

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of Obsolete Rules of the
Department of Agriculture Relating to the
Dairy Industry

**ORDER ON REVIEW OF ADDITIONAL
NOTICE PLAN**

This matter came before Chief Administrative Law Judge Tammy L. Pust upon the Minnesota Department of Agriculture's (Department) request for review of its Additional Notice Plan. The Department seeks a legal review of its materials under Minn. Stat. 14.3895, subd. 2 (2018).

In its submissions, the Department included the following:

1. a proposed Notice of Intent to Repeal Obsolete Rules;
2. an Additional Notice Plan;
3. the repealer and certification from the Minnesota Office of Revisor of Statutes, identifying the rules to be repealed; and
4. the Department's Annual Rules Report, dated November 21, 2017.

For the reasons set forth in the accompanying Memorandum,

IT IS HEREBY ORDERED THAT:

The Additional Notice Plan is **DISAPPROVED**.

Dated: August 8, 2018

A handwritten signature in black ink, appearing to read 'TLP', is written over a horizontal line.

TAMMY L. PUST
Chief Administrative Law Judge

MEMORANDUM

In its Additional Notice Plan, the Department states that it will “email the parties listed below with a copy of the Notice and the proposed rule”:

- Minnesota Milk Producers;
- Upper Midwest Dairy;
- Upper Midwest Dairy Industry Association (UMDIA);
- The Department’s rulemaking mailing list; and
- The Department’s “Dairy and Meat Inspection - dairy list”.

First, it is unclear if additional notice will be made to all Minnesota milk producers (i.e., all milk producers in Minnesota) or the Minnesota Milk Producers Association, a specific organization representing milk producers in Minnesota. Accordingly, the word “Association” has particular significance in this instance.

Second, it is unclear whether “Upper Midwest Dairy” is different from “Upper Midwest Dairy Industry Association (UMDIA).” If these two entities are different, the Department should note the difference and ensure that the correct organization name is stated.

Third, it is unclear what is meant by the Department’s “Dairy and Meat Inspection – dairy list.” Additional clarification would be helpful in the Additional Notice Plan.¹

Fourth, because other clarifications are needed, it would be helpful to also include a notification to the Minnesota Dairy Association (a/k/a “Midwest DairyTM”). It would appear that this trade association may be among the “cases of persons who may be significantly affected by the rule repeal,” as set forth in Minn. Stat. § 14.3895, subd. 2.

Finally, the Department should consider two revisions to the Notice of Intent to Repeal Obsolete Rules (Notice). The Department should specifically name the agency contact person who can be contacted by members of the public about the proposed rule repeals. The Notice should give both a name of the agency contact and that person’s contact information (such as telephone number, address, and email address). It is not sufficient that the Notice only identify the Office of Administrative Hearings ecomments website. This is particularly true considering that the last paragraph of the Notice specifically states that requests should be made to the “agency contact person listed above.” No agency contact person is listed in the Notice.²

¹ The Department is further advised that Minn. Stat. § 14.3895, subd. 3 requires that the agency also mail notices to the chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rule repeal.

² See *generally* Minn. Stat. § 14.3895, subd. 3 (2018).

In addition, for better clarification, the Administrative Law Judge suggests that the “Modifications” paragraph in the Notice be revised as follows:

Modifications. The agency might modify its choice of these designated rules or parts proposed for repeal (e.g., fixing a typo or deciding not to repeal a rule because the rule is discovered not to be obsolete), based on comments and information submitted to the agency. If the final rules to be repealed are identical to the rules originally published in the State Register for repeal, then the agency will publish a notice of adopting the repealers in the State Register. If the final rules to be repealed are different from the rules originally published in the State Register for repeal, then the agency must publish a copy of the changes in the State Register. If the proposed repeal of obsolete rules affects you in any ~~by~~ way, the agency encourages you to participate in the rulemaking process.

Once these changes are made or clarified, the agency should resubmit its Additional Notice Plan and related documents for further review and approval.

T. L. P.