

020539

## Minnesota Department of Agriculture Rule Review Report

July 19, 2001

### **1500 Wholesale Produce Dealers**

The rules provide additional definitions and guidelines not contained in the statute for the applicability and enforcement of the wholesale produce dealers law, such as the options available to a person with a claim against a wholesale produce dealer (i.e. wholesale produce dealer's bond, wholesale produce dealers trust, arbitration, mediation). The rules are current and need not be changed.

### **1502 Farmers Lender Mediation**

The department adopted the rules for the Farmer-Lender Mediation Program at the University of Minnesota because the University has no rule making authority.

The Farmer-Lender Mediation Program does not have any rules that would be recommended for repeal. This chapter is the working rules for the Farmer-Lender Mediation Program. The rules as written are accurate to the implementation of the program. They are being enforced in the administration of the program. The rules as written provide interpretation, clarity and the information necessary for quality continuity of the statewide Farmer-Lender Mediation Program. At this time, there is no need to change any of the rules.

### **1505 Pest and Disease Control**

This chapter addresses a number of individual programs and rules that relate to a variety of agricultural programs. The rule is necessary to provide requirements for municipalities to employ and train tree inspectors and establish a municipal shade tree disease control program; establish procedures for quarantines to protect Minnesota potatoes; protect the state from the injurious effects of noxious weeds on public health, the environment, public roads, crops, livestock and other property and protect consumers from the fraudulent sale of nonviable nursery stock and specify the requirements for wholesalers and retailers; clearly define the procedures for the proper licensure of pesticide applicators; specify the treatment of dunnage to restrict and eliminate invasive plant pests; to insure protection of ground and surface water from fertilizer/pesticide contamination from missing/malfunctioning/inoperable antipollution equipment or a lack of equipment maintenance in chemigation systems; and protect citizens, employees and the environment from the potential damage caused by improper storage of bulk pesticides and prevent off-site releases to save the state and industry from liability and cleanup costs.

Sections of this chapter dealing with shade trees, noxious weeds are currently being reviewed for possible amendments.

### **1506 Damage by Elk Compensation**

The rules provide additional definitions and guidelines not contained in the statute to determine who is eligible to make a claim and the verification needed to substantiate a claim. This rule

spells out the claims procedure for producers that have crops damaged by elk. It is current and does not need amending.

### **1508 Agriculture Liming Law**

These rules ensure that ag liming materials meet the claimed nutrient value content and are effective and suitable for agricultural purposes. It also ensures that ag lime is stored, handled, distributed and used in a safe and appropriate manner.

### **1509 Waste Pesticide Collection**

Waste Pesticide Collection Rules are necessary to implement the waste pesticide collection program. The collection of waste pesticide protects human health and eliminates the possibility of the movement of waste pesticides into the environment.

### **1510 Seed, Fertilizers, Feeds**

1510.0011 – 1510.0360 Agricultural Seeds

These parts are necessary for consumer protection and fair competition. They provide a predictable business climate for seed businesses and the seed industry as a whole. Labeling requirements protect consumers. Currently, an advisory group is meeting to discuss and advise the department on the future direction of the seed program, and statutory and rule modifications that may be necessary.

1510.0370 – 1510.1090 Commercial Fertilizers

Uniform regulation and retail of fertilizer nutrients ensures safe storage and handling of fertilizers in the state to protect citizens and the environment and allows for the proper application of these products for economic and environmental benefit.

1510.1930 - 1510.2220 Commercial Feeds

These parts are necessary to provide a clear understanding of the intent of the Minnesota Commercial Feed Law to the regulated community and to provide a consistent basis for enforcement of the Minnesota Commercial Feed Law which has a direct impact on human and animal food/feed safety.

### **1511 Grain Standards Testing**

These rules provide the specific tolerances acceptable for dockage, moisture, test-weight and protein machines used in the grain trade to establish characteristics which affect the market value of grain. This ability to 'check' the machines and use of them allows producers and others to ensure that where there are questions about the operator or the machine's accuracy the department can resolve the issue.

### **1512 Soil Testing Laboratories; Agricultural Chemical Response**

This chapter is necessary to provide specific operating procedures for claims made to the Agricultural Chemical Compensation Board under the Agricultural Chemical Response and Reimbursement Account (ACRRA) in support of Minnesota Statutes 18E.

The rule chapter will come under review in the next two years due to changes made to Minnesota Statutes 18E over the last two legislative sessions.

