

MINNESOTA DEPARTMENT OF AGRICULTURE
Agricultural Marketing Services Division

STATEMENT OF NEED AND REASONABLENESS

Proposed Amendments to Rules Governing Promotion Councils; *Minnesota Rules*, 1570.0100; 1570.0200, subps. 1, 3, 11, and repeal of subp. 12; 1570.0500, subps. 4, 5 and 9; 1570.0600, subp. 3; 1570.0700, subp. 1; 1570.0800, subp. 1, 2, 4, 5 and 7; and 1570.0900, subps. 2-6.

I. INTRODUCTION:

The subject of this rulemaking is the proposed adoption of amendments to the rules governing commodity councils and check-offs. Commodity councils are statutorily prescribed quasi-governmental entities which have administrative agreements with the department for oversight of their elections, review of their contracts, and auditing of their finances. When producers of certain commodities sell their commodity to a first purchaser, a percentage of the sale is "checked off" and sent to the commodity council for research and promotion. For certain commodities, the check off fee is refundable back to the producer, if the producer requests it of the commodity council. The purpose of the amendment is to clarify commodity council procedures and requirements. The statutory authority to adopt this rule is M.S. 17.58, subd 4. This statement was made available for public review on October 8, 2009.

II. DESCRIPTION OF CLASSES OF PEOPLE AFFECTED BY THE RULES.

The classes of people affected by the proposed rules are commodity councils, producers who are eligible to vote in council elections, and first purchasers of agricultural commodities subject to check-off. The classes of people who will bear the cost of the proposed rules are commodity councils and first purchasers of agricultural commodities subject to check-off. The classes of people who will benefit from the proposed rules are commodity councils and producers subject to check-off fees.

III. PROBABLE COST TO THE AGENCY AND EFFECT ON REVENUE.

There will be no costs to the agency or to other agencies.

IV. DETERMINATION OF A LESS COSTLY OR LESS INTRUSIVE METHOD.

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

V. DESCRIPTION OF ALTERNATIVE METHODS.

The department considered no alternative methods.

VI. PROBABLE COST OF COMPLYING.

The probable cost of complying with the proposed rule by the commodity councils will be the added cost of mailing election ballots to an increased number of producers resulting from a more accurate list of qualified producers. First purchasers of agricultural commodities subject to check-off may incur additional costs for providing names and addresses of producers who are subject to the check-off to the commodity councils. In both cases, the added cost is minimal.

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

In accordance with M.S. 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 because the additional costs are added mailing costs and the cost of compiling a list, none of which will rise to the level of \$25,000.

VII. PROBABLE COSTS OR CONSEQUENCES OF NOT ADOPTING THE RULE.

The probable costs or consequences of not adopting the proposed rule for affected regulated industry, governmental units or individuals are continued use of outdated lists by the commodity councils, limited participation by producers in elections or referendums, and delays in the producers receiving their check-off refunds.

VIII. DIFFERENCES BETWEEN FEDERAL AND STATE REGULATIONS.

There are no applicable federal rules.

IX. PERFORMANCE BASED REGULATORY SYSTEMS.

In developing the rules, the department considered and implemented the legislative policy supporting performance-based regulatory systems by balancing the goals of assuring proper oversight of council activities by the department and more accurate and openness of council elections/referendums with the added costs to the councils and first purchasers. Some of the rule changes were due to the results of the department's participation in a week-long "LEAN" program as it pertains to the commodity check-off refund process. Enterprise Lean is a coordinated state government initiative for improving the organizational performance and results in Minnesota's state government agencies.

X. EFFORTS TO PROVIDE NOTICE TO PERSONS TO BE AFFECTED BY THE RULE.

The rules and notice of intent to adopt these rules without a public hearing will be sent to all the commodity councils affected by the rule changes, as well as to the Minnesota Grain and Feed Association, an elevator and grain trade association. Two meetings with these groups were conducted to get their input into the proposed changes, as well.

XI. EFFECT ON LOCAL GOVERNMENT ORDINANCES

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 none of the changes involve local government.

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 Carol Milligan at Minnesota Department of Agriculture, 625 Robert St. N., St. Paul, MN 55155-2538, 651-201-6606, and fax: 651-201-6118. TDD users may call the Department of Agriculture at 800-627-3529.

