

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE
PROPOSED RULE OF THE
DEPARTMENT OF AGRICULTURE
GOVERNING WHOLESALE
PRODUCE DEALERS

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 wholesale produce dealers. The rule is proposed for adoption pursuant to Minnesota Statutes, section 27.14, which authorizes the MDA to adopt rules for the regulation of wholesale producers, dealers, and purchasers.

The Department has determined that the proposed rule is noncontroversial in nature because two proposed drafts of the rules have been sent to the industry for comment and most of their suggested changes have been incorporated into the present proposed rules. The department has also met on several occasions with interested members of the industry to discuss the proposed rules. 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 Minnesota Statutes, 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

The legislature recognizes that perishable agricultural products are important sources of revenue to a large number of citizens of this state engaged in producing, processing, manufacturing, or selling such products and that such products cannot be repossessed in case of default. It is therefore declared to be the policy of the legislature that certain financial protection be afforded those who are producers on the farm; farmer cooperatives which are not wholesale produce dealers as described in Minnesota Statutes, section 27.01, subdivision 8; and licensed wholesale produce dealers, including the retail merchant purchasing produce directly from farmers. The 1990 legislature

passed a bill that made major changes to the existing statute. The department decided to rewrite the rules to eliminate obsolete provisions in the existing rules and to promulgate rules to implement the new legislation.

III. NEED FOR AND REASONABLENESS OF THE PROPOSED WHOLESALE PRODUCE DEALERS RULES

The need for and reasonableness of the proposed wholesale producer dealer rules are as follows:

1500.0201. DEFINITIONS

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

1500.0301. SIGNED INVOICE

This rule is needed to accommodate the business practices of certain segments of the produce industry. Some members of the industry do not utilize formal written contracts but use sale documents to complete their transactions. It is reasonable because the rule provides a simple method for extending the protections of the act to the segments of the industry that utilize sale documents to complete transactions.

1500.0401. CASH

This rule is needed to define the concept of payment by cash. When a person pays for produce with cash, bonding is not required. However, when payments are made by personal or business checks, bonding is required to protect the producer. This rule is reasonable because personal and business checks do not eliminate the payment problems that make bonding a necessity.

1500.0501. PERISHABLE PRODUCTS

This rule is needed because it clarifies what products are perishable. After certain procedures or processes, products can change in form. This change in a product's nature mandates a change in treatment of the particular product under the Wholesale Produce Dealers Act. This rule is reasonable because only perishable items are protected by this Act. Thus, clear definition of what products are perishable or nonperishable is essential for compliance with and enforcement of this Act.

1500.0601. FINANCIAL STATEMENTS

There is a need for a financial statement in the application process in order to assure the purchaser's ability to pay for produce or services obtained. The accounting principles that are required allow for an accurate determination of an entity's financial status. This rule is reasonable because parties are able to contract with others with some assurance of the other parties ability to pay for or to produce the items contracted for.

1500.0701. BONDS

Bonds are needed to provide financial security for sellers of wholesale produce. This rule is also reasonable because it allows for irrevocable letters of credit which are easier to obtain and less expensive than bonds.

1500.0801. CLAIMS AGAINST A BOND

This rule is needed to inform an injured party what information is necessary in order to file a proper claim. This rule is reasonable because it sets minimal standards for filing such a claim.

1500.0901. MEDIATION AND ARBITRATION

This rule is needed to allow parties involved in contracts for produce low-cost alternative procedures for the resolution of contract disputes. This rule is reasonable because many contract disputes are minor in nature and do not warrant the large investment of time and expense of going to court. The mediation process is desirable because it allows the parties to participate and cooperate in finding a solution to their dispute. Arbitration is beneficial because the parties can utilize a low-cost alternative to litigation.

1500.1001. PARENT COMPANY

This rule is needed to guarantee payments owed to producers and wholesale produce dealers who deal with wholesale produce dealers owned or controlled by another company. Business buyouts and consolidation activities have created a concern that shell, spin-off and subsidiary corporations might be unable to fulfill contracts with producers and wholesale produce dealers because of bankruptcy or insufficient assets. This rule is reasonable because it allows the producer and wholesale produce dealer recourse against a third party who substantially owns or controls the corporation that has contracted with the producer or wholesale produce dealer.