### **1513 Anhydrous Ammonia**

This chapter is adopted to regulate the design, construction, repair, alteration, location, installation and operation of agricultural anhydrous ammonia systems with products used or intended for use as a fertilizer. The rule is necessary because anhydrous ammonia is an extremely hazardous substance, and if not handled properly the consequences can be severe.

### **1515 Livestock**

Parts 1515.0100 –1515.2900 provide additional definitions and guidelines not contained in the statute for the applicability and enforcement of the statute, including more information on what criteria is to be used to determine if a person is eligible for a license. Minor updating will be done to match current statutory requirements.

Parts 1515.3000-1515.3700 administer MS, section 3.737. These parts need to be updated to reflect current statutory language (the rule refers to the damage being done by an animal classified as an "endangered species " whereas the statute specifically states "gray wolf") including the expansion of the definition of livestock. There are references in the rule to the maximum amount a producer can claim per animal, that amount has been changed in the statute to "fair market value".

### **1520 Poultry and Eggs**

The federal government primarily regulates poultry and eggs, but Chapter 1520 is necessary because it addresses requirements for hatcheries, plant sanitation and retail labeling identification requirements of eggs and affiliation with the National Poultry Improvement Plan which are not included in the federal requirements.

### **1525 Dairy Industry; 1530 Milk, Milk Products and Standards; and 1535 Cheese and Cheese Products**

These chapters are in the process of a major revision. Many parts of all three chapters have been superseded by federal regulations and have been or are in the process of being repealed. The remaining parts have been updated to reflect current statutes and industry practices. Most of Chapter 1535 was recently repealed and the remaining sections were recodified into Chapter 1525. The same is being done for Chapter 1530. The remaining parts are necessary because no federal standards exist covering certain products or processes for the production of milk and milk products.

### **1540 Meat Inspection**

The federal government primarily regulates meat inspection, however, Minnesota does have the State Meat Inspection Program. It is necessary to keep the meat inspection rules to address issues unique to the state program. The rules are being reviewed to repeal conflict or duplication of federal rules and update the rules to current industry processing standards.

### **1545 Meat, Fish and Poultry Industry**

A review of this chapter related to meat, fish and seafood and poultry facilities, standards of identity, labeling and licensing indicated that many of these rules are out-of-date and can be repealed. In addition, duplication occurs with the Code of Federal Regulations adopted by reference in statute. A comparison of these rules and the appropriate statute is being conducted to identify those sections that can be repealed and then any remaining sections could be rolled into Chapter 1550, Food; General Rules.

### **1550 Food; General Rules**

A review of this chapter on food establishments, food products, food labeling and enforcement of these provisions shows that many of the parts are in conflict with or equivalent to federal regulations or the federal Food, Drug and Cosmetic Act, adopted in statute, and will be repealed. Additional sections refer to requirements about truth in labeling, kosher products, open-dating of products, bulk foods, salvaged and reconditioned food and other issues for which there is no federal equivalent. These parts must be retained. Comparisons with federal rules will be made for Chapters 1545 and 1555. Rules that duplicate or conflict with federal requirements will be repealed and the remaining parts will be recodified into Chapter 1550.

### **1552 Agricultural Development Grants**

This chapter should remain in effect. The rule provides the criteria and procedures necessary for the administration of the grants so that the Commissioner can encourage and promote the production and marketing of Minnesota agricultural products by the means described in MN Statute, section 17.101 subd. 1. This statute also states "The commissioner shall make permanent rules for the administration of these grants and contracts." These grant rules are not only used to administer the Agricultural Development Grants, but also the Value-Added Agricultural Product Processing and Marketing grant program. The department has had several successful projects with commodity organizations and we continue to assist Minnesota agricultural businesses in the processing and marketing of their products.

### **1555 Food Definitions and Standards**

Over the past several years, the federal government adopted standards for most food products, and the department repealed large sections of this chapter replaced by the federal standards. Chapter 1555 will be reviewed again to determine which parts can be repealed because of additional federal standards (i.e., requirements for treated seeds, vinegars, beverages, organic food requirements and grading of apples and potatoes). The remaining sections will be recodified into Chapter 1550.

