

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

ATTORNEY GENERAL

December 6, 1988

CAROL MILLIGAN
Management Analyst

JULIE A. LEPPINK
Special Assistant
Attorney General

6-9422

In the Matter of the Adopted Rule Relating to
Grain Quality Testing Equipment

The above-referenced rule has been approved as to its legality by the Attorney General on December 2, 1988.

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.

JAL:rer

Enclosures

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

William Brown
Chief Administrative Law Judge
Office of Administrative Hearings

1536

SF-00006-05 (4/86)

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT : OF AGRICULTURE

DATE : November 10, 1988

Recd 11/16/88 OK RMD

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

FROM : Carol Milligan, Management Analyst
Planning Division

PHONE : 296-6906

SUBJECT : Review of Proposed Emergency Rule Governing Grain Quality Testing Equipment

The Department of Agriculture adopted the above-mentioned emergency rule pursuant to Minnesota Statutes, sections 14.29-14.36. 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.

If you have questions, please contact me.

CM:cb

Attachment

cc: Jim Nichols, Commissioner
Paul Strandberg, Special Assistant Attorney General
Craig Lindeke, Office of Revisor of Statutes
Gerald Heil, Planning Division
Pat Jensen, Counsel to the Commissioner
Ed Moline, Grain Inspection Division

RECEIVED
NOV 16 88
ATTORNEY GENERAL'S OFFICE
515 TRANSPORTATION BLDG.
ST. PAUL, MN 55155

gal

File No. 5531 Docket . 05.0009.0986

DATE RECEIVED 11/16/88 ADOPTED W/O HEARING _____

REVIEW DATE 12/2/88 EMERGENCY RULE X

DUE DATE 12/2/88 REVISOR APPROVED X

APPROVED 12/2/88 gal REVISOR DISAPPROVED _____

DISAPPROVED _____ FILED W/SEC. OF STATE _____

WITHDRAWN _____ RETURNED TO AGENCY _____

✓ Rule as adopted (4 copies)

_____ ~~Notice to Solicit Outside Information/Opinion (if applicable)~~

_____ ~~Date published in State Register~~
_____ ~~Comments~~

_____ ~~Petition for Adoption of a Rule (if applicable)~~

_____ ~~Board's Authorizing Resolution~~

_____ ~~Date adopted~~

✓ Proposed Rule

yes Revisor's Certificate

✓ Notice of Intent to Adopt Rule

17B.041 Statutory Authority
NB Small Business Statement
NB Expenditure of public money statement
yes Signature

_____ ~~Statement of Need and Reasonableness (if applicable)~~

_____ ~~Small Business Statement~~
_____ ~~Fees - § 16A.128~~

✓ Affidavit of Mailing Notice of Intent to Adopt Rule

10/12/88 Date 30/25 days before adoption
ok Notice attached
_____ ~~Copy of rule or summary attached~~

✓ Publication in State Register

10/17/88 Date 30/25 days before adoption

_____ 180-day deadline from:

_____ ~~end of comment period (§ 14.26) (rules without hearing)~~
N/A effective date of statutory authority (§ 14.29) (emergency rules)

_____ ~~Resolution Adopting~~

_____ ~~Date adopted~~

✓ Findings of Fact, Conclusions & Order Adopting

11/14/88 Date

_____ ~~Written requests, submissions or comments~~

✓ Declaration of attorney

Paul Strandberg Name of SAAG representing agency

✓ Certificate of Mailing List ~~Notice of Submission to Atty. Gen. (if applicable)~~

_____ ~~Aff. of Mailing Notice to Atty. Gen. (if applicable)~~

Department of Agriculture

Adopted Emergency Rules Relating to the Testing of Equipment and Equipment Operators Involved in Determining the Quality and Condition of Grain Received for Purchase or Storage

Rules as Adopted

GRAIN STANDARDS TESTING

1511.0100 [Emergency] DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part apply to parts 1511.0100 to 1511.0170 [Emergency].

Subp. 2. **Department.** "Department" means the Minnesota Department of Agriculture.

Subp. 3. **Person.** "Person" means an individual, firm, co-partnership, cooperative, company, association, or receiver licensed by the department to purchase grain or store grain for others.

Subp. 4. **Test equipment.** "Test equipment" means mechanical or electronic devices commonly used in the measurement of grain qualities, including equipment that determines moisture or protein content, test weight per bushel apparatus, and dockage testing devices.

Subp. 5. **Reject tag.** "Reject tag" means a device that is applied to test equipment that fails to meet established tolerances.

Subp. 6. **Tolerances.** "Tolerances" means values fixing the minimum or maximum limit of allowable error or departure from true performance or value.

