

STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED RULES)	
OF THE DEPARTMENT OF AGRICULTURE)	
GOVERNING USE OF THE MINNESOTA FOOD)	STATEMENT OF NEED
PRODUCTS LOGO (3 MCAR SS 1.4035-1.4040))	AND REASONABLENESS

I. INTRODUCTION

The subject of this rulemaking is the proposed adoption by the Minnesota Department of Agriculture of rules governing use of the Minnesota food products logo. These rules are proposed for adoption pursuant to Minn. Stat. section 17.102, subd. 1 which authorizes the Department to establish a logo or labeling statement for use in identifying food products which are Minnesota grown, processed or manufactured, and to promulgate rules authorizing and governing the use of the logo or labeling statement.

Rulemaking on the proposed rules was authorized by the Department on June 11, 1982. Prior to the authorization of rulemaking, the Department found that the proposed adoption of these rules was noncontroversial in nature as a result of consultations with food industry representatives who are potential users of the Minnesota food products logo and would thus be subject to these rules. Due to the noncontroversial nature of the rules, the Department directed that the rulemaking proceedings be conducted in accordance with the statutory provisions governing the adoption of noncontroversial rules, Minn. Stat. section 15.0412, subd. 4h (1981 Supp.). Accordingly, the rulemaking proceedings on the proposed rules are governed by that statute and no hearing will be conducted on the adoption of the rules unless, on or before July 28, 1982, seven or more persons submit to the Department a written request for such a hearing.

In accordance with the requirements of Minn. Stat. section 15.0412, subd. 4h (1981 Supp.), this document, the Statement of Need and Reasonableness, was prepared and completed prior to the dates that the proposed adoption of the rules was noticed in the State Register.

The discussion provided in this Statement is divided into the following parts:

Part II. General Overview

Part III. Need for and Reasonableness of the Proposed Rules

II. GENERAL OVERVIEW

A. The Need for Food and Agricultural Product Market Promotion

In order to understand the need for and reasonableness of the proposed rules, it will be useful to have a general understanding of the current situation in food and agricultural product marketing and its benefits to the economy of Minnesota. In 1981, about one-third of the state's raw agricultural products were exported from the state into national and international markets, amounting to roughly \$2 billion. Coupled with the state's food industry, the agricultural production processing and distribution systems in Minnesota account for 40 percent of the economic activity of the state. Currently, there is much interest among food and agricultural industries in processing more of Minnesota's raw agricultural products within the state before marketing them elsewhere. The use of a food products logo to identify these products of Minnesota origin would be a useful tool in expanding promotion of both raw and processed Minnesota food products in markets around the world.

At the same time that increased food and farm exports are anticipated from use of the Minnesota food products logo, there is some indication that the logo would also address a growing interest in promoting purchase of the state's agricultural produce by Minnesota consumers and its use would

strengthen local markets for local products. In the July 18, 1981 issue of The Farmer, an article argued that two-thirds of the food consumed in Minnesota was from out of state and suggested some ways to change that balance. A related article appeared in the March 1982 issue of Corporate Report: Minnesota, describing a project recently funded by the Bremer Foundation called "Buy Minnesota." The Minnesota food products logo could assist in identifying Minnesota agricultural produce for marketing directly to Minnesota consumers. This projected overall increase in the quantity of Minnesota food products marketed locally, nationally and internationally would improve income for Minnesota farm families as well as increase industry revenues during this difficult economic period.

B. Policy Interpretations of the Department

Several determinations were made by the Department during the course of developing these proposed rules. The initial interpretation of the enabling statute was that two steps should be taken: first, the logo or labeling statement should be established, and second, the rules should be promulgated. Upon researching the use of logos in other states, the Department also decided to take steps to protect the logo for its intended use.

Whether to develop a logo or labeling statement was the first choice faced by the Department because of the option provided by the statute, and the decision was made to develop the visual representation, or logo, rather than a labeling statement. It was felt that this visual symbol would be more appealing because of its flexibility for use on promotional materials as well as on food product packages and containers and also because of a philosophy that a visual design, when recognition had developed over time, would have more impact than words in a labeling statement.

