

LCRAR Book

Department : Agriculture

STATE OF MINNESOTA
Office Memorandum

Date : August 18, 1994

To : Maryanne Hruby, Director
LCRAR

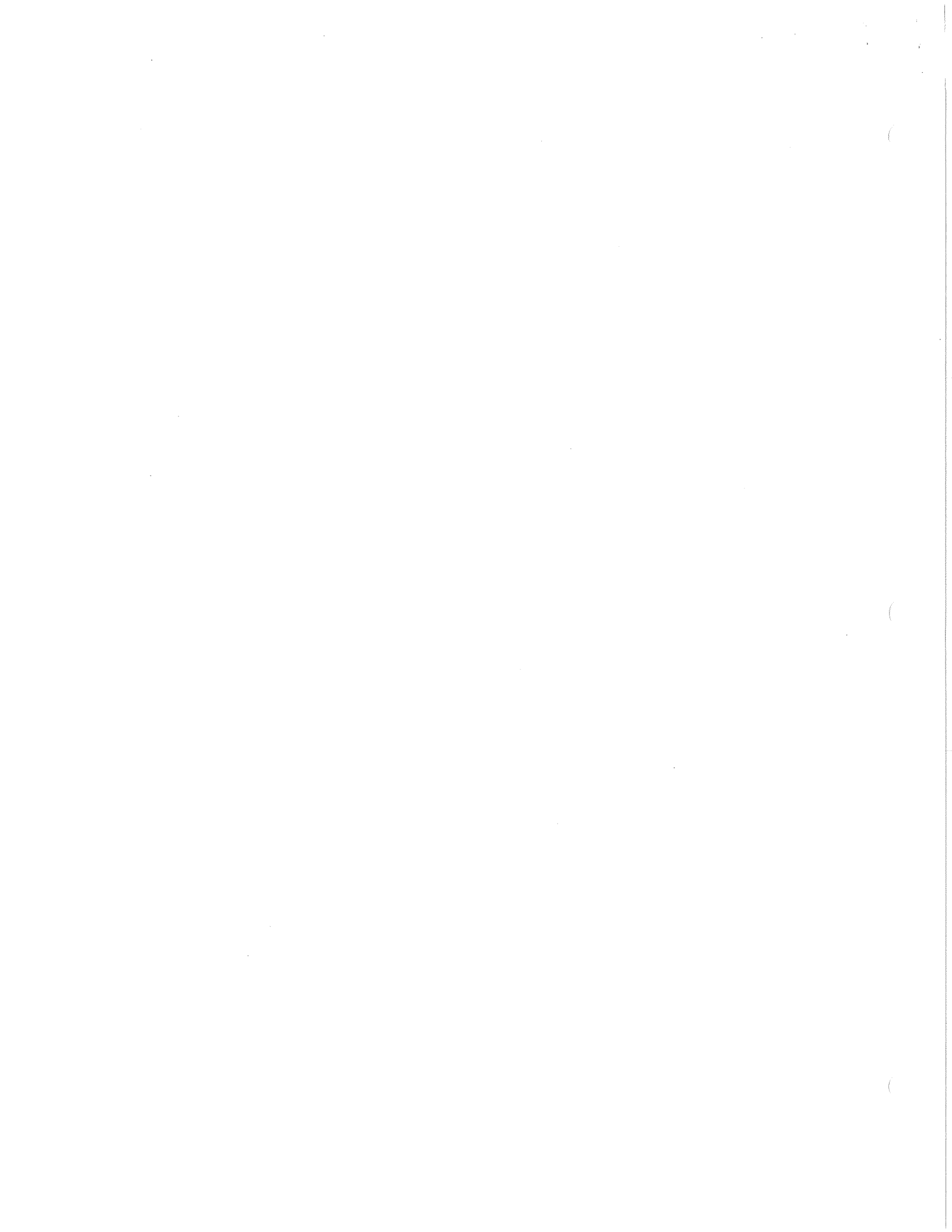
From : Carol Milligan *cm*
Agriculture Planning Division

Phone : 296-6906

Subject : **Submittal of Statement of Need and Reasonableness**

As required by Minnesota Statutes, sections 14.131 and 14.23, attached is the Statement of Need and Reasonableness for rules governing agricultural inspectors. The Notice of Intent to Adopt and the rules will be published in the *State Register* on 9/6/94.

Attachment



**STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE**

IN THE MATTER OF PROPOSED RULES OF THE)	
DEPARTMENT OF AGRICULTURE GOVERNING)	STATEMENT OF NEED
AGRICULTURAL INSPECTORS)	AND REASONABLENESS
MINNESOTA RULES, PARTS 1505.0751, 1505.0752,)	
1505.0754, 1505.0756, 1505.0758.)	

I. INTRODUCTION

The subject of this rule making is the adoption of proposed rules by the Minnesota Department of Agriculture (MDA) governing agricultural inspectors. Minnesota Statutes, sections 18.79, subdivision 4, and 18.81, subdivision 3, authorize the MDA to adopt rules for the proper enforcement of the Minnesota Noxious Weed Law.

