

FEB 7 1995

Department : Agriculture

STATE OF MINNESOTA
Office Memorandum

Date : February 2, 1995

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 local implementation of pesticide control regulations. The Notice of Intent to Adopt Rules and the rules will be published in the *State Register* on 2/20/95.

Please call me if you have any questions.

Attachment

FEB 8 1995

State of Minnesota
Department of Agriculture

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**In the Matter of the Proposed Rules
of the Department of Agriculture
Governing Procedures Addressing
Local Implementation of State
Pesticide Control Regulations**

**Statement of Need
and Reasonableness**

This statement was prepared in accordance with Minnesota Statutes, section 14.23

INTRODUCTION

This rule is proposed for adoption by the Minnesota Department of Agriculture pursuant to Minnesota Statutes, section 18B.06 which provides the commissioner with the general authority to adopt rules to enforce the State Pesticide Control Law (Minnesota Statutes Chapter 18B) and specifically directs that rules be adopted including procedures addressing the local control of pesticide regulation.

Minnesota Statutes, section 18B.02 states: "Except as specifically provided in this chapter, the provisions of this chapter preempt ordinances by local governments that prohibit or regulate any matter relating to the registration, labeling, distribution, sale, handling, use, application, or disposal of pesticides. It is not the intent of this section to preempt local responsibilities for zoning, fire codes, or hazardous waste disposal."

This rule is needed to provide the procedures addressing the local control of pesticide regulation as directed in Minnesota Statutes, section 18B.06 while maintaining the directive of Minnesota Statutes, section 18B.02 which preempts development of local ordinances in regard to the regulation of pesticides. This rule provides the avenue through which local units of government can choose to partner with the Minnesota Department of Agriculture in addressing issues regarding pesticides.

SMALL BUSINESS IMPACT

This rule provides the opportunity for local units of government to implement certain provisions of the state pesticide control law through local implementation programs developed through delegation agreements with the commissioner. The outcome of this rule does not change the provisions or requirements of the law in any way, therefore, the requirements for compliance with that law does not change and small businesses required to comply with the law will see no change in their responsibility to comply.

COST TO PUBLIC BODIES

The department envisions that a local unit of government entering into a delegation agreement for which inspection personnel will be hired will have associated costs. This could occur in one of four ways:

1. A local unit of government contracts for existing staff of another local unit of government to provide the required services at a known charge or as an "in kind"

service complementing other services already provided through other agreements or functions. (i.e. a township contracts with a county for service on the part of the County Agricultural Inspector)

2. A local unit of government provides inspection as an **added** activity for existing staff who are qualified. (i.e. the county adds this duty to **existing** duties of the Environmental Health Officer, County Agricultural Inspector, Feedlot Officer, Water Plan Coordinator, etc.)
3. A local unit of government contracts with a private entity **to** perform inspection duties and uses existing staff to carry out administrative functions (i.e. a township hires an Independent Crop Consultant or Environmental Consultant to perform inspection duties)
4. The local unit of government adds staff to specifically **carry out** activities associated with implementation of the local implementation program.

It is likely that local units of government choosing to add staff **to carry out** the activities associated with a local implementation program would expend **approximately** \$50,000 annually to provide for one full time equivalent personnel, fringe benefits, office support, travel, training and other expenses. The addition of staff to specifically **carry out** the activities associated with a local implementation program would be the **most** expensive of the four options described. Therefore, using the figure of \$50,000 as an **annual** financial expenditure will likely represent the highest potential cost.

The department envisions as many as five local units of government pursuing delegation agreements the first year and another five the second year. **Providing** a total potential expenditure of \$750,000 for the biennium cost to public bodies **as the** highest potential cost.

It must be reiterated here that entry into this process and development of a local implementation program by a local unit of government is **completely** voluntary on their part. Also, the figure of \$750,000 is the an estimate based on the **highest** potential cost. It is expected local units will use several of the options described or **may** provide other creative solutions to the financing of their local implementation programs. The actual cost to public bodies could therefore be considerably less based on the number **which** actually choose to enter the process and the method of staffing and financing chosen.

