

May 19, 2014

Legislative Reference Library
645 State Office Building
100 Constitution Avenue
St. Paul, Minnesota 55155

Re: In The Matter of the Proposed Rules of the Department of Agriculture Governing
Anhydrous Ammonia Inspector Certification; Revisor's ID Number 4215

Dear Librarian:

The Minnesota Department of Agriculture intends to adopt rules governing Anhydrous Ammonia Inspector Certification. We plan to publish a Notice of Intent to Adopt Rules without a Public Hearing in the May 19, 2014 State Register.

The Department has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Department is sending the Library an electronic copy of the Statement of Need and Reasonableness at the same time we are mailing our Notice of Intent to Adopt Rules.

If you have questions, please contact me at 651-201-6435 or luis.rivera@state.mn.us.

Yours very truly,

Luis Rivera
Rules Coordinator

Enclosure: Statement of Need and Reasonableness

Minnesota Department of Agriculture

Statement of Need and Reasonableness

Proposed Rules Governing Anhydrous Ammonia Inspector Certification Program, Minnesota Rules 1514; Revisor's ID Number: RD4215

This statement will be made available for public review the same day the Notice of Intent to Adopt Rules is published in the State Register.

I. Introduction

The Minnesota Department of Agriculture (MDA) is proposing new permanent rules chapter 1514, governing Anhydrous Ammonia Inspector Certification. The statutory authority to develop these rules can be found in Minnesota Statutes chapter 18C.111 subdivision 4. The MDA currently issues permits and conducts inspections of all facilities that store, sell or handle anhydrous ammonia for agricultural purposes under Minnesota Rules chapter 1513 and Minnesota Statutes chapters 18C and 18D.

The MDA was directed by the 2011 Minnesota Legislature to write rules and create an inspector certification program that would certify applicants to inspect anhydrous ammonia facilities. The purpose of creating an anhydrous ammonia inspector certification program is to increase compliance with Minnesota's anhydrous ammonia rules and statutes within the agricultural chemical industry. This program will be voluntary for those agricultural chemical facilities that wish to hire inspectors certified by the MDA. These certified inspectors will be responsible for assessing a facility's compliance with the MN Statutes 18C and 18D and MN Rules 1513. The intent of such assessments is to help facilities comply with applicable regulations, improve operational safety and ultimately reduce the noncompliance issues found by MDA during its regulatory inspections that may result in an enforcement action.

The goal of this program is to create a voluntary inspection program where anhydrous ammonia facilities can hire a certified anhydrous ammonia inspector. This certified anhydrous ammonia inspector will inspect the facility and after documenting that all items are in compliance, the certified inspector will issue the facility a certificate of compliance. These certified anhydrous ammonia inspectors will not be employees of the MDA and will not have authority to enforce rules and laws. They will only inspect and certify anhydrous ammonia facilities that are in compliance with Minnesota Statutes 18C and 18D and Minnesota Rules 1513. The MDA will receive notice from a facility when it has received a certificate of compliance.

The MDA will continue to use its authority to inspect anhydrous ammonia facilities to determine compliance with applicable rules and statutes. The MDA expects that facilities which receive a certificate of full compliance from a certified inspection will also have fewer violations during MDA inspections. As the program matures, MDA may prescribe less inspection and oversight for facilities that take advantage of a certified inspector. This program will be the first of its kind in the nation. No other state currently certifies private anhydrous ammonia facility inspectors.

II. Alternative Format

Upon request, this Statement can be made available in an alternative format, such as large print, Braille, or cassette tape. To make a request, contact Luis Rivera at Minnesota Department of Agriculture, 625 Robert St. N., St. Paul, MN 55155-2538, 651-201-6435 and fax: 651-201-6118. TDD users may call the Department of Agriculture at 1-800-627-3529.

III. Statutory Authority

The MDA has statutory authority to adopt this rule under Minnesota Statutes, section 18C.111 subdivision 4 which allows the commissioner to certify a person to offer or perform a regulatory compliance inspection of any person or site that stores, handles, or distributes ammonia or anhydrous ammonia fertilizer.

IV. Regulatory Analysis

A. A description of the classes of persons who may be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule

The classes of people affected by the proposed rules will be those that apply to become certified anhydrous ammonia inspectors. Those that apply will be affected as they will have to take the required classroom and practical training and exams to become a certified inspector. The MDA will bear start up and ongoing costs as they will have to support the development of the certification program. Also, applicants to become certified inspectors will be responsible to meet inspector certification requirements and cover any associated costs.

