



Annual Rules Report

2018

Deputy Commissioner Andrea Vaubel, 651-201-6551
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November 15, 2018

Governor Mark Dayton

Sen. Bill Weber, Sen.bill.weber@senate.mn
Agriculture, Rural Development and Housing Policy Committee

Sen. Torrey Westrom, Sen.torrey.westrom@senate.mn
Agriculture, Rural Development, and Housing Policy Committee

Rep. Paul Anderson, Rep.Paul.Anderson@house.mn
Agriculture Policy and Finance Committees

Mr. Greg Hubinger, Director
Legislative Coordinating Commission, lcc@lcc.leg.mn

Mr. Ryan Inman, Revisor
Minnesota Revisor of Statutes, ryan.inman@revisor.mn.us

Subject: Annual Report on Obsolete, Unnecessary, or Duplicative Rules as Required by Minnesota Statutes, section 14.05, subdivision 5

Dear Governor Dayton, Senators, Representatives, Revisor Timmons, Director Hubinger:

Minnesota Statutes, section 14.05, subd. 5, directs the Minnesota Department of Agriculture (MDA) to report to you by December 1 of each year whether any of its rules are obsolete, unnecessary, or duplicative of other state or federal statutes or rules.

MDA has reviewed its rules and found that the following rules are or have become obsolete, unnecessary, or duplicative over the course of the last year. MDA's timetable for completing these rulemakings is by the end of 2019 through the processes outlined in Minnesota Statutes, sections 14.3895 and 14.47, subd. 6(b).

1. 1525.1470 subparts 1, 2 and 4 These rules pertain to the regulation of dairy industry. MDA proposes to repeal these rules because either the statutes related to these rules were repealed, or they are duplicative and not needed because the Federal Pastuerized Milk Ordinance (PMO) or USDA Rules on Milk for Manufacturing Purposes already cover it and Minnesota has adopted them.

Status of rules identified in the Minnesota Department of Agriculture's 2017 Annual Rules Reports.

1. 1525.0560-1525.1340, 1525.1521-2550, 1525.2620, 1525.2900-1525.2960, 1525.2980-1525.3030 These rules pertain to the regulation of dairy industry. MDA proposes to repeal these rules because either the statutes related to these rules were repealed, or they are duplicative and not needed because the Federal Pastuerized Milk Ordinance (PMO) or USDA Rules on Milk for Manufacturing Purposes already cover it and Minnesota has adopted them. The Department started the process of repealing these rules with the 60 day comment period ending on November 9, 2018. It is estimated that the rules will be repealed by the end of the year.

Status of rules identified in the Minnesota Department of Agriculture's 2016 Annual Rules Reports.

1. Chapter 1506. These rules contain procedures to compensate agricultural crop owners for crops that are damaged or destroyed by elk. MDA plans to remove all references to “Federal crop adjuster” and to remove the qualifier “county extension” from all references to “county extension agent.” MDA believes this is necessary because of federal changes that eliminated the federal crop adjusters and because there are fewer county extension agents. This has created an unintended barrier to compensating agricultural crop owners because the current process requires applicants to direct their claims through a federal crop adjuster or a county extension agent. Repealing these obsolete and unnecessary phrases will allow agricultural crop owners to make their claims using any MDA-approved agent. MDA has not started the process but plans to repeal these provisions in 2019 by using the process provided by Minnesota Statutes, section 14.3895.

2. 1500.0701. This part pertains to the acceptance of irrevocable letters of credit in lieu of a Wholesale Produce Dealer’s bond. MDA believes this part is unnecessary because as long as an applicant has the funds secured through means defined in Minnesota Statutes, chapter , the financial requirements of the statute for an applicant are satisfied. MDA treats irrevocable letters of credit as it does bonds for the purpose of its wholesale dealers produce program. MDA has not started the process but plans to repeal these provisions in 2019 by using the process provided by Minnesota Statutes, section 14.3895.

3. 1562.1700 Subp. 6. Pursuant to this subpart, the disbursement date for claims against a grain bond is 90 days from the date the commissioner publishes a public notice of a claim. This timeline conflicts with Minnesota Statutes, sections 223.17 and 232.22, which affords aggrieved parties 180 days from the breach of contract to file a claim with the commissioner, and injects an unnecessary measure of uncertainty in the bond claims process. Repeal of this section will allow for the statutes to be the only mention of a timeline for bond claims. MDA has not started the process but plans to repeal these provisions in 2019 by using the process provided by Minnesota Statutes, section 14.3895.

Status of rules identified in the Minnesota Department of Agriculture’s 2015 Annual Rules Reports.

1. 1505.3070, subpart 1 B. (2). This rule states that “[t]he area must be sloped to a sediment trap used only for the temporary collection of spilled or released pesticides. The sediment trap may not be greater than two feet deep or hold more than 109 U.S. gallons.” MDA plans to remove the section of the rule that states, “or hold more than 109 U.S. gallons” because the rule requirement is unnecessary. This specific amount rule requirement is arbitrary and not based on any industry standards, it is not based on any state or federal law, it is overly restrictive to industry, and does not provide the adequate flexibility required for secondary containment/sediment trap designs. This rule was repealed.

