

STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED)	
RULES OF THE DEPARTMENT OF)	
AGRICULTURE GOVERNING RETAIL)	STATEMENT OF NEED
FOOD STORE SANITATIAON.)	AND REASONABLENESS
(MINNESOTA RULES PART)	
1547.0001 - 1547.0112)	

I. INTRODUCTION

The subject of this rulemaking is the proposed adoption by the Minnesota Department of Agriculture (MDA) of a rule governing the sanitary requirements for retail food store establishments. 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 rule is noncontroversial in nature because it is supported by the industry as providing uniform statewide sanitary requirements for the operation of retail food stores and will bring Minnesota's requirements into conformity with the Food and Drug Model Code. Because of the noncontroversial nature of this rule, the department directed that the rulemaking proceedings be conducted in accordance with the statutory provisions governing the adoption of noncontroversial rules, Minnesota Statutes, sections 14.21 to 14.28. Accordingly, the rulemaking proceedings on the proposed rule are governed by that statute and no hearing will be conducted on the proposed amendment unless twenty-five or more persons submit to the department a written request for such a 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 proposed rule was published by the State Register.

II. GENERAL OVERVIEW

The department has adopted rules to cover most categories of food handling which includes the manufacture, process, labeling, transporting, wholesaling, and salvaging, including most of the handling of food products up to but not including the final retailing of the finished product. The Food Inspection Division of this department has always had responsibility for retail food stores and has protected the public health through sanitary requirements and wholesomeness of food with existing laws found in Chapter 31 of the Minnesota Food Law. The department has adopted rules covering most other categories of food handlers but this proposed new rule will be the first and only rule which will cover the retail sale of food through grocery stores.

In 1974, the Association of Food and Drug Officials (AFDO) consisting of state and federal food officials submitted a "Retail Food Market Document" to the Food and Drug Administration (FDA) for the purpose of review, necessary changes and publishing the document as a national standard. The final draft of the proposed standard containing the sanitary requirements for operation of retail food stores was published in the Federal Register and adopted as a model "Retail Food Store Sanitation Code" in 1982.

The FDA is responsible for food establishments which operate in interstate business. Since retail food stores do not normally operate in interstate commerce, the FDA has little or no jurisdiction in the stores. For this reason the code was adopted as a model and not as part of the Code of Federal Regulations which this department has already adopted. Each state, therefore, must adopt the code as part of their rules.

The model code was accepted by the FDA after significant contributions through the cooperation of the food store industry, government agencies, food equipment manufacturers and other interested parties. The Department of Agriculture has the support of the food industry in the adoption of this code as part of Minnesota Rules.

III. NEED FOR AND REASONABLENESS OF THE PROPOSED RULES

1547.0001 Purpose

1547.0002 Definitions

These two rules are needed to define the purpose for this rule and Definitions are a basic and reasonable part of any rule.

1547.0003 Food Supplies

This rule is needed and is reasonable in that it requires a retailer to purchase and sell food which is wholesome as required by Minnesota Statute, chapter 31.02.

1547.0004 Special Requirements

The special requirements for eggs, milk and shellfish are needed because these products are exceptionally good media for the growth of pathogens. The need and reasonableness for this rule is as follows:

Subpart 1. Milk products: This subpart is a requirement found in Minnesota Statute, chapter 21.394.

Subpart 2. Shellfish: Raw shellfish may transmit intestinal diseases such as typhoid fever or be carriers of natural or chemical toxins. It is important that they be obtained from unpolluted waters and produced, handled and distributed in a sanitary manner. Shellfish must comply with the general requirements of the Food and Drug Administration and with the states through the National Sanitation Program. Shellfish plants must be approved and certified with that certification number attached to each shipped container. It is only reasonable that those shellfish containers should remain identified as a protective control in the event of a food poisoning.

Subpart 3. Eggs: This subpart is a requirement found in Minnesota Statutes, Chapter 29.33, requiring all eggs sold at retail to meet grade standards of quality.

