



Annual Rules Report

2015

Deputy Commissioner James A. Boerboom, 651-201-6395
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December 10, 2015

Governor Mark Dayton

Sen. Dan Sparks, Sen.Dan.Sparks@senate.mn
Jobs, Agriculture and Rural Development Committee

Sen. David Tomassoni, Sen.David.Tomassoni@senate.mn
Environment, Economic Development and Agriculture Division

Sen. Bill Ingebrigtsen, Sen.Bill.Ingebrigtsen@senate.mn
Environment, Economic Development and Agriculture Budget Division

Sen. Gary Dahms, Sen.Gary.Dahms@senate.mn
Jobs, Agriculture and Rural Development Committee

Rep. Paul Anderson, Rep.Paul.Anderson@house.mn
Agriculture Policy Committee

Rep. David Bly, Rep.David.Bly@house.mn
Agriculture Policy Committee

Mr. Greg Hubinger, Director
Legislative Coordinating Commission, lcc@lcc.leg.mn

Ms. Michele Timmons, Revisor
Minnesota Revisor of Statutes, revisor@revisor.mn.gov

Subject: Annual Report on Obsolete, Unnecessary, or Duplicative Rules as Required by Minnesota Statutes, section 14.05, subdivision 5

Dear Governor Dayton, Senators, Representatives, Revisor Timmons, Director Hubinger:

Minnesota Statutes, section 14.05, subd. 5, directs the Minnesota Department of Agriculture (MDA) to report to you by December 1 of each year whether any of its rules are obsolete, unnecessary, or duplicative of other state or federal statutes or rules.

MDA has reviewed its rules and found that the following rules are or have become obsolete, unnecessary, or duplicative over the course of the last year. MDA's timetable for completing these rulemakings is by the end of 2016 through the processes outlined in Minnesota Statutes, sections 14.3895 and 14.47, subd. 6(b).

1. **1505.3070, subpart 1 B. (2).** This rule states that "[t]he area must be sloped to a sediment trap used only for the temporary collection of spilled or released pesticides. The sediment trap may not be greater than two feet deep or hold more than 109 U.S. gallons." MDA plans to remove the section of the rule that states, "or hold more than 109 U.S. gallons" because the rule requirement is unnecessary. This specific amount rule requirement is arbitrary and not based on any industry standards, it is not based on any state or federal law, it is overly restrictive to industry, and does not provide the adequate flexibility required for secondary containment/sediment trap designs. MDA will address this rule change through use of the process provided by Minnesota Statutes, section 14.3895.

2. **1513.0140, subpart 1.** Pursuant to this rule, “[e]ach system nameplate must be made of a noncorroding metal permanently attached to the system by continuous welding around its perimeter and located so as to be readily accessible for inspection.” MDA plans to remove the section of the rule that states, “by continuous welding around its perimeter” because the rule requirement is obsolete. The MDA does not and never has conducted inspections for nameplates based on how they are mounted. There are many anhydrous ammonia tanks where the nameplates are permanently attached by various means such as welding and rivets. The MDA plans to address this through the application of Minnesota Statutes, section 14.3895.

3. **1505.1100, subpart 3 D.** This rule states: “Records must be submitted to the commissioner no later than December 1 of the calendar year in which they occur.” The MDA plans to remove subpart 3 D entirely as this language no longer matches statutory language. The MDA plans to address this through the application of Minnesota Statutes, section 14.3895.

4. **1505.0960.** This rule provides that “[i]f any applicant fails to achieve a passing score on any examination, he/she shall be eligible to retake the examination after 15 days from the date of notification of failure of the first examination. If any applicant fails to achieve a passing score upon retaking an examination, he/she shall be eligible to retake the examination after 30 days from the date of notification of examination failure. A failing applicant may retake an examination no more than three times in one year. Upon submission to the commissioner in writing of specific reasons within 30 days from the date of notification of failure of third retaken examination, an appeal of the score may be made.” MDA plans to remove the section of the rule that states, “after 15 days from the date of notification of failure of the first examination. If any applicant fails to achieve a passing score upon retaking an examination, he/she shall be eligible to retake the examination after 30 days from the date of notification of examination failure.” This rule requirement slows down the license process and places limits on a person’s ability to go to work. The MDA currently issues waivers for waiting periods, but this adds unnecessary additional work for the agency. By removing this requirement an unnecessary burden will be removed from both the MDA and pesticide applicators. The MDA plans to address this obsolete rule through the application of Minnesota Statutes, section 14.47, subd. 6(b) or the process set forth in Minnesota Statutes, section 14.3895 as appropriate.

