

October 23, 2024

VIA EFILING ONLY

Doug Spanier
Minnesota Department of Agriculture
625 Robert St N
Saint Paul, MN 55155
douglas.spanier@state.mn.us

**Re: *In the Matter of the Proposed Exempt Rules Relating to
Pesticide Records*
OAH 5-9024-40309; Revisor R-4879**

Dear Doug Spanier:

Enclosed herewith and served upon you by mail is the **ORDER ON REVIEW OF RULES UNDER MINN. STAT. § 14.388 AND MINN. R. 1400.2400** in the above-entitled matter. The amendments to the rule parts are exempt from the rulemaking requirements of Minnesota Rules chapter 1400 (2023) pursuant to the good cause exemption in Minn. Stat. § 14.388, subd. 3 (2024).

With the approval of the adopted rules, the Office of Administrative Hearings has closed this file and is returning the rule record to the Department so that the Department can maintain the official rulemaking record in this matter as required by Minn. Stat. § 14.365 (2024). Upon submission to the Office of Administrative Hearings of the Department's signed order approving the rules, the Office of Administrative Hearings will file the rules with the Secretary of State. The Department's next step is to arrange for publication of the proposed amendments in the State Register as required by Minn. Stat. § 14.388, subd. 1 (2024).

If you have any questions regarding this matter, please contact William Moore at (651) 361-7893, william.t.moore@state.mn.us or via facsimile at (651) 539-0310.

Sincerely,



NICHOLE SLETTEN
Legal Assistant

Enclosure

cc: Legislative Coordinating Commission
Ryan Inman

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Exempt
Rules Relating to Pesticide Records

**ORDER ON REVIEW
OF RULES UNDER
MINN. STAT. § 14.388
AND MINN. R. 1400.2400**

This matter came before Administrative Law Judge Jim Mortenson upon the Department of Agriculture's submission for legal review its proposed rule amendments relating to restricted use pesticide record keeping. On October 9, 2024, the Department filed the required documents with the Office of Administrative Hearings for review and approval under Minn. Stat. § 14.388 (2024) (Good Cause Exemption) and Minn. R. 1400.2400 (2023) (Review of Exempt Rules.)

Based upon a review of the written submissions by the Department, pursuant to law, and for the reasons set out in the memorandum below,


IT IS HEREBY DETERMINED THAT:

1. The Department has provided adequate justification for the use of the exempt rulemaking process and, specifically, the good cause exemption pursuant to Minn. Stat. § 14.388, subd. 1, clause (2), for the adoption of these rule amendments.
2. The proposed rule amendments are legal, based on review under Minn. R. 1400.2100 (A) and (D) – (G) (2023).

IT IS HEREBY ORDERED THAT:

The adopted rules are **APPROVED**.

Dated: October 23, 2024



JIM MORTENSON
Administrative Law Judge

MEMORANDUM

The Department proposes to amend its rules on record-keeping requirements for dealers of restricted use pesticides.¹ The federal Environmental Protection Agency (EPA) worked with the Department over the last several years to ensure these proposed changes were adopted in Minnesota.² The changes reflect the requirements for record-keeping found in federal law at 40 C.F.R. § 171.303(b)(vii)(A) – (C). Because these changes are required under federal law and direction from federal regulators, the Department is reasonably using exempt rulemaking to adopt them.

Minnesota law requires even exempt rules to be reviewed and approved by an administrative law judge for legality before they may be adopted.³ Pursuant to Minn. R. 1400.2400, concerning the review of exempt rules, “the judge must decide whether the rule meets the standards of part 1400.2100, items A and D to G.”⁴ These standards are as follows:

A rule must be disapproved by the judge or chief judge if the rule:

- A. was not adopted in compliance with procedural requirements of this chapter, Minnesota Statutes, chapter 14, or other law or rule, unless the judge decides that the error must be disregarded under Minnesota Statutes, section 14.15, subdivision 5, or 14.26, subdivision 3, paragraph (d);
- . . .
- D. exceeds, conflicts with, does not comply with, or grants the agency discretion beyond what is allowed by, its enabling statute or other applicable law;
- E. is unconstitutional or illegal;
- F. improperly delegates the agency's powers to another agency, person, or group; [or]
- G. is not a "rule" as defined in Minnesota Statutes, section 14.02, subdivision 4, or by its own terms cannot have the force and effect of law.⁵

The Department submitted all of documentation required under Minn. R. 1400.2400, subp. 2, for the rule review. It also submitted additional information concerning the EPA approval process, which was requested by the Judge. Therefore, the rule was adopted in compliance with law.

¹ Department filing (Oct. 8, 2024).

² Department filing, Attachment A.

³ Minn. Stat. §§ 14.388, subd. 1; .386(a)(3) (2024).

⁴ Minn. R. 1400.2400, subp. 3.

⁵ Minn. R. 1400.2100 (2023).

Minn. Stat. § 18B.06 (2024) authorizes the Department to adopt rules to implement chapter 18D. Chapter 18D governs chemicals used in agriculture, including pesticides.⁶ As noted above, the amendments bring Minnesota law into compliance with federal regulatory requirements. Thus, the rule does not exceed, conflict or fail to comply with any law. Moreover, it does nothing regarding the agency's authority, but rather sets requirements for pesticide dealers. Therefore, there is no basis to disapprove the rule based on item D of Minn. R. 1400.2100.

The rule amendment adds the following record-keeping requirements for pesticide dealers: obtaining the address of the person who will be applying the pesticide; the use categories listed in the applicator's license; the pesticide's Minnesota special local need registration number, if applicable; and the Minnesota emergency exemption number, if applicable.⁷ The amendment also adds the requirement to obtain the applicator's license or certification card if certified by a Tribe or the federal government, not only a state.⁸ There is nothing unconstitutional or illegal about the addition of these record-keeping requirements for people who provide or sell pesticides.

The rule amendments do not delegate the Department's authority. In addition, the amendments set forth requirements which can be followed and are enforceable. Thus, they are rules, as defined in Minn. Stat. § 14.02, subd. 4 (2024) and can have the force and effect of law.

The Department has the legal authority to adopt these rule amendments governing pesticide record-keeping by dealers of the chemicals. The Department reasonably invoked the good cause exemption to the rulemaking process because the adopted rules incorporate specific provisions already promulgated under federal law and were required by the EPA to be specifically included in Minnesota law for proper implementation. The proposed rule amendments are approved and should be adopted.

J. R. M.

⁶ Minn. Stat. § 18D.01, subd. 3 (2024).

⁷ Department filing, proposed rule amendments Minn. R. 1505.1100, subp. 3(B) (2023).

⁸ *Id.*