

STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE)
PROPOSED RULE OF THE)
DEPARTMENT OF AGRICULTURE)
GOVERNING ORGANIC FOOD)
(MINNESOTA RULES PART 1555.0005 -)
1555.0012))

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

The subject of this rulemaking is the proposed adoption by the Minnesota Department of Agriculture (MDA) of new rules governing the requirements for the growing, handling, labeling and selling of organic food. The rule is proposed for adoption pursuant to Minnesota Statutes, section 31.94, which authorizes the MDA to adopt rules that clarify organic food standards and marketing practices. As provided in Minnesota Statute, section 31.002, when practicable and consistent with state law, these rules must conform with those promulgated under Federal Law.

The Department has determined that the proposed amendment to the rule is noncontroversial in nature because it is supported by industry and is in conformity with Federal Regulations. The Food and Drug Administration (FDA) does not now nor has it ever had specific requirements, outside of labeling, for organic food products. Because of the noncontroversial nature of this rule, the Department directed that the rulemaking proceedings be conducted in accordance with the statutory provisions governing the adoption of noncontroversial rules, Minnesota Statutes, section 14.21 to 14.28. Accordingly, the rulemaking proceedings on the proposed amendment to the rule are governed by that statute and no hearing will be conducted on the proposed rule unless, twenty-five or more persons submit to the Department a written request for such hearing during the 30 day comment period required by Chapter 14.

In accordance with the requirement of Minnesota Statutes, section 14.23, this Statement of Need and Reasonableness was prepared and completed prior to the date that the proposed rule was published by the State Register.

II. GENERAL OVERVIEW

Minnesota Statutes, Chapter 31, was amended by the 1985-86 Legislature to include sections 31.92 to 31.94 to recognize as a public benefit the establishment of standards for food products marketed and labeled using the term "organic" or a derivative of the term organic. It was recognized that the standards would facilitate the development of out-of-state markets for Minnesota food which was grown by organic methods.

The Department of Agriculture was required by the statute to enforce those requirements found in the statute and could adopt rules to further clarify organic food standards, labeling and the marketing of those products. The Organic Food Statutes became effective April 1, 1986. Through the help of the organic growers and sellers, a compromise rule draft, acceptable to all parties, was written to clarify and broaden the requirements of the Organic Food Statutes.

III. NEED FOR AND REASONABLENESS OF THE PROPOSED AMENDMENT TO THE RULES.

The need for and reasonableness of the proposed new rules governing Organic Food follows:

Minnesota Rules, parts 1555.0005 to 1555.0012.

1555.0005 Definitions.

This rule is needed to define the wording used in the following rules which determine where and how food must be grown to use the term organic. Definitions are a reasonable part of any set of rules.

1555.0006 Organic Food Requirements.

1555.0007 Exceptions

Minnesota Statute 31.93 sets certain limits as to how and where a food defined as "organic" can be grown and sold. The statute also says that the Department shall enforce those provisions relating to the sale, labeling and advertising of such food by adoption of rules to clarify organic food standards and marketing practices. This rule is needed to clarify, specify and provide minimum standards needed to meet the statute. These rules are reasonable with the exceptions that are allowed in the rules because they allow growers to use natural substances, not synthetic, to promote growth and to protect the food with natural pesticides.

Since there has been a widespread use of chemicals and pesticides, a percentage of the established tolerances set by the FDA and EPA was allowed because it is now almost impossible for the earth to be completely free of agricultural pesticides and chemicals.

1555.0008 Treated Seed, Transplants and Propagating Parts.

The organic food statute allows the use of treated seed in situations where untreated seed is unavailable. This rule is needed to spell out the circumstances and situations whereby a person may purchase such seed and yet is reasonable because it does not make it an impossible task to purchase such seed if proper requests and records are maintained.

1555.0009 Records.

Records must be maintained by a producer, processor and retailer so that compliance to both the statute and rules can be investigated during both routine inspections and special investigations which may involve complaints against products labeled as organic. This rule is, therefore, a needed part to the Organic Food Rules and is reasonable because it provides support and protection to the producer, processor and retailer.

1555.0010 Inspection Authority

This rule is necessary to both the statute and the rule to define limits of enforcement, times of inspection and who can be inspected and is, therefore, reasonable to any requirement for rules.

1555.0011 Certification or Verification

1555.0012 Prohibitions

These rules permit any food to be certified by an organization or person providing the food conforms to all the requirements of the Organic Food Law and these rules and the certifying or verifying organization is identified on labeling and in advertising of organic food.

This identification is reasonable by the promotion of organic food through certification by knowing that food products are truthfully represented as being grown by organic methods.

IV. SMALL BUSINESS IMPACT OF THE PROPOSED RULES

As prescribed by Minnesota Statutes, Section 14.115, subdivisions 1 and 2, the Department has considered the degree of impact the proposed rule will have on small businesses and the alternative methods for lessening that impact.

The Department has determined that some persons, processors/manufacturers and retailers of organic food products will be impacted by the implementation of these new rules because they are now producing product labeled as organic food but have not maintained records or fully met some of the requirements of the new rules. However, the adoption of this new rule will result in development of new markets, both in Minnesota and out-of-state for Minnesota food grown by organic methods. The degree of market sales cannot be known at this time. Very few states have rules covering the organic food industry and, therefore, the adoption of these rules will be a great asset to the Minnesota grown organic food industry.

These rules also are in conformity to federal regulations and, therefore, pose no barrier to trade between states.