The MDA has determined that the proposed rules are noncontroversial in nature because they are supported by both local and county governments and will provide necessary direction to obtain enforcement of the noxious weed law. Because the proposed rules are noncontroversial in nature, the department has directed that the rule making proceedings be conducted in accordance with statutory provisions governing the adoption of noncontroversial rules, Minnesota Statutes, section 14.22 to 14.28. Accordingly, the rule making proceedings on the proposed rules are governed by the statute and no hearing will be conducted on the proposed rules unless 25 or more persons submit to the department a written request for such a hearing. In accordance with the requirements of Minnesota Statutes, section 14.23, this Statement of Need and Reasonableness was completed prior to the date the proposed new rules were published in the State Register.

II. GENERAL OVERVIEW

The purpose of the Minnesota Noxious Weed Law, Minnesota Statutes, sections 18.75 to 18.88, is to protect the residents of the state from the injurious effects of noxious weeds. The law is enforced by controlling the spread of noxious weed propagating parts from infested sites. This approach prevents noxious weed populations from increasing to a point where they are out of control. Eradication is also a goal of enforcement but it is rarely achievable and the environmental degradation that might result from intensive control measures would not be worth the risk. As a result, the costs of a control program that seeks to limit spread remain constant but they do not increase.

The first attempt at regulation of weeds in Minnesota was in 1872 when the "Canada thistle law" was enacted by the legislature. The enforcement process, much as we know it today, was enacted in 1939. In 1992, the law underwent another major revision but the enforcement process was left largely in tact because it had been so effective over the years. Many of the changes made to the law in 1992 involved the functions of the local and county officials responsible for enforcement.

Enforcement of the Minnesota Noxious Weed Law is a cooperative effort between the state, county, and local levels of government. Each level has a separate and unique role in the

process. The role of the state is carried out by the MDA and it is to maintain uniformity and fairness in the enforcement of the law by the county and local levels of government. To do this, the MDA provides training, enforcement policy, and enforcement materials such as law booklets and forms. Each county is required to appoint an agricultural inspector. In addition to their role in noxious weed law enforcement, county agricultural inspectors are also responsible for enforcement of the state seed and screenings laws in the county and to participate in the control programs for pesticides, feed, fertilizers, and insect pests. County agricultural inspectors pass on the training in noxious weed law enforcement obtained from the state to local inspectors and they provide expert assistance when technical enforcement procedures are needed. Local weed inspectors are the supervisors of each township, the mayor of each city, or their appointed assistant. The role of local weed inspectors is to perform inspections of the land under their jurisdiction and to initiate the non-technical enforcement procedures.

For the noxious weed law to be uniformly and effectively enforced, state, county and local levels of government must cooperate with each other by doing their part. The law either is not enforced or the responsibility for doing so is transferred to the next higher level of government when local or county government officials fail to carry out their responsibilities. Local and county inspectors fail to do their duty by choosing not to do it or because they lack the expertise to do it properly. The overall intent of the proposed rules is to insure that local weed and county agricultural inspectors are provided the training and authority to perform their enforcement tasks competently and to hold them accountable if their duties are not performed as required.

The nonperformance rule establishes a procedure to follow when an apparent violation of the law is observed but no enforcement action is undertaken by either local weed or county agricultural inspectors. The procedure is a series of steps designed to achieve voluntary cooperation from the inspector involved but failing that, to see that the law is enforced. Under this procedure, if a municipality fails to act, the county may do the enforcement work for them and must be reimbursed by the municipality for the expenses in doing so. If a county agricultural inspector fails to act, the MDA could act for them but cannot be reimbursed by the county. Instead of reimbursement, the failure to act would be considered at the inspector's annual performance appraisal and their agent of the commissioner status would be revoked.

The workplan and performance appraisal rule establishes a uniform procedure for determining the amount of time that is sufficient for each county and whether or not the county agricultural inspector is doing the job at a satisfactory level. Failure to comply with a notice of nonperformance would be a factor upon which the evaluation is based.

The training and authorized agent status rule establishes a standardized training requirement for county agricultural inspectors and an official procedure for the MDA to grant agent status to the inspector. The training requirement is a factor in both the annual evaluation and the granting of agent status to the county agricultural inspector. Granting agent status to the inspector is both a privilege and a requirement. As a privilege it entitles the inspector to the same protection of the state as is accorded to a state employee. As a requirement, county

agricultural inspectors must be agents of the commissioner before they can participate in enforcement activities of many state laws.

The meeting and report rule establishes a list of the specific meetings and reports that are required by the law in Minnesota Statutes, section 18.79, subdivision 7.

III. NEED FOR AND REASONABLENESS FOR THE PROPOSED NEW RULES

Part 1505.0751 Definitions.

This part is necessary and reasonable because it clarifies the meaning of the terms used in the proposed rules.

Part 1505.0752 Procedure for the Enforcement of Nonperformance

Subpart 1 of the proposed rule is necessary because it provides a method of dealing with local weed inspectors who fail to perform their duty in noxious weed law enforcement as required in Minnesota Statutes, section 18.81, subdivision 2. In the past, when a local weed inspector did not perform a required duty, the county agricultural inspector would simply act for them. This was possible as long as the occurrence of nonperformance was infrequent. In recent years, the rate of occurrence has increased significantly. As a result, uniform enforcement in some counties has become very difficult, if not impossible, because a single county inspector cannot do the work of many local weed inspectors.

Subpart 1 is also necessary because it provides a mechanism to prevent the transfer of financial responsibility to counties from municipalities by simply failing to do a required duty. Item C of this subpart contains a process that authorizes a county to seek reimbursement for the costs when a municipality has failed to perform their duty to enforce the noxious weed law.