The classes of people that will benefit from the proposed rules are the certified anhydrous ammonia inspectors who will be able to charge for their inspection services. Those anhydrous ammonia facilities that decide to hire a certified inspector will also benefit, as they will have a new avenue for compliance assistance. The MDA will benefit from this proposed rule by being able to better allocate limited resources. With anhydrous ammonia facilities conducting their own inspections, the MDA will be able to shift focus to those anhydrous ammonia facilities with higher safety concerns. The general public will also benefit from this proposed rule because facilities will be inspected more often and with more frequent inspections, the overall safety of facilities will be improved.

B. Probable costs to the MDA and to any other agencies of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues

The costs of this inspector certification program are not completely calculated at this time. It is uncertain what number of applicants will apply to become certified inspectors. The proposed rule would have some limited effect on state expenditures, because of the proposed fee imposed to establish and administer the program. The probable costs to the agency include, developing the classroom training, writing the exam, developing the practical training and skills test, and ongoing inspector recertification training. The agency will also need to develop an administrative procedure for the program. It is anticipated that the application and training fees generated from

applicants will support the costs for administration. The anhydrous ammonia facility will be responsible for hiring and paying the certified inspector.

There are no anticipated probable costs to any other agency for implementation and enforcement.

There are no anticipated effects on state revenue associated with the proposed rule.

C. Determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule

It has been determined that there is no less costly or intrusive method of achieving the purpose of the proposed rules.

D. Description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.

During the 2011 legislative session the MDA requested an increase in tonnage fees to support anhydrous ammonia inspections by MDA personnel at agricultural chemical facilities that store, handle and distribute anhydrous ammonia. The increase in tonnage fees would have allowed the MDA to hire additional inspectors in order to lower the interval between inspections. The 2011 legislature did not authorize the tonnage fee increase and instead provided a one-time general fund appropriation to the Minnesota Department of Agriculture to be used to draft rules creating the inspector certification program.

E. Probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or applicants.

This is a voluntary facility certification program; there will be no costs to those parties that choose not to participate in the program. The MDA will be responsible for developing the inspector certification program including developing the classroom training, written exam, practical exam and skills test. Applicants to become certified inspectors will be required to take classroom training, written exam and practical training and a skills test to become certified. Applicants will be required to pay for the cost of the required training and exams. The total cost for the training and inspector certification program has not yet been determined. The fees for this program will be administered strictly to help the agency recover the expense of administering the program in accordance with 16A.1285 subdivision 2. There will be no costs to other units of government or business.

The proposed rules were submitted to Minnesota Management and Budget for the consultation on the fiscal impact and benefit of the proposed rule on local units of government. Comments from Minnesota Management and Budget are attached.

In accordance with Minnesota Statutes, sec. 14.127 the agency has determined that the cost of complying with the rule will not exceed \$25,000 for a business with less than 50 people or a city

with less than 10 full time employees. This is a voluntary program open to all who wish to participate. There will be no penalty for those agricultural chemical facilities who choose not to hire a certified inspector. The cost of the inspection performed by a certified inspector will be determined between the anhydrous ammonia facility and the certified inspector.

F. Probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or applicants.

The probable costs of not adopting the proposed rule for affected regulated industry or applicants will be negligible. The probable cost of not adopting the proposed rule for government would include the cost for the department to hire one or more anhydrous ammonia inspectors in order to conduct inspections of anhydrous ammonia facilities at a level needed to ensure compliance.

Consequences of not adopting the proposed rule would have a negative impact on the industry. Without the help of certified anhydrous ammonia inspectors, the interval between inspections of facilities will remain high. A lengthy gap in between inspections may result in an industry overall less compliant with MN Statutes 18C and 18D and Rules 1513 and lower operational safety at certain facilities. Without the inspector certification program, the industry would be without an important resource to assist them in operating as safely as possible.

G. An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.

There are no applicable federal rules.

H. An assessment of the cumulative effect of the rule with other federal and state regulations.

There are no similar federal rules in place for an anhydrous ammonia inspection program that would impact these proposed rules. This program will be a voluntary program, anhydrous ammonia facilities will not be required to participate or hire a certified inspector.

