

Minnesota Attorney General: Administrative Rules Proceedings

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12 pages

MINNESOTA STATE REGULATIONS

Notice of filing by the Commissioner of Administration

We have received on this date, stamped and filed 2 copies of Rules and Regulations pertaining to the Dept of Agriculture
(Agency or Board)

Regulation No. AGR 101-108 Part A Chapter 4-101-108

Subject: Rules relating to the control of Dutch Elm disease and Oak wilt by local units of government

Department of Administration
Publication, Central Services Division
Documents Section
140 Centennial Office Building
St. Paul, Minnesota 55155
Telephone: (612) 296-2874

FILED
RICHARD L. BRUBACHER
Commissioner of Administration

AUG 25 1975 9:00AM

BY Eda Flaudeman ps
AUTH SIGNATURE

Stamped and filed with the Secretary of State August 25, 1975 8:45 AM

Rev. 9-72

Paul Strandberg
Special Assistant Attorney General
Agriculture

August 25, 1975

- AGR 101 - 108

RULES AND REGULATIONS OF THE DEPARTMENT OF AGRICULTURE
PART A, CHAPTER 4, REGULATIONS AGR 101 - 108

Agr 101 Purpose: It is the purpose of the rules and regulations contained herein to carry out and enforce the provisions of Minnesota Statutes 1974, Section 18.023, as amended by Laws 1975, Chapter 253. The rules relate to the control of Dutch elm disease and oak wilt by local units of government and include procedures and criteria for two grants-in-aid programs.

Agr 102 Definitions As used in this regulation, the following words and terms shall have the meaning given:

(a) "Shade tree" means any oak or elm tree situated in a disease control area approved by the commissioner.

(b) "Shade tree disease" means Dutch elm disease caused by Ceratocystis ulmi, or oak wilt disease caused by Ceratocystis fagacearum.

(c) "Commissioner" means the commissioner of agriculture. (Minn. Stat. Sec. 18.023, Subd. 1)

(d) "Metropolitan area" means the area comprising the counties of Hennepin, Ramsey, Anoka, Dakota, Washington, Scott and Carver. (Minn. Stat. Sec. 18.023, Subd. 1)

(e) "Municipality" means any city or any town exercising municipal powers pursuant to Minnesota Statutes, Section 368.01, or any general or special law, located in the metropolitan area, or any special park district as organized under Minnesota Statutes, Chapter 398, or any special purpose park district organized under the city charter of a city of the first class located in the metropolitan area, or any county in the metropolitan area for the purposes of county owned property or any portion of a county located outside the geographic boundaries of a city or town exercising municipal powers and any municipality or county located outside the metropolitan area which makes request to and has consent of the commissioner to come within the provisions of this section. (Minn. Stat. Sec. 18.023, Subd. 1)

(f) "Tree inspector" means a person who has the necessary qualifications to properly plan, direct and supervise all requirements for controlling shade tree disease in one or more governmental subdivisions within the limits of all laws, rules, and regulations governing this control and is so certified by the commissioner.

(g) "Disease control area" means an area approved by the commissioner within which a municipality will conduct a shade tree disease control program. (Minn. Stat. Sec. 18.023, Subd. 1)

(h) "Disease control program" means the municipal plan as approved by the commissioner to control shade tree disease. (Minn. Stat. Sec. 18.023, Subd. 1)

(i) "Subsidy Program" means a municipal program of financial assistance to private, residential property owners for the removal of diseased elm and/or oak shade trees.

(j) "Wood utilization or disposal system" means a system used for the removal and disposal of diseased shade trees which includes the collection, transportation, processing or storage of wood and which aids in the recovery of materials or energy from wood. (Minn. Stat. Sec. 18.023, Subd. 1)

(k) "Equipment" means machinery or devices which singly or in combination are designed, constructed and operated for the purposes of wood utilization and/or disposal and shall include all machinery, tools and devices ancillary to the use of such machinery or devices.

(l) "Facility" means land, buildings, and other appurtenances which are necessary or useful in the operation of wood utilization or disposal equipment.

Agr 103 Tree Inspector Employment and Qualifications

(a) A municipality will employ or retain on a continuing basis a tree inspector or will employ or retain jointly with one or more municipalities a tree inspector as provided by Minnesota Statutes, Section 471.59.

(b) Provisional appointments

(1) A municipality may provisionally appoint a tree inspector for a period of not more than six (6) months.

(2) This appointment is dependent on approval by the commissioner after determing the competence of the appointee.

(3) The provisional appointment cannot be extended and the appointee must either pass the tree inspector examination or successfully complete the next training course approved by the commissioner to be certified as a tree inspector.

(4) The provisional appointment may be withdrawn for cause by the commissioner upon notice and hearing.

(c) A tree inspector must be able to demonstrate the following qualifications:

(1) Identify all native tree species common to his work area, with or without leaves, and all felled or down trees with bark intact.