Subpart 1 is reasonable because enforcement of the noxious weed law is designed to be a cooperative effort between the state, counties, and municipalities. Each has a separate and integral responsibility in that effort. The failure of one level of government to carry out their responsibility under the noxious weed law can cause all three to fail. If the next higher level of government is able to do the duty, they also must assume the costs for enforcement. When that level of government does not have the resources to do the job, the duty cannot be carried out. The process for enforcement of nonperformance is a series of steps that are designed to encourage the local weed inspector to cooperate. If the local weed inspector refuses two or more requests to do their duty, it is reasonable that they be held responsible for the costs of enforcement when the county has to do it for them.

Subpart 1 is also reasonable because the process outlined in this subpart is intended to prevent abuse of the authority to seek reimbursement. The process requires a county to provide evidence of the nonperformance and of their attempts to persuade the local weed inspector to do the required work.

Subpart 2 of the proposed rule is necessary to provide a method of dealing with county agricultural inspectors who fail to perform a duty as required in Minnesota Statutes, section 18.81, subdivision 1. In the past, when a county agricultural inspector did not perform a required duty, the MDA would act for them. This was possible as long as the occurrence of nonperformance was infrequent. In recent years, the rate of occurrence has increased significantly. As a result, uniform enforcement has become very difficult, if not impossible, in some counties because MDA does not have nor has it ever had the resources to do the work of several county agricultural inspectors.

Subpart 2 is also necessary because it provides a mechanism that seeks to prevent the transfer of financial responsibility to the state from counties by simply failing to accomplish a required duty. Unlike the same provision for municipalities, no authority was granted by law to seek reimbursement for the state from counties when they fail to act. Instead, the county agricultural inspector involved could potentially lose their authorized agent status and be disciplined by the county where they are employed.

Subpart 2 is reasonable because enforcement of the noxious weed law is designed to be a cooperative effort between the state, counties, and municipalities. Each has a separate and integral responsibility in that effort. The failure of one level of government to carry out their responsibility usually causes all three to fail. If the next higher level of government is able to do the duty, they also must assume the costs for enforcement. When that level of government does not have the resources to do the job, the duty cannot be carried out. The process for enforcement of nonperformance is a series of steps that are designed to encourage the county agricultural inspector to cooperate. If the county agricultural inspector refuses two or more requests to do their duty, it is reasonable that they be held responsible at their annual evaluation and that they lose their authorized agent status.

Subpart 2 is also reasonable because it establishes a process that is aimed at achieving cooperation from the county agricultural inspector and failing that, to get the enforcement work done and hold the inspector accountable for their inaction. The process requires the state to provide evidence of the nonperformance and of their attempts to persuade the county inspector to do the required duty.

Subpart 2 is also reasonable because it will increase uniformity of enforcement and thereby increase the efficiency and effectiveness of enforcement for all counties.

Part 1505.0754 Workplans and Performance Evaluation for County Agricultural
Inspectors

Subpart 1 is necessary to determine the amount of time that is sufficient for a county agricultural inspector to perform their duties. This subpart is proposed to comply with Minnesota Statutes, section 18.80, subdivision 1. County agricultural inspectors are required to perform the duties prescribed in Minnesota Statutes, section 18.81, subdivision 1. At present, no standard method is available to quantify the amount of time necessary for the position. In addition, each county is unique and the amount of time needed to accomplish the duties vary. The duties that county agricultural inspectors are required by law to perform are

constant. The time needed to perform each prescribed duty can be determined if a standard time requirement is allotted for each task. Using the standard time requirement, a workplan can be developed cooperatively by the county agricultural inspector and the MDA. It will contain the program goals, the yearly emphasis, a list of the individual tasks, a breakdown of the time needed for each, and the budget required.

Subpart 1 is reasonable because it requires the approval of the county board of commissioners. Since the position is paid for by the county, they must have financial control to prevent unplanned for demands on their budget. On the other hand, county commissioners are not directly involved in the supervision of the enforcement activities of their inspector and as a result may not know of or appreciate the importance of the work being done. The MDA and county agricultural inspectors are required to jointly develop the workplan because they are in the best position to know about the amount and complexity of the work to be done.

Subpart 1 is also reasonable because a county commissioner could be a landowner with a noxious weed problem or the owner of a seed business. As such they would be a client of the inspector. A potential conflict of interest exists because they could cut the time necessary for the inspector to do their job.

Subpart 1 is also reasonable because it provides a uniform mechanism whereby the MDA can interact with counties in a mutually acceptable manner to insure that each agricultural inspector has sufficient time to do the job.

Subpart 1 is also reasonable because if a county agricultural inspector is to be held accountable for their performance, they should have adequate time to do the job. It would be unreasonable to fault an inspector for failure to perform a duty if insufficient time was allotted.

Subpart 2 is necessary to provide a standardized system of performance appraisal for all county agricultural inspectors. At present, no standardized system of performance evaluation exists for these inspectors. Inspector nonperformance as proposed in part 1505.0752 is intended to address local and county inspectors who fail to carry out an assigned duty. Performance evaluation differs from nonperformance in that it focuses on accomplishments instead of failures and it only affects county agricultural inspectors. Some counties have based their evaluation solely upon whether or not complaints have been received. In other cases, the time allotted is insufficient and many complaints are received implying that the inspector is not doing the job. Subpart 1 provides for the submission of a workplan establishing the type and amount of work to be done and Subpart 2 provides for an evaluation process to measure the success in accomplishing that work.