V. Performance Based Regulatory Systems

The purpose of this program is to help industry improve operational safety and thereby public safety by allowing additional opportunities for compliance assistance in satisfying MDA's anhydrous ammonia regulations. The proposed rule is designed to increase and improve operational safety of anhydrous ammonia facilities and increase the flexibility and the effectiveness of the MDA's anhydrous ammonia regulatory program, by creating a performance based voluntary inspection program. By having certified inspectors available to issue certificates of compliance to anhydrous ammonia facilities, the MDA may have adequate resources to perform a greater number of inspections at those facilities that have a history of non-compliance. Facilities can reduce their burden of regulatory inspections by hiring a certified inspector and receiving a certificate of compliance.

VI. Efforts to provide notice to persons to be affected by the rule.

This Additional Notice Plan was sent to the Office of Administrative Hearings for review and approval by Administrative Law Judge Barbara Case on May 2, 2013.

The MDA has made considerable effort to provide notice and involve affected persons, through direct mailings, public meetings, emails, phone calls and information posted on a webpage developed specifically for this program. In accordance with Minnesota Statutes section 14.101 and Minnesota Rules part 1400.2060, subpart 2, item A, MDA did the following to provide notice to interested and regulated parties:

REQUEST FOR COMMENTS

A Request for comments on the proposed rule was published in the State Register on Monday, June 11, 2012. No written comments were received. The request for comments was published to the State Register a second time on September 16, 2013. No written comments were received.

PROVIDING NOTICE

Several public discussions were held within the state of Minnesota to gather input from the various industry representatives prior to writing the rules. These meetings were held at the following dates and locations:

St. Paul, MN, Friday April 19, 2013

St. Paul, MN, Monday April 29, 2013

Crookston, MN, Wednesday May 1, 2013

Worthington, MN, Tuesday May 21, 2013

Mankato, MN, Thursday May 23, 2013

St. Cloud, MN, Tuesday May 28, 2013

ADDITIONAL NOTICE – WEB PAGE AND MAILINGS

A website, Anhydrous Ammonia Inspector Certification Program (<https://www.mda.state.mn.us/chemicals/fertilizers/nh3/nh3rules.aspx>) was created to provide information on the development of the rules with interested parties. The availability of this website was included in correspondence with interested parties. The website included information on the rulemaking process, Frequently Asked Question's (FAQ's), dates, times and locations of the public meetings and a comment page where persons were able to submit comments directly to the MDA. Drafts of the rule were also posted to the website. The website also provided MDA contact information to the public if someone wished to contact the department directly. As of the date of this SONAR no comments have been received via the website.

ADDITIONAL NOTICE – PROPOSED RULE MEETING SESSIONS

An additional public discussion was held within the state of Minnesota to present and discuss the draft of the rules with all interested parties. This meeting was held at the MDA offices in St. Paul, MN on January 13, 2014.

ADDITIONAL NOTICE – NOTICE OF INTENT TO ADOPT RULES

At the time of the publication of the Notice of Intent to Adopt Rules the MDA proposes to notify the parties listed below with a copy of the Notice, the proposed rule, and the Statement of Need and Reasonableness:

BY MAIL

1. All registered parties on the MDA rulemaking list, per Minnesota Statutes, section 14.14, subdivision 1a.
2. The Minnesota Legislature per Minnesota Statutes, section 14.116
3. Minnesota Association of Small Cities, Minnesota Association of Townships, The League of Minnesota Cities
4. Association of Minnesota Emergency Managers, County Emergency Managers, HSEM Regional Program Coordinators
5. Minnesota Environmental Partnership
6. All 287 registered anhydrous ammonia facilities
7. Minnesota Crop Production Retailers, Cooperative Network, Minnesota Grain and Feed Association
8. The Minnesota Department of Public Safety
9. The Minnesota Police and Peace Officers Association
10. The Minnesota Department of Health

BY EMAIL

1. All anhydrous ammonia inspector certification public discussion attendees

The MDA proposes to post on the Anhydrous Ammonia Inspector Certification Program website the Notice of Intent to Adopt Rules, a copy of the proposed rule, and the Statement of Need and Reasonableness, for public viewing and comment.