5. **1545.2050 - 1545.3170.** These rules regulate the processing of fish for human consumption. The MDA proposes to repeal these rules as duplicative and unnecessary. Fish processing is subject to the Minnesota Food Code, Minn. R. ch. 4626, as well as to the federal food and drugs rules and fishery products rules. These federal rules have been incorporated into Minnesota law by *Minnesota Statutes*, section 31.101. Each of the rules in chapter 1545 proposed to be repealed is substantively addressed by the Minnesota Food Code, the federal rules, or Minnesota Statutes, as illustrated in the attached table. MDA believes that repealing the proposed rules will eliminate confusion and streamline the regulatory process for both the regulated parties and the agency, without any detriment to food safety. MDA plans to repeal these rules using the process set forth in Minnesota Statutes, section 14.3895.

6. **1550.1255-1550.1530.** These rules pertain to bakeries. The MDA proposes to repeal these rules as duplicative and unnecessary. Bakeries are subject to the Minnesota Food Code, Minn. R. ch. 4626, as well as to the federal food and drugs rules. These federal rules have been incorporated into Minnesota law by Minnesota Statutes, section 31.101. Each of the bakery rules in chapter 1550 proposed to be repealed is substantively addressed by the Minnesota Food Code, the federal rules, or a provision of Minnesota Statutes, as illustrated in the attached table. MDA believes that repealing the proposed rules will eliminate confusion and streamline the regulatory process for both the regulated parties and the agency, without any detriment to food safety. MDA intends to use the process set forth in Minnesota Statutes, section 14.3895 to repeal these rules.

7. **1550.1540-1550.1700.** These rules contain requirements for the manufacture of nonalcoholic beverages, beer, and other malt beverages. MDA believes these rules are duplicative and unnecessary. Beverage manufacturers are subject to the Minnesota Food Code, Minn. R. ch. 4626, as well as to the federal food and drugs rules. These federal rules have been incorporated into Minnesota law by Minnesota Statutes, section 31.101. Each of the beverage rules in chapter 1550 proposed to be repealed is substantively addressed by the Minnesota Food Code, the federal rules, or Minnesota Statutes, as illustrated in the attached table. MDA believes that repealing the proposed rules will eliminate confusion and streamline the regulatory process for both the regulated parties and the agency, without any detriment to food safety. MDA plans to repeal these rules using the process contained in Minnesota Statutes, section 14.3895.

Status of rules identified in the Minnesota Department of Agriculture's 2013 and 2014 Annual Rules Reports.

The obsolete rules identified in MDA's 2013 and 2014 Annual Rules Reports have not yet been repealed. These rules were to be repealed by legislation that did not pass and become law. Repeal of 1562.0100 C, 1562.0300, 1510.0340 -1510.0360, and 1510-0161 are still in the planning stages. MDA will move forward with the repeal of these rules using the process set forth in Minn. Stat. 14.3895.

If you have any questions regarding this report, please contact Kimberly Middendorf, MDA Administrative Rules Coordinator (651-201-6435 or kimberly.middendorf@state.mn.us).

The cost of preparing this report.

In compliance with Minnesota Statutes 3.197, the cost of preparing this report is as follows: Staff cost: \$2,000. This includes time for review of rules, legal research and the time to complete the report.