Subpart 2 is reasonable because periodic measurement of proficiency is needed to effectively manage an employee. For employees who perform above expectations, a commendation, promotion, or salary increase are important ways of recognizing and encouraging their continued high level of effort. When performance is below expectations, the areas of weakness need to be identified so that appropriate remedies may be used. Over time, if an inspector does not perform up to expectations, the evaluations serve as evidence supporting disciplinary action or reassignment to another job. The county agricultural inspector plays a key role in the

enforcement of the noxious weed law. Competent performance of their duties is necessary if the state and local governments are to effectively fulfill their roles.

Part 1505.0756 Training Requirements And Authorized Agent Status For County
Agricultural Inspectors

Subpart 1 is necessary to establish a minimum training requirement as a qualification for county agricultural inspectors. One of the provisions of Minnesota Statutes, section 18.80, subdivision 1, is that county agricultural inspectors must meet qualifications prescribed by rule. In part 1505.0760 of the existing rules, reference is made to qualifications in the "Qualification Guidelines" for county agricultural inspectors. These guidelines refer to physical ability, legible report writing, possession of a driver's license, and conflicts of interest. The qualification guidelines, although important, do not refer to the technical ability necessary for successful completion of the tasks assigned to the position. To address this need in the past, a training regimen was developed over forty years ago. In the early 1980's, a voluntary accreditation program was put in place to provide more formal proof of this training. Our experience over the years indicates that if a county agricultural inspector takes full advantage of the training offered, it is adequate for their needs. This subpart would make the voluntary accreditation program an official training requirement to ensure the technical skill capability.

Subpart 1 is also necessary to provide for continuing training to maintain and improve the existing technical ability of county agricultural inspectors. Enforcement goals and policies can and do vary from year to year as a result of changes in law, seasonal weather, and technology. In order for a county agricultural inspector to remain competent and to provide training and guidance to municipal inspectors, their technical skills need to be updated annually.

Subpart 1 is reasonable because county agricultural inspectors serve as leaders to local governments by providing training and guidance in noxious weed law enforcement. To be able to provide this training, they must be technically competent themselves. Training by itself does not ensure the competence but it provides the information necessary to be so. When used in combination with an annual performance appraisal, the level of an inspector's competence can be determined.

Subpart 2 is necessary to provide a procedure for granting authorized agent of the commissioner status to county agricultural inspectors. Minnesota Statutes, section 18.79, subdivision 2, empowers the commissioner to authorize county agricultural inspectors to act as agents in the administration and enforcement of the laws assigned to the position. The administration and enforcement of the Minnesota Noxious Weed Law, Minnesota Statutes, sections 18.76 to 18.88, is a cooperative effort between state, county, and municipal governments. Each level has a different role in this effort. Although all three levels can use formal enforcement procedures, the county agricultural inspector is often the only one who gets involved in this manner. If a civil suit were to result from an enforcement case where only the county agricultural inspector was involved, only the county attorney would be able to provide legal representation to the inspector. The Minnesota Noxious Weed Law is a state law even though it is enforced, for the most part, on the county and local levels. The state would be able to assist in the legal representation of the county agricultural inspector once the

inspector has attained authorized agent status.

Subpart 2 is also necessary because many of the laws enforced by county agricultural inspectors require them to be authorized agents. Minnesota Statutes, section 18.81, subdivision 1, item (4), requires a county agricultural inspector to participate in the control programs for feed, fertilizers, pesticides, and insect pests. Most of these control programs require the enforcement official to be an agent of the commissioner before they can obtain official samples or perform inspections. In order for the county agricultural inspector to comply with a request to participate, they would need to be classified as an authorized agent.

Subpart 2 is reasonable because these inspectors are enforcing state laws. If they show a high degree of competence, they should be entitled to the same protection a state employee has in their job. Granting authorized agent status to a county agricultural inspector is recognition of their ability and is needed to motivate and protect them.

Subpart 2 is also reasonable because the authorization would not be granted unless a county agricultural inspector has demonstrated and maintained their competence by following the requirements set forth in this part. The granting of agent status is not meant to be easily obtained and it will either not be granted or it will be revoked if the county agricultural inspector fails to meet the requirements of this part.

Part 1505.0758 Meetings and Reports Required of Inspectors

Subpart 1 is necessary in order for county agricultural and local weed inspectors to comply with Minnesota Statutes, section 18.79, subdivision 7.

Subpart 1 is also necessary to establish a uniform method of providing the required training to county agricultural inspectors. Part 1505.0790 establishes the minimum requirement for training needed annually for county agricultural inspectors. This part establishes the type of meeting the county agricultural inspector must attend to obtain the required training.

Subpart 1 is also necessary to establish a uniform method for MDA and county agricultural inspectors to provide training to local weed inspectors. Each township supervisor and city mayor or their appointed assistant is designated as the local weed inspector for their political subdivision. Most new local weed inspectors do not have the law enforcement expertise needed to effectively and fairly enforce the noxious weed law. In addition, noxious weed law enforcement by local weed inspectors is seasonal. To make sure they have the technical skills needed, a combined new inspector and refresher type training session needs to be provided annually.

Subpart 1 is reasonable because local weed inspectors must receive training in proper enforcement techniques to attain effective enforcement of the noxious weed law. A meeting has traditionally been held annually to provide the initial training and a refresher in the technical aspects of noxious weed law enforcement.