1505.4000 PURPOSE

This section describes the purpose for which this rule is developed.

1505.4010 SCOPE

This section is necessary to define the limits of this rule. This section explicitly lists those aspects and sections of the state pesticide control law which **will be** available through local delegation, describes what areas of the law are retained by the **department**, and reiterates the statutory direction that local units of government are not allowed **to** develop ordinances which regulate pesticides except as specifically provided by the pesticide control law. This section clarifies what provisions of the pesticide control law **will be considered** eligible for delegation, and should, therefore, reduce confusion for local units of government wishing to pursue

delegation agreements. It is necessary to include this section at the beginning of the rule to provide clarity in process, as local units of government pursuing a delegation agreement will be knowledgeable of the extent of the field from the beginning of their process of development of an agreement or subsequent local implementation program. It is reasonable for the department to specifically define the areas of authority which will be eligible for delegation so as to provide reasonable expectations for local units of government wishing to pursue delegation agreements. The department has state wide authorities in regard to the regulation of pesticides and limitation of authorities eligible for delegation is intended to reduce overlap and redundancy of regulation to the greatest extent possible while providing for potential increases in efficiency and effectiveness. Certain authorities assigned by the Pesticide Control Law to the Minnesota Department of Agriculture require a high level of expertise which has been developed and is maintained within the department, it is believed that these areas are best retained within the department as both a cost effective and technically efficient approach to management.

1505.4020 DEFINITIONS

Definitions are necessary to clarify the meanings of specific words and phrases used throughout the rule. This section specifically refers to definitions from the enabling statute (Minnesota Statute 18B) as being applicable to this rule. This section also provides specific definitions for words and phrases used exclusively in this rule and which have specific meanings within this rule.

1505.4030 PROCEDURE

This section is necessary as it provides the procedure through which a local unit of government will develop, complete and implement a delegation agreement and its subsequent local implementation program. This section provides the required steps and time frames in this developmental process. This section also sets out the standards for notification, public participation and department review.

Subpart 1. Applicability

This part describes who the process applies to and its general purposes. It is reasonable to provide this part to set the limits of applicability and to inform readers as to the purposes of the procedure.

Subp. 2. Resolution to develop a local control proposal

This part describes how the process is officially initiated. This part is necessary to establish how the process of developing a delegation agreement begins and who is responsible to take that action. It is reasonable to provide for an initiating action and it is also reasonable to require that an initiating action be taken by a governing body as such a body is held accountable to its electing constituents. This action also establishes the base line date upon which required activities will be measured in terms of time frames.

Subp. 3. Notice of decision to develop proposal

This part provides for how the commissioner and general public will be notified that a local unit of government has initiated the process of development of a local implementation

proposal. This part also provides information on who may be contacted by the public in regard to the local implementation proposal. This section is necessary to provide that the commissioner is duly informed of the official action of the local unit of government initiating development of a local implementation proposal, and that the general public is informed and is given a contact so they can express their concerns, opinions and desires in regard to the development of the local implementation proposal. It is reasonable to provide that a local unit of government inform the general public through publication two newspapers of general circulation within the geographic area affected as this is an economical means to reach a wide audience within the specified area. It is reasonable for the commissioner to require notification by direct mail of a copy of the adopting resolution so as to be assured that the initiating action took place through the governing body of the local unit of government and to be assured regarding the date this action took place as this date has significance regarding the length of time in which actions are expected to be completed.

Subp. 4. Public informational meetings

This part is necessary to provide for public education and input in regard to the local implementation proposal. This part provides the time frame in which a public informational meeting is required, the minimum number of required public informational meetings, how the scheduled meeting(s) must be noticed, and the required content of the meeting(s). It is reasonable and prudent to require public informational meetings. Although many local units of government may provide adequate public participation within their governmental framework, it is of utmost importance that adequate public participation be provided in the process of proposal development so that issues and potential problems can be addressed at this stage rather than at a later stage. The public informational meeting is a reasonable means to bring about the desired end of informing, educating and receiving comment from the interested public as it provides direct contact and interchange.