VII. Effect on local government ordinances

In accordance with Minnesota Statutes, section 14.128 the department has determined that the rules will not require any local government to adopt or amend an ordinance or regulation to comply with the proposed rule because anhydrous ammonia facilities are permitted by the Minnesota Department of Agriculture and not by local government.

VIII. Section by Section Analysis of Need and Reasonableness

1514.0100 Definitions

The definitions are necessary to insure that the rule is clearly understood. The inclusion of definitions is reasonable so that the Minnesota Department of Agriculture (MDA) may consistently apply the rule, and so that regulated persons do not become confused as to how to interpret the language contained in the rule.

1514.0200 General Provisions; Certified Anhydrous Ammonia Inspector.

1514.0200, Subpart 1. **Certificate of Compliance.** It is necessary to allow certificates of compliance to only be issued by certified inspectors. These certified inspectors have gone through the required training and testing to become a certified inspector. It is reasonable to allow only those that have been trained and certified to issue certificates of compliance.

1514.0200, Subpart 2. **Certification Card.** It is necessary for certified inspectors to carry an identification card to demonstrate their certification as an anhydrous ammonia inspector. This will offer assurance to those facilities who hire a certified inspector that the MDA has indeed certified them to conduct inspections. This rule is reasonable because it offers assurance to facilities and the MDA that the inspector has indeed met all MDA inspector certification requirements.

1514.0200, Subpart 3. **Certification not transferable.** It is necessary that only applicants that have applied to the MDA on the appropriate forms, completed training and passed all necessary exams will be certified as anhydrous ammonia facility inspectors. This rule is reasonable because it ensures that all certified anhydrous ammonia facility inspectors have gone through the certification process set forth in the rule. Allowing the transfer of the inspector certification to another individual would act to defeat the vital education and training requirements created by this rule.

In order to operate in the state of Minnesota, anhydrous ammonia facilities must be permitted by the MDA. It is necessary and reasonable to only allow certified anhydrous ammonia inspectors to inspect anhydrous ammonia facilities that have been permitted by the state as required in Minnesota Statutes Chapter 18C.305, subdivision 1. Minnesota Statute 18C.111, Subd. 4, provides the authority to the commissioner to certify persons to offer or perform a regulatory compliance inspection of a site that stores, handles, or distributes anhydrous ammonia. Only those facilities that are permitted by the MDA are legally allowed to store anhydrous ammonia. Inspection of unpermitted facilities is beyond the scope of the inspector certification program and is not part of the inspection services.

1514.0200, Subpart 4. **Issuance of certificate.** This rule is essential to operate the program in accordance with Minnesota Statutes 18C.111, Subd. 4(b), which requires that an inspector certification of compliance is provided to an inspected person upon documenting, in writing, that the site or person is in full compliance with the provisions of applicable Minnesota Rules and Statutes. The rule is necessary to ensure the integrity of the certificate of compliance. It is

reasonable that in order to ensure that the certificate of compliance is a worthwhile and valuable asset for both the anhydrous ammonia facility and the MDA, the facility must be in full compliance with all Minnesota Statutes and Rules.

1514.0300 Certified Anhydrous Ammonia Inspector Certification.

1514.0300, Subpart 1. Certification.

The certified inspector requirements are necessary as they are designed to prepare the certified inspector for inspecting anhydrous ammonia facilities. By meeting all of the requirements prescribed in the rule, the applicant has demonstrated that they have the understanding of anhydrous ammonia systems and Minnesota Statutes chapters 18C and 18D and Minnesota Rules 1513. It is reasonable to issue a certification card to an inspector after they have passed the required training and exams and been certified by the MDA to conduct compliance inspections of anhydrous ammonia facilities. As stated above, this card is meant to identify that the carrier has been certified by the state of Minnesota to conduct compliance inspections of anhydrous ammonia facilities.

The expectations for inspector certification are defined in the rule. It is necessary and reasonable that an applicant who has not passed a required part of the inspector certification process will not become a certified inspector. All requirements listed in the rule must be met in order for an applicant to become certified. If an applicant fails to pass the required written or practical exams they may reapply to the commissioner and begin the inspector certification training process from the beginning.

1514.0300, Subpart 2. Qualifications.

