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STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED)
AMENDMENTS TO EXISTING RULES OF)
THE DEPARTMENT OF AGRICULTURE)
GOVERNING SEED FEES)
(MINNESOTA RULE 1510.0281))

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

The subject of this rulemaking is the proposal for amendments to existing rules of the Minnesota Department of Agriculture governing seed fees.

Minnesota Statutes, sections 21.85, subdivisions 12 and 13, 21.89, subdivision 1, and 21.90 subdivision 2 authorize amendments to the existing rule. Each section authorizes the establishment of a different seed fee.

The proposed rulemaking is necessary to increase the amount of revenue deposited into the seed fund which in turn provides funding for the operation of a seed testing laboratory and a seed regulatory program in Minnesota.

The specific items to be considered in this rulemaking pertain to charges under the Minnesota Seed Law for seed permit fees, seed testing fees, and hybrid corn registration fees.

The Commissioner of the Minnesota Department of Agriculture proposed the amendments to the rule for adoption in accordance with Minnesota Statutes 14.21 to 14.28. Consultations with seed industry representatives indicate the proposed rulemaking is non-controversial. Outside opinion was considered when the final draft of this proposed rulemaking was written.

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

- II. Small Business Impact
- III. General Overview
- IV. Need For And Reasonableness Of The Proposed Amended Rule
- V. Attachments

II. SMALL BUSINESS IMPACT

Minnesota Statute 14.115 requires an assessment of the impact on small businesses when laws and rules are enacted that affect them.

The proposed rulemaking pertaining to seed permit fees would increase fees for seed sold over the previous fees which were established in 1984. The following is an example of how these fees were determined:

1. Present Fee:
 - a. Soybeans @ 4 cents per hundredweight sold or at 60 pounds of seed used per acre, 2.4 cents per acre planted.
 - b. Sunflower @ 70 cents per hundredweight sold or at 3.5 pounds of seed used per acre, 2.45 cents per acre planted.
2. Proposed Fee:
 - a. Soybeans @ 6 cents per hundredweight sold or at 60 pounds of seed used per acre, 3.6 cents per acre planted.
 - b. Sunflower @ \$1.00 per hundredweight sold or at 3.5 pounds of seed used per acre, 3.5 cents per acre planted.

The fees on seed sold are a legitimate cost for seed firms and are included in the selling price. Therefore, the consumer is actually paying a user fee whenever seed is purchased. The existing fees on seed sold are based on an average 2.5 cents per acre no matter what crop is planted. The proposed fees on seed sold are based on an average 3.55 cents per acre. By establishing a fee that is approximately the same for each acre of crop planted, the consumer receives equitable treatment in the payment of the user fee no matter which crop seed is purchased. There are presently 550 seed permits in effect. The projected new revenue under the proposed fee would be \$165,200 annually or \$300 per permit. Small seed businesses should not be impacted adversely by the

fees on seed sold since they recover their costs in the selling price of the seed. Attachment A at the end of this statement contains a fiscal analysis of the effect on revenue that changing the fee rate will have.

The proposed rulemaking pertaining to the hybrid seed corn variety registration fee increases the annual registration fee from \$27.50 to \$30.00 per variety. This rulemaking also establishes a fee of \$35.00 per variety on registrations received after the February 1 deadline established by statute. Approximately 1,550 hybrids are registered annually by almost 100 firms. The average increase in fees paid by a hybrid seed corn company would be \$51.25 annually. These costs are passed on to the consumer in the purchase price and therefore, should not adversely affect small hybrid seed corn companies.

The proposed rulemaking pertaining to fees for seed testing and identification would increase those fees over the existing fees established in 1984. The Minnesota State Seed Laboratory normally receives an average of 6,500 non-regulatory or service samples for testing or identification annually from 2,250 farmers, 250 seed companies, and 5 agencies. We collect approximately \$43,700 in fees for this service or an average of \$6.73 per sample submitted. The proposed fee increase would bring this per sample cost up to \$10.10. Each farmer, seed company, and agency would theoretically be paying \$3.37 more per sample for this service under the proposed fees. A small seed business selling a 1,000 bushel lot of seed would have an additional .337 cent cost per bushel sold. The average price for a bushel of soybean seed is approximately \$11.00. This amount of increase should not adversely affect their competitiveness or profitability.

There are several private laboratories providing seed testing and identification service in Minnesota. We encourage this private business because it helps to provide a needed service to seed firms and farmers. If state laboratory fees for testing and identification are too low, we unfairly compete against these private businesses. We anticipate a 30 percent reduction in samples submitted to our laboratory if fees are raised as proposed. Private seed laboratories will likely receive these samples instead. These small businesses should benefit from increased business volume and better profit margins on the service they provide.