Sincerely,



James A. Boerboom
Deputy Commissioner

Food Rules Proposed for Repeal - 2015

	Proposed Rule	Title	Corresponding Federal Rule 21 CFR	Corresponding MN Food Code Provision	Corresponding Minnesota Statute
		Fish			
1	1545.2050	Fish unfit for human food	21 CFR 123.7	4626.0445	31.09
2	1545.2060	Packing Boxes and Containers of denatured fish			31.095
		Fish Processing Establishments			
3	1545.2840	Definitions	21 CFR 110.3, 123.3	4626.0020	
4	1545.2850	Permits			28A.04, 28A.07
5	1545.2860	Renewal			28A.04, 28A.07
6	1545.2870	Revocation of permit, notice, reinstatement			34A.06
7	1545.2880	Inspections and corrective orders		4626.1785-.1790	31.04, 34A.04
8	1545.2890	Tagging insanitary equipment, utensils, rooms, or compartments		4626.1815	
9	1545.2900	Conditions of premises	21 CFR 110.20	4626.1230, .1310, .1330	
10	1545.2910	Buildings and structures	21 CFR 110.20	4626.1325, .1335, .1520	
11	1545.2920	Lighting	21 CFR 110.20	4626.1470	
12	1545.2930	Ventilation	21 CFR 110.20	4626.1475	
13	1545.2940	Waste disposal and plumbing system	21 CFR 110.37	4626.1185, .1200, .1215	
14	1545.2950	Roofs and other parts of buildings and structures	21 CFR 110.20	4626.1325, .1330, .1400	
15	1545.2960	Rooms and compartments	21 CFR 110.20	4626.1335, .1520	
16	1545.2970	Exclusion of dogs, cats, and vermin	21 CFR 110.35	4626.0120, .1585	
17	1545.2980	Water supply	21 CFR 110.37	4626.0980, .1035, .1040	
18	1545.2990	Hot water	21 CFR 110.37	4626.1025, .1020	
19	1545.3000	Facilities	21 CFR 110.20	4626.1075	
20	1545.3010	Toilet rooms	110.37	4626.1075, .1390, .1460, .1495, .1095	
21	1545.3020	Lavatories	21 CFR 110.37	4626.1095, .1435, .1440, .1445	
22	1545.3030	Containers for processed	21 CFR 110.35	4626.0450,	

Food Rules Proposed for Repeal - 2015

		products		.1650	
23	1545.3040	Product or material creating objectionable condition	21 CFR 110.80	4626.1505, .1575, .1600, .1680	
24	1545.3050	Facilities for cleaning	21 CFR 110.36	4626.1080, .1485, .1510	
25	1545.3060	Equipment	21 CFR 110.40	4626.0450	
26	1545.3070	Operations and operating procedures	21 CFR 110.80	4626.0165, .0235, .0300, .0375, .0380	
27	1545.3080	Mechanical adjustments	21 CFR 110.80	4626.0945, .0950	
28	1545.3090	Removal and segregation of certain products	21 CFR 110.80	4626.0335, .0445	
29	1545.3100	Ingredients	21 CFR 110.80	4626.0145 - .0210	
30	1545.3110	Methods and procedures	21 CFR 110.80	4626.0235, .0275	
31	1545.3120	Health of personnel	21 CFR 110.10	4626.0045, .0095, .0100, .0105	
		Fish Smoking Establishments			
32	1545.3130	Definitions	21 CFR 110.3	4626.0020	34A.01
33	1545.3140	Permits		4626.1755- .1780	28A.04, 28A.07, 31.04
34	1545.3150	Permits granted to establishments not located in Minnesota			28A.04
35	1545.3160	Renewal of permits			28A.07, 28A.17
36	1545.3170	Facilities and equipment		Ch. 4626	
		Bakeries			
37	1550.1255	Applicability		4626.0017	
38	1550.1260	Definitions		4626.0020	
39	1550.1270	Requirements for premises	21 CFR 110.20	Ch. 4626	34A.02
40	1550.1280	Satisfactory compliance for premises	21 CFR 110.20	Ch. 4626	34A.02
41	1550.1290	Sanitary condition of bakery products and ingredients	21 CFR 110.20	Ch. 4626	
42	1550.1300	Satisfactory compliance for bakery products and ingredients	21 CFR 110.80(a) 1-7	Ch. 4626	
43	1550.1310	Refrigeration and protection of perishable products	21 CFR 110.80(b)(i)	4626.0340- .0420, .0165	
44	1550.1320	Satisfactory compliance for perishable supplies and	21 CFR 110.80(a) &(b), 110.40,	4626.0340- .0420, .0165	

