



July 22, 2024

SENT VIA EMAIL

Legislative Reference Library (sonars@lrl.leg.mn)

**Re: Proposed Amendment to Rule Governing Petroleum Tax
Refunds for Power Take-Off Units or Auxiliary Engines, Minnesota
Rules, Part 8125.1301; Revisor's ID Number R-04840.**

To Whom it May Concern:

In the [July 22, 2024 edition of the State Register](#), the Department of Revenue published a Notice of Intent to Adopt (*i.e.*, Dual Notice) with respect to proposed changes to Minn. Rules Part 8125.1301. Consistent with Minn. Stat. §§ 14.131 and 14.23, the Department is providing the Legislative Reference Library with the Statement of Need and Reasonableness associated with the rulemaking.

If you have questions or need additional information, please contact me via email (jim.jordan@state.mn.us) or phone (651-556-4080).

Sincerely,

Jim Jordan, Attorney
Minnesota Department of Revenue

Enclosures:
Exhibit 1 – Statement of Need and Reasonableness

Exhibit 1

MINNESOTA DEPARTMENT OF REVENUE

STATEMENT OF NEED AND REASONABLENESS

Rule Amendment to

Minnesota Rules, Part 8125.1301

Revisor ID: 04840

July 22, 2024

I. Introduction

Minnesota Rules, Part 8125.1301 (the “Rule”), addresses a specific kind of refund of state petroleum tax paid under *Minnesota Statutes*, Chapter 296A. Specifically, it addresses refunds of tax paid on gasoline or special fuel purchased and used in power take-off units (“PTOs”) or auxiliary engines.

First to some background about the refunds at issue. A PTO is attached to a motor vehicle, like a truck, and exists not to power the vehicle down the road, but to power a separate machine, like a concrete mixer or wood-chipper. The fuel tank powering the PTO is the same fuel tank that powers the vehicle. The fuel at issue is not used for a purpose that triggers the imposition of petroleum tax, *e.g.*, is not used in producing and generating power for propelling a motor vehicle used on the public highways of Minnesota. See *Minnesota Statutes*, section 296A.07, subdivision 1. Instead, the gasoline or special fuel at issue powers the PTO itself, and therefore the fuel is exempt from Chapter 296A petroleum tax if certain requirements are satisfied (*e.g.*, if certain records are maintained). If a consumer pays Minnesota petroleum tax on gasoline or special fuel used to power a PTO, submits a claim for refund, and the refund claim meets the requirements in statute and in the Rule, the petroleum tax paid is refunded to the consumer.

The statute allowing for these refunds was enacted in 1997 through [*Minnesota Laws, 1997 Regular Session, chapter 231, article 7, section 3*](#). This same session law required the Department of Revenue (“Department”) to adopt rules to administer the refunds, which the Department did in 1998. Because the Rule has not been updated since 1998, the Department is proposing changes to align the rule with current terminology and current industry and Department practices (“Rule Amendment”). The specific proposed changes that make up the Rule Amendment are detailed in section XIII.

II. Purpose of this Statement of Need and Reasonableness

This Statement of Need and Reasonableness (“SONAR”) has been prepared to establish the statutory authority for, need for, and reasonableness of the proposed rules. It is submitted pursuant to *Minnesota Statutes*, section 14.23, and *Minnesota Rules*, part 1400.2070.

III. Alternative Format

Upon request, this SONAR will be made available in an alternative format, such as large print, braille, or audio recording. To make a request, contact:

Jim Jordan, Attorney
Appeals, Legal Services, and Disclosure Division
Minnesota Department of Revenue
600 N. Robert Street
St. Paul, MN 55146-2220
Phone: (651) 556-4080
Fax: (651) 296-5304
jim.jordan@state.mn.us

IV. Statutory Authority

The Department has specific authority to promulgate rules related to Chapter 296A petroleum tax. *Minnesota Statutes*, section 296A.02, subdivision 3 reads: “The commissioner [of revenue] may adopt rules relating to administration and enforcement of laws regulating the sale,

distribution, and use of petroleum products and special fuel.”

This statutory authority was adopted and effective prior to January 1, 1996 and this rulemaking amends an existing rule. For these reasons, *Minnesota Statutes*, section 14.125, which requires agencies to publish a notice of intent to adopt rules or a notice of hearing within eighteen months of the effective date authorized or requiring rules to be adopted, does not apply. See *Minnesota Laws* 1995, chapter 233, article 2, section 58.

