

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

SF-00006-05 (4/86)

DEPARTMENT : ATTORNEY GENERAL

STATE OF MINNESOTA

Office Memorandum

DATE : March 12, 1990

TO : CAROL MILLIGAN, Planning Division
Department of Agriculture
90 West Plato Boulevard (55107)

FROM : MARTHA J. CASSERLY MJC
Special Assistant Attorney General
525 Park Street, Suite 500 (55103)

PHONE : 296-6839

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

The above-referenced Permanent rule has been approved as to its legality by the Attorney General on March 8, 1990.

Enclosed is your 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, submissions or comments along with any extra copies of documents which you submitted to the Attorney General.

Your next step is to arrange for publication of the Notice of Adoption in the State Register. In a day or two, you should receive from the Revisor's Office three copies of the notice of adoption of your rule. You should submit two copies of the Notice of Adoption to the State Register for publication. A permanent rule without a hearing does not become effective until five days after a notice of adoption is published 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:bbl
Enclosures
cc: William Brown, Chief Judge (memo only)
MaryAnn Hruby " "
Paul Strandberg " "

MJC

RULE REVIEW CHECKLIST

File No. 1673 Docket No. 05-0009-0986

DATE RECEIVED 2-27-90 ADOPTED W/O HEARING X

REVIEW DATE @ 3-8-90 EMERGENCY RULE _____

DUE DATE 3-13-90 To Revisor: 2-28-90

REVISOR APPROVED 3-7-90

APPROVED Mar 8, 1990 mjc REVISOR DISAPPROVED _____

DISAPPROVED _____ FILED W/SEC. OF STATE 3-12-90

WITHDRAWN _____ RETURNED TO AGENCY _____

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4 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
- ✓ Revisor's Certificate

_____ Notice of Intent to Adopt Rule
- 178.041 subd 1 Statutory Authority
- NA Small Business Statement
- _____ Expenditure of public money statement
- Dec 1, 89 Signature

✓ Statement of Need and Reasonableness (if applicable)
- ✓ Small Business Statement
- NA Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
- Jan 17, 1990 Date 30/25 days before adoption
- ✓ Notice attached
- _____ Copy of rule or summary attached

✓ Publication in State Register
- Jan 22, 1990 Date 30/25 days before adoption

_____ 180-day deadline from:
- _____ Effective date of law requiring rule (14.12) (both rules) — didn't make Deadline
- ✓ end of comment period (§ 14.26) (rules without hearing)
- _____ effective date of statutory authority (§ 14.29) (emergency rules) — see note Emergency Rules made into permanent

_____ Resolution Adopting
- _____ Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
- Feb 22 1990 Date

_____ Written requests, submissions or comments

_____ Declaration of attorney
- Paul Strandberg Name of SAAG representing agency

_____ Notice of Submission to Atty. Gen. (if applicable)

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

Department of Agriculture

Adopted Permanent 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 DEFINITIONS.

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

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 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 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 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 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 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 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 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

MAR 12 1990

Joan Anderson Growe
Secretary of State

11:45AM

APPROVED AS TO FORM AND LEGALITY

March 8 1990

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY MJ Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

Department : Agriculture

STATE OF MINNESOTA

Office Memorandum

Date : February 26, 1990

2-27-90

To : Rita Desmond
Attorney General's Office

From : Carol Milligan
Planning Division

Phone : 296-6906

Subject : **Review of Proposed Rule Governing Grain Quality Equipment Testing**

The Department of Agriculture adopted the above-mentioned rule pursuant to Minnesota statutes, sections 14.22-14.28. Enclosed with this memo 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.

Please contact me if you have any question.

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

STATE OF MINNESOTA
Department of Agriculture

RECEIVED
DEC 06 1989
PLANNING DIVISION

In the Matter of the Proposed 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

Minnesota Rules 11511.0100 - 1511.0170

STATEMENT OF NEED AND REASONABLENESS

I. General Need and Authority for Rules

The Minnesota Department of Agriculture is required by Minnesota Statutes, section 17B.041, subd. 1, to make rules to implement a program governing the regulating of test equipment and test equipment operators involved in determining the quality and condition of grain received for purchase or storage.