Subp. 5 Meetings with other local units of government

This part provides that the unit of government sponsoring the proposal must meet with other units who have authorities in the geographic area affected. This part is necessary to insure that these local units are informed and that, if similar activities are occurring or are planned to occur, that activities can be coordinated as described under part 1505.4060 of this rule. It is reasonable to expect that local units will wish to be informed of activities which may take place within their geographic area of authority. A meeting is the most efficient method of providing an opportunity for the affected local units of government to express and resolve their concerns.

Subp. 6. Record of meetings

This part is necessary to provide a record that the local unit of government developing the proposal has held meetings as described in subparts four and five above, and also provides that these records be supplied to the department. It is reasonable to keep official records of such meetings as a general practice and memorialize what occurred at the meetings. These records also inform the department regarding what occurred at the meetings.

Subp. 7. Public participation

This part provides that meetings to provide public participation be held to the standard of Minnesota Statutes, section 471.705. This is necessary to set out how meetings will be noticed, held, recorded, etc., without making such stipulation in this rule and thereby making this rule cumbersome. It is also efficient to refer to the above referenced statute as local units are familiar with this standard. This standard is reiterated in this rule so that the reader of the rule is both fully aware of this standard and informed that public participation is a required element of the local implementation proposal development process. It is reasonable to make this reference as it provides clarity to the reader and consistency to the process utilized.

Subp. 8. Initial review

This part is necessary to describe when the local implementation proposal is to be submitted to the department, what information is to be submitted, the time allotted for the department to review and the method of notification of department findings to the local unit of government. It is reasonable to provide for departmental review of the local implementation proposal and to set the time frames and information whereupon that review will take place.

Subp. 9. Review criteria

This part is necessary to provide the criteria upon which the local implementation proposal's adequacy will be determined. It is reasonable to provide criteria based upon the mandates the department is responsible to carry out. It is reasonable to include consistency with the mandates of FIFRA (the Federal Insecticide, Fungicide, and Rodenticide Act) and consistency with Minnesota Statutes 18B and 18D as these are the Federal and State Laws which ultimately regulate pesticides. It is reasonable to include within the criteria the education, training and experience level of personnel as a given level of expertise is required to effectively carry out activities associated with a local implementation program. It is also reasonable to include criteria regarding consistency with department procedures and policies as a local implementation program is created under delegation and actions of a local implementation program are expected to be consistent and enforceable as actions taken by the department.

Subp. 10. Notice of review

This part is necessary to notify the general public that the department has received a local implementation proposal for its review and to solicit outside public opinion in regard to the local implementation proposal. This part also provides that opinions received through this solicitation can only be applied based on the same review criteria as the local implementation proposal itself. This is an appropriate approach in gathering and applying information in the review of a local implementation proposal as it allows the public to provide input and recommendations at this stage of the process. It is reasonable for the department to notify the general public and solicit outside opinion so as to inform itself of the general disposition of the public in regard to the local implementation proposal for purposes of review. This can serve to strengthen the foundation of information for decisions on the part of the commissioner. The *State Register* serves as a vehicle of state wide distribution for informing the general public regarding issues or actions being addressed by the department.

Subp. 11. Negotiation

This part is necessary to provide for the transformation of the local implementation proposal into a delegation agreement. This activity takes place as described in this part as a negotiating process between staff of the department and the local unit of government and results in a delegation agreement which is then submitted for the commissioner's signature. The delegation agreement is the document which authorizes the local unit of government to undertake activities stipulated therein. It is reasonable to provide for this process as the local implementation proposal is a proposal or planning document and the delegation agreement is the authorizing or enabling document for the local unit of government.

Subp. 12. Completion

This part stipulates how a delegation agreement is completed between the commissioner and a local unit of government. This section is necessary as it provides the actions necessary on the part of the commissioner and the local unit of government for the completion of the delegation agreement and the time frame in which the actions must take place. It is reasonable to provide for completion of the process as both parties are then aware of the expected actions, the time allotted for the actions to occur, and what is to occur following those actions.