A. Every year throughout both the nation and the state of Minnesota, anhydrous ammonia is the cause of serious injuries and fatalities. Certified inspectors have the very important responsibility to certify that facilities are in compliance with Minnesota Statutes chapters 18C and 18D and Minnesota Rules 1513. The experience requirement was recommended by industry leaders as being necessary during public discussions on the inspector certification program. It was brought up many times during multiple public discussions that experience working with anhydrous ammonia would be the most important qualification for an inspector. The experience requirement working with anhydrous ammonia in this rule is reasonable because there are many technical and specialized details that are learned best by working directly with anhydrous ammonia systems. Because of its specialized use in agriculture, the majority of time spent working directly with anhydrous ammonia covers only a few weeks a year. Due to this limited timeframe that experience with anhydrous ammonia can be gained, it is reasonable to have an experience requirement of 5 years.

There are a variety of ways in the agricultural chemical industry to gain experience working with anhydrous ammonia. It is necessary in the rule to specify the type of experience that is relevant to becoming an anhydrous ammonia inspector. It is reasonable to require direct, hands-on experience with anhydrous ammonia and anhydrous ammonia systems to become an inspector, as this experience provides the certified inspector with the hands on knowledge necessary to become an inspector. It is reasonable to require a variety of work experience as a way to ensure the applicant has experience working with more than one area of an anhydrous ammonia system.

At a minimum, an applicant for the anhydrous ammonia inspector certification program must have a high school diploma or a GED. A high school diploma or GED proves that the applicant has met basic reading and mathematics standards. Industry leaders have stated in public discussions on the topic of inspector certification that a high school diploma or GED was a reasonable requirement for inspector certification. The minimum requirement of a high school diploma is reasonable as it was recommended to the MDA during every public meeting held regarding this inspector certification program.

B. It is necessary and reasonable for an applicant to submit an application to the MDA providing a history of employment, as proof the applicant has the experience and education required by the rule. Providing employment and education history is a common requirement for most job applications.

1514.0300, Subpart 3. **Classroom Training.** Even with an extensive background working with anhydrous ammonia it is necessary for all applicants to go through training as well. While applicants will have experience working with anhydrous ammonia, they will not have experience conducting an inspection of facilities according to MDA standards. Therefore, it is reasonable for the MDA to require all applicants to attend classroom and practical training that will include the proper safety and handling of ammonia, and the requirements specified in MN Statutes chapters 18C and MN rule chapter 1513. These rules and statutes are the basis for the MDA inspection process. The classroom and practical training will teach applicants what to look for during an inspection, what constitutes a violation and how the violation should be corrected.

Is it necessary to outline the requirements of the classroom training so that applicants know what is required in order to become certified. It is reasonable for the classroom training to be long enough to accommodate all the required elements. Sixteen hours was stated by industry leaders in multiple public discussions as being enough time during which to cover the required elements of classroom training based on the qualifications of the applicants. The lectures and demonstrations will show applicants how the MDA conducts their inspections of anhydrous ammonia facilities and will identify correct and incorrect ways that anhydrous ammonia storage and equipment can be stored and handled. The course review is a necessary and reasonable requirement as it will serve to reiterate important points from the classroom training.

1514.0300, Subpart 4. **Written exam.** A written exam is necessary because exams are typically used as a standard to assess knowledge of a topic. Industry leaders have stated in public discussions on the topic of inspector certification that a written exam was a necessary tool to measure the knowledge of the inspector. The written exam will be crucial to establishing a baseline of knowledge that all certified anhydrous ammonia inspectors must possess to become certified. A written exam is a reasonable requirement as it will be taken after the classroom training, and will be a tool to judge the amount of information the applicant understands and can apply to inspection practices. The written exam will be taken after the applicant completes the classroom training and must be completed before the applicant moves on to the practical training and exam.

1514.0300, Subpart 5. **Practical training and skills test.** The practical training and skills test is necessary as a demonstration of knowledge by the applicant in order to complete the certified inspector training. Industry leaders have stated in public discussions on the topic that practical training and skills test would be one of the most significant aspects of certified inspector training and would provide valuable information about how anhydrous ammonia inspections are done. Industry members have also expressed that the ability to ask MDA anhydrous ammonia inspector's direct questions about the inspection process would be one of the most important parts of practical training. This rule is a reasonable requirement as the purpose of the skills test will be to demonstrate to an agent of the commissioner that the applicant understands what must be examined during an inspection. Because of the importance of the skills tested in the evaluation of the certified inspector it is reasonable to require the applicant to pass the skills test before becoming a certified inspector.

