

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE  
PROPOSED RULE OF THE  
DEPARTMENT OF AGRICULTURE  
GOVERNING THE CERTIFICATION  
OF ORGANIC FOOD  
(MINNESOTA RULES PART 1556.0100 -  
1556.0127)

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 certification of organic food. The rule is proposed for adoption pursuant to Minnesota Statutes, section 31.95 subdivision 4, which authorizes the MDA to adopt rules for the implementation of an organically grown certification program. As provided in Minnesota Statutes, 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 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 have nor has it ever had specific requirements for certified 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 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 1988 Legislature to include section 31.95. This section provided for the Commissioner of Agriculture to designate one or more Minnesota organizations to certify organically grown seeds, products and food. Minnesota Statutes, 31.95(4) provides that organic certification organizations may draft rules for submission to the Commissioner to adopt for implementation of the organically grown certification program. Minnesota Statutes 31.94 gives the Department rulemaking authority for the clarification of organic food standards and marketing practices. The Organic Growers and Buyers Association, Inc., a designated certification organization, was instrumental in helping the Department draft the proposed certification rules.

## III. NEED FOR AND REASONABLENESS OF THE PROPOSED ORGANIC CERTIFICATION RULES

The need for and reasonableness of the proposed organic certification rules are as follows:

Minnesota Rules, parts 1556.0100 to 1556.0127.

1556.0105 Definitions.

This rule is needed to define words used in the following rules which determine how the certification process is to be conducted. Definitions are a reasonable part of any set of rules and help to eliminate misinterpretation of the rule's intent.

1556.0107 Certification Procedure

This rule is needed to set up the application procedure for certification of organic products. It is reasonable because it provides an orderly process for providing certification services to providers of organic products in a timely manner.

#### 1556.0109 Certification Requirements.

This rule is needed to provide the basic requirements an organic producer must meet to be eligible for certification. It is reasonable to require separation of produce to allow for the tracking of products to assure their organic character. It is impossible to determine the difference between organic and non-organic products. On-site inspection of organic enterprises is reasonable because it gives the inspector an opportunity to observe all of the circumstances surrounding the production of an organic product, inspect the records that are kept on-site and obtain a signed affidavit from the certification applicant. The record keeping requirements are reasonable because they provide the basis of a paper trail that traces an organic product from seed to sale and insures its authenticity. These certification requirements are consistent with the requirements of other state and private certification programs and should present no barriers to interstate commerce.

#### .1556.0111 Certification Inspectors

This rule is needed to define the concept of an impartial and independent inspector. Inspectors conduct on-site inspections and are responsible for reviewing records. They determine whether an enterprise meets organic standards and is therefore eligible for organic certification. This rule is reasonable because it provides a basic set of requirements to avoid conflicts or interest on the part of on-site inspectors.

#### 1556.0113 Training of Certification Inspectors

This rule is needed to provide for minimum standards that an inspector must meet in order to become a certification inspector. This rule is reasonable because expertise in the area of organic growing and processing techniques is important in determining a producer's or processor's eligibility for the certification process.

#### 1556.0115 Decertification

This rule is needed to provide for a procedure to decertify enterprises that are in violation of Minnesota organic law and rules. This rule is reasonable because violations of organic law and rules threaten the integrity of the certification system and are a threat to public confidence in the certification process.

#### 1556.0117 Complaints and Appeals

There is a need for an appeal procedure in case mistakes have been made in the certification process. An appeal procedure is reasonable because it allows an inquiry into the facts relating to a certification issue and provides a forum for the settlement of a complaint or problem.

#### 1556.0121 Data Privacy

This rule is needed to provide for protection of trade secrets and financial information producers provide the certifying organization. This rule is reasonable because privacy is important to insure applicant cooperation in obtaining the documents necessary to verify the organic history of products and these documents would not otherwise be made public.

#### 1556.0123 Fair Labor Practices

The effectiveness of a certification system is highly dependent on the voluntary efforts of a producer or processor to abide by not only the organic rules and standards but all of the other rules and laws that impact on the production and processing of organic products. The employees of organic enterprises that are treated fairly are much more likely to preserve and protect the integrity of a product than are employees who are not treated well. Employees of an enterprise are an integral part of the production of an authentically organic product. Therefore it is important and reasonable to require that employees be treated fairly.

#### 1556.0125 Fair Trade Practices

Organic produce is not distinguishable from non-organic produce once it has entered the stream of commerce. The only assurance consumers have that a product is organic is the word of the producer or processor or the certification process. Fair trade practice rules are necessary to protect and preserve public confidence in certified organic produce. This rule is reasonable because it establishes precisely which marketing practices are inimical to public confidence and therefore prohibited.

#### 1556.0127 Labeling

This rule is needed to clarify what the term "certified organic" on a label means. The rule is also needed to establish other label and verification requirements needed in order to use the term on a label. This rule is reasonable because it establishes minimum requirements to insure the integrity of an organic product.

REPEALER: Minnesota Rules, parts 1555.0005, subparts 2 and 13, part 1555.0011, and part 1555.0013 are repealed. Parts 1555.0005, subparts 2 and 13, and part 1555.0011 are superseded by new rules and part 1555.0013 is obsolete.

#### 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 the impact.

The Department has determined that some persons, processors/manufacturers and retailers of organic food products will be impacted by the implementation of these rules because a fee will be charged for the certification services and documentation and recordkeeping requirements might be increased for some certification applicants. However, certification is voluntary and there are three certifying organizations in the state with varying fee schedules.

Certification is the wave of the future in the organic industry because it is the most reliable way of assuring that a product is organic. There is activity in many other states to implement and enforce organic certification programs. The proposed Minnesota rules are very similar to those existing in other states. These rules require the absolute minimum documentation and compliance requirements necessary to insure the authenticity of an organic product. The rules even provide for on-site inspection of documents to save the certification applicant time and money for postage and duplication. The industry which consists of mostly small businesses was invited to comment on the proposed rules by phone letter or in person. A public meeting was held to allow them to give additional input. The rules were drafted to accommodate their reasonable requests.