Subp. 13. Notice of adoption

This part is necessary to provide the public with due notice that a delegation agreement has been completed between the commissioner and a local unit of government and what is contained within the agreement. It is reasonable to provide for public notice as a means of informing the general public. Publication in a local newspaper is the most cost effective means of informing the general public in the local area affected by a local implementation proposal, while publication in the *State Register* is the most effective means whereby the department can inform the general public on a state wide basis.

1505.4040 CONTENT OF LOCAL IMPLEMENTATION PROPOSAL

This section outlines the information required to be included in a local implementation proposal. This section is necessary to provide a consistent format for information regarding a proposed program for the local implementation of the State Pesticide Control Law. This section also provides the information necessary for the commissioner to begin a review of the merits of the proposed program.

Subpart 1. Title Sheet

This part is necessary as it provides the formal title of the proposed program which will be used in reference to the proposal in correspondence. This part also provides the date of submittal of the proposal, which, allowing time for mail delivery, will closely coincide with the date beginning the 90 day review period allowed for the department to complete its review of the proposal and report its findings to the local unit of government. This section also provides the title of the governing body submitting the proposal. This is necessary to distinguish proposals of similar content submitted by different governmental units and to identify the body ultimately responsible for the proposed program. It is reasonable to provide for formalizing a title to a proposal such that it becomes independence in terms of reference.

Subp. 2. Table of contents

This part provides an overview of what is contained within the proposal. This section is necessary to the efficient management of discussions which refer to the proposal, as it provides a means to reference specific areas of the document and guides how information may be discovered within the document. It is reasonable to provide a table of contents as means of quick reference and guidance in finding specific information in the local implementation proposal.

Subp. 3. Map and description of the geographic area affected

This part is necessary to describe the geographic area in which the proposed program would take effect. It is important that the commissioner be able to determine if and where local implementation programs may overlap as this may require development of a coordinated program under section 1505,4060 of this rule. This section is also necessary to provide a description of affected area for those persons who may reside, have a resident business, provide services within the area, or otherwise have interest in the program and the area it affects. It is reasonable to provide a map and description of the geographic area affected so that there is clarity as to where the local implementation program will take effect.

Subp. 4. Primary contact

This part is necessary to provide an official contact through which the commissioner may communicate in regard to the local implementation proposal. It is reasonable to provide for an official contact so that there is clarity in communication. This aids in reducing confusion and provides for continuity in the development and review process.

Subp. 5. Executive summary

This part requires a brief descriptive overview of the local implementation proposal and is intended primarily for those readers who are not interested in extensive and detailed descriptions of all aspects of the local implementation proposal, but desire to be informed of its substance. It is reasonable to provide an executive summary as a means to provide the salient information contained within the complete document in a concise format which is accessible to the reader.

Subp. 6. Detailed description of proposed program

This part provides that a detailed description of the proposed local implementation program be developed for the proposal. This part also provides for some of the categories of information to be presented. This part is necessary to provide information at a level of detail such that the department can make determinations of relevance, adequacy and implementability based on the review criteria. It is reasonable to provide an in depth description so that the complete detail of the proposal is developed and understood. The department is the primary audience for this detailed description, as the detailed description can provide a significant amount of information to assist the department in the determining the merits of the proposed program. The department is not the only audience, however, and the detailed description can provide more complete information to those who have a greater depth of interest in the proposed program which cannot be addressed by the cursory overview provided by the executive summary.

Subp. 7. Administering agency

This part is needed to ensure that the local unit of government submitting the local implementation proposal, within their organizational structure or through agreement with another agency, has at their disposal the personnel necessary to successfully administer the local implementation program. This part also provides a contact for the department for future reference in regard to administrative activities. It is reasonable to expect that a local unit of government may explore various means by which the local implementation program can be administered. It is also reasonable, therefore, that the actual administering agency for a given program be named here such that all parties are informed of who that official administering agency will be.