1500.1101. WHOLESALE PRODUCE DEALERS TRUST

This rule is needed to provide the same payment protection to produce sellers engaged in intra-state commerce that produce sellers engaged in interstate commerce are afforded through the federal trust provisions of the Perishable Agricultural Protection Act (P.A.C.A.) and the Packers and Stockyards Act (P & S). This rule is reasonable because it requires little effort and no cost on the part of the seller to preserve the right to payment.

1500.1201. NOTICE OF PAYMENT PROTECTION

This rule is needed to inform producers and wholesale produce dealers that a buyer is a licensed and bonded wholesale produce dealer. The rule is also needed to inform producers of their bond and wholesale produce dealers trust protection and how to file a claim. This rule is reasonable because the notice to each seller need only be given once and therefore does not create an undue burden on the buyer.

1500.1301. COMMITMENT TO PAY

This rule is needed to provide a method for calculating reimbursement for passed acreage. Passed acreage is acreage contracted for but not harvested. The rule is also needed to provide a procedure for reporting why acreage is passed and how reimbursement for that passed acreage is conducted. The rule is reasonable because it recognizes a difference between a suitable and unsuitable crop, differences in grade and yield, and payment systems already in existence.

1500.1401. UNFAIR TRADE PRACTICES

This rule is needed to promote and insure fair trade practices between producers and wholesale produce dealers. This rule is reasonable because it incorporates into state law trade practice prohibitions that already exist and are prohibited on the federal level. Industry members that are involved in interstate commerce are already subject to the federal trade practice prohibitions.

1500.1501. FEDERAL PREEMPTION.

This rule is needed to avoid duplication of federal and state enforcement activities. This rule is reasonable because it recognizes the priority of federal jurisdiction and enforcement, and avoids duplication of effort by the state.

REPEALER

Minnesota Rules parts 1500.0100 to 1500.3200 need to be repealed because some of the present rules have been incorporated into the statute, are inconsistent with the statute or directly contradict the present statute. The present statute reflects major revisions that were made during the 1990 legislative session.

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 rules will have on small businesses and the alternative methods for lessening their impact.

The 1988 legislature authorized an Agricultural Contracts Task Force to determine the extent of problems relating to the sale of agricultural commodities under contract. The recommendations of the task force resulted in changes in the Minnesota Wholesale Produce Dealers Act and the promulgation of these rules. There were many representatives of small business on this task force. The major impact of these rules is to provide financial protection for producers and wholesale produce dealers, most of whom are small business persons.

For the small businesses that need to be licensed and bonded as Minnesota wholesale produce dealers, these rules will have the following impact. There are no new reporting requirements, however, in order to make certain a business is financially sound, the requirements for an acceptable financial statement will be more stringent; financial statements must be prepared in

accordance with standards established by the American Institute of Certified Public Accountants. If a small business is involved in contracting, a copy of the contract must be submitted to the department.

In lieu of a surety bond a small business which meets certain financial criteria may submit an irrevocable letter of credit. An irrevocable letter of credit has not been accepted by the commissioner in the past and is a less costly process for small businesses. The mediation and arbitration requirement will help small businesses because many disputes are minor in nature and do not warrant the large investment of time and expense of going to court. The rules governing the Wholesale Produce Dealers trust will not add any recordkeeping or reporting requirements but they will require that wholesale produce dealers not encumber any assets they have not paid for in order to satisfy outstanding obligations to sellers of produce. Since most small produce businesses are already under a federal trust provision (either the Perishable Agricultural Commodities Act or the Packers and Stockyards Act) this provision should have relatively little impact on small businesses.

These rules require wholesale produce dealers to notify sellers that they are licensed and bonded. The burden of this rule was lessened by requiring one-time notification rather than annually or at each transaction. The commitment to pay for a crop has no impact on small businesses.