The seed fees established in the present rule and in the proposed amendment to this rule are needed to fund the state's seed regulatory and seed service testing programs. Any size business selling seed in this state benefits from an effective seed regulatory and service program through a fair marketplace in which to compete for the consumer dollar. Therefore, a seed business should pay for this benefit in proportion to their share of the marketplace. Taken one step further, the consumer benefits from an effective seed regulatory and service program through being able to buy truthfully labeled seed to fit their needs. Consumers ultimately pay for this benefit in the purchase price of the seed, but only in proportion to the number of acres they plant.

III. GENERAL OVERVIEW

A. The Need For An Increase In Seed Fees

To understand the need for and reasonableness of the proposed rulemaking to increase fees, it is important to know why they are proposed. When the existing fees were established by rule in 1984, it was estimated that with a normal inflationary rate, there would be a need to raise fees by 1990. This meant that the original fees would be sufficient to generate a surplus in the seed account that at some point would begin to abate because of increased costs due to inflation. If a five percent inflationary rate is used, since 1984, the seed program costs have risen 25 percent. Seed Program costs have reduced the surplus to a point where it will not be sufficient to cover periods of low revenue during the next fiscal year. This demonstrates a need to increase fees to build up the surplus to a point where a cash flow problem will not develop.

The seed permit fees are established on an equitable per acre cost basis. Therefore, planting shifts from one crop to another will not cause a reduction in revenue from these fees. However, planting fewer acres would reduce revenue. The 1985 Federal Farm Security Act initiated a program called the Conservation Reserve Program (C.R.P.). This program reduced the acreage planted in Minnesota by approximately 5 percent annually for at least ten years starting in 1985. This has caused a reduction in seed permit revenue. As a result, it is necessary to raise the seed permit fee rates to maintain the previous level of revenue.

The seed industry in the United States and, in particular, Minnesota is a very dynamic one. Prices per seed unit are increasing and profit margins along with them. Increased potential for profit motivates some in the industry to misrepresent cheaper, lower quality seed in order to obtain increased profits. This has caused an additional workload for seed regulatory staff of which there are presently three full time positions allocated. In addition, biotechnology is speeding up plant breeding to a point where new plant varieties are developed in a fraction of the time it used to take. These new varieties will cost considerably more than present ones and will require new ways to be developed to effectively regulate their sale. Seed is a convenient package in which to market this new technology. The state seed laboratory staff will have greater and more sophisticated demands put on them due to the influence of biotechnology. As a result, there is a need to increase staff in both the seed regulatory and the seed laboratory sections. It will require increased revenue to fund two new positions and the proposed increase in the seed permit fee rates reflects this need.

This rulemaking is necessary and reasonable to provide funding for a seed regulatory and service program that will protect consumers through uniform and accurate labeling of seed sold in Minnesota. Uniformity and accuracy in labeling of seed also provides a fair and competitive marketplace for the sale of seed and thereby benefits the seed industry as well.

B. Format Of The Proposed Amendments To The Fee Rule

The proposed amendments to the fee rule are set forth in the following manner: Seed fee permits, hybrid seed corn variety registration fee, and service testing and identification fees.

In this statement, for the sake of brevity, the content of the amended rule has not been repeated. However, the number and title of each affected portion of the rule has been noted for reference purposes.

IV. NEED FOR AND REASONABLENESS OF THE PROPOSED AMENDMENTS TO THE EXISTING FEE RULE

The need for and reasonableness of each portion of the proposed amendments to the existing fee rule follows:

1510.0281, Subpart 3, Clause A Seed Fee Permits.

This portion of the amendment modifies a phrase in the existing rule to clarify who must apply for a seed permit after the existing seed fee permit rule is amended. It is necessary to specify that existing seed permit holders do not need to re-apply for a permit just because the rule is amended. It is reasonable that this modification be enacted because there is no reason to reissue permits that are already in effect.

1510.0281, Subpart 3, Clause A(1) Seed Fee Permits.

This amendment is intended to correct a grammatical error in the existing rule. It is necessary and reasonable to propose amendments which correct errors in language useage that do not change the intent of the rule.

1510.0281, Subpart 3, Clause B Seed Fee Permits.

This amendment enables the department to have flexibility in establishing the reporting periods for payment of seed permit fees. It is necessary to make provision for more flexibility in the payment periods to allow for different fiscal years among permit holders. It is reasonable in that it will not change the amount of revenue collected but rather when it is collected during the year. It is further reasonable because it will spread out the revenue collections to somewhat alleviate cash flow shortages in the seed account during the year.

1510.0281, Subpart 3, Clause C Seed Fee Permits.