The proposed rules define the type of equipment that must be tested, the acceptable tolerance for each type of equipment, the designation by management of a "chief equipment operator" and establish the procedures for conducting the testing of equipment and equipment operators.

It is necessary and reasonable to adopt the proposed rules so that:

1. Persons performing grain quality determinations are provided with information necessary to comply with the Grain Standards Testing program and,

2. Sellers and depositors of grain have access to information about their concerns as to the accuracy of test equipment used to make grain quality determinations.

II. Need and Reasonableness of Each Rule Part

1511.0100 Definitions. The definitions are necessary to assure that the rule is clearly understood and consistently applied.

1511.0110 Established Tolerances

This part establishes tolerances for each type of equipment used to determine grain quality. It is necessary and reasonable to establish tolerances in that there must be parameters for determining the acceptability or rejection of equipment. These tolerances are reasonable and achievable when the equipment is functioning properly.

1511.0120 Testing Equipment List Provided to the Department

This part requires each person or firm to identify each piece of equipment to include the Brand, model number and serial number of each unit. It is necessary and reasonable to have this information so that each piece of equipment is identified for the purpose of determining the capability of giving acceptable results.

1511.0130 Testing Grain Equipment

This part defines persons or firms that are required to have their equipment tested, the type of equipment to be tested, how the standard test sample is to be prepared and dispersed, who should perform the analysis, how the results must be recorded and establishes the time period for returning test results to the department. It is necessary and reasonable to establish procedures so that all persons or firms that are required to have their equipment tested for accuracy are informed as to what test equipment needs to be tested, and how and where the results of the standard test samples must be recorded and forwarded.

1511.0140 Retesting of Equipment

This part summarizes when and in what manner equipment must be retested. It is necessary and reasonable to retest equipment when the results from the first set of standard test samples are not within established tolerances to verify that the equipment being tested is not functioning accurately before costly on-site review is performed.

1511.050 On-Site Reviews of Test Equipment and Equipment Operators

This part summarizes the procedures and conditions for performing on-site reviews of test equiment and test equipment operators. It is necessary and reasonable to establish guidelines for conducting on-site reviews in order to determine the cause of inaccurate test results or test results not being returned to the department. Inaccurate results can be caused by operating electronic test equipment in an uncontrolled environment or by improper procedures used on the part of the test equipment operator. These conditions can only be determined by on-site reviews of the test equipment operators' procedures when they are operating the test equipment. It also provides a seller or purchaser of grain the opportunity to request the department to perform an on-site review of test equipment and/or the test equipment operator when they feel that they are not receiving full value for the grain they are marketing or storing when test results are not within expected ranges.

1511.0160 Tagging of Test Equipment

This part addresses the use of reject or condemned tags applied by employees of the department and establishes the conditions under which a reject tag may be removed. The procedure for tagging equipment is necessary to assure that test equipment that is not capable of producing results within the established tolerance is not used to make grain quality determinations as it could have a reflection on the prices paid to persons selling their grain when discounts are applied. The procedure is reasonable because it establishes conditions under which test equipment can be placed back

in service after it has been repaired and proven to be capable of producing accurate results.

1511.0170 Posting Notice

This part is included in M.S. 17B and is incorporated into the rules solely for the purpose of making it conveniently available to persons that are required to post this notice at their facility.

III. Impact of the Proposed Rules on Small Businesses

Most of the firms or persons affected by these proposed rules would be defined as small businesses under M.S. Chapter 14.115 as entities that employ fewer than 50 full-time employees. Although a few may be considered as part of a larger entity, each individual facility must stand on its own merits for compliance with these proposed rules.