Subp. 8. Administrative procedures

This part is necessary as it provides that the local unit of government develop and present a description of how the local administering agency will actually administer a local implementation program. This part provides examples of administrative elements which are expected to be included in this description. It is reasonable to request this type of information as it provides direction of the actual administration of the program and sets out what the department can expect in terms of its own management of information, reports and reviews.

Subp. 9. Implementation procedures

This part provides a description of the procedures it will follow in implementing its program. This part is necessary to provide planning for implementation on the part of the local unit of government or its implementing agency. This part is also necessary for the department to be able to determine if the implementation procedures meet with the standards of department policies and procedures. It is reasonable to request this type of information to establish how in fact the program will be implemented and to determine if resources and personnel will be adequate to meet the needs of the planned implementation program.

Subp. 10. Financial considerations

This part is necessary to assist in the planning on the part of the local unit of government for adequate financial support of the proposed local implementation program and to assist in the department being able to assess whether the local unit of government has identified adequate financial resources to carry out the proposed local implementation program. It is reasonable to include this part as any local implementation program will require some means of financing and the potential for successful implementation is based, in part, in matching those means to the level of implementation. This part can help provide that a proposed local implementation program does not exceed its means by providing for planning on the part of the local unit of government and review and oversight on the part of the department.

Subp. 11. Draft delegation agreement

This part is necessary to provide a starting point toward development of the final delegation agreement. Since the local unit of government initiates the process, it is reasonable for the local unit of government to provide the draft delegation agreement which expresses their desires. This is a working document whereon negotiations between the local unit of government and the department may begin.

1505.4050 CONTENTS OF DELEGATION AGREEMENT

This section establishes what may be provided as substance within a delegation agreement. This section also provides that the department may develop model delegation agreements to assist local units of government. This section is necessary to identify what may be contained in a delegation agreement. It is reasonable to establish a base of what may be contained in delegation agreements and to provide the opportunity for the department to provide guidance to local units of government through development of model delegation agreements.

1505.4060 COORDINATION

This section is necessary to ensure that local units of government, who may have jurisdiction within the same geographic area (i.e. township/ county), coordinate any activities authorized through this rule. This section provides means by which multi-jurisdictional situations can be resolved. It is anticipated that local units of government will enter into delegation agreements with the department which cover areas which intersect, overlap, or encompass the same geographic area for which delegation agreements already exist or for which other local units of government show interest in developing their own delegation agreement. It is reasonable to avoid redundancy in local implementation programs in order to reduce costs to public bodies and to ensure that government functions are carried out in a complementary fashion. The employment of the formation of Joint Powers Agreements is the appropriate vehicle to achieve this as it is well defined in Minnesota Statute, section 471.59, has been successfully employed to address similar issues, and provides the flexibility required to address the particular issues of a given situation.

1505.4070 MINIMUM QUALIFICATIONS OF INSPECTION PERSONNEL

This section identifies the criteria by which personnel carrying out local implementation programs will be evaluated. This section establishes the minimum qualifications required of personnel to be considered adequate to carry out field surveillance, inspection, collection of samples or other implementation activities. This section is necessary to assure that a local unit of government entering into and carrying out a local implementation program can complete the required activities at a level of competency required for subsequent enforcement of the State Pesticide Control Law. This section also provides the time at which the qualifications of inspection personnel must initially be submitted to the commissioner. It is reasonable to provide for minimum qualifications for inspection personnel as these personnel are responsible for collecting information which may lead to development of enforcement actions. Matters involving the collection and preservation of information that may be used as evidence in enforcement actions can be highly technical in nature and requires a certain minimum level of expertise.

1505.4080 ENFORCEMENT

This section is necessary to establish the limits and conditions of authority for enforcement associated with a delegation agreement. This section establishes the procedure to be used in pursuing enforcement action, and provides for communication in regard to cases referred for enforcement to the department from a local unit of government. It is anticipated that issues of noncompliance or violation will be moved to enforcement action through activities of local

implementation programs acting under delegation agreements. It is also assumed that the state may not be held severable from enforcement actions developed through a local implementation program acting through a delegation agreement. It is reasonable, therefore, that since the state may ultimately be held accountable for outcomes of enforcement actions taken under delegation agreements, that it also retains authority to carry out such enforcement actions.