Subpart 4. Ice: Any person engaging in the business of food handling must have a suitable water supply. Food products requiring water for production must be from a satisfactory source as required by Chapter 31.175. This part is needed to spell out the requirements for ice products and its sale and is, therefore, reasonable. The requirement that only prepackaged ice be sold will prevent further contamination prior to sale.

1547.0005 Food Protection

1547.0006 Emergency Occurrences

Food which is wholesome and safe when received from the supplier can become contaminated with filth, pathogenic organisms, and toxic chemicals if it is mishandled within the retail store. The requirements of these rules are needed to protect food from numerous sources of contamination that may occur during retail food store operations and are reasonable because sources of contamination will be minimized.

1547.0007 Food Storage

1547.0008 Refrigerated or Frozen Storage

1547.0009 Hot Storage

These rules are a needed and necessary part of this chapter because they spell out minimum requirements for the proper care during storage of various food products so that they are protected and will maintain the integrity and wholesomeness of the food products. Temperature requirements are defined as maximum and minimum safe temperatures which will prevent growth of potential food poisoning organisms. Thermometers are required in or on equipment to provide a means for monitoring air temperatures around potentially hazardous food.

1547.0010 Food Preparation

1547.0011 Raw Fruits and Vegetables

1547.0012 Cooking Potentially Hazardous Foods

1547.0013 Bakery Product Fillings

1547.0014 Reheating

Along with the requirements for storage which include proper temperatures for food, these rules are needed and are necessary to this chapter because they provide protection to the consumer through proper handling and separation of certain food products from others and also require maximum and minimum temperatures for food being processed to destroy or prevent rapid growth of microorganisms in food which may have become contaminated. The temperature specified for thawing, cooking, and reheating are based on safety requirements.

1547.0015 Food Product Thermometers

This rule is needed to require accurate thermometers for the protection of food. The rule is reasonable because proper temperatures are a basic requirement for the prevention of food poisoning.

1547.0016 Thawing Potentially Hazardous Foods

This rule is needed to show the three safe methods for the thawing of potentially hazardous foods in order to prevent food poison organisms from proliferating at stress temperatures above 40 degrees or below 150 degrees Fahrenheit. These methods are recommended by the U.S. Department of Agriculture, the Food and Drug Administration and the Minnesota Department of Health.

1547.0017 Potentially Hazardous Food Display

1547.0018 Frozen Food Display

1547.0019 Food Display

These rules are needed to detail continued control of product temperatures of potentially hazardous food and to direct the effort of store employees toward a sanitary display. The rules are reasonable because any lapse in concern for protecting food during display will negate all earlier efforts to maintain quality.

1547.0020 Dispensing Utensils

Chapter 31.84, section 5, relates to the sale of bulk food and the use of dispensing devices and utensils. The statute has been carried over to this rule because a large amount of bulk food is sold through grocery stores. The rule, therefore, has a need and is reasonable to this chapter by spelling out the requirements for dispensing utensils to prevent unnecessary contamination or adulteration of bulk food products by store patrons.

1547.0021 Food Sample Demonstrations and Food Promotions

1547.0022 Food Transportation by Retail Food Store

These two rules are self explanatory and are needed to detail assurances which are needed for both the promotion and transportation of food to meet requirements of sanitation.

1547.0023 Employee Health

1547.0024 Personal Cleanliness

1547.0025 Clothing

1547.0026 Employee Practices

These rules are needed and are reasonable for the protection of public health. Chapter 31.171 states that it is unlawful for any diseased person to work in or about any place where any fruit or any food products are packed, stored, prepared or sold. The Code of Federal Regulations in Part 110 which this Department has adopted also states that no person with a disease or infective wounds shall work in a food plant. All persons working in direct contact with food must wear clean outer garments and maintain a high degree of personal cleanliness to prevent potential contamination of food. These rules are reasonable because food recontaminated by insanitary and unsightly personal practices can adversely affect food products through disease or adulteration.