Subp. 7. **Standard sample.** "Standard sample" means a sample of grain with a known measurement of quality or weight for the purpose of testing equipment.

Subp. 8. **Grain.** "Grain" means cereal grain, coarse grain, or oilseed in unprocessed form for which a standard has been established by the United States Secretary of Agriculture or the Minnesota Board of Grain Standards, dry edible beans, or other

agricultural crops designated by the commissioner by rule.

Subp. 9. **On-site review.** "On-site review" means the testing of equipment and test equipment operators conducted where grain quality is determined for grain that is received for purchase or storage.

Subp. 10. **Condemned tag.** "Condemned tag" means a device that is applied to equipment that is beyond a state of repair rendering the equipment unfit for making grain quality determinations.

Subp. 11. **Chief equipment operator.** "Chief equipment operator" means a person assigned by the firm management as the responsible person for operating equipment used to determine grain quality.

Subp. 12. **Authorized service representative.** "Authorized service representative" means a person that has been certified by the manufacturer or distributor of the test equipment as being technically qualified and capable of servicing their test equipment.

1511.0110 [Emergency] ESTABLISHED TOLERANCES.

Established tolerances for each type of equipment are:

A. moisture determination, plus or minus 0.5 of one percent;

B. protein determination, plus or minus 0.5 of one percent;

C. test weight determination, plus or minus one-half pound; and

D. dockage determination, plus or minus 0.5 of one percent.

1511.0120 [Emergency] TEST EQUIPMENT LIST PROVIDED TO DEPARTMENT.

A person who receives grain for purchase or storage in Minnesota shall provide the department with a list of equipment used to determine grain quality on forms provided by the department. The list must include the model number, serial number, and make or brand name of each piece of equipment used to determine moisture or protein content, test weight measuring

apparatus, and dockage testing devices.

1511.0130 [Emergency] TESTING GRAIN EQUIPMENT.

Subpart 1. **Testing for accuracy.** Persons in Minnesota who receive grain for purchase or storage are subject to having the equipment used to determine grain quality routinely tested for accuracy by the department. The test equipment must include mechanical or electronic devices that are used to determine moisture or protein content, test weight scales, and dockage testing devices.

Subp. 2. **Standard samples.** Standard samples for testing equipment, prepared by the department, must be forwarded to persons or firms that perform quality determinations for grain received for purchase or storage.

Subp. 3. **Analysis; results.** Department standard samples received by a firm must be analyzed by the designated chief equipment operator. Test results must be recorded on the forms provided by the department and returned to the department within five days of receipt of the standard samples.

1511.0140 [Emergency] RETESTING OF EQUIPMENT.

Test equipment that does not meet the established tolerances must be retested. A second set of standard test samples must be forwarded for test equipment that exceeds the established tolerance. Results of the second set of standard test samples must be returned to the department within five days of receipt of the standard test samples.

1511.0150 [Emergency] ON-SITE REVIEWS OF TEST EQUIPMENT AND EQUIPMENT OPERATORS.

The department may randomly perform an on-site review of test equipment and the chief test equipment operator at each location where grain is being received for purchase or storage. An on-site review must be conducted during normal business hours. An on-site review may be conducted when one or more of the following conditions are determined by the department:

A. if the test results of standard samples are not

returned to the department within the prescribed time;

B. if test equipment fails to meet the established tolerance on the second set of standard test samples;

C. if the department determines that inaccurate test results may be caused by the chief test equipment operators' procedures;

D. if the department determines that the environmental conditions in the area where the test equipment is operated may be inadequate; and

E. if the department receives a signed statement from a purchaser or seller of grain requesting a review of the test equipment or test equipment operator.

1511.0160 [Emergency] TAGGING OF TEST EQUIPMENT.

Subpart 1. **Attachment and removal of tags.** Test equipment found to exceed the established tolerances during an on-site review must have a reject tag attached to the test equipment by the department and the equipment must not be further used to determine the quality of grain received for purchase or storage until the test equipment has been serviced and the reject tag is removed:

A. by an employee of the department, upon completion of testing that shows the equipment to be within the established tolerance; or

B. by an authorized service representative who certifies to the department that the equipment has been serviced and tested for compliance within the established tolerance.

Subp. 2. **Return of tags.** A reject tag must be returned to the department immediately upon placing the equipment back into service. The information requested on the reverse side of the reject tag must be completed and contain the signature of the authorized service representative or the department employee.

Subp. 3. **Condemned tag.** A condemned tag must be attached to test equipment used to determine grain quality when it is determined that the test equipment is no longer serviceable.

