

STATE OF MINNESOTA
Department of Agriculture

In the Matter of the Proposed Rules of the
Department of Agriculture Governing Testing
of Equipment and Equipment Operators
Involved in Determining the Quality and
Condition of Grain Received for
Purchase or Storage

Minnesota Rules 11511.0100 - 1511.0170

RECEIVED
DEC 06 1989
PLANNING DIVISION

STATEMENT OF NEED AND REASONABLENESS

I. General Need and Authority for Rules

The Minnesota Department of Agriculture is required by Minnesota Statutes, section 17B.041, subd. 1, to make rules to implement a program governing the regulating of test equipment and test equipment operators involved in determining the quality and condition of grain received for purchase or storage.

The proposed rules define the type of equipment that must be tested, the acceptable tolerance for each type of equipment, the designation by management of a "chief equipment operator" and establish the procedures for conducting the testing of equipment and equipment operators.

It is necessary and reasonable to adopt the proposed rules so that:

1. Persons performing grain quality determinations are provided with information necessary to comply with the Grain Standards Testing program and,
2. Sellers and depositors of grain have access to information about their concerns as to the accuracy of test equipment used to make grain quality determinations.

II. Need and Reasonableness of Each Rule Part

1511.0100 Definitions. The definitions are necessary to assure that the rule is clearly understood and consistently applied.

1511.0110 Established Tolerances

This part establishes tolerances for each type of equipment used to determine grain quality. It is necessary and reasonable to establish tolerances in that there must be parameters for determining the acceptability or rejection of equipment. These tolerances are reasonable and achievable when the equipment is functioning properly.

1511.0120 Testing Equipment List Provided to the Department

This part requires each person or firm to identify each piece of equipment to include the Brand, model number and serial number of each unit. It is necessary and reasonable to have this information so that each piece of equipment is identified for the purpose of determining the capability of giving acceptable results.

1511.0130 Testing Grain Equipment

This part defines persons or firms that are required to have their equipment tested, the type of equipment to be tested, how the standard test sample is to be prepared and dispersed, who should perform the analysis, how the results must be recorded and establishes the time period for returning test results to the department. It is necessary and reasonable to establish procedures so that all persons or firms that are required to have their equipment tested for accuracy are informed as to what test equipment needs to be tested, and how and where the results of the standard test samples must be recorded and forwarded.

1511.0140 Retesting of Equipment

This part summarizes when and in what manner equipment must be retested. It is necessary and reasonable to retest equipment when the results from the first set of standard test samples are not within established tolerances to verify that the equipment being tested is not functioning accurately before costly on-site review is performed.

1511.050 On-Site Reviews of Test Equipment and Equipment Operators

This part summarizes the procedures and conditions for performing on-site reviews of test equipment and test equipment operators. It is necessary and reasonable to establish guidelines for conducting on-site reviews in order to determine the cause of inaccurate test results or test results not being returned to the department. Inaccurate results can be caused by operating electronic test equipment in an uncontrolled environment or by improper procedures used on the part of the test equipment operator. These conditions can only be determined by on-site reviews of the test equipment operators' procedures when they are operating the test equipment. It also provides a seller or purchaser of grain the opportunity to request the department to perform an on-site review of test equipment and/or the test equipment operator when they feel that they are not receiving full value for the grain they are marketing or storing when test results are not within expected ranges.

1511.0160 Tagging of Test Equipment

This part addresses the use of reject or condemned tags applied by employees of the department and establishes the conditions under which a reject tag may be removed. The procedure for tagging equipment is necessary to assure that test equipment that is not capable of producing results within the established tolerance is not used to make grain quality determinations as it could have a reflection on the prices paid to persons selling their grain when discounts are applied. The procedure is reasonable because it establishes conditions under which test equipment can be placed back

in service after it has been repaired and proven to be capable of producing accurate results.

1511.0170 Posting Notice

This part is included in M.S. 17B and is incorporated into the rules solely for the purpose of making it conveniently available to persons that are required to post this notice at their facility.

III. Impact of the Proposed Rules on Small Businesses

Most of the firms or persons affected by these proposed rules would be defined as small businesses under M.S. Chapter 14.115 as entities that employ fewer than 50 full-time employees. Although a few may be considered as part of a larger entity, each individual facility must stand on its own merits for compliance with these proposed rules.

In recognizing the statues upon which the proposed rules are based the agency has considered the impact that the proposed rules will have on small businesses as follows:

A. The Establishment of Less Stringent Compliance or Reporting Requirements

The proposed rules do not impose any additional compliance or reporting requirements other than what is required by M.S. 17B. The proposed rules are for the purpose of establishing procedures as to when and how the reporting requirements are to be recorded and filed on forms supplied by the department.

Less stringent requirements could cause individuals to suffer monetary losses if inaccurate test results are used to apply discounts to producers' grain that is delivered for purchase or storage.

B. The Establishment of Less Stringent Schedules or Deadlines for Compliance or Reporting Requirements

The proposed rules do establish deadlines for compliance and reporting requirements. The five day period for returning results are necessary for two reasons:

1. A delay in performing the required test on standard samples can cause erratic test results if the standard samples are not handled or stored in a proper manner.

2. Equipment that is not performing with acceptable tolerances should not be allowed to remain in service as it may cause individuals to receive a lower price for their grain when discounts are applied. Most of the discounts that apply to the price of grain are based on test results performed at the receiving facility.

C. The Consolidation or Simplification of Compliance or Reporting Requirements

The agency has consolidated and simplified compliance and reporting require-

ments in that malfunctioning equipment can be placed back into service by an authorized service representative immediately after repairs and testing have been completed. The forms for reporting test results are prepared by the department and the chief equipment operator is only required to record the results on the form and return it to the department.

D. The Establishment of Performance Standards for Small Business to Replace Design or Operational Standards Required in the Rule

The proposed rules do not establish performance standards or require replacement design or operational standards other than establishing acceptable tolerances for equipment. Several individuals or firms have requested the agency to assist or advise them on recommended placement of test equipment or environmental conditions that are best suited for maintaining optimum efficiency and operation of electronic apparatuses. These recommendations are not included in the proposed rules as it could cause a hardship for small business due to the added expenditure of complying with design or conditions under which the test equipment is operated.

E. The Exemption of Small Businesses From Any or All Requirements of the Rule

The proposed rules do not impose any additional requirements on persons or firms beyond what is stipulated in the law. Any exemption from the rule may be contrary to statutes. Further, any exemption to the rule would allow malfunctioning test equipment to remain in operation even if it is not capable of producing accurate results. Accurate test results are essential and necessary in determining the true quality of grain being sold or stored as these test results are directly related to the discounts that are applied in determining final monetary value.

IV. Conclusion

The department believes that these proposed rules are necessary and reasonable to effectively administer the Grain Standards Testing provision contained in M.S. 17B.

These proposed rules are intended to provide protection and fairness for all parties that are involved in the marketing or storage of grain.