This amendment changes the rates at which fees on seed sold are charged. It is necessary to increase rates and thereby increase the revenues collected under seed permits in order to pay for the increased costs of the seed regulatory and service program. The increased costs are as a result of inflation and reductions in

acreage planted. It is further necessary in order to provide for an increased level of seed regulation and laboratory support of the regulatory effort. This increased level is as a result of higher prices for seed and thereby more motivation to misrepresent cheaper, lower quality seed in order to obtain higher profits. It is reasonable because the increase is intended to provide for the adequate funding of a higher level of regulation. It is further reasonable because Minnesota has one of the largest seed industries in the United States and it should be protected by insuring the existence of a fair marketplace for seed firms.

1510.0281, Subpart 3, Clause D Seed Fee Permits.

This amendment is a word change to more accurately specify when a seed fee permit can be revoked. It is necessary because the previous word used applied to the entire seed fee rule when non-compliance with only the seed permit requirements should be involved. It is reasonable to more accurately specify the conditions under which a permit can be revoked.

1510.0281, Subpart 4 Hybrid Seed Corn Variety Registration Fee.

This amendment increases the normal registration fee from \$27.50 to \$30.00 per variety and provides for a higher registration fee after February 1 of each year. It is necessary to increase this fee to cover the increased costs incurred by the Minnesota Agricultural Experiment Station in testing new hybrids to determine the accuracy of their labeled maturity rating. It is further necessary to have a higher fee after February 1 of each year because the department has to approve the registrations in a shorter period of time and thereby increasing the costs of handling the registrations. It is reasonable to increase the fee rate for hybrid seed corn variety registration to cover the increased costs of testing the new hybrids due to inflation.

1510.0281, Subpart 5 Service Testing and Identification.

This amendment increases the prices for testing and identification of seeds done for clientele. It is necessary to increase these prices to cover the increased costs of testing and identification

incurred by the State Seed Laboratory due to inflation. The fees were last increased in 1984. It is further necessary so that government agencies are not unfairly competing against private seed testing laboratories. It is reasonable in that the increased fees will not be too high to discourage farmers, seed companies, and other state agencies from getting their seed tested. A rate that is too high would discourage seed testing and cause increased seed regulatory costs due to mislabeled seed. When the fees were increased the last time, the seed laboratory experienced a decrease of approximately 2,000 samples received annually which we feel were done by private laboratories instead. It is further reasonable because the fees presently charged by privately operated seed laboratories and in surrounding state seed laboratories compare favorably with those proposed in this rulemaking.

V. ATTACHMENTS

The following attachments have been referred to or pertain to this statement.

Attachment A - Comparative Fiscal Analysis of the Proposed Change in Seed Fees, 5 pages.

Attachment B - Approval of Fee Adjustments by the Commissioner of Finance.

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ATTACHMENT A

Proposed Seed Permit Fee Increase for F. Y. 1990

Minnesota Seed Rule 1510.0281, subpart 3, item c (1) and (2) specifies the fee to be paid per hundred weight of seed sold. Listed below are the categories as shown in the rule with the current fee, proposed fee, estimated revenue and the percentage of increase.

Fee Category	Present ¹ Fee Rate	Present Annual Fees Collected	Proposed ² New Rate	Estimated Annual Fees Collected	Percent Increase
Oats, Wheat, Barley	\$.03/cwt	\$ 58,085	\$.045/cwt	\$ 87,127	50%
Soybeans, Fieldbeans, Rye	.04/cwt	56,441	.06/cwt	84,662	50%
Buckwheat, Flax	.06/cwt	727	.08/cwt	969	33%
Fieldcorn	.15/cwt	144,090	.21/cwt	201,726	40%
Forage, Lawn and Turf	.20/cwt	42,750	.35/cwt	74,813	75%
Sunflower	.70/cwt	4,205	1.00/cwt	6,007	43%
Sugarbeet	.70/cwt	3,984	2.35/cwt	13,375	23%
Other	.10/cwt	5,027	.20/cwt	10,054	100%
Vegetable and Flower	.10/\$100 Sales	<u>885</u>	.30/\$100 Sales	<u>2,655</u>	300%
	Total	\$316,194		\$481,388	

The collection of \$316,194 in seed permit fees translates into about 12,647,760 acres planted annually in Minnesota with seed purchased from permit holders. The \$165,194 estimated increase in collections would be a 52% increase in fees collected.

¹Based on an average of 2.5¢ per acre no matter what kind of seed is planted.

²Based on an average of 3.55¢ per acre no matter what kind of seed is planted.

**PROPOSED REGISTRATION FEE INCREASE
FOR HYBRID CORN VARIETIES**

Minnesota Rule 1510.0281, subpart 4, specifies the hybrid seed corn variety registration fee.

