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Department : Agriculture

STATE OF MINNESOTA  
**Office Memorandum**

Date : November 16, 1994

To : Maryanne Hruby, Director  
LCRAR

From : Carol Milligan   
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 12/5/94.

These rules were originally published for comment in the State Register on September 6, 1994, and a copy of the Statement of Need and Reasonableness was sent to you at that time. However, because of a procedural problem in the notice, the rules were withdrawn. No changes were made in the Statement of Need.

Please call me if you have any questions.

Attachment



**STATE OF MINNESOTA  
DEPARTMENT OF AGRICULTURE**

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

**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