Subpart 1 is also reasonable because if a local weed inspector cannot attend the required

meeting, an optional type of training can be provided in place of the meeting.

Subpart 1 is also reasonable because it will encourage uniformity in the use of lawful enforcement techniques and thereby protect the rights of those being subjected to an enforcement action.

Subpart 2 is necessary in order for county agricultural and local weed inspectors to comply with Minnesota Statutes, section 18.79, subdivision 7.

Subpart 2 is also necessary to document the activities in enforcement of laws by county agricultural inspectors. To be effective, enforcement of any of the laws assigned to county agricultural inspectors must be uniformly applied. In addition, uniformity of enforcement is often questioned by those being subjected to an enforcement action. A detailed record of the activities of a county agricultural inspector will provide evidence of the uniform application of the law.

Subpart 2 is also necessary for the uniform collection of data from all local weed and county agricultural inspectors. The data collected is a summary of the enforcement activity of these inspectors in the previous year. The annual evaluation of this data on a statewide basis can provide indicators of the effectiveness of enforcement and also reveal trends that support or refute the need for change in enforcement policy.

Subpart 2 is reasonable because it will increase the effectiveness of county agricultural inspectors. A detailed record of their activities often is needed to build a case for prosecution of a law violation or the forced control of a noxious weed problem. Good records of the inspector's activities must be kept in order to document that the law is being fairly and uniformly enforced. In addition, evidence gathering in an enforcement case would be a part of the routine procedure in the keeping of the required record.

Subpart 2 is also reasonable because the data collected enables the MDA to plan statewide control programs for noxious weeds, seed, and screenings. A reliable and consistent method of collecting data would provide the information upon which to make decisions on changes in enforcement that are needed. A one page report completed annually by each municipality and county minimizes the effort needed to provide the data requested.

IV. SMALL BUSINESS IMPACT OF THE PROPOSED NEW RULES

The MDA has considered the impact of the proposed rules on small businesses as required by Minnesota Statutes, section 14.115, subdivision 1 and 2. The MDA has determined that there is no impact to small businesses because the rule making applies only to local governments.

V. COST TO PUBLIC BODIES STATEMENT

The MDA has considered the impact of the proposed rules on public bodies as required by Minnesota Statutes, section 14.11, subdivision 1.

The MDA has determined that, overall, some change in costs may occur for public bodies. The noxious weed law has been in existence for more than sixty years, with enforcement designed to be a cooperative effort by state, county, and local governments. Each level of government has a unique role to fulfill in the enforcement process. When each level cooperates by doing their part, enforcement is efficient and uniform. In recent years, there has been an increasing number of instances where local or county governments have failed to execute their responsibilities. This has resulted in non uniform enforcement, inefficiencies, and increased use of public funds by the other levels of government. The proposed rules focus on county and local government accountability. The increased accountability that would result from the proposed rules could mean increased costs for some local and county governments. The amount of increase is difficult to estimate since each county or municipality may differ in their program need and past performance. If inadequate program support was provided in recent years by a local or county government, an increase in program support now will not result in new costs because they have had the responsibility since 1939. In many instances, all or part of the increase in program costs could be saved at another level of government that had been attempting to do their job for them. The full impact of any increase in costs will also be offset somewhat by increased efficiency. More uniform and effective enforcement will decrease the need for the use of more expensive enforcement measures such as prosecution.

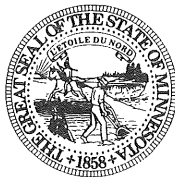
By definition in Part 1505.0751, a municipality is a township or city. Minnesota has over 2,650 municipalities in the eighty-seven counties. Approximately twenty-five percent of the municipalities have not been doing their part in enforcement of the noxious weed law. If it costs a municipality an average of \$400 annually to enforce the noxious weed law, the total increase in cost for all that have not been cooperating would be \$265,000 annually. These are not new costs because the non cooperating municipalities have had this responsibility since 1939. County agricultural inspectors and the MDA have tried to offset this lack of cooperation and have experienced increased costs and decreased efficiency as a result. There are ninety-five county agricultural inspectors who average 13 hours per week and five half time MDA staff involved in the noxious weed control program. If each of these inspectors experienced an increase in costs of at least \$1500 annually due to a lack of cooperation from municipalities, the additional cost would be \$150,000. Therefore, the actual increase in costs for non cooperating municipalities would only be \$115,000 annually if the increased costs for counties and the MDA are considered.

The amount of time spent by each county agricultural inspector on duties assigned to the position averaged 25 hours per week in the early 1980's. That figure dropped to about 19 hours per week on average in 1993. This is a reduction of over 27,000 hours statewide. This reduction significantly impacted the amount of work they have been able to accomplish. One of the duties of a county agricultural inspector is the seed control program. Up until 1985, the number of official seed samples obtained annually was around 2,500. County agricultural inspectors normally obtain 75% of this amount and MDA staff the other 25%. In 1994, only 1,350 official samples were obtained. This reduction is directly attributable to a cutback in the amount of time county agricultural inspectors have to do their job. MDA estimates that 40,000 to 45,000 seed lots are marketed in Minnesota each year. If official samples can be obtained randomly in all areas of the state, four percent of the lots offered for sale is an adequate number of samples for an efficient seed regulatory program. Unless participation

from county agricultural inspectors is increased, that percentage is impossible to achieve. The total increase in time would be 9,048 hours if each county increased by two hours per week for seed law enforcement. If the hourly rate of pay is \$15, the increase in cost to counties would be \$135,720 annually. However, since the actual cutback in hours worked by county agricultural inspectors in the past twelve years is over 27,000 hours, the increase would still leave them far short of where they were. For this reason, the extra cost is not considered an increase but rather it brings the program effort back closer to appropriate levels. This increase would not be a direct function of the new rules since it is needed even if the rules had not been proposed.