(2) Distinguish oak wilt and Dutch elm disease from all other tree problems of oak and elm.

(3) Know the proper method of collecting samples for disease diagnosis.

(4) Know and understand the biology of oak wilt and Dutch elm disease.

(5) Know the appropriate Minnesota laws and rules and regulations relative to oak wilt and Dutch elm disease.

(6) Know the approved control methods for oak wilt and Dutch elm disease.

(d) If a municipality fails to appoint a tree inspector an appointment may be made by the commissioner pursuant to Minnesota Statutes 1974, Section 18.023. Ten working days prior to such appointment, the commissioner shall notify the municipality by mail of such pending appointment. An inspector appointed by the commissioner shall be paid by the municipality for a minimum of 90 days even though the municipality may appoint their own inspector prior to the expiration of 90 days. This provision shall not apply to an inspector whose employment is suspended or terminated for cause.

Agr 104 Certification of Tree Inspector

(a) Certification of tree inspectors shall be accomplished by their passing an examination prescribed by the commissioner for the purposes of determing that the applicant possesses the necessary qualifications. Each applicant shall be notified by the commissioner by mail of the time and date of such examination. The applicant and the employing municipality will be notified of the results of the examination within 15 days.

(b) After certification, a tree inspector shall be required to attend annually at least one program of continuing education as approved by the commissioner. Failure to attend such programs as required may be grounds for revocation, termination, or suspension of certification.

Agr 105 Decertification of Tree Inspectors. The commissioner may upon notice and hearing decertify any tree inspector for cause as provided in the law.

Agr 106 Shade Tree Disease Control Program. The tree disease control program of all municipalities affected by these regulations shall include as a minimum the following elements:

(a) Control area. Each municipality shall designate and submit for approval by the commissioner a disease control area.

(b) Program plan. Each municipality shall prepare a tree disease control program plan that details the manner in which these regulations will be fulfilled.

(c) Methods of identifying diseased shade trees. Diseased shade trees will be identified by generally accepted field symptoms such as wilting, or yellowing of leaves, or staining of wood under bark. Confirmation when determined to be necessary, will be made by the Minnesota department of agriculture tree disease laboratory, or other laboratory recognized by the commissioner.

(d) Dutch elm disease and oak wilt control

(1) Tree inventory. Each municipality shall make and record a reasonable estimate of elms, oaks, and other tree species on both public and

private property within the municipality. Estimates of tree numbers may be made by acceptable forest inventory procedures. Control areas shall be designated with estimates of tree numbers within control areas recorded separately from estimates of tree numbers outside of control areas. These records shall be permanent and shall be reported to the department of agriculture.

(2) Dutch elm disease control shall include the following:

(aa) Sanitation. Sanitation is the major element in any Dutch elm disease control program and is essential for the elimination of elm bark beetles, diseased trees, and dead or weakened elm wood arising from any cause. This must include trees on private property.

(i) Prior to April 15, each municipality shall annually inspect all public and private properties for elm wood or logs that could serve as bark beetle breeding sites and require removal, or debarking if wood is to be retained. Before making any inspections on private property within a municipality, it shall be the duty of the municipality to attempt to give notice of said inspection to all affected residents either through individual, oral or written notice or by publishing said notice in a local newspaper.

(ii) Each municipality shall inspect all elm trees within a control area at least twice during the growing season (by July 1 and August 15) for Dutch elm disease symptoms.

(iii) After notification by the municipality, private property owners shall remove and properly dispose of diseased or dead elm trees or any above ground parts thereof within 20 days in accordance with prescribed methods approved by the commissioner and consistent with applicable air quality and solid waste regulations.

(iv) Trees or parts thereof not removed within 20 days of such notification shall be removed by the municipality and the costs thereof shall be assessed against the property.

(bb) Root Graft Control. A municipality shall disrupt common root systems by chemical or mechanical means as approved by the commissioner to prevent root graft spread of Dutch elm disease.

(3) Oak wilt. Oak wilt control involves both root graft treatment and prevention of infection by oak wilt spores carried by insects or other agents (overland spread).

(aa) A municipality shall use chemical or mechanical means to disrupt root graft transmission of the oak wilt fungus as approved by the commissioner.

(bb) To control overland spread of the disease, a municipality shall do the following:

(i) Avoid pruning or other mechanical damage during the most susceptible period in May and June. Use tree wound dressings if wounding is unavoidable during susceptible period.

(ii) Girdle diseased trees as soon as they are detected to reduce spore mat formation. Chemical or mechanical root disruption shall precede girdling if root graft spread is likely to occur.

(iii) Eradicate or destroy the following diseased oaks: northern red oak, Quercus rubra; northern pin oak, Quercus ellipsoidalis; black oak, Quercus velutina; and scarlet oak, Quercus coccinea; in accordance with prescribed methods approved by the commissioner and consistent with applicable air quality and solid waste regulations.