Once the logo was developed, the method of establishing it was the next consideration. Research into the market promotion and logo programs of other states (Illinois, Massachusetts, Texas, New Hampshire, South Dakota, Iowa, Michigan, Georgia, North Carolina, Kansas, Indiana, Kentucky, New York and Pennsylvania) revealed Minnesota to be unique in having a specific enabling statute for establishment of a logo and also in having a statutory directive to promulgate rules for its use. At the same time that Minnesota is unique, the experience of these other states was helpful because many had chosen to protect their market promotion labels or quality seals through registration at the U.S. Copyright Office at the Library of Congress or the Office of Patents and Trademarks of the U.S. Department of Commerce. In the case of one state which had chosen not to protect by copyright a promotional logo of the state, the department which had developed the logo ran into problems with other states' borrowing their general format, and had subsequent problems with the legislature in that state. In addition to their experiences in developing and protecting logos, some of the other states contacted also had developed informal guidelines for users of logos or quality seals. Some of the ideas from those informal guidelines were useful in developing these proposed rules.

At the end of this research phase, the Department elected to establish the logo and protect it for its legislatively intended use in identifying the origin of Minnesota food products by seeking registration of the logo with the Minnesota Secretary of State and the U.S. Office of Patents and Trademarks. Registration sought for the logo was its registration as a certification mark intended only for use in certifying the origin of the food product in Minnesota, as directed by Minn. Stat. section 17.102, subd. 1. This registration provides certain protections under federal and state law and regulations, and such registration of the logo as a

certification mark for origin is distinct from other possible certification mark registrations, such as for quality. The Minnesota food products logo was neither intended by the legislature nor registered by the Department as a "quality" mark. As it is a requirement before seeking state or federal registration, the Department has also seen to it that the logo was used in intrastate and interstate trade.

In developing these proposed rules, the Department reviewed the informal guidelines used in some other states as mentioned earlier, and also relied on its own administrative experience. The Department's administrative experience in the areas of enforcing the state's food laws; in inspecting dairy plants and dairy farms; in market promotion; in licensing food handlers and dealers; and in developing application procedures were heavily relied upon in making policy decisions about specific provisions to include in the proposed rules for administration of the Minnesota food products logo program.

C. Format of the Proposed Rules

The proposed rules are set forth in the following manner: purpose and authority; definitions; eligibility; application; authorization; renewal; promotional use of the logo; and enforcement.

In this statement, for the sake of brevity, the content of the rules has not been repeated, but the numbers of the rules have been noted for reference.

III. NEED FOR AND REASONABLENESS OF THE PROPOSED RULES

The need for and reasonableness of each of the proposed rules and sections follows.

3 MCAR S 1.4035

This rule clarifies the purpose of the rules and the authority by which the Commissioner proposes them for readers of the rules. The purpose is in keeping with the general requirement of Minn. Stat., section 17.101, which directs the Commissioner of Agriculture to encourage and promote the marketing of the products of Minnesota agriculture. Since Minn. Stat., section 17.102 directs the Commissioner to establish either a logo or a labeling statement, the Commissioner elected to establish a specific visual symbol or "logo", and permit individual producers, processors or manufacturers to select their own labeling statements, as is apparent in 3 MCAR SS 1.4036 I., 1.4038 A.2.d., and 1.4038 B.3.

The purpose of the logo will be to identify food products which are produced, processed or manufactured in Minnesota, in keeping with the statutory directive contained in Minn. Stat., section 17.102, subdivision 1. The statute uses the word "grown", but "produced" was used for the purpose of the rules because milk, a very important food product, is not grown but rather is produced from livestock. The Department interpreted the legislative intent to include raw agricultural materials such as milk which is a food product for human consumption, but which would be produced originally rather than grown.

Authority to adopt rules to authorize and govern use of the Minnesota food products logo or labeling statement is given to the Commissioner under Minnesota Statutes, section 17.102, subdivision 1.

3 MCAR S 1.4036

This section is necessary to clarify for readers of the rules the meanings of the terms used. Some of the definitions are similar to definitions that appear in various chapters of Minnesota Statutes. Familiar terms and meanings were chosen to be consistent with current labeling, grading and enforcement programs of the Department and thus to provide for smoother administration of this new Minnesota food products logo program. These familiar definitions include "agricultural products" (Minn. Stat., section 273.111), "commissioner," "commodity council" (Minn. Stat., chapter 17) "department," "processor or manufacturer" (Minn. Stat., section 28A.05), "retailer" (Minn. Stat., section 325D.01, subdivision 2) and "wholesaler" (Minn. Stat., section 325D.01, subdivision 3).