NEED FOR AND REASONABLENESS FOR THE PROPOSED RULE:

Throughout the entire chapter when the language states “referendum and election,” the word “referendum” is being stricken. This rule change is necessary as it clears up a redundancy in the rules. The change is reasonable as a referendum and an election are already defined in the rules as being the same thing.

1570.0100

This rule change is necessary and reasonable because it is simply a technical word change to better explain the role of the department. It does not change any authority the department has.

1570.0200, subp. 4.

This rule change is necessary and reasonable because it explains to all involved which agency is the regulating agency.

1570.0200, subp. 12.

The repeal of this rule is necessary as it refers to a process that is being eliminated as part of these amendments. The repeal is reasonable as the process it refers to created multiple mailings, added paperwork, and longer time to get refunds processed. It is being replaced with a procedure that gets the information directly from the first purchaser rather than the producer, which means more accurate lists of producers for the councils, and less time and paperwork in the processing refunds by the department and councils.

1570.0500, subp. 4(C)

The repeal of this rule is necessary as the department does not have the expertise in this area to do the work, and it will be more costly to the councils to have the department perform this function. The repeal is reasonable as the councils are in a better position to hire an attorney and file the paperwork directly with the federal agencies than have the department do the work.

1570.0500, subp. 4 (D)

The repeal of this rule is necessary and reasonable as it eliminates language that already exists in statute.

1570.0500, subp. 9

This rule change is necessary as it allows for smaller councils, who gross less money and are therefore less able to afford extensive audits, to conduct audits that are less costly. It is reasonable as it still requires the smaller councils to report the information the department needs to fulfill their oversight responsibilities, and maintain sound accounting practices and fiscal management.

1570.0600, subp. 3

1570.0800, subp. 5 (D)

These rule changes are necessary and reasonable as they simply allow for new forms of technology to be used in conducting meetings and corresponding with producers.

1570.0700, subp. 1

This rule change is necessary and reasonable to clarify how public notice will be given. The department wants to ensure that the information is disseminated as widely as possible to as many people as possible.

1570.0800, subp. 2 (A)

This rule change is necessary as it clears up an issue as to who is eligible to vote in an election. The rule change is reasonable as it requires that in order to be eligible to vote that you file a Schedule F, which is a tax requirement if you have agricultural income. This change was asked for by the advisory committee during one of the early meetings to discuss changes to the rules.

1570.0800, subp. 2 (C)

This rule change is necessary to allow absentee voting for elections. Previous elections resulted in low voter turn out, and, as a result, many producers requested the ability to absentee vote. It is reasonable, as the absentee voting process still will maintain the accuracy and integrity of the elections but allow for producers to vote without having to travel.

1570.0800, subp. 4 (A)9

The repeal of this rule is necessary now that absentee voting is allowed, because tabulating the votes at the polling place will not result in a final number and is therefore not needed. It is reasonable because it still maintains the integrity of the election process and assures accurate counting of ballots.

1570.0800, subp. 5 (A)

This rule change is necessary because producers complained in the past that they were unaware that an election was taking place. In addition, with the new use of absentee voting, the timeframe for advertising the election needs to be lengthened. This is reasonable as it will result in more awareness of the election by producers, and allows the department enough time to conduct absentee voting. It lengthens and clarifies the amount of time required for advertising.

1570.0900, subp. 3

This rule change is necessary because the councils currently are using eligible voter lists that are outdated, which results in difficulty in conducting elections. Also, the check off refund process is currently cumbersome and time-consuming, because the councils must rely on the information coming from individual producers. The rule change is reasonable because the first purchaser has this information already, it will speed up the refund process and make it more efficient and accurate, and it will provide to the councils a more accurate list for election purposes than obtaining the information from individual producers.