1514.0300 Subpart 6. **Training Partners.** This rule gives the MDA the ability to choose a partner to develop the classroom training, written exam and the practical training and skills test. This partnership would help the MDA work within budget and within staffing constraints. This rule is necessary as it will allow the MDA to partner with an institution that has more expertise in developing training and written exams. The classroom training, written exam and practical training and skills test will be a measure of the applicant's knowledge of the anhydrous ammonia inspection and Minnesota's anhydrous ammonia rules and policies. This rule is reasonable as it will allow the MDA to assess the knowledge of the inspector applicants within staff and budget limits. If the MDA offers the classroom training, written exam and practical exam and skills test through a partner approved by the commissioner, it is both necessary and reasonable that the commissioner should provide the list of approved partners to all interested parties. This list will be made available to all interested parties on the MDA's website.

1514.0300, Subpart 7. **Attempts to pass and time limits.** It is necessary to require a length of time in which the inspector certification requirements can be completed. The 18 month time period to complete the written exam and the practical training and skills test, will give applicants the opportunity to take each exam more than once, while not being long enough for the applicant to forget everything from the classroom and practical training. This rule is reasonable as industry leaders have stated in public discussions on the topic of inspector certification that a time period where the exams will be offered more than once is necessary. Starting in the spring, the 18 month time period will cover the winter season once and the spring season twice, giving three opportunities for the written exam and skills test to be offered.

It is necessary that an applicant should have to begin the inspector certification process from the beginning after failing the exams three times. Three opportunities to take and pass both the written exam and practical exam offered the applicant ample opportunities to pass both exams. The applicant has invested a great deal of time in taking both the classroom and practical training, by offering multiple chances to retake the test the MDA is acknowledging this commitment. Three opportunities to retest is consistent with the MDA's pesticide licensing program which offers applicants the opportunity to three retakes of their written exam within a one year time period. By failing the written exam three times, there is obviously some information that the applicant is missing or doesn't understand. Starting the inspector certification process from the beginning is reasonable as it would provide the applicant the

opportunity to learn areas of deficiency and determine if they are capable of becoming a certified inspector.

1514.0300, Subpart 8. **Reciprocal certification agreements.** This rule is necessary because it will allow those that have become certified anhydrous ammonia inspectors or equivalents in other jurisdictions or organizations to waive all or part of the examination and/or training for inspector certification in Minnesota. By completing training judged to be equivalent to the training and exams offered in Minnesota, the applicant has demonstrated that they have the knowledge necessary to be a certified anhydrous ammonia inspector. Only those who have taken training judged by the commissioner to be equivalent to the required training for certified anhydrous ammonia inspectors in the state of Minnesota will receive credit or have requirements waived. This rule does not require the commissioner to give credit or waive training to any inspector that has gone through any training by another jurisdiction or organization. The training must be judged by the commissioner to be equal in substance and quality to the training that Minnesota provides in their inspector certification program. This rule is reasonable because it will allow qualified inspectors from other states to become certified anhydrous ammonia inspectors as it relieves them of duplicative training obligations.

1514.0400 Recertification of Certified Anhydrous Ammonia Inspector Certification.

A. The inspector recertification requirement is necessary to update inspectors on all anhydrous ammonia storage and equipment rules, statutes and department inspection policies. Industry leaders have stated in public discussions on the topic of inspector certification that recertification should take place every two years and last no more than eight hours. Industry leaders felt that this was enough time to thoroughly review and update certified inspectors on inspection training requirements. Inspector recertification is a reasonable requirement because it encourages a better understanding of new technologies, MDA policies and offers a review of MN Statutes 18C and 18D and MN Rules 1513 which are the basis for the MDA inspections.

B. The expiration of the inspector's certification is a necessary rule. By not recertifying by the designated deadline, the certified inspector is not meeting the standards set forth in the rules and therefore is no longer qualified to be a certified inspector. A recertification requirement for inspectors is reasonable as it reflects the high standards of this anhydrous ammonia inspector certification program and the dangers of anhydrous ammonia. It is reasonable to require a due date for inspector recertification, to ensure that inspector recertification is completed. It is necessary to provide a deadline for certified anhydrous ammonia inspectors to complete their recertification in the rule. March 1st is a reasonable recertification date, as it marks the beginning of the inspection season. Setting the inspector recertification date of March 1st ensures that all inspector recertification will be completed before the inspection session begins.