Another group of definitions were derived specifically for these rules, and focus on concepts that use of the Minnesota food products logo will add to the present enforcement and administration of food-related laws and regulations. They are intended to make it possible for the Commissioner to establish, authorize and govern the use of the Minnesota food products logo. The definitions specifically derived for these rules include: "certification mark," "food products," "improper use," "labeling statement," "logo," "producer," and "trade association".

The definition of "food product" is important for these rules because the criteria in its definition will be key determinants in the eligibility of any product submitted for approval to use the logo. The definition uses the key criterion of "food or drink for human consumption" which is similar to the definition found in

Minn. Stat., section 31.01, subdivision 3, but it also states the connection between agricultural products and food products for the purpose of the rules. This association seems reasonable for the purpose of these rules.

These definitions are reasonable in that they will not provide undue hardship for any potential user of the Minnesota food products logo.

3 MCAR S 1.4037

This rule provides the eligibility criteria under which producers or processors and manufacturers may apply to use the logo. The rule provides separately for the two groups of potential users in order to clarify that producers are eligible to use the logo on agricultural as well as food products under certain circumstances, i.e. if the agricultural product is intended to be a food product. While the provisions for producers and processors or manufacturers are treated separately, the eligibility requirements are parallel in order to be consistent and non-discriminatory. Each provision states the general type of product on which the Minnesota food products logo may be used, whether agricultural or food product, and then states two criteria for eligibility: location of production unit, or processing or manufacturing plant and a requirement that the food product must meet all minimum applicable requirements for its production, or processing or manufacturing in Minnesota.

The provision regarding the location of the production unit, or processing or manufacturing plant is necessary because Minn. Stat., section 17.102, subdivision 1, states that the logo shall be used to identify food products from Minnesota. It is reasonable, therefore, to require that the food products must come from sources geographically located within the boundaries of the State of Minnesota. In the case of a producer, this might mean that an agricultural product intended for processing into a food product outside the state would still be eligible to use the logo if produced in Minnesota. Similarly, a processing or manufacturing plant might get agricultural products from another state and process them into food products in Minnesota, and the resulting food products would be eligible for use with the Minnesota food products logo.

The statements in both parts A and B of this rule requiring that the food product meet all applicable minimum requirements for producing, processing or manufacturing the food product in Minnesota is necessary because Minn. Stat., section 17.102, subdivision 2 requires that the logo shall not supersede or replace any federal label or grade standard. This is interpreted to mean that there should be some recognition in the rules that certain requirements exist for the production, processing or manufacturing of food products in Minnesota. This criterion for eligibility reflects recognition of the fact that these requirements already exist, and is reasonable because its inclusion will not cause any hardship for producers, processors and manufacturers who are already meeting minimum requirements for producing, processing or manufacturing food products as a basic condition of doing business in the state.

3 MCAR S 1.4038 A.

This section of the rule sets forth the procedure producers and processors or manufacturers are to follow in applying to use the Minnesota food products label.

The first statement is necessary and reasonable to assure applicants that the Minnesota food products logo program is open to all eligible producers, processors and manufacturers and that it is a non-discriminatory program.

The second part of this section of the rule sets forth the information which is to appear on the application forms. It is necessary that the forms required for application contain the information needed by the Commissioner to determine eligibility, primarily the location of the production unit or processing or manufacturing plant and the representation from the producer, processor or manufacturer that the food product meets all applicable minimum requirements set for that food product in Minnesota. The list of all food products on which the producer, processor or manufacturer may use the logo is necessary so that the Department can monitor whether the logo is being used on eligible and approved food products. Also necessary is the provision requiring submission of one facsimile of the form in which the logo and the labeling statement will be used since the Commissioner needs this information in order to assure that the logo will be accompanied by a labeling statement as required under 3 MCAR S 1.4038 B.3., and in order to be able to determine whether the labeling statement signifies "Minnesota origin" to remain consistent with Minn. Stat., section 17.102, subdivision 1.