8-15-94
Date


Elton Redalen
Commissioner



Minnesota Department of Agriculture

August 31, 1994

TO: Individuals, Firms and Organizations on the Minnesota
Department of Agriculture Rulemaking Mailing List

FROM: ^{CM} Carol Milligan, Management Analyst
Agriculture Planning Division

SUBJ: Proposed Rule of the Department of Agriculture

Enclosed you will find a "Notice of Intent to Adopt a Rule Without a Public Hearing" and proposed amendments to rules governing agricultural inspectors. The notice explains the procedures that will be followed in adopting the rule including opportunities for public comment.

The notice and the proposed rules will be published in the *Minnesota State Register* on Tuesday, September 6, 1994. The 30-day comment provided for by the Administrative Procedures Act will extend from that date until October 6, 1994. All comments on the proposed rule must be received by that date.

If you have any questions, please call me at (612) 296-6906.

CM:dw

Enclosure

STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed Rules
of the State Department of Agriculture
Governing Agricultural Inspectors

NOTICE OF INTENT TO ADOPT
A RULE WITHOUT A PUBLIC
HEARING

The Minnesota Department of Agriculture intends to adopt rules without a public hearing following the procedures set forth in the Administrative Procedures Act sections 14.22-14.28. You have 30 days to submit written comment on the proposed rules and may also submit a written request that a hearing be held on the rules.

Department Contact Person. Comments or questions on the rules and written requests for a public hearing on the rules must be submitted to:

Carol Milligan, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107
(612) 296-6906, Fax (612)297-7678.

Subject of Rules and Statutory Authority. The proposed rules are about local agricultural inspectors duties. The statutory authority to adopt these rules is Minnesota Statutes, sections 18.79, subd. 4 and 18.81, subd. 3. A copy of the proposed rules is published in the *State Register* and attached to this notice as mailed.

Comments. You have until 4:30 p.m. October 6, 1994, to submit written comment in support of or in opposition to the proposed rules or any subpart of the rules. Your comments must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comments should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

Request for a Hearing. In addition to submitting comments, you may also request that a hearing be held on the rules. Your request for a public hearing must be in writing and must be received by the agency contact person by 4:30 p.m. on October 6, 1994. Your written request for a public hearing must include your name and address. You are encouraged to identify the portion of the proposed rules which caused your request, the reason for the request, and any changes you want made to the

proposed rules. If 25 or more persons submit a written request for a hearing, a public hearing will be held unless a sufficient number withdraw their request in writing. If a public hearing is required, the department will proceed according to Minnesota Statutes, sections 14.131-14.20.


Modifications. The proposed rules may be modified as a result of public comment. The modifications must be supported by the data and views submitted to the department and may not result in a substantial change in the proposed rules as attached and printed in the *State Register*. If the proposed rules affect you in any way, you are encouraged to participate in the rulemaking process.

Statement of Need and Reasonableness. A Statement of Need and Reasonableness is now available from the department contact person. This statement describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules.

Small Business Considerations. This rule applies only to local units of government, and has no impact on small business.

Adoption and Review of the Rules. If no hearing is required, after the end of the comment period the department may adopt the rules. The rules and supporting documents will then be submitted to the Attorney General for review as to legality and form to the extent that form relates to legality. You may request to be notified of the date the rules are submitted to the Attorney General or be notified of the Attorney General's decision on the rules. If you wish to be so notified or wish to receive a copy of the adopted rules, submit your request to the department contact person listed above.

8-16-94
Date


Elton Redalen
Elton Redalen, Commissioner
Department of Agriculture

1 Department of Agriculture
 2
 3 Proposed Permanent Rules Relating to Agricultural Inspectors
 4
 5 Rules as Proposed (all new material)

6 1505.0751 DEFINITIONS.

7 Subpart 1. Scope. The definitions in this part apply to
8 parts 1505.0752 to 1505.0758.

9 Subp. 2. Commissioner. "Commissioner" means the
10 commissioner of agriculture or an authorized agent and may
11 include a county agricultural inspector.

12 Subp. 3. Control program. "Control program" means the
13 administration and enforcement of laws and rules pertaining to
14 seeds, noxious weeds, screenings, pesticides, fertilizers, feed,
15 or insect pests.

16 Subp. 4. County agricultural inspector. "County
17 agricultural inspector" means an individual appointed by the
18 county board of commissioners under Minnesota Statutes, section
19 18.80, subdivision 1.

20 Subp. 5. Enforcement action. "Enforcement action" means
21 an administrative or legal proceeding used by the commissioner,
22 a county agricultural inspector, or a local weed inspector to
23 carry out duties under Minnesota Statutes, sections 18.79,
24 subdivision 1, and 18.81, subdivisions 1 and 2.

25 Subp. 6. Local weed inspector. "Local weed inspector"
26 means the supervisor of a township board or the mayor of a city
27 when they assume the duties of their office or their appointed
28 assistant under Minnesota Statutes, section 18.80, subdivisions
29 2 and 3.