1505.4090 REPORTING REQUIREMENTS

This section is necessary for the local unit of government and the department to plan its annual activity associated with a delegation agreement and subsequent local implementation program. This section also allows the local unit of government and the department the opportunity to review accomplishments of the program over time. It is reasonable to require resumes and training programs of identified personnel be reported annually to assure that the department is aware of any changes in personnel and to ensure that continuing training and education commensurate with the identified program is occurring. It is also reasonable to require that all schedules, implementation measures and outcomes be identified in reporting both planned activities and in reporting accomplishments so as to be able to determine where activities exceed or fall short of those which were planned and to assist in making adjustments in the program.

1505.4100 PERFORMANCE REVIEW AND EVALUATION

This section establishes the criteria and processes by which the delegation agreement and subsequent local implementation program will be evaluated by the department. This section is necessary for the department to be able to assess the performance of the local implementation program, qualifications of inspection personnel, and the effectiveness of the local program in maintaining appropriate levels of training, support, and staff complement necessary to carry out the local implementation program adequately. This section also assists local units of government by providing the opportunity to plan for reviews and self-evaluate their performance in anticipation of official review by the department. It is reasonable to provide for formal review of existing programs and to evaluate performance so as to determine whether planned expectations of the program are being met and to provide feedback to personnel as to program development and improvement. Performance of joint inspections can aid both in allowing the department to observe the level of competence in performing inspections and to provide on-site training in performing such inspections. Spot check inspections allow the department to evaluate how effectively a program is maintaining compliance with particular laws or rules. Verification of staff qualifications and on-going education and training programs provides the department means to evaluate if expertise of personnel are being maintained at an adequate level.

1505.4110 COMPLIANCE

This section describes how the department will evaluate a local implementation program in terms of compliance with the signed delegation agreement. Essentially the delegation agreement sets out a framework under which a local unit of government will perform certain activities. It is necessary to describe how the department may act to determine whether a local unit of government is meeting the terms set out in the delegation agreement, what action the department will take in gaining compliance with the agreement, and the time frame in which

the local unit must act to gain compliance when informed of being out of compliance by the department. It is anticipated that local implementation programs will, from time to time, deviate from their intended goals or planned activities. It is reasonable for the department to identify and inform the contact for the local unit of government of issues of noncompliance and to provide direction to the local unit of government regarding procedures to gain compliance with the delegation agreement. The procedures identified will be specific to the particular issue of noncompliance.

1505.4120 APPEALS

This section identifies that signature of a delegation agreement by the commissioner will be considered a final agency action and stipulates the appropriate jurisdiction for appeal for such action as the Minnesota Court of Appeals. It is anticipated that persons potentially affected or actually affected by actions taken under a delegation agreement may have dispute with, claim disenfranchisement by, or claim other damage under the delegation agreement and may wish to file appeals in regard to the formation of the agreement, its enactment, or its implementation. It is reasonable to establish the method for persons to make appeals and the Minnesota Court of Appeals is the appropriate body to hear such appeals.

1505.4130 TERMINATION

This section is needed to allow the parties of an agreement to legally dissolve or terminate the agreement. It is anticipated that the department, a local unit of government or a joint powers organization formed under Minnesota Statutes, section 471.59 will wish to be released from, or terminate, an agreement at some time after its adoption. This section sets out the required time frame and notifications for effective and orderly termination of a delegation agreement. It is reasonable to provide sixty days notification of the other party in regard to termination so as to provide an adequate amount of time for that party to make necessary arrangements for termination. It is reasonable to provide for notification of termination and provide for publication in a local newspaper as means, as this is a cost effective method of reaching the localized population. Publication of notification of termination in the *State Register* is the most effective means for the department to notify the public on a state wide basis.

1-30-95

DATE



ELTON R. REDALEN

Commissioner of Agriculture