These requirements for this application form are reasonable because they are similar to requirements on other administrative application forms used by this Department and others, and for that reason will not pose an undue hardship for any industry users. Additionally, applying for use of the logo and filing the form will be voluntary on the part of the applicant; industry users have a choice as to whether or not to participate in the program.

The third part of this section of the rule which permits application for new food products to be used with the logo is necessary and reasonable so that producers, or processors and manufacturers will not have to wait until their three-year renewal date before listing with the Commissioner additional food products on which they may want to use the logo.

3 MCAR 1.4038 B.

This section of the rule sets forth the basis for authorization to use the logo and the conditions under which authorized users may use the logo. Authorization to use the logo is necessary because Minn. Stat. section 17.101, subdivision 1 directs the Commissioner to establish the logo and provide rules to govern its use. As part of establishing the logo, the Commissioner registered the logo, without any labeling statement, as a certification mark with the Secretary of State and the U.S. Commissioner of Patents and Trademarks. As part of this process, the Commissioner was required to state the ways in which the logo would be used. Thus, as the owner of the certification mark and pursuant to federal and state laws and rules governing such marks, as well as by virtue of the enabling statute, the Commissioner must approve applications and authorize use of the logo. At the same time, because of the simplicity of the application process, acquiring approval and authorization will not pose undue hardship on industry applicants and is therefore reasonable.

This first part of this section of the rule is necessary because it makes explicit the terms on which and the length of time for which a producer, processor or manufacturer will be authorized to use the logo. The three-year time period is a reasonable length of time in which industry users can integrate the logo into

their packaging labels, advertising, containers, and related items since this will provide enough time to plan and execute such integration.

The second part of this section of the rule regarding discretionary use of the logo by an authorized producer, processor or manufacturer during the authorization period is consistent with Minn. Stat., section 17.102, subdivision 2.

The third part of this section of the rule sets forth the requirement that when used on a food product, the logo must be accompanied by an approved labeling statement. The labeling statement is necessary because while the logo itself on food products may suggest "agriculture," there is nothing inherent in the circular design itself which suggests "Minnesota." In time, the logo standing alone may be recognized as related to Minnesota, but during the initial few years, a labeling statement explicitly denoting "Minnesota" will be necessary. These types of procedures are frequently followed by private industry companies in the establishment of product "marks." In addition to this reason, this part of the rule remains consistent with the directive of Minn. Stat. 17.102, subdivision 1 to the Commissioner to establish a logo or labeling statement by including the flexibility in this part. While a producer, processor or manufacturer will need to provide a labeling statement reflecting Minnesota origin in order to be consistent with the enabling statute, they have the flexibility to choose a labeling statement they prefer rather than being required to use a labeling statement established by the Commissioner. This flexibility is reasonable because producers, processors or manufacturers will have their choice of language for the labeling statement, such as "Minnesota Produced," "Minnesota Processed," etc., and can determine for themselves the amount of additional print in which they wish to invest in printing these labeling statements.

The fourth part of this section of the rule which includes the provision that the authorized users receive a certificate indicating authorization to use the logo is necessary so that the Department will be able to identify such users in order to accomplish the function of monitoring authorized users. The registration number will assist the Department in the administrative task of recording and filing lists of authorized users and their food products. Providing such certificates is reasonable in that it is similar to current licensing procedures of the Department, although is not exactly the same, and thus will not constitute an entirely new procedure with which industry will have to familiarize itself. It is necessary that the Department supply the authorized producer, processor or manufacturer with reproduction proofs, which are copies of the logo clearly enough printed so as to make possible duplication, since the Department, as owner and governing agency of the certification mark, prefers to control the dissemination of the correct representation of the registered mark. It is also reasonable that the Department furnish at least one such original rendering of the logo to users, since they will not have a copy of the logo prior to their authorization to use it and will have no other manner of acquiring a copy.

The fifth part of this section of the rule which permits the Department to offer assistance to authorized users of the logo is necessary so that the Department may offer to logo users whatever expertise it has gained in its experience of other market promotion efforts, as well as the experience it may gain in this particular case of advising and assisting other authorized users of the logo. Such administrative experience is a resource which should be utilized. The provision is reasonable in that it would be similar to other market promotion services offered by the Department.

3 MCAR S 1.4038 C.

This part of the rule sets forth requirements for authorized users in renewing their authorizations to use the logo, and is necessary so that the Department can monitor the use of the logo and periodically determine which authorized producers, processors or manufacturers are continuing to use the logo.