2. 1513.0140, subpart 1. Pursuant to this rule, “[e]ach system nameplate must be made of a noncorroding metal permanently attached to the system by continuous welding around its perimeter and located so as to be readily accessible for inspection.” MDA plans to remove the section of the rule that states: “by continuous welding around its perimeter” because the rule requirement is obsolete. The MDA does not and never has conducted inspections for nameplates based on how they are mounted. There are many anhydrous ammonia tanks where the nameplates are permanently attached by various means such as welding and rivets. This rule was repealed.

3. 1505.1100, subpart 3 D. This rule states: “Records must be submitted to the commissioner no later than December 1 of the calendar year in which they occur.” The MDA plans to remove subpart 3 D entirely as this language no longer matches statutory language. This rule was repealed.

4. **1505.0960.** This rule provides that “[i]f any applicant fails to achieve a passing score on any examination, he/she shall be eligible to retake the examination after 15 days from the date of notification of failure of the first examination. If any applicant fails to achieve a passing score upon retaking an examination, he/she shall be eligible to retake the examination after 30 days from the date of notification of examination failure. A failing applicant may retake an examination no more than three times in one year. Upon submission to the commissioner in writing of specific reasons within 30 days from the date of notification of failure of third retaken examination, an appeal of the score may be made.” MDA plans to remove the section of the rule that states: “after 15 days from the date of notification of failure of the first examination. If any applicant fails to achieve a passing score upon retaking an examination, he/she shall be eligible to retake the examination after 30 days from the date of notification of examination failure.” This rule requirement slows down the license process and places limits on a person’s ability to go to work. The MDA currently issues waivers for waiting periods, but this adds unnecessary additional work for the agency. By removing this requirement an unnecessary burden will be removed from both the MDA and pesticide applicators. This rule was repealed.

5. **1545.2050 - 1545.3170.** These rules regulate the processing of fish for human consumption. The MDA proposes to repeal these rules as duplicative and unnecessary. Fish processing is subject to the Minnesota Food Code, Minn. R. ch. 4626, as well as to the federal food and drugs rules and fishery products rules. These federal rules have been incorporated into Minnesota law by *Minnesota Statutes*, section 31.101. Each of the rules in chapter 1545 proposed to be repealed is substantively addressed by the Minnesota Food Code, the federal rules, or Minnesota Statutes, as illustrated in the attached table. MDA believes that repealing the proposed rules will eliminate confusion and streamline the regulatory process for both the regulated parties and the agency, without any detriment to food safety. MDA has not started this process but plans to repeal these rules in 2019 using the process set forth in Minnesota Statutes, section 14.3895.

6. **1550.1255-1550.1530.** These rules pertain to bakeries. The MDA proposes to repeal these rules as duplicative and unnecessary. Bakeries are subject to the Minnesota Food Code, Minn. R. ch. 4626, as well as to the federal food and drugs rules. These federal rules have been incorporated into Minnesota law by Minnesota Statutes, section 31.101. Each of the bakery rules in chapter 1550 proposed to be repealed is substantively addressed by the Minnesota Food Code, the federal rules, or a provision of Minnesota Statutes, as illustrated in the attached table. MDA believes that repealing the proposed rules will eliminate confusion and streamline the regulatory process for both the regulated parties and the agency, without any detriment to food safety. MDA has not started the process but plans to repeal these rules in 2019 by using the process set forth in Minnesota Statutes, section 14.3895.

7. **1550.1540-1550.1700.** These rules contain requirements for the manufacture of nonalcoholic beverages, beer, and other malt beverages. MDA believes these rules are duplicative and unnecessary. Beverage manufacturers are subject to the Minnesota Food Code, Minn. R. ch. 4626, as well as to the federal food and drugs rules. These federal rules have been incorporated into Minnesota law by Minnesota Statutes, section 31.101. Each of the beverage rules in chapter 1550 proposed to be repealed is substantively addressed by the Minnesota Food Code, the federal rules, or Minnesota Statutes, as illustrated in the attached table. MDA believes that repealing the proposed rules will eliminate confusion and streamline the regulatory process for both the regulated parties and the agency, without any detriment to food safety. MDA has not started the process but plans to repeal these rules in 2019 using the process contained in Minnesota Statutes, section 14.3895.

Status of rules identified in the Minnesota Department of Agriculture’s 2013 and 2014 Annual Rules Reports.

The obsolete rules identified in MDA's 2013 and 2014 Annual Rules Reports are in the process of being repealed. These rules were to be repealed by legislation that did not pass and become law. Repeal of 1562.0100 Subpart 2C, 1562.0300, 1510.0340 -1510.0360, and 1510.0161 is underway. MDA will move forward with the repeal of these rules using the process set forth in Minn. Stat. 14.3895.

If you have any questions regarding this report, please contact Doug Spanier, MDA Administrative Rules Coordinator (651-201-6166 or Douglas.Spanier@state.mn.us).

The cost of preparing this report.

In compliance with Minnesota Statutes 3.197, the cost of preparing this report is as follows: Staff cost: \$100. This includes time for review of rules, legal research and the time to complete the report.

Sincerely,

Andrea Vaubel
Deputy Commissioner