In recognizing the statues upon which the proposed rules are based the agency has considered the impact that the proposed rules will have on small businesses as follows:

A. The Establishment of Less Stringent Compliance or Reporting Requirements

The proposed rules do not impose any additional compliance or reporting requirements other than what is required by M.S. 17B. The proposed rules are for the purpose of establishing procedures as to when and how the reporting requirements are to be recorded and filed on forms supplied by the department.

Less stringent requirements could cause individuals to suffer monetary losses if inaccurate test results are used to apply discounts to producers' grain that is delivered for purchase or storage.

B. The Establishment of Less Stringent Schedules or Deadlines for Compliance or Reporting Requirements

The proposed rules do establish deadlines for compliance and reporting requirements. The five day period for returning results are necessary for two reasons:

1. A delay in performing the required test on standard samples can cause erratic test results if the standard samples are not handled or stored in a proper manner.

2. Equipment that is not performing with acceptable tolerances should not be allowed to remain in service as it may cause individuals to receive a lower price for their grain when discounts are applied. Most of the discounts that apply to the price of grain are based on test results performed at the receiving facility.

C. The Consolidation or Simplification of Compliance or Reporting Requirements

The agency has consolidated and simplified compliance and reporting require-

ments in that malfunctioning equipment can be placed back into service by an authorized service representative immediately after repairs and testing have been completed. The forms for reporting test results are prepared by the department and the chief equipment operator is only required to record the results on the form and return it to the department.

D. The Establishment of Performance Standards for Small Business to Replace Design or Operational Standards Required in the Rule

The proposed rules do not establish performance standards or require replacement design or operational standards other than establishing acceptable tolerances for equipment. Several individuals or firms have requested the agency to assist or advise them on recommended placement of test equipment or environmental conditions that are best suited for maintaining optimum efficiency and operation of electronic apperatuses. These recommendations are not included in the proposed rules as it could cause a hardship for small business due to the added expenditure of complying with design or conditions under which the test equipment is operated.

E. The Exemption of Small Businesses From Any or All Requirements of the Rule

The proposed rules do not impose any additional requirements on persons or firms beyond what is stipulated in the law. Any exemption from the rule may be contrary to statutes. Further, any exemption to the rule would allow malfunctioning test equipment to remain in operation even if it is not capable of producing accurate results. Accurate test results are essential and necessary in determining the true quality of grain being sold or stored as these test results are directly related to the discounts that are applied in determining final monetary value.

IV. Conclusion

The department believes that these proposed rules are necessary and reasonable to effectively administer the Grain Standards Testing provision contained in M.S. 17B.

These proposed rules are intended to provide protection and fairness for all parties that are involved in the marketing or storage of grain.

all new mat.

Stat. Authority
178.041 subd 1
The commissioner shall implement, by rule or emergency rule, a program for the periodic reviews of protein analyses etc

180 days
all new material, mandatory, statute
in 88 statutes not passed in 89

don't have letters to the gov. or the house explaining why they were late in promulgating the rules

3-2-90 Carol Mulligan said these were emergency rules that were made permanent rules so its not new material
MN Stat 14.12 doesn't address it this

So this O.K.?

OK, so their saying they did emergency rules w/in 180 days

LIST OF ATTACHED DOCUMENTS

A. Rule as Proposed

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

C. Statement of Need and Reasonableness

D. Affidavit of Mailing

E. Certificate of Mailing List

F. State Register Photocopy of Notice of Intent

G. Rule as Adopted (four copies)

H. Findings of Fact, Conclusions and Order Adopting

I. Declaration of Counsel

Department of Agriculture

Proposed Permanent 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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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;

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

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1511.0170 POSTING NOTICE.

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by Revisor _____

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.