30 Subp. 7. Municipality. "Municipality" means a home rule
31 charter or statutory city or a township.

32 Subp. 8. Noxious weed. "Noxious weed" means an annual,
33 biennial, or perennial plant that the commissioner designates to
34 be injurious to public health, the environment, public roads,
35 crops, livestock, or other property.

1 1505.0752 PROCEDURE FOR ENFORCEMENT OF NONPERFORMANCE.

2 Subpart 1. Local weed inspectors. The procedure in this
3 subpart applies if a city mayor, township supervisor, or their
4 appointed assistant fails to carry out a duty assigned in
5 Minnesota Statutes, section 18.81, subdivision 2.

6 A. If a county agricultural inspector observes that a
7 local weed inspector has failed to carry out a duty assigned in
8 Minnesota Statutes, section 18.81, the county agricultural
9 inspector shall instruct the local weed inspector having
10 jurisdiction to initiate enforcement action including the date
11 by which it must be initiated. If no enforcement action is
12 initiated by the date given, the county agricultural inspector
13 shall notify the local weed inspector of the nonperformance in
14 writing. The notice of nonperformance must include the
15 following:

16 (1) the name and address of the owner and
17 occupant of the land in violation or of the person selling or
18 transporting noxious weed propagating parts;

19 (2) the legal description of the land in
20 violation, if applicable;

21 (3) the names of the noxious weeds growing on the
22 land or being unlawfully sold or transported;

23 (4) the steps to be followed by the local weed
24 inspector in carrying out the inspector's duty;

25 (5) the date by which enforcement action must be
26 initiated; and

27 (6) the county agricultural inspector's
28 signature, address, and telephone number.

29 B. If a local weed inspector fails to initiate an
30 enforcement action by the date specified in a notice of
31 nonperformance, the county agricultural inspector serving the
32 notice may perform the duty.

33 C. After an enforcement action resulting from a
34 notice of nonperformance has been completed, the county
35 agricultural inspector involved may file an itemized statement

1 of costs with the clerk in the municipality where the action was
2 carried out if the county cannot be reimbursed in another
3 manner. The municipality shall issue the proper warrants to the
4 county for the services rendered.

5 D. If a municipality fails to reimburse the county,
6 the county auditor may include the amount listed in the itemized
7 statement as a part of the next annual levy in the municipality
8 and withhold that amount from the municipality in making its
9 next apportionment.

10 Subp. 2. **County agricultural inspectors.** The procedure
11 established in this subpart applies if a county agricultural
12 inspector fails to carry out a duty assigned in Minnesota
13 Statutes, section 18.81, subdivision 1, clauses (1) to (3).

14 A. If the commissioner observes that a county
15 agricultural inspector has failed to carry out a duty assigned
16 in Minnesota Statutes, section 18.81, the commissioner shall
17 instruct the county agricultural inspector to initiate
18 enforcement action, including the date by which the enforcement
19 action must be initiated. If no enforcement action is initiated
20 by the date given, the commissioner shall notify the county
21 agricultural inspector of the nonperformance in writing. The
22 notice must contain the following:

23 (1) the name and address of the person or persons
24 who own, occupy, or manage the land or firm;

25 (2) the legal description of the land in
26 violation, if applicable;

27 (3) the names of the noxious weeds growing on the
28 land in violation or a specific description of the
29 nonperformance;

30 (4) the steps for the county agricultural
31 inspector to follow in order to carry out the inspector's duty;

32 (5) the date by which the enforcement action must
33 be taken by the county agricultural inspector; and

34 (6) the signature, address, and telephone number
35 of the commissioner.

36 B. If a county agricultural inspector fails to

1 initiate an enforcement action by the date specified in a notice
2 of nonperformance, the commissioner may carry out the duty for
3 the county. The commissioner shall inform the board of county
4 commissioners of the nonperformance by the agricultural
5 inspector.

6 C. The commissioner may request the board of county
7 commissioners to provide information concerning any corrective
8 measures taken to prevent future nonperformance actions.

9 1505.0754 WORK PLANS AND PERFORMANCE EVALUATIONS FOR COUNTY
10 AGRICULTURAL INSPECTORS.

11 Subpart 1. **Work plans.** A detailed plan of work to be
12 accomplished by each county agricultural inspector must be
13 jointly developed each year by the commissioner and the county
14 agricultural inspector. A separate work plan must be developed
15 for each of the control programs involving seed, noxious weed,
16 and screenings. If participation in the control programs for
17 feed, fertilizer, pesticide, and insect pests is requested by
18 the commissioner, a separate work plan must also be developed
19 for each program. The plan must list the individual tasks, the
20 amount of time sufficient to complete them, and the budget
21 necessary. The plan must be submitted to the board of county
22 commissioners each year for its approval of the amount of time
23 and the budget needed.

24 If the commissioner requests participation in the feed,
25 fertilizer, pesticide, and insect pest control programs, the
26 written request to do so must accompany the work plan.

27 Subp. 2. **Performance evaluation.** The performance of a
28 county agricultural inspector must be evaluated annually by the
29 board of commissioners in the county where the inspector is
30 employed. The evaluation must be based on the following
31 criteria:

32 A. whether or not all tasks assigned to the inspector
33 by the work plan were performed;

34 B. the level of performance for each task assigned by
35 the work plan;

1 C. the response to all notices of nonperformance
2 received during the calendar year for which the evaluation is
3 being made; and

4 D. whether or not the hours of training required by
5 part 1505.0756 were completed.

6 1505.0756 TRAINING REQUIREMENTS AND AUTHORIZED AGENT STATUS FOR
7 COUNTY AGRICULTURAL INSPECTORS.