1547.0027 Materials

1547.0028 Solder

1547.0029 Wood

- 1547.0030 Plastics and Rubber Materials
- 1547.0031 Cutting Surfaces
- 1547.0032 Single-Service Articles
- 1547.0033 Design and Fabrication
- 1547.0034 Accessibility
- 1547.0035 Clean In Place (CIP)
- 1547.0036 Food Product Thermometers
- 1547.0037 Non-Food Contact Surfaces
- 1547.0038 Ventilation Hoods

These rules are needed to define to a retail store which food contact and non-food contact materials may be used, where they may be used, and how they must be maintained to remain in a sanitary condition. Food contact surfaces must meet the statutory requirements found in Chapter 31.121 which states that a food is deemed to be adulterated if its container is composed in whole or in part of any poisonous or deleterious substance which could render the contents injurious to health and Chapter 31.02 which prohibits the sale of any food that is adulterated. These rules are reasonable because they are only minimum requirements for food surfaces of equipment which must be smooth, made of safe materials and be easily cleanable.

- 1547.0039 Maintenance of Equipment and Utensils
- 1547.0040 Equipment Installation and Location
- 1547.0041 Table-Mounted Equipment
- 1547.0042 Floor-Mounted Equipment
- 1547.0043 Aisles and Working Spaces

These rules are needed and are reasonable because they define how food equipment must be maintained in order to be suitable for a sanitary operation in keeping with good public health practice. The Code of Federal Regulations, Part 110 which this department has adopted states that all plant equipment and utensils should be suitable for their intended use, so designed of such materials to be cleanable, and installed

and maintained to facilitate cleaning of the equipment and all other spaces. Equipment, as is the case with materials used within a food establishment, must be smooth, easily cleanable and made of safe materials. The aisles and working spaces are intended to assure that employees have enough space to perform duties without inadvertently contaminating food and clean surfaces.

1547.0044 Cleaning Frequency

1547.0045 Wiping Cloths

These rules are needed as minimum requirements for sanitation within the processing and retailing areas of the store. Minnesota Statute, Chapter 31.161 states in part that no person shall operate a food establishment in a filthy, unclean or insanitary condition. A definition of clean means free from physical, chemical and microbial substances discernable by ordinary sight or touch, by ultraviolet light, by artificial light and by the dye test, and free from insects, vermin and debris. Part 110 of the Code of Federal Regulations states in part that all utensils and product contact surfaces must be cleaned as frequently as necessary to prevent contamination of food and food products. The rules are reasonable because they are minimum requirements for public health to prevent the spread of food poisoning organisms and chemicals.

1547.0046 Food Service in Retail Food Stores

Restaurants and other food service operations are regulated under rules defined by the Minnesota Department of Health. Food Service in establishments licensed and regulated by Agriculture must meet the Minnesota Health Department rules. This rule is therefore needed and is reasonable for food service operations in retail food stores by definition to meet health rules.

1547.0047 Manual Cleaning and Sanitizing

1547.0048 Mechanical Cleaning and Sanitizing

1547.0049 Drying

1547.0050 Retail Food Stores without Equipment and Utensil Cleaning Facilities

1547.0051 Equipment and Utensil Handling

Regular, effective cleaning and sanitizing of equipment, utensils, and work surfaces minimizes the probability of food contamination, accelerated food spoilage, and the transmission of disease organisms or toxins to employees or consumers. These rules are needed as requirements to assure that all facilities and testing equipment necessary for effective cleaning and sanitization are provided. They are reasonable because effective cleaning prevents spread of disease and these rules will provide operating procedures which are known by public health officials to be safe and effective.

1547.0052 Equipment and Utensil Storage

1547.0053 Single-Service Articles

1547.0054 Prohibited Storage Areas

Proper food handling requires that single-service articles and reuseable equipment and utensils must be properly stored to prevent their being contaminated. Part 110 of the Code of Federal Regulations states under 110.37 that "Cleaned and sanitized portable equipment and utensils with product contact surfaces should be stored in such a location and manner that product contact surfaces are protected from splash, dust and other contamination." These three rules are needed to define proper areas of storage within a food store and are reasonable because assurances are provided for proper storage to prevent recontamination of clean equipment and utensils and single service articles.