Approved
by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent 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

7002.0010; .0020; .0030; .0050; .0060; .0070; .0080; .0100; (adopted) 1878
7002.0020 s.2,4,5,7 (repealed) 1878
7002.0310 (adopted) 1878
7045.0100; .0125 s.10, 11 (repealed) 1718
7050.0150; .0180; .0185; .0210; .0211; .0212; .0214; .0218; .0220; .0460; .0470 (proposed) 1662
7050.0210 s.14 (proposed repealer) 1662
7105.0010; .0020; .0030; .0040; .0050; .0060; .0070; .0080; .0090; .0100; .0110; .0120; .0130 (adopted) 1718

Public Safety Department

7411.0100; .0200; .0300; .0400; .0510; .0550; .0610; .0700; .0800 (proposed) 1755
7411.0100 s.2,3; .0500; .0600; .0800 s.4,6; .2100; .2200; .2300; .2400; .2500; .2600; .2700 (proposed repealer) 1755
7520.0650; .1000; .1100 (adopted) 1806

Minnesota State Lottery

7856.1000-.7070 (proposed) 1650
7857.2000-.7000 (proposed) 1657

Revenue Department

8100.0100; .0200; .0300; .0400; .0500; .0600 (adopted) 1806

Transportation Department

8815.0100; .0200; .0300 (adopted) 1719

Human Services Department

9505.0115 (proposed) 1859
9505.3010-.3140 (proposed) ..... 1627 and 1796
9553.0010; .0020; .0035; .0036; .0040; .0050; .0052; .0053; .0054; .0056; .0057; .0061; .0070; .0075; .0079 (proposed) 1841
9553.0051; .0020 s.43 (proposed renumbering) 1841
9575.0350; .1500 (adopted) 1806

Proposed Rules

Pursuant to Minn. Stat. §§ 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 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 a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Department of Agriculture intends to adopt the above-entitled rule 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 this rule is *Minnesota Statutes*, section 17B.041, subdivision 1.

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

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.

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 rule 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 14.131-14.20.

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

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

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

Most businesses affected by the rules are small businesses as defined by *Minnesota Statutes*, section 14.115. However, all reporting requirements in the rule are required by statute, and any exemption of small business from the requirements of the rule would be contrary to the intent of the statute.

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: 1 December 1989

Jim Nichols, Commissioner
Department of Agriculture

Rules as Proposed (all new material)

GRAIN STANDARDS TESTING

1511.0100 DEFINITIONS.

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

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 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 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 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 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 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 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.

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.

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 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.

Department of Health

Proposed Permanent Rules Relating to Services to Clients of Intermediate Care Facilities for Persons with Mental Retardation or Related Conditions

Notice of Hearing

NOTICE IS HEREBY GIVEN that a public hearing on the above-entitled matter will be held in Room D, 5th Floor, Veterans Service Building, 20 West 12th Street, St. Paul, MN on February 22 and 23, 1990 commencing at 9:00 a.m. and continuing until all interested or affected persons have an opportunity to participate. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing which is to be included in the hearing record may be mailed to Jon Lunde, Administrative Law Judge, Office of Administrative Hearings, 500 Flour Exchange Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415; telephone (612) 341-7645, either before the hearing or within five working days after the public hearing ends. The Administrative Law Judge may, at the hearing, order the record be kept open for a longer period not to exceed 20 calendar days. The comments received during the comment period shall be available for review at the Office of Administrative Hearings. Following the close of the comment period the agency and all interested persons have three business days to respond in writing to any new information submitted during the comment period. During the three-day period, the agency may indicate in writing whether there are amendments suggested by other persons which the agency is willing to adopt. No additional evidence may be submitted during the three-day period. The written responses shall be added to the rulemaking record. Upon the close of the record the Administrative Law Judge will write a report as provided for in *Minnesota Statutes*, section 14.50. The rule hearing is governed by *Minnesota Statutes*, section 14.14 to 14.20 and by *Minnesota Rules*, parts 1400.0200 to 1400.1200. Questions about procedure may be directed to the Administrative Law Judge.