8 Subpart 1. Training requirements.

9 A. To meet qualifications as a county agricultural
10 inspector in the control programs for noxious weed, seed, and
11 screenings as required by Minnesota Statutes, section 18.80,
12 subdivision 1, each county agricultural inspector must complete
13 at least 40 hours of approved training in the first year of
14 employment, and 20 hours in each succeeding year as follows:

15 (1) 16 hours in seed law enforcement training in
16 the first year and eight in each succeeding year;

17 (2) 20 hours in noxious weed law enforcement
18 training in the first year and ten in each succeeding year; and

19 (3) four hours in screenings law enforcement in
20 the first year and two in each succeeding year.

21 B. To meet qualifications as a county agricultural
22 inspector in the control programs for feed, fertilizers,
23 pesticides, and insect pests, the participating county
24 agricultural inspector must satisfactorily perform all assigned
25 tasks in the noxious weed, seed, and screenings control programs
26 and must complete the number of hours of training required by
27 the county work plan for each program.

28 Subp. 2. Authorized agent status.

29 A. Minnesota Statutes, section 18.79, subdivision 2,
30 gives the commissioner the power to authorize county
31 agricultural inspectors to act as agents in the administration
32 and enforcement of Minnesota Statutes, sections 18.76 to 18.88.
33 As an agent, the county agricultural inspector has the same
34 authority, within the agent's jurisdiction, as the commissioner
35 to administer and enforce assigned laws.

1 B. A county agricultural inspector shall submit a
2 request in writing to the commissioner to become or to
3 discontinue being an authorized agent for each control program
4 assigned to the inspector in Minnesota Statutes, section 18.81,
5 subdivision 1.

6 C. A county agricultural inspector is eligible to
7 become an authorized agent of the commissioner for the noxious
8 weed, seed, and screenings control programs one year after
9 completing the initial training needed to meet the qualification
10 requirement if the inspector's latest annual performance
11 evaluation specified in part 1505.0754, subpart 2, indicates a
12 satisfactory level of performance.

13 D. The commissioner may authorize a county
14 agricultural inspector to be an authorized agent for the feed
15 fertilizer, pesticide, and insect pest control programs if the
16 inspector is already an authorized agent in the noxious weed,
17 seed, and screenings control programs and if the inspector has
18 met the qualification requirement in item C.

19 E. The commissioner shall provide a letter of
20 authorization along with an endorsement for authorized agent
21 status in each control program on an identification card
22 supplied to each authorized inspector.

23 F. The commissioner may revoke the authorized agent
24 status for each or all control programs if an inspector fails to
25 maintain a satisfactory level of performance as determined in
26 the annual evaluation specified in part 1505.0754, subpart 2.

27 1505.0758 MEETINGS AND REPORTS REQUIRED OF INSPECTORS.

28 Subpart 1. Meetings.

29 A. County agricultural inspectors shall attend the
30 following meetings according to Minnesota Statutes, section
31 18.79, subdivision 7, to receive the training considered
32 necessary by Minnesota Statutes, section 18.79, subdivision 6:

33 (1) an annual short course for all county
34 agricultural inspectors at one location;

35 (2) an annual meeting for the county agricultural

1 inspectors in a designated region at several locations
2 throughout the state; and

3 (3) other regional meetings called by the
4 commissioner to address a special problem or training need that
5 may arise involving one or more duties assigned to the position
6 in Minnesota Statutes, section 18.81, subdivision 1.

7 B. Local weed inspectors are required to attend the
8 following meetings according to Minnesota Statutes, section
9 18.79, subdivision 7, to receive the training considered
10 necessary by Minnesota Statutes, section 18.79, subdivision 6:

11 (1) an annual noxious weed law enforcement
12 training meeting or time allotted on the program of an annual
13 meeting of a county township officers association;

14 (2) for those unable to attend a meeting as
15 provided in subitem (1), a correspondence refresher course or
16 other training approved by the commissioner; and

17 (3) other meetings called by the commissioner to
18 address a special problem or training need that may arise
19 involving a duty assigned to the position in Minnesota Statutes,
20 section 18.81, subdivision 2.

21 Subp. 2. Reports.

22 A. The following reports are required from county
23 agricultural inspectors according to Minnesota Statutes, section
24 18.79, subdivision 7, as a record of their activities in
25 performing the duties assigned to them in Minnesota Statutes,
26 section 18.81, subdivision 1:

27 (1) a monthly report to be kept on file in each
28 county and available for review;

29 (2) an annual report submitted to the
30 commissioner summarizing their activities in the duties assigned
31 to them and the activities of the local weed inspectors reported
32 to them; and

33 (3) special reports, to be requested as needed
34 and submitted to the commissioner, involving one or more of the
35 duties assigned to them.

36 B. An annual report from each municipality submitted

1 to the county agricultural inspector in the county where the
2 municipality is located is required of local weed inspectors
3 according to Minnesota Statutes, section 18.79, subdivision 7,
4 as a record of their activities in performing the duties
5 assigned to them in Minnesota Statutes, section 18.81,
6 subdivision 2.