Year	Number Var. Reg. Before Feb. 1	Number Var. Reg. After Feb. 1	Var Reg. Fee Before Feb. 1	Var. Reg. Fee After Feb. 1	Present Fees Collected	Estimated Fees Collected
1989	1308	250	27.50/var.	27.50/var.	\$42,845	----
1990	1308 (Est.)	250 (Est.)	30.00/var.	35.00/var.	----	\$47,990

A \$5,145 increase in fees is projected with \$3,895 coming from the \$2.50/variety increase in registration fee and \$1,250 from the extra \$5.00 when registrations are received after February 1 each year.

Comparison of Present and Proposed Seed Laboratory Testing Fees in Minnesota

Minnesota Rule 1510.0281, subpart 5, specifies the service testing and identification fees for the state seed laboratory.

	<u>Present</u>	<u>Proposed</u>	<u>Percent Increase</u>
I. General Crop Seeds			
Germination	5.00	7.50	50%
Purity	8.00	12.00	50%
State Noxious	4.00	6.00	50%
USA Noxious	---	8.00	N/A
Tetrazolium	10.00	15.00	50%
Rush Samples	Add 2.00	Add 10.00	500%
Special Testing	12.00/hr.	20.00/hr.	67%
II. Medium to Small Seeds (Grasses)			
Germination	7.00	10.50	50%
Purity	12.00	18.00	50%
State Noxious	6.00	9.00	50%
USA Noxious	---	11.00	N/A
Tetrazolium	12.00	18.00	50%
Rush Samples	Add 2.00	Add 10.00	500%
Special Testing	12.00/hr.	20.00/hr.	67%
III. Chaffy Range Grasses			
Germination	10.00	15.00	50%
Purity	20.00	30.00	50%
State Noxious	10.00	15.00	50%
USA Noxious	---	17.00	N/A
Tetrazolium	18.00	27.00	50%
Rush Samples	Add 2.00	Add 10.00	500%
Special Testing	12.00/hr.	20.00/hr.	67%

Comparison of Present Revenue with Proposed Revenue From Service Seed Testing and Identification Done by the State Seed Laboratory

	<u>Number of Samples Annually</u>	<u>Fees Collected</u>	<u>Number of Clients</u>	<u>Ave. Cost Per Sample</u>	<u>Number of Samples Per Client</u>	<u>Ave. Cost Per Client</u>
Present Fees ¹	10,100	67,960	3,100	6.73	3.26	21.92
Proposed Fees ²	4,550	45,955	2,170	10.10 ³	2.82	21.21
Increase or Decrease	(5,550)	(22,005)	(930)	3.37	(1.16)	(.71)

On a 1,000 bushel seed lot, a \$3.37 per sample increase in cost for testing translates to a .337 cent per bushel increase in cost for a seed firm. A bushel of seed wheat is approximately \$6.00 and a bushel of seed soybeans is \$11.00.

¹ Data based on fiscal year 1989 samples and fees collected.

² The number of samples received in fiscal year 1989 was unusually high due to the poor cropping conditions in 1988. More testing was needed to find quality seed in adequate supplies for farmers to plant in the spring of 1989. In an average year prior to 1989, 6,500 samples were tested for about 2,500 clientele. Our projections for fees collected from service testing is based on the more normal years prior to 1989. In addition, the last time the fees were increased, the number of samples declined by about 30%. We are projecting a similar decline from this fee increase.

³ We are assuming about a 50% increase in sample testing fees based on the comparison of the present to proposed fees on page 3 of this attachment.

**Comparison of the Total Revenue Received Under the Present
Fees and Under the Proposed Fees**

Fee	Present Revenue	Proposed Revenue	Percent Increase
Seed Permits	\$316,194	\$481,388	52%
Hybrid Corn Registration	42,845	47,990	12%
Service Testing and Identification	67,960	45,955	5%
Miscellaneous Revenue	<u>10,888</u>	<u>10,880</u>	0%
Total	\$437,887	586,213	34%

DEPARTMENT : of Finance

STATE OF MINNESOTA

Office Memorandum

DATE : November 6, 1989

TO : Jim Nichols, Commissioner
Department of Agriculture

FROM : Bruce J. Reddemann, Director *BJR*
Budget Operations and Support

PHONE : 296-5188

SUBJECT : Seed Inspection Fee Increase

RECEIVED
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PLANNING DIVISION

The proposed fee increases as shown in Attachment A of your request are approved as submitted. A copy of Attachment A is enclosed.

cc: Chuck Dale ✓
Jim King
Joe Komro

Enclosure

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ATTACHMENT A

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