1511.0170 [Emergency] POSTING NOTICE.

A person in Minnesota who receives grain for purchase or for storage must post a notice, furnished by the department, informing persons delivering grain for sale or storage of their right to have a representative sample of the grain in dispute forwarded to the department for analysis. The notice must be posted in a conspicuous place in conjunction with the license to buy or buy and store grain.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

DEC 6 1988

Joan Anderson Growe
Secretary of State

9:05 AM

APPROVED AS TO FORM AND LEGALITY

December 2 19 88

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY John A Zeppenfeld
SPECIAL ASSISTANT ATTORNEY GENERAL

PLANNING DIVISION
DEPARTMENT OF AGRICULTURE

LIST OF ENCLOSED DOCUMENTS

A. Emergency Rule as Proposed.

B. Notice of Intent to Adopt Emergency Rules.

C. Affidavit of Mailing Notice of Intent to Adopt Emergency Rules.

D. Certificate of Mailing

E. State Register Photo Copy of Notice of Intent to Adopt.

F. Emergency Rules as Adopted. (4 copies).

G. Findings of Fact and Conclusions, and Order Adopting Rule.

H. Declaration of Counsel.

Department of Agriculture

Proposed Emergency Rules Relating to the Testing of Equipment and Equipment Operators Involved in Determining the Quality and Condition of Grain Received for Purchase or Storage

Rules as Proposed (all new material)

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Approved by Revisor

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by Revisor _____

returned to the department within the prescribed time;

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1511.0170 [Emergency] POSTING NOTICE.

Approved
by Revisor _____

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Approved
by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Emergency Rules Relating to the Testing of Equipment and Equipment Operators Involved in Determining the Quality and Condition of Grain Received for Purchase or Storage

AGENCY: Department of Agriculture

MINNESOTA RULES: Chapter 1511

The attached rules are approved for publication in the State Register

Craig E. Lindeke
Senior Assistant Revisor

Department of Agriculture

In the Matter of the Proposed Adoption of Emergency Rules of the Department of Agriculture Governing Testing of Equipment and Equipment Operators Involved in Determining the Quality and Condition of Grain Received for Purchase or Storage.

NOTICE OF INTENT TO ADOPT EMERGENCY RULES

Notice is hereby given that the Minnesota Department of Agriculture intends to adopt the above entitled emergency rule. The statutory authority to adopt the emergency rule is contained in Minnesota Statutes, section 17B.041. The department, in adopting the rule, is following the procedures set forth in the Administrative Procedures Act for adopting emergency rules in Minnesota Statutes, sections 14.29-14.36.

All persons have 25 days after publication to submit data and views on the proposed emergency rule or any part or subpart of the rule in writing. Any comments must be submitted to: Carol Milligan, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, Minnesota 55107, (612) 296-6906.

A copy of the proposed rule is attached to this notice. A free copy of the proposed emergency rule is available by contacting Ms. Milligan.

The proposed emergency rule 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 emergency rule as noticed.

Upon adoption of the emergency rule by the department, the emergency rule as adopted and its supporting documents will be delivered to the Attorney General for review as to legality and form to the extent 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.

The emergency rule will take effect five working days after approval by the Attorney General and be effective for 180 days. The emergency rule will be continued in effect for an additional 180 days if the department gives notice of continuation in accordance with Minnesota Statutes, section 14.35.

STATE OF MINNESOTA

Date: 9-15-88

Jim Nichols
Commissioner of Agriculture

In the Matter of the Proposed Adoption of the Emergency Rule of the Department of Agriculture Governing Testing of Equipment and Equipment Operators Involved in Determining the Quality and Condition of Grain Received for Purchase or Storage

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT AN EMERGENCY RULE

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Marie Skerbitz, being sworn, says:

That on the 12th day of October, 1988, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt an Emergency Rule 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 who have requested, persuant to Minnesota Statutes, sections 14.14, subdivision 1.a. and 14.22 or 14.30, that their names be placed on the Minnesota Department of Agriculture rulemaking mailing list.

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

Marie Skerbitz
Mail Room Clerk

Subscribed and sworn to before me
this 12th day of October, 1988.

Diane M. Windham

Emergency Rules

Proposed Emergency Rules
According to Minn. Stat. of 1984, §§ 14.29-14.30, state agencies may propose adoption of emergency rules if: 1) expressly required; 2) authorized by statute; or 3) if the manner permitted by a directive (given by statute, federal law or court order) does not allow for compliance with sections 14.14-14.28. The agency must, however, publish a notice of intent to adopt emergency rules, along with the rules themselves, in the *State Register*. The notice must advise the public:

1) that a free copy of the proposed emergency rule is available upon request from the agency;
2) that notice of the date that the rule is submitted to the attorney general will be mailed to persons requesting notification;
3) that the public has at least 25 days after publication of the proposed emergency rule to submit data and views in writing; and
4) that the emergency rule may be modified if the data and views submitted support such modification.