V. Request for Comments

On March 4, 2024, a Request for Comments was published in the *State Register*, and on the Department’s website. No comments were received during the subsequent 60-day comment period. (Note – The same Rule Amendment that accompanies the Notice of Intent to Adopt was also provided with the Request for Comments.)

VI. Regulatory Analysis

As required by *Minnesota Statutes*, section 14.131, the Department considered these eight factors:

“(1) a description of the classes of persons who probably will 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”

Described in the broadest terms, the class of persons affected by the Rule Amendment are those persons and entities that operate PTOs or auxiliary engines and follow the Rule to file refund claims. Subpart 4 of the Rule provides default, percentage-of-fuel-based refund rates for certain PTOs, and subpart 4’s descriptions of these listed PTOs also serve as a more specific description of many of the affected classes. These subpart 4 PTO descriptions tell us affected classes span a wide variety of industries and include operators of concrete pumping trucks, corn shellers, garbage trucks, asphalt distribution trucks, seeder trucks, dump trucks, and utility trucks.

The Department believes the Rule Amendment will not impose significant additional costs on the affected classes. The Department also believes that affected classes will benefit from the proposed changes because the updated rule will more clearly and accurately communicate refund requirements.

“(2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues”

The proposed changes are not expected to increase costs for the Department, or to any other state agency. There is no anticipated effect on state revenues.

“(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule”

The only way to make necessary and helpful updates and clarifications to existing rule text is to amend the rule. There are no less costly or less intrusive methods.

“(4) a 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”

As stated immediately above, the only way to make necessary and helpful updates and clarifications to existing rule text is to amend the rule. There are no alternative methods.

“(5) the 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 individuals”

As stated in response to factor (1) (see above), the Rule Amendment will not impose significant additional costs on affected parties.

“(6) the 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 individuals”

The Department has not identified any specific probable costs of not adopting the Rule Amendment. The consequence of not adopting the changes is that the purposes of the Rule Amendment, which are generally described in the Introduction, will not be achieved.

“(7) 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”

No federal regulations apply to the issues addressed in the Rule Amendment.

“(8) an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule... ‘Cumulative effect’ means the impact that results from incremental impact of the proposed rule in addition to other rules, regardless of what state or federal agency has adopted the other rules. Cumulative effects can result from individually minor but collectively significant rules adopted over a period of time.”

There are no significant and related state or federal rules regarding the issues addressed in the Rule Amendment. Therefore, the Rule Amendment will not have a cumulative effect.

VII. Performance-Based Standards

Minnesota Statutes, sections 14.002 and 14.131, require this SONAR to describe how the agency’s rulemaking process considered and implemented performance-based standards that emphasize superior achievement in meeting the agency’s regulatory objectives and maximum flexibility for the regulated party and agency. Given that the Rule Amendment will create a rule that more clearly and accurately communicates petroleum tax refund requirements, the Department believes this rulemaking complies with relevant performance-based standards.

VIII. Additional Notice

Minnesota Statutes, section 14.23, requires the Department to describe the additional notice it provided under *Minnesota Statutes*, section 14.22. This rulemaking's Additional Notice Plan was approved by the Office of Administrative Hearings in a January 25, 2024 letter from Administrative Law Judge Suzanne Todnem. Based on a recommendation from Judge Todnem in the same approval letter, the list of interested parties that receive notice of the Request for Comments, Notice of Intent to Adopt Rules, and any other documents published in the State Register ("Public Notice Documents") was expanded and includes all the following: 1) the "Petroleum Tax Updates" GovDelivery email list, which reaches everyone signed up for notices related to Minnesota's petroleum tax; 2) Fueling Minnesota (formerly the Minnesota Petroleum Marketers Association), which is the principal trade group for Minnesota retailers that sell gasoline and related businesses; 3) the Minnesota Chamber of Commerce – Tax and Fiscal Policy Division; 4) Minnesota Business Partnership – Economic and Fiscal Policy Director; 5) the Minnesota Society of Certified Public Accountants; 6) the Minnesota State Bar Association – Tax Section; 7) Concrete Paving Association of Minnesota; 8) Associated General Contractors; 9) Minnesota Trucking Association; 10) Agrigrowth; and 11) Solid Waste Association of North America – ND/MN Chapter.

The Additional Notice Plan also includes giving notice required by statute. Consistent with *Minnesota Statutes*, section 14.14, subdivision 1a, and as mentioned above, the Department will distribute the Public Notice Documents to those on the Department's rulemaking mailing list. The Department will also give notice to the Legislature as required by *Minnesota Statutes*, section 14.116.

