regulations, Title 21, parts 103 and 129, which deal with the Good Manufacturing Practices (GMP's) and standards for bottled water. There are no vended water regulations currently in existence in the CFR's. Parts 103 and 129 were adopted by the federal government in 1977 and have not been amended since that date. The MDA proposed bottled water and vended water rules will require uniformity with the CFR, Title 21, parts 103 and 129 as required by statute. The proposed rules also will be uniform with the Federal Safe Drinking Water Standards established under the Environmental Protection Agency, (EPA). The FDA is presently working on proposed new regulations for bottled water. The MDA proposed rules were modeled after the proposed FDA regulations. Uniformity is extremely important since the FDA Regulations will pre-empt any state requirements not uniform to federal labeling standards. The proposed FDA regulations are presently shelved.

The MDA has circulated copies of these proposed rules to all interested parties to gain input and comment so they will be workable both for MDA and for industry. Plant operators and vendors support the adoption of these rules.

In accordance with the requirements of Minnesota Statute, section 14.23, this Statement of Need and Reasonableness was prepared and completed prior to the date that the proposed rules were published by the State Register.

III. NEED FOR AND REASONABLENESS OF THE PROPOSED RULES

1550.3200 DEFINITIONS

Definitions are an integral part of any rules for explanation of words and phrases and therefore are reasonable to any set of rules.

1550.3210 PRODUCT QUALITY

This part is needed to maintain uniformity with the CFR's, Title 21, parts 103, and the standards of quality for chemical requirements of the EPA Safe Drinking Water Standards. It provides for references to analyses and where they can be found. This rule is necessary to maintain bottled water in a safe and

sanitary condition by requiring specific standards of quality along with the references to do the analysis.

1550.3220 BOTTLED WATER PROCESS REQUIREMENTS

This part defines minimum requirements for bottled water plants in the production of a safe, wholesome product in a sanitary environment of the bottling plant. It includes the provision to maintain uniformity with the CFR's. The rule is reasonable because it provides minimum requirements for the production of a safe and wholesome bottled water for consumer protection.

1550.3230 SOURCE WATER MONITORING

1550.3240 FINISHED PRODUCT MONITORING

These parts are needed to require a plant operator to be responsible for monitoring both the source and finished product water in the assurance they are safe and suitable for drinking or other uses. A bottled water is only as safe as its source but the integrity of the finished bottled water product is also needed. These rules will bring the Department into uniformity with the EPA Safe Drinking Water Requirements. The rule is reasonable because it requires the same minimum testing for contaminants that are required for safe municipal drinking water standards.

1550.3250 LABELING REQUIREMENTS

This part is needed to define the common or usual name to be used on labels and therefore is reasonable because it will conform to accepted nomenclature of industry and will be uniform with the CFR, Title 21, labeling standards.

1550.3260 SODA WATER AND SOFT DRINK EXEMPTION

This part is needed to designate that certain soft drinks are exempt from these proposed rules. Certain beverages containing carbonation which are traditionally identified as soft drinks and commonly labeled as soda water, club soda, plain soda or carbonated water are accepted product identities by the soft drink industry. Such products are neither flavored nor sweetened. These beverages are defined as soft drinks and are regulated under Minnesota Rules 1550.1540 to 1550.1700 and 1555.4120 to 1555.4230.

1550.3270 OPERATOR REQUIREMENTS
1550.3280 VENDING MACHINE REQUIREMENTS
1550.3290 SERVICE; SAMPLING; RECORDS

These three (3) parts are needed to cover minimum requirements for the operator, the vending machines, sanitation and required analyses of water sold to consumers through vending machines. These parts are unique to vended water. They therefore are reasonable because they are minimum requirements for producing a safe, wholesome, water free from contaminants and produced in sanitary equipment through vending type machines.

1550.3300 REVIEW OF PLANS
1550.3310 PREOPERATIONAL INSPECTION

Chapter 28A.04 requires all firms operating a food facility to obtain a license prior to doing business. Chapter 28A.07 states that prior to the issuance of the license, appropriate inspections must be made to determine fitness of the firm to do business. Plan reviews by the Department prior to the construction of a bottled water plant are needed by the Department and the plant to prevent problems with post construction therefore requiring further inspections and delays. These rules are therefore reasonable because they will prevent further delays and expense to plant operators.

1550.3320 EXISTING BOTTLED WATER PLANTS AND VENDING DEVICES

This rule is needed to allow for all existing facilities and equipment in good repair and maintained in a sanitary condition to continue in operation after the effective date of these rules, and therefore, this rule is reasonable.

IV. SMALL BUSINESS IMPACT OF THE PROPOSED RULES

As prescribed by Minnesota Statute, section 14.115, subd. 1 and 2, the Department has considered the degree of impact the proposed rules will have on small businesses and the alternative methods for lessening that impact.

The Department has determined that small bottled water plants and water vendors will be minimally affected by these rules because of the provisions allowed by rule 1550.3320 which will allow the plant operator and the water vendor with existing facilities and equipment in use before the effective date of this chapter, that do not fully meet the design and fabrication requirements, to continue to use the equipment or facility so long as

they are in good repair, can be maintained in a clean and sanitary condition and will produce a safe and wholesome drinking water.

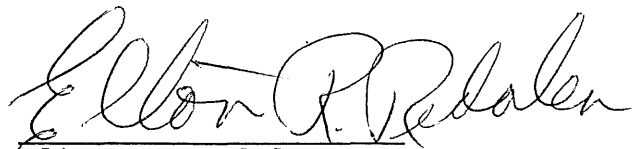
There will be an increased cost to plant operators and vendors to do further testing of their products. This is reasonable since water served to consumers through municipal systems must meet and perform the identical tests to meet the EPA Drinking Water Standards. There also will be a slight increase to certain bottled water plant operators whose labels must be revised to meet the truth in labeling clauses in these rules. They can no longer misrepresent bottled water as spring or artesian water when the water is from a well or municipal source. These requirements will also be found in the federal regulations when they are eventually adopted.

The adoption of these rules provides uniform statewide requirements for both plant operators and vendors in Minnesota and will be uniform with the federal. These rules are supported by the industry to provide the necessary testing to assure a safe and sanitary water and will provide for truth in labeling on the finished products.

Since the requirements set by these rules are minimum requirements to protect the public health and interest, any alternative method to reduce further impact would be contrary to the objectives set by Minnesota Statute, section 31.11 which requires the Department to publish uniform rules, not inconsistent with law, to protect and preserve the public health.

3-3-93

Date



Elton R. Redalen
Commissioner