Adopted Emergency Rules
Emergency rules take effect five working days after approval by the attorney general, and after compliance with Minn. Stat. §§ 14.29-14.365. As soon as possible, emergency rules are published in the *State Register* in the manner provided for in section 14.18.

Emergency rules are effective for the period stated in the notice of intent to adopt emergency rules. This may not exceed 180 days.

Continued/Extended Emergency Rules
Adopted emergency rules may be continued in effect (extended) for an additional 180 days. To do this, the agency must give notice by: 1) publishing notice in the *State Register*; and 2) mailing the same notice to all persons who requested notification on rulemaking. No emergency rule may remain in effect 361 days after its original effective date. At that point, permanent rules adopted according to Minn. Stat. 14.14-14.28 supercede emergency rules.

Department of Agriculture

Proposed Emergency Rules Relating to the Testing of Equipment and Equipment Operators Involved in Determining the Quality and Condition of Grain Received for Purchase or Storage

Notice of Intent to Adopt Emergency Rules

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Dated: 15 September 1988

Jim Nichols
Commissioner of Agriculture

Rules as Proposed (all new material)

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Board of Marriage and Family Therapy

Proposed Emergency Rules Relating to Marriage and Family Therapy

Notice of Intent to Adopt Emergency Rules

NOTICE IS HEREBY GIVEN that the State Board of Marriage and Family Therapy intends to adopt the above entitled emergency rules. The statutory authority to adopt the emergency rules is contained in *Minnesota Statutes,* sections 148B.171 and 148B.31. The Board, in adopting the rules, is following the procedures set forth in the Administrative Procedure Act for adopting emergency rules in *Minnesota Statutes,* sections 14.29 to 14.36.

All persons have 25 days after publication to submit data and views on the proposed emergency rules or any part or subpart of the rules in writing. Any comments must be submitted to:

Deborah L. Mancheski
Executive Director
Board of Marriage and Family Therapy
2700 University Avenue West, Suite 225
St. Paul, Minnesota 55114
(612) 643-2586

A copy of the proposed emergency rules is attached to this notice.

A free copy of the proposed emergency rules is available by contacting Deborah Mancheski at the above mentioned address or phone number.

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

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed Adoption of the Rule of the Minnesota Department of Agriculture Governing Testing of Equipment and Equipment Operators Involved in Determining the Quality and Condition of Grain Received for Purchase or Storage

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING EMERGENCY RULES

Notice of the Commissioner's intent to adopt the above-entitled emergency rule was published in the State Register on October 17, 1988, and was sent by United States mail to all persons on the list maintained by the department pursuant to Minnesota Statutes, section 14.30 on October 12, 1988.

All persons were given the oportunity to submit written comment on the rule for at least 25 days after notice of proposed rulemaking.

No submissions or comments on the rule were received by the department. No requests for notice of submission to the attorney general were received by the department.

NOW THEREFORE, IT IS ORDERED that the rule identified as the Emergency Rule Governing Testing of Equipment and Equipment Operators Involved in Determining the Quality and Condition of Grain Received for Purchase or Storage is adopted this 14th day of November, 1988, pursuant to authority vested in me by Minnesota Statutes, section 17B.041.

STATE OF MINNESOTA

Jim Nichols

Jim Nichols
Commissioner of Agriculture

In the Matter of the Adoption of the Emergency Rule of the Minnesota Department of Agriculture Governing Testing of Equipment and Equipment Operators Involved in Determining the Quality and Condition of Grain Received for Purchase or Storage

DECLARATION OF COUNSEL

I, Paul Strandberg, 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 0986.

Paul Strandberg
Special Assistant Attorney General

Date: 11/15/88

In the Matter of the Proposed Adoption of the Emergency Rule of the Department of Agriculture Governing Testing of Equipment and Equipment Operators Involved in Determining the Quality and Condition of Grain Received for Purchase or Storage

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. Statutes, sections 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 12th day of October, 1988.

Carol Milligan
Carol Milligan
Management Analyst

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

Subscribed and sworn to before me this 12th day of October, 1988.

Diane M. Windham

Authority

17B.041 = Laws of Minnesota, 1988
ch 688 Art 6 § 2. dt.

Rule

See AG Copy for comments.