The Public Notice Documents will also be posted on the Department's rulemaking webpage (<https://www.revenue.state.mn.us/minnesota-administrative-rules>).

Because refunds governed by this rule relate to fuel used in equipment (*i.e.*, PTOs and auxiliary engines) that are sometimes used in farming operations and to ensure compliance with *Minnesota Statutes*, section 14.111, the Department provided a copy of the proposed rule change to the Commissioner of Agriculture more than 30 days prior to the publication of the proposed rule in the State Register.

IX. Minnesota Management and Budget and Local Government Impact

Consistent with *Minnesota Statutes*, section 14.131, the Department consulted with Minnesota Management and Budget to "evaluate the fiscal impact and fiscal benefits of the proposed rule changes on units of local government." In its letter to the Department dated May 28, 2024, Minnesota Management and Budget writes:

"Proposed changes will not impact the timing, magnitude, or likelihood of cash flows for the state, local governments, or eligible taxpayers.

The removal of the annual filing process is immaterial since refunds already need to be submitted on a monthly basis under current practice. Other changes proposed in this submission are also technical in nature. For example, broadening "on-board computer" to "technology" will allow the rule to be interpreted and applied consistently as technological changes are implemented over time.

In summary, the proposed changes would not result in a fiscal impact for any state or local unit of government.”

X. Determination About Rules Requiring Local Implementation

Minnesota Statutes, section 14.128, requires the Department to determine whether a local government must adopt or amend an ordinance or other regulation to comply with rule changes. The Rule Amendment does not require any local government to adopt or amend an ordinance or regulation.

XI. Cost of Complying for Small Business or City

Minnesota Statutes, section 14.127, requires the Department to determine if the cost of complying with the Rule Amendment in its first year will exceed \$25,000 for any small business or small city. A “small business” is defined as a for-profit or non-profit business with fewer than 50 full-time employees. A “small city” is one with less than ten full-time employees.

As stated in the Regulatory Analysis factors (1) and (5) above, the proposed rule will not impose significant additional costs on affected parties.

XII. List of Witnesses

If these rules go to a public hearing, the Department does not anticipate calling witnesses. However, it is possible any such hearing could involve testimony from Department employees.

XIII. Description of the “Need” for and “Reasonableness” of the Proposed Rule Changes

Minnesota Statutes, Chapter 14, requires the Department to explain facts establishing the need for and reasonableness of the Rule Amendment. “Need” means a problem requires administrative attention. “Reasonableness” means there is a rational basis for the proposal. Below is a description of the need for and reasonableness of each proposed change.

8125.1301 REFUNDS FOR POWER TAKE-OFF UNITS OR AUXILIARY ENGINES

Subpart 2. Claim for refund

The current rule allows for refund claims to be made monthly or annually. The Department proposes changing the rule so it allows only monthly returns. While this is a significant textual change, it will have no practical effect. The reason – for more than a decade, only monthly returns have been possible due to limitations in the petroleum tax refund processing system. Specifically, the relevant software is not able to process a refund claim with more than one tax rate. Therefore, taxpayers are already submitting only monthly returns. This subpart is also amended to make a number of minor clarifications regarding monthly claim filings, including: 1) when measuring whether a claim is filed within one year from the fuel purchase date, the postmark date is the filing date; 2) eliminating the requirement that the sales ticket be an “original” or be accompanied by a “signed dealer affidavit” given technology now provides other verification tools; 3) clarifying that an amended refund claim must be filed for claim corrections; and 4) clarifying that only one refund claim per each month period is allowed.

Subpart 3. Records to be maintained

In this subpart, the Rule Amendment makes minor clarifications and minor terminology updates regarding what information must be on each sales ticket or invoice, and how some of that information must be printed or numbered. The Rule Amendment also proposes presenting the required information in a list to improve readability.

Subpart 5. Optional means of calculating refund; information needed for refund claim

The Department proposes updating this subpart's terminology in three ways. First, we propose replacing the outdated term "onboard computer" with the more general term "technology" so that taxpayers with the ability to accurately record the amount of fuel used to propel the PTO, regardless of the specific technology, meet the requirement. Second, we propose replacing "printouts" with "statements" so that digital and hard-copy printouts clearly meet the requirement. Third, we propose replacing "computer information" with "technology-generated information" so that taxpayers qualify based on the quality of the information, and not the specific technology that produced it.

XIV. Conclusion

Based on the preceding text, the proposed rule is both needed and reasonable.

July 22, 2024

Date



Paul Marquart, Commissioner
Department of Revenue