1570.0900, subp. 4

These rule changes are necessary because the department, due to current rule requirements, is unable to meet its statutory timelines for returning refunds to producers. The refund process required multiple mailings between producers, the department and the councils, resulting in lengthy delays and opportunities for information to get lost. The rule changes are reasonable as it makes the refund process more accurate and efficient with less bureaucracy, resulting in quicker, more accurate refunds. The department hired

an outside consultant and conducted a LEAN audit of the refund process, outlining each step of the process with a goal towards efficiency. Some of these changes are a result of that process. The department and the councils will also be sharing a computer database, which, by adding the rule change in 1570.0900, subp 3, will eliminate the need for the department to receive original receipts from the producer. This is beneficial, as the producer needs these documents for tax purposes, and the department will reduce the postage cost and the need to resend the documents back to the producer. Furthermore, by having a shared database, the councils will also be able to issue checks directly to the producer rather than send the checks to the department who would then send the checks to the producer. The department will be able to still perform its oversight role by verifying the database. It will also allow the department to comply with the statutorily prescribed timeline to issue refunds.

1570.0900, subp. 5

These rule changes are necessary because in the past, if a first purchaser violated the law and did not turn in the refund money to the council, there was a lengthy process to get the first purchaser into compliance, resulting in long delays for the producer to receive their money. The change to the law will allow the department to notify the producer when there is a delay in getting their refund due to noncompliance by the first purchaser. The change is reasonable as it creates transparency to the producers as to why there is a delay in receiving their refunds, and allows the producer to work with the first purchaser in solving the problem.

1570.0900, subp. 6

This rule change is necessary as it was pointed out during one of our meetings with affected parties that there were no definition of what it meant for a commodity council to "suspend" actions, and also no procedures set out for a commodity council to suspend actions. The rule change is reasonable as it allows the commodity council to suspend certain activities when they find that it is economically unfeasible to continue, yet the department still maintains its oversight responsibilities.



Office Memorandum

Date: September 21, 2009

To: Carol Milligan, Rules Coordinator,
Minnesota Department of Agriculture

From: Kerstin Larson, Executive Budget Officer

Phone: 651-201-8045

Subject: M.S. 14.131 Review of Proposed Revisions to Minnesota Rules 1570.0100-1570.0900 relating to commodity councils and check-off payments

Background

Minnesota Department of Agriculture proposes revising Minnesota Rules 1570.0100-1570.0900 to expand commodity council election procedures, streamline the issuance of check-off refunds, and amend the enforcement of the check-off collection process.

Under current rules, commodity council elections do not permit the submission of absentee ballots, the use of video conferencing for commodity council meetings or the ability of participants to request ballots via email. Commodity councils are funded through payment of a "check-off" fee, which may be refundable, collected by the first handler or first purchaser of an agricultural commodity from the participating producer. Under current rules, commodity councils must send all check-off refund-related correspondence through the Commissioner of Agriculture, which delays the issuance of check-off refunds to producers. In addition, enforcement of the check-off fee collection process requires that commodity councils attempt three contacts to the delinquent first handler or first purchaser before the council may engage legal counsel to pursue the matter, and does not require that the council notify producers of the anticipated delay in the issuance of their check-off refund.

The rule revisions will provide commodity councils with expanded means for conducting elections, a streamlined process of issuing check-off fee refunds, and a faster process to enforce first purchasers' collection of commodity council check-off fees, while producers will more quickly obtain their check-off fee refunds. Commodity councils may incur costs related to mailing election ballots to an increased number of producers. First handlers and first purchasers subject to check-off may incur additional costs for providing names and addresses of producers who are subject to check-off to commodity councils so that producers may be contacted if their refund is delayed.

Pursuant to M.S. 14.131, the agency has asked the Commissioner of Finance to help evaluate the fiscal impact and fiscal benefit of the proposed rule on local units of government.

Evaluation

On behalf of the Commissioner of Finance, I have reviewed the proposed rules and related Statement of Need and Reasonableness (SONAR) for any potential costs and benefits to local units of government. My evaluation is summarized below:

- 1) The proposed rules will primarily affect commodity councils, first handlers and first purchasers, and producers.
- 2) These rules are related to the governance of commodity councils and commodity councils' ability to issue refunds and enforce collection of check-off fees and therefore do not affect local units of government. Local units of government are not involved in either the administration or enforcement of these regulations.

Based on this information, I believe that Minnesota Management & Budget proposed rule revisions will have no fiscal impact on local units of government.

cc: Mike Roelofs, Budget Division Team Leader