

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed Rules of the
Department of Agriculture Governing the
Anhydrous Ammonia Inspector
Certification Program, Minnesota
Rules 1514

**ORDER ON REVIEW OF
RULES UNDER
MINN. STAT. § 14.26**

The Minnesota Department of Agriculture (Department) is seeking review and approval of the above-entitled rules, which were adopted by the agency pursuant to Minn. Stat. § 14.26. On July 16, 2014, the Office of Administrative Hearings (OAH) received the documents that must be filed by the Department under Minn. Stat. § 14.26 and Minn. R. 1400.2310. Based upon a review of the written submissions and filings, Minnesota Statutes, and Minnesota Rules, and for the reasons in the Memorandum that follows,

IT IS HEREBY ORDERED:

1. The Department has the statutory authority to adopt the rules.
2. The rules were adopted in compliance with the procedural requirements of Minnesota Statutes, Chapter 14, and Minnesota Rules, Chapter 1400.
3. The record demonstrates the rules are needed and reasonable.
4. The rules are **APPROVED**.
5. The Department should consider making the technical changes set forth in the attached memorandum.

Dated: July 23, 2014

s/Barbara J. Case

BARBARA J. CASE
Administrative Law Judge

MEMORANDUM

The Department has submitted these rules to the Administrative Law Judge for review under Minn. Stat. § 14.26. Subdivision 3(a) of that statute specifies that the Administrative Law Judge must approve or disapprove the rules as to their legality and form. In conducting the review, the Administrative Law Judge must consider the issue of whether the agency has the authority to adopt the rules; whether the record demonstrates a rational basis for the need for and reasonableness of the proposed rules; and whether the rules as modified are substantially different from the rules as originally proposed. Based on a review of the written submissions and filings, the Administrative Law Judge concludes that the rules comply with the applicable legal requirements.

The Administrative Law Judge recommends, however, that the agency make a few language changes to clarify or improve readability of the proposed rules. These wording changes are merely suggestions and do not denote defects in the proposed rules. The proposed changes are set forth below.

A. Minnesota Rules Part 1514.0200, Subpart 3 – Certification not transferable

This subpart states in part that “certified anhydrous ammonia inspectors shall perform only inspections of anhydrous ammonia facilities permitted by the commissioner.” It is unclear whether the word “permitted” is modifying the word “facilities” or is creating a requirement that the inspections must be permitted by the commissioner. To make this subpart unambiguous, the Administrative Law Judge recommends that the permit requirements of Minn. Stat. § 18C.305 be referenced or that the sentence be changed to read: Certified anhydrous ammonia inspectors shall perform only inspections of anhydrous ammonia facilities that have received a permit from the commissioner.”

B. Minnesota Rules Part 1514.0300, Subpart 8 – Reciprocal certification agreements

As proposed, Minn. R. 1514.0300, subp. 8 provides:

If classroom training, a written examination, or a practical training and skills test is offered by another jurisdiction or organization and is determined by the commissioner to be equal in standards to Minnesota’s anhydrous ammonia inspection certification training and examination requirements, the commissioner may waive all or part of the training and examination requirements provided for in subparts 2 to 5. For the purposes of this subpart, the commissioner shall only approve a classroom training program, a written examination, or a practical training and skills test that is offered by another jurisdiction or organization if the classroom training program, written examination, or practical training and skills test meets or exceeds the applicable requirements in subparts 3 to 5.

The proposed language refers to Minn. R. 1514.0300, subp. 2, which sets forth minimum qualifications for an individual to be eligible to apply to be an anhydrous ammonia inspector; and to Minn. R. 1514.0300, subps. 3, 4 and 5, which set forth that “classroom training,” “written exam,” and “practical training and skills test” are all required for an individual who wishes to become a certified anhydrous ammonia inspector.

Minnesota Rules part 1514.0300, subpart 2, relates to minimum qualifications such as a high school diploma or a GED. The stated purpose of subpart 8 is to waive training and examination requirements. Therefore, including subpart 2 in the subparts that may be waived is inconsistent with the language in subpart 8. The Administrative Law Judge recommends either that subpart 8 be changed to make it clear that the minimum qualifications may be waived or that subpart 8 be changed to read such that it limits what may be waived to subparts 3 to 5.

B. J. C.