1547.0055 Water Supply; General

1547.0056 Water Under Pressure

1547.0057 Steam

1547.0058 Sewage; General

1547.0059 Plumbing; General

1547.0060 Nonpotable Water System

1547.0061 Backflow

1547.0062 Grease Traps

1547.0063 Garbage Grinders

1547.0064 Drains

Any person engaging in the business of food handling must have a suitable water supply. Food products requiring water for processing must be from a potable source as required by Chapter 31.175 of the Food Law. Water and waste lines inconveniently located, improperly designed or in disrepair can make store operation difficult or impossible. These rules are needed to assure that plumbing is designed and installed so that equipment and facilities will have sufficient water volume and pressure to properly perform their functions. The rules are reasonable because they are only intended to protect potable water systems, fixtures and equipment from contamination by cross-connections or backflow involving toxic chemicals and pathogenic organisms.

1547.0065 Toilet Installation

1547.0066 Toilet Design

1547.0067 Toilet Rooms

1547.0068 Toilet Facility Maintenance

Toilet facilities are needed for the proper disposal of human waste which is a prime source of pathogens in the spread of disease from one person to another. These rules are reasonable by assuring that toilet facilities are provided, properly designed and conveniently located and will permit employees to practice personal cleanliness.

1547.0069 Handwashing Facility Installation

1547.0070 Handwashing Facility Faucets

1547.0071 Handwashing Supplies

1547.0072 Handwashing Facility Maintenance

Hands are probably the most common vehicle for the transmission of contamination to food and food contact surfaces. These rules are needed to assure that there are sufficient, convenient, properly equipped and located handwashing facilities in the store for the use of the employee. These rules are, therefore, reasonable in the prevention of disease transmission by requiring sinks for food preparation, warewashing and handwashing.

1547.0073 Garbage and Refuse Containers

1547.0074 Garbage and Refuse Storage

1547.0075 Garbage and Refuse Disposal

Proper storage and disposal of garbage and refuse are necessary in the prevention of the breeding, harboring, and attraction of insects, rodents, and other animals. Part 110.35 of the Code of Federal Regulations says in part that rubbish and offal must be so conveyed, stored and disposed of as to minimize odor and harborages of vermin and prevent contamination of food, food-contact surfaces, ground surfaces and water supplies. These rules are reasonable because they provide assurances that garbage and other refuse will be properly handled and not become a source of contamination to the food, equipment, or utensils.

1547.0076 Insect and Rodent Control; General

1547.0077 Openings

Insects and rodents are carriers of disease. Open doors or windows and damaged facilities can allow the entrance of animals, birds and vermin which can contaminate food and become a serious public health problem. These two rules are needed and reasonable because they will prevent a health nuisance if the food store maintains their facilities in compliance to these requirements.

1547.0078 Floor Construction

1547.0079 Floor Carpeting

1547.0080 Prohibited Floor Covering

1547.0081 Mats and Duckboards

1547.0082 Utility Line Installation

Floors that are of smooth durable construction and non-absorbent are more easily cleaned. Special materials, sealing, coving and grading to drains are needed for floors which are cleaned by spraying or flushing so that wastes are quickly carried away.

These rules are reasonable because they provide minimum requirements and restrictions to assure that regular and effective cleaning is possible and that insect harborage is minimized. Sawdust, wood shavings and similar materials are prohibited because they contribute to dust-borne contamination and makes floors more difficult to clean.

1547.0083 Maintenance

1547.0084 Construction

1547.0085 Exposed Construction

1547.0086 Utility Line Installation

1547.0087 Attachments

1547.0088 Covering Material Installation

Walls and ceilings that are of smooth construction, non-absorbent and in good repair can be easily and effectively cleaned. The special requirements provided for the installation of utility lines, attachment of accessories, and application of covering materials, are intended and needed to assure that the cleanability of these surfaces are retained. Cleanliness in a retail store is essential to prevent contamination and, therefore, these rules are reasonable.