1514.0500 Revocation of Certified Anhydrous Ammonia Inspector Certification.

1514.0500, Subpart 1. **Authority.** Minnesota Statutes chapters 18C and 18D provide the MDA the authority to respond to incidents, conduct inspections and provides the MDA with civil, administrative and criminal enforcement authority. This rule is necessary and reasonable because it gives the public knowledge of the MDA's statutory authority.

1514.0500, Subpart 2. **Return of certificate.** This rule is necessary because it will assist in preventing those who are no longer certified from attempting to conduct inspections of anhydrous ammonia storage and equipment. It is reasonable for the commissioner to require a person who is no longer certified to be an anhydrous ammonia inspector to return their original certification card because they will no longer be authorized by the commissioner to conduct inspections. It is necessary that the certification card of the formerly certified inspector be returned to the MDA to ensure that the card cannot be used by the formerly certified inspector to conduct anhydrous ammonia inspections. Ten business days is a reasonable amount of time to return the certificate to the MDA because it can be sent and received by the MDA within that time period.

1514.0500, Subpart 3. **Satisfaction of judgment.** This rule is necessary and reasonable because it provides evidence to the public and MDA of a certified inspector's fitness to perform anhydrous ammonia compliance inspections. This rule is reasonable as it provides the MDA some assurance that the certified inspector is following the law as it relates to a wide range of legal requirements (civil, administrative, criminal).

1514.0600 Requirements Relating to Notification, Inspection, and Issuance of Certificate of Compliance.

1514.0600, Subpart 1. **Notification.** This rule is necessary to provide assurance to facilities that the MDA acknowledges the efforts by facilities to become compliant when hiring a certified inspector. The rule is reasonable because such notice assures facilities that the MDA will not perform a routine anhydrous ammonia inspection within and up to a 60 day time frame. The rule requires notice to the MDA of the facilities which are scheduled for certified inspection so that the MDA can direct its routine facility inspection resources to other facilities. The 30 day pre-inspection hold is necessary to assure facilities that the MDA will not conduct routine inspections when a facility has scheduled an inspection by a certified inspector. The 30 day post-inspection hold on routine inspections is meant to provide incentive for facilities to repair non-compliance issues in a timely manner and in accordance with the MDA's recommended compliance schedule. The MDA routine inspection hold will only take place if the facility notifies the MDA that a compliance inspection is scheduled. The MDA retains their authority to inspect the facility in every other capacity except for routine inspections during the 60 day time period.

1514.0600, Subpart 2. Required Elements of Inspection.

A. This subpart is necessary to establish a required standard for every anhydrous ammonia inspection conducted by a certified inspector. At a minimum, the certified inspector must perform the tasks that are listed in this subpart to maintain their inspector certification. These standards are necessary to ensure uniformity in the inspection process between different certified inspectors. Requiring the certified inspectors to perform these tasks is reasonable because it provides the MDA with a standard to use when evaluating the certified inspectors performance in accordance with their classroom and practical training, Minnesota Rules 1513, and Minnesota Statutes chapters 18C and 18D.

The tasks listed in the rule are:

1. Record all non-compliance issues noted at time of inspection
2. Provide the facility with the MDA recommended compliance schedule
3. Issue Certificates of Compliance
4. Maintain records

B. It is necessary for the MDA to establish a timeframe for the inspection process. This ensures that inspections do not drag on for an unreasonable amount of time. The eight month timeframe is reasonable as it coordinates with the MDA's recommended compliance schedule provided to the certified inspector from the MDA.

1514.0600, Subpart 3. **Responsibilities of Inspected Facility.** This subpart is necessary to establish a required standard for every anhydrous ammonia inspected facility. This rule lists the required minimum responsibilities of all inspected facilities. All facilities must at least perform the tasks that are listed in this subpart to maintain their certificate of compliance. Listing the required responsibilities of the anhydrous ammonia facilities in the rule is reasonable because it provides the MDA, certified inspectors and facilities with a clear outline of what is expected of them to obtain the certificate of compliance.

- A. Document corrections of non-compliance issues that have been corrected.
- B. Submit certificate of compliance to the commissioner

Effective Date. The effective date is necessary as it will give the agency a time period to develop the classroom training courses, written exam, practical training and exam, and other required aspects of the program.