The three-year authorization period between renewals stated in the first part of this section of the rule is necessary to be consistent with 3 MCAR S 1.4038 B.1. and is reasonable for reasons similar to those outlined for that part of the rule. The three-year period will permit a long enough lead time for authorized users to integrate the logo into appropriate parts of their packaging and to amortize any expense for doing so over a reasonable length of time. This period of time is also reasonable from the standpoint of the Department's administration of the program, since it will not require neither excessive and frequent paperwork nor large mailing costs. The 60-day notice before the renewal date is necessary and reasonable because authorized users will have sufficient advance notice, and the Department will be better able to anticipate and plan the amount of administrative work which will be periodically required to handle the renewal notification and renewal process.

The second part of this section of the rule sets forth in simple terms the procedure required for renewal and is analogous to the procedure set forth for initial approval in 3 MCAR S 1.4038 A. It is necessary and reasonable for those same reasons. The language regarding inclusion of any changes from the previous application is necessary in order to assure the Department's capacity to monitor which food products are being used with the logo, and whether authorized users have discontinued use of the logo with certain products. This provision is reasonable because it provides flexibility to authorized users of the logo and is consistent with the discretionary use requirement of Minn. Stat., section 17.102, subdivision 2.

The third part of this section of the rule sets forth two conditions under which renewal of authorization to use the logo may be denied. The first denial of renewal for improper use of the logo, is necessary because Minn. Stat. section 17.102, subdivision 1 says that the Commissioner shall promulgate rules governing use of the logo, and if there is improper use, it is necessary that the Commissioner be able to exercise his directive to govern use by denying renewal. It is a reasonable provision because each user shall be made aware of these rules governing use, and, as with other of the Department's regulatory functions, users should be expected to comply with these rules if they wish to participate in the program. This last point should be emphasized: the program is voluntary for producers, processors and manufacturers; they are not required to participate. It seems reasonable, therefore, that if they wish to participate they should comply with provisions for the proper use of the logo outlined in these rules. If they do not comply, it is reasonable for the Commissioner to have the power to deny renewal for such failure to comply with the rules, or "improper use."

The second condition for denying renewal in this part of this section of the rule is also necessary and reasonable. In order to keep current in its record keeping, the Department needs a time frame in which to expect renewals of certain authorized users. If users do not re-apply and do not notify the Department as to the reason for failure to do so, it can only be assumed that they no longer wish to participate in the program. The total time frame in which authorized users can renew their applications is reasonable, since they will receive a

renewal notice sixty days prior to renewal date and have an additional 30 days after that renewal date, a total of ninety days, in which to renew their application. This should provide enough time for authorized users to assess the usefulness of continuing in the Minnesota food products logo program.

3 MCAR S 1.4039

This rule sets forth conditions for the promotional use of the logo, because while the primary purpose of the Minnesota food products logo is to identify Minnesota food products, it is necessary and reasonable that there should also be promotional use of the logo for two reasons. The first is that until the logo is established and recognized as designating Minnesota food products, there will have to be some promotion of the logo itself so that the association will become familiar to purchasers and consumers of Minnesota food products. Secondly, the promotion of food products does not occur as the product is sold and its reputation enhanced, but also occurs through advertising the food products. This rule would permit the logo to be used in such an advertising effort.

It is necessary that the logo be available without the labeling statement for promotional purposes, since generally there is other language used on posters, brochures, etc. as part of a marketing campaign which would state that the food products being promoted are from Minnesota. Further, since the Commissioner is required under 3 MCAR S 1.4039 to approve these promotional uses of the logo, the Commissioner would assure that the logo is in fact being used with such accompanying language reflecting Minnesota origin. At the same time, this promotional use of the logo without the labeling statement is reasonable because it permits a certain measure of flexibility in the manner in which the logo might be presented during a promotional campaign.