1547.0089 Cleaning Physical Facilities

1547.0090 Service Sinks

Cleanliness in a retail food store is necessary to minimize attractants for insects and rodents, aid in preventing contamination of food and equipment and prevent nuisance conditions. Sinks used for food production, equipment washing and handwashing cannot be used as a service sink because of the potential of contamination between food contact and non-food contact surfaces. These rules are reasonable assurances to preclude avoidable contamination of food and equipment.

1547.0091 Lighting; General

1547.0092 Protective Shielding

These rules are necessary to provide for adequate lighting for reading labels, discerning colors of substances, identify toxic substances and to facilitate general store cleanup and yet provide protection to exposed food employees and equipment from glass breakage and, therefore, the rule is reasonable.

1547.0093 Ventilation; General

Ventilation is necessary for protecting food from contamination by controlling moisture condensation, obnoxious odors, drippage from accumulations of fats and oils and other hazards and nuisances produced within a food market. This rule is reasonable as it spells out the minimum requirements needed to prevent contaminating materials from being a problem in a retail food store.

1547.0094 Dressing Rooms and Areas

1547.0095 Locker Areas

Street clothing and personal belongings can contaminate food, food equipment and food preparation surfaces. Lockers and suitable facilities are needed to provide for the proper storage of personal belongings such as purses, coats, shoes and personal medications. These rules are reasonable in the prevention of further contamination of food products.

1547.0096 Poisonous or Toxic Materials Permitted

1547.0097 Labeling of Materials

1547.0098 Storage of Materials

1547.0099 Use of Materials

1547.0100 Storage and Display of Toxic or Poisonous Materials

1547.0101 First-Aid Supplies and Personal Medications

These rules are needed to prevent any accidental contamination of food or food-contact surfaces with pesticides, toxic cleaning compounds, other poisons or medicines. The rules are reasonable in that they will assure that only those toxic materials which

are necessary to the retail stores operation are present with proper labeling, safely stored and properly used.

1547.0102 Premises; General

1547.0103 Living Areas

1547.0104 Laundry Facilities

1547.0105 Linens and Work Clothes Storage

1547.0106 Cleaning Equipment Storage

1547.0107 Animals

Food store construction and design must be suitable in size, materials and design to facilitate maintenance and sanitary operation. These rules are necessary to provide for minimum size of the facilities and areas to effectively exclude pests, dirt and other filth or toxic substances from equipment and utensils. Toxic substances must be used according to manufacturers specifications, so as not to contaminate food. Except as specified in the rule, animals must be excluded from retail food stores to prevent contamination of food. These rules are reasonable because they are defined by other rules covering food operations similar to retail food stores.

1547.0108 License to Operate; General

1547.0109 Issuance of License

1547.0110 Review of Plans

1547.0111 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 will be made to determine fitness of the firm to do business. Plan reviews by the department prior to the construction of a retail food store will help to prevent problems with post construction requiring further inspection and delays to the facility. These rules, therefore, are needed in the Food Store Sanitation Rules and are reasonable because they require nothing greater than necessary minimum requirements.

1547.0112 Existing Establishments

This rule is needed as a grandfather clause to all existing facilities and equipment which are in good repair and maintained sanitary to be used after the effective date of the Retail Food Sanitation Rules and, therefore, is reasonable.

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 rules will have on small businesses and the alternative methods for lessening that impact.

The department has determined that all small food stores will be minimally affected by these rules because of the provisions allowed by rule 1547.0112 which will allow a food store 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 facility or equipment so long as they are in good repair and able to be maintained in a clean and sanitary condition. Even though the department has always had responsibility for retail food stores, rules relating to the sanitary requirements and the wholesome handling of food products were never adopted. The laws found in Minnesota Statutes, Chapter 31, of the Food Laws have been used during the inspection of food stores. The adoption of these proposed rules will provide statewide uniform rules covering all retail food stores in Minnesota.

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.