Minnesota Rules, parts 4656.0250 to 4656.0330 establish procedures for assessing the amount and types of services being provided to clients of all intermediate care facilities, including state operated community-based residential facilities, that participate in the Medical Assistance program. This assessment is completed for the purpose of assigning client reimbursement classifications required by the client centered reimbursment system specified in parts 9553.0010 to 9553.0080. This rule does not apply to intermediate care facilities in regional treatment centers. This rule affects intermediate care facilities that provide services to persons with mental retardation or related conditions.

The proposed rule establishes standards for: requirements for completing assignments; areas to be assessed; requirements for the assignment of a client reimbursement classification; request for reconsideration of client reimbursement classifications; audits of assessments; and payment source update information.

The agency's authority to adopt the proposed rules is contained in *Minnesota Statutes*, section 144.0723, subdivision 8.

Adoption of these rules will not result in additional spending by local public bodies in the excess of $100,000 per year for the first two years following adoption under the requirements of *Minnesota Statutes*, section 14.11. A fiscal note prepared according to the requirements of *Minnesota Statutes*, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available upon request from Marian Lewis, Minnesota Department of Health, 393 North Dunlap Street, P.O. Box 64938, St. Paul, MN 55164-0938.

Copies of the proposed rules are now available and at least one free copy may be obtained by writing to Marian Lewis, Minnesota Department of Health, 393 North Dunlap Street, P.O. Box 64938, St. Paul, MN 55164-0938. A copy of the rule may also be viewed at any of the 87 county welfare agencies in the State of Minnesota.

In the Matter of the Adoption of the Rule of the State Department 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

Dated: 2/22/90

Department of Agriculture

Grain Inspection

In the Matter of the Proposed Adoption of
the 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

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

(1) Notice is hereby given that the Minnesota Department of Agriculture intends to adopt the above-entitled rule 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 this rule is Minnesota Statutes, section 17B.041, subdivision 1.

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

(4) Any person may make a written request for a public hearing on the rule within the 30-day comment period. (4) 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. (6) Any person requesting a public hearing should state their name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any proposed change. (7) If a public hearing is required, the department will proceed according to Minnesota Statutes, sections 14.131-14.20.

(5) 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.

(8) The proposed 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 rule as noticed.

(11) A copy of the proposed rule is attached to this Notice.

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

(14) Most businesses affected by the rules are small businesses as defined by Minnesota Statutes, section 14.115. However, all reporting requirements in the rule are required by statute, and any exemption of small business from the requirements of the rule would be contrary to the intent of the statute.

(9) If no hearing is required, upon adoption of the final rules, the rules, and the required supporting documents will be submitted to 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.

STATE OF MINNESOTA

Dec 1 1989
Date

Jim Nichols
Jim Nichols, Commissioner
Department of Agriculture

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

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

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Marie Skerbitz, being sworn, says:

That on the 17th day of January, 1990, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt a Rule 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 who have requested, pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 or 14.30, that their names be placed on the Minnesota Department of Agriculture rulemaking mailing list.

Marie L Skerbitz

Marie Skerbitz
Mail Room Clerk

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

Subscribed and sworn to before me
this 17th day of January, 1990.

Diane Windham

In the Matter of the Proposed Adoption of the Rule of the State 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 Minnesota Statutes, sections 14.14, subdivision 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 17th day of January, 1990.

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 17th day of January, 1990.

Diane Windham

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed Adoption of the Rule of the State 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 RULE WITHOUT PUBLIC HEARING

(1) Notice of the Commissioner's intent to adopt the above-entitled rule was published in the *State Register* on January 22, 1990, and was sent by United States mail to all persons on the list maintained by the department pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 on January 17, 1990. (2) 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.

(4) All persons were given the opportunity to submit comment on the rule for 30 days after the notice of proposed rulemaking. (5) No requests for a public hearing on the rule were received by the department.

(7) 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.

The above-captioned rule is needed and reasonable.

(8) NOW, THEREFORE, IT IS ORDERED that the rule identified as the 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 22nd day of February, 1990, pursuant to authority vested in me by Minnesota Statutes, sections 17B.041, subdivision 1.

(9)

Jim Nichols

Jim Nichols
Commissioner