It is necessary and reasonable to extend this promotional use of the logo to three groups named in this rule which might well use the logo in a promotion of Minnesota food products: producers, processors or manufacturers already authorized to use the logo on Minnesota food products themselves; wholesalers, retailers, commodity councils or trade associations who generally act as the movers of such food products into consumer marketing channels; or the Department itself. It is reasonable to extend the authorized use of the logo on Minnesota food products to the promotional use in the case of producers, processors and manufacturers, since many of them market their own food products and might wish to elect to use the Minnesota food products logo as part of that marketing program. In the case of the wholesalers, retailers, commodity councils and trade associations, who are traditional actors in the promotion and marketing of Minnesota food products, it is necessary and reasonable to allow them access to this one additional marketing tool, particularly since without their participation in promoting use of the logo, the entire program may be neither very visible nor successful. The Department interpreted this to be a reasonable extension of the legislative intent of Minn. Stat., sections 17.101 and 17.102, subdivision 1. The use by the Department is necessary and reasonable because the Department is charged by the Minnesota Legislature with the responsibility of acting to promote the products of Minnesota agriculture, in accordance with Minn. Stat., section 17.101. If one of the tools to promote Minnesota food products is the Minnesota food products logo, then it is reasonable for the Department to be able to use the logo in a promotional sense, too, in order to be consistent with the statutory directive.

The final provision of this rule, stating the requirement that the Commissioner must approve any promotional use of the logo is necessary so that the Commissioner will be able to assure that the promotional campaign adequately reflects Minnesota origin, as stated above, and so that the Department will be able to monitor proper use of the logo. This provision is reasonable because as owner and governing agency of the logo, the Department wishes to assure its proper use.

3 MCAR S 1.4040

This rule is set forth to provide remedies in the event there appears to be or in the event there is actual improper use of the logo, and to clarify the exact significance of the appearance of the logo as a certification mark on Minnesota food products.

The first section of this rule is necessary in order for the Commissioner to act in accordance with the statutory directive to authorize and govern the use of the Minnesota food products logo which is found in Minn. Stat., section 17.102, subdivision 1. In order to be able to govern the use of the logo, it is necessary that the Commissioner be able to investigate any improper use and revoke permission to use the logo if such improper use is determined. The criterion that the Commissioner shall use in determining whether to revoke authorization to use the logo, conformity of the use with these rules, is reasonable.

This section of the rule is necessary to inform authorized users that certain protections are afforded the logo by state and federal statutes since it is a registered certification mark. These protections are also necessary for the Commissioner to be able to govern the use of the logo. The use of certification and other marks such as trademarks in intrastate and interstate commercial trade is an important component of market promotion efforts; in some cases trademarks are assets valued in the millions of dollars. Should the Minnesota food products logo come to have such value, there may be increased possibility of its improper use and it will be necessary for the Commissioner to take appropriate protective action against any party using the Minnesota food products logo improperly. Such actions would be reasonable because authorized users have the right to expect that a market promotion tool in which they have invested their time and resources will be protected by the authorizing agent, the Commissioner, against unauthorized or improper use.

This section of the rule is necessary to clarify the proper use of the logo for the authorized users, and sets limits on the expectations of those who may view the logo. The section is consistent with Minn. Stat. section 17.102, subdivision 2 which states that the logo or labeling statement shall not replace or supersede any federal label or grade standard. This section is necessary because it acknowledges the existence of those other requirements for producing, processing or manufacturing the food product in Minnesota, but does not supersede or replace them. Further, this section is included to protect the Department against liability in the event consumers think that the Department is guaranteeing the quality of a particular food product. This section reaffirms the responsibility that producers, processors and manufacturers have to meet certain requirements as a condition of doing business in Minnesota, rather than creating a new role for the Department which the enabling statute did not envision. The second part of the section is consistent with Minn. Stat., section 17.102, subdivision 1, which says that the logo shall be used to identify Minnesota food products. To guarantee quality would be to go beyond the directive of the statute.

The final section of this rule is included to clarify the relationship between this set of rules and other laws and regulations relating to the production, processing or manufacturing of food products and their labeling and is a slightly different statement from the one in the section just preceding this section. The previous section indicates what the Department is certifying by authorizing use of the Minnesota food products logo, while this section clarifies for readers and users of the rules that these rules do not exempt producers, processors or manufacturers from other laws or regulations governing food products. The Department only monitors certain requirements for food products and labeling. This section assures that authorized users will know clearly that authorization for use of this certification mark does not exempt them from any requirement not monitored by the Department. Its inclusion is necessary and reasonable as information for authorized users of the logo and for readers of the rules.