#### **1555.6720 -1555.6950 Seed Potato**

The Seed Potato rules provide standards for inspection; certification, production and marketing of certified seed potatoes. The rules provide the specific disease tolerances, and field inspection and winter-test requirements to ensure a viable seed potato industry in Minnesota. There are no federal standards or requirements in this field. Without the tolerances and inspection requirements for primary foundation, prenuclear and nuclear certified seed potato production and the certification program, the seed potato industry in Minnesota would not be

able to provide certified seed stock to Minnesota growers or export certified stock to domestic and foreign growers.

### **1556 Minnesota Grown Labeling Statements**

1556.0100 to 1556.0120 Minnesota Grown Labeling Statement

These parts are necessary because they contain definitions for products eligible to use the Minnesota Grown logo. The section is relevant since the number of farmers and processors licensed to use the logo is increasing each year. Over 620 licenses have been issued this year. No changes are recommended at this time.

1556.0140 Organic Product Labeling Statement; 1556.0200-1556.0227 Organic Certification Program.

These parts should remain in effect until the federal organic rule is fully implemented on October 21, 2002. At that time, the federal process for approving certification organizations and certification procedures will supersede the state rule. MDA will revise the state rule adopting the federal process and authorizing the state to implement those organic activities allowed the state under the federal rule. Until that time, this rule provides the framework for verification/certification that an organic product was produced in compliance with state standards.

### **1558 Genetically Engineered Organisms**

This chapter should remain in effect. The rules define the categories of genetically engineered organism release permits and exemptions, provide the criteria for each permit, describes the considerations in determining whether permits should be issued, and describes the procedures and application requirements and conditions. The state receives and reviews approximately 60 applications for the release of genetically engineered organisms each year. The rule is essential to maintaining the department's authority to enforce the statute and the department's status as an agency with a significant environmental permit under MN Statutes, section 116C.94 subd. 2 (EQB - GEOs); and rule 4420.0075 subp. 4 (EQB GEO rule).

### **1560 Miscellaneous**

1560.0100-1560.3200 Family Farm Security

There were over 400 applications approved and closed from 1977 through 1985. About 40 files remain open. No new applications to the program have been permitted by the Legislature since 1986. Consequently, the following sections of the Rule may be repealed: 1560.2000 Eligibility, 1560.2100 Preliminary Approval; Notification and Reconsideration; and 1560.2200 Final Approval. The balance of the rule pertains to the servicing of loans that are still active in the program and must be retained until the last loan has matured and the state repaid. This is projected to occur in calendar year 2006.

1560.7700-1560.8800 Warehouses Other Than Grain or Cold Storage

Several parts of this rule are obsolete including the definition of household goods, floor load determination, and licensing period requirements. However, these rules were adopted several years ago and the department did not have statutory authority to do so. Therefore, the department does not have the statutory authority to amend these rules. The department has

attempted to get authority to amend these rules, but this authority has not passed the legislature.

### **1562 Buying and Storing of Grain**

This chapter supports MS Chapters 223, 232 and 236. The rule is current and reflects the way we currently enforce these statutes. Except for specific changes made to increase fees and to delete redundant language, no wholesale review of this rule has been done since it was written in 1987, but the department has limited authority to amend these rules. The department has attempted to broaden authority to amend these rules, but this authority has not passed the legislature. The grain storage bond amounts and grain bank bond amounts are set in this rule (grain buyer bond amounts are set by statute). The rule should be retained.

### **1570 Commodity Councils; Promotion Councils**

This chapter is necessary to provide for the organization and meetings of commodity councils, to provide general polling procedures for elections and referendums and to provide for the administration of promotional orders. The rule meets these objectives and is needed to continue the operation of the various commodity councils. No changes are recommended at this time

### **1572 Agricultural Contracts**

Chapter 1572 should remain in effect because the chapter creates protections for producers when they contract their services or commodities. Such protections are needed to compensate for the unbalance of power when producers contract with large businesses. The rules also create an avenue for dispute resolution in the event of a disagreement between the parties to a contract. The dispute resolution process is quicker and cheaper than going to court, which is a benefit to many producers.

### **Chapter 4626 Food Code; Food Managers**

Chapter 4626 is a joint rule with the Department of Health that deals with the regulation of retail food stores and food service establishments and certification of food managers. It is based on the 1995 U.S. Public Health Service, FDA Food Code. When the 2001 FDA Food Code is released in late summer or early fall 2001, the Department will convene a group of stakeholders (MDA, MDH, local health agencies, retail food industry, restaurant industry and academia) to review Chapter 4626 for updating.