Food Rules Proposed for Repeal - 2015

		products	110.37		
45	1550.1330	Storage of nonperishable products and supplies	21 CFR 110.80	4626.0300-.0305	
46	1550.1340	Satisfactory compliance for storage of nonperishable products and supplies	21 CFR 110.80	4626.0300-.0305	
47	1550.1350	Bakery construction and facilities building requirements	21 CFR 110.20(b)	4626.1325-.1485	
48	1550.1360	Satisfactory compliance for bakery construction	21 CFR 110.20(b)	4626.1325-.1485	
49	1550.1370	Toilet and dressing rooms	21 CFR 110.37	4626.1460	
50	1550.1380	Satisfactory compliance for toilet and dressing rooms	21 CFR 110.37	4626.1460	
51	1550.1390	Lighting	21 CFR 110.20(b)(5)	4626.1470	
52	1550.1400	Satisfactory compliance for lighting	21 CFR 110.20(b)(5)	4626.1470	
53	1550.1410	Ventilation	21 CFR 110.20(b)(6) & (7)	4626.0690	
54	1550.1420	Satisfactory compliance for ventilation	21 CFR 110.20(b)(6) & (7)	4626.0690	
55	1550.1430	Control of insects, rodents, birds, and other animals	21 CFR 110.35(c)	4626.1515-.1585	
56	1550.1440	Satisfactory compliance for insect, rodent, bird, and other animal control	21 CFR 110.35(c)	4626.1515-.1585	
57	1550.1450	Water supply	21 CFR 110.37(a) & (b)	4626.0980-.1130	
58	1550.1460	Waste disposal	21 CFR 110.37(C) & (b) & e(6) & (f)	4626.1225-.1320	
59	1550.1470	Satisfactory compliance for waste disposal	21 CFR 110.37(C) & (b) & e(6) & (f)	4626.1225-.1320	
60	1550.1480	Construction and design of equipment and utensils	21 CFR 110.40	4626.0505-.0670	
61	1550.1490	Satisfactory compliance for equipment and utensils	21 CFR 110.40	4626.0505-.0670	
62	1550.1500	Cleaning and sanitizing	21 CFR 110.35(b)	4626.0840-.0905	
63	1550.1510	Satisfactory compliance for cleaning and sanitizing	21 CFR 110.35(b)	4626.0840-.0905	
64	1550.1520	Health and hygiene practices of personnel	21 CFR 110.10(a) & (b)	4626.0040-.0120	
65	1550.1530	Satisfactory compliance of health and hygiene	21 CFR 110.10(a) & (b)	4626.0040-.0120	

Food Rules Proposed for Repeal - 2015

		practices			
		Manufacturing Requirements for Nonalcoholic Beverages, Beer, and Other Malt Beverages			
66	1550.1540	Capping	21 CFR 110.80(b)	4626.0190	34A.02
67	1550.1550	Wooden ladle or paddle prohibited	21 CFR 110.40(a)	4626.0490	34A.02
68	1550.1560	Beverage cooler	21 CFR 110.37(b)	4626.0265	
69	1550.1580	Sanitation of beverage coolers	21 CFR 110.35(d)	4626.0840-.0845	
70	1550.1590	Germicidal treatment	21 CFR 110.35	4626.0845, 0895, .0900, .0905	
71	1550.1600	Dispensers and containers	21 CFR 110.40, 110.80(b)(1)-(3)	4626.0320, .0450, .0575	
72	1550.1620	Beverage dispenser or container sign	21 CFR 101.3, 101.4	4626.0435, .0440	
73	1550.1630	Net contents declaration	21 CFR 101.4	4626.0435	
		Bottling of Beer or Other Malt Beverages			
74	1550.1650	Places where beer or other malt beverages are bottled	21 CFR 110.35, 110.37	4626.1185, .1325, .1335, .1380, .1470, .1520	
75	1550.1660	Automatic filler	21 CFR 110.80	4626.0315, .0575	34A.02
76	1550.1670	Sterilization of bottles, cans, and other containers	21 CFR 110.35, 110.80	4626.0905, .1620	34A.02
77	1550.1680	Size of container and labeling	21 CFR 101.3, 101.5, 101.105		Ch. 340A
78	1550.1690	Protection from contamination	21 CFR 110.80, 110.35, 110.37	4626.0235, .0845, .0875, .0895, .0900, .0905, .1020, .1050, .1070, .1075, .1095, .1390, .1440, .1450	34A.02
79	1550.1700	Suspension or revocation of license			34A.06