(e) Records. Shade tree disease program records shall be kept by each municipality and be available for examination at any time by the commissioner. A yearly report of the summation of these records shall be made to the commissioner by December 1 and this report shall include the following:

(1) Monies expended on personnel, equipment, and contracts, listed separately.

(2) Man hours spent on tree inventory, sanitation, and any chemical control measures.

(3) An initial inventory of trees.

(4) Number of samples submitted for diagnosis and the results.

(5) Number of diseased trees identified.

(6) Number of removal notices issued for the diseased trees located on private property.

(7) Number of trees removed, both diseased and others.

(8) Number of notices issued for removal of wood which may be a hazard in the spread of a shade tree disease.

(f) Program Review

(1) By January 1 of each year, municipalities shall submit their shade tree disease control program plan to the commissioner for review to determine if it meets the requirements of the law and any applicable rules and regulations.

(2) The commissioner shall complete this review and notify the municipalities of his determination within 15 days.

(3) Final determination of municipal program compliance with these rules and regulations shall rest with the commissioner.

(4) The commissioner may require changes or improvements anytime he determines such changes or improvements are needed to any municipal program to comply with these rules and regulations.

Agr 107 Grants-in-aid to Municipalities for Removal of Diseased Shade Trees

(a) Application for grants-in-aid

(1) A municipality may apply to participate in the grants-in-aid program provided for in Minnesota Statutes, Section 18.023 and in this regulation

by submitting annually at a time designated by the commissioner a completed application on a form provided by the commissioner.

(2) The application shall state that the municipality is eligible for a grant-in-aid and shall include the municipality's general plan for distribution of payments to private, residential property owners.

(b) Eligibility for grants-in-aid. To the extent appropriations are provided by the legislature, the commissioner may make grants-in-aid to municipalities for partial funding of municipal subsidy programs for the removal of diseased shade trees by owners of private, residential property, provided the following criteria are met:

(1) A municipality shall be eligible to receive grants-in-aid for the removal of diseased shade trees if:

(aa) The municipality is within the metropolitan area and has a shade tree disease control program approved by the commissioner, or

(bb) The municipality is outside the metropolitan area, has an approved shade tree disease control program, and has made request and received the consent of the commissioner to come under the shade tree disease control program described in Minnesota Statutes, Section 18.023, and Regulations Agr 101 to 106.

(cc) The municipality has a subsidy program for tree removal complying with the requirements of Minnesota Statutes, Section 18.023 and these regulations.

(2) A grant-in-aid may be given to an eligible municipality for the removal of trees meeting the following criteria:

(aa) The tree shall have been removed on or after June 1, 1975,

(bb) The tree shall have been in a disease control area,

(cc) A determination shall have been made by the municipal tree inspector that the tree was a hazard to the disease control program,

(dd) The tree shall have been removed from private, residential property, and

(ee) The tree must have been removed and disposed of pursuant to Regulation Agr 106.

(c) Procedures for administration of grants-in-aid

(1) The commissioner may make grants-in-aid to eligible municipalities based on the number of qualifying trees removed from private, residential property within the municipality. Said grants-in-aid may be less than, but shall not exceed the amount of subsidies paid to private, residential property owners by the municipality for the removal of eligible trees.

(2) In determining whether or in what amount a grant-in-aid shall be made to an eligible applicant municipality, the commissioner shall attempt to further the policy of Minnesota Statutes, Section 18.023 by considering all factors he deems to be relevant, including but not limited to the following:

(aa) The incidence of shade tree disease in the applicant's disease control area,

(bb) The number of shade trees within the disease control area immediately threatened by the disease,

(cc) The potential for and magnitude of economic and esthetic losses which may occur as a result of the spread of the disease, and

(dd) The extent of conformance of the municipality to its respective approved shade tree disease control program.

(3) An eligible municipality may make requests for a grant-in-aid payment on forms provided by the commissioner. Said requests may be submitted to the commissioner by the 15th day of any calendar month, and shall include eligible trees removed during the preceding calendar month or months for which no payment had been made by the commissioner. Requests for payment shall include the following information:

(aa) A certified list of the private, residential property owners qualifying for the municipal subsidy for tree removal,

(bb) The number of eligible trees removed from each specific parcel of private property,

(cc) A[illegible]rtification that the trees re[illegible]ed meet all of the requirements of paragraph (b) (2) (aa) through (ee) of this regulation,

(dd) A certification as to the total amount of subsidy payments the municipality either will pay out or has paid out to the private, residential property owners, and

(ee) Such other information deemed relevant by the commissioner.

Agr 108 Grants-In-Aid for Wood Utilization or Disposal Systems

(a) The commissioner may, within moneys appropriated, make grants-in-aid to eligible applicants for the cost of facilities, equipment, and systems for the disposal or utilization of diseased shade trees. Said grants-in-aid may be made to cities with more than 80,000 population, or any special purpose park district organized under the charter of a city of the first class, or any non-profit corporation serving a city of the first class, or any county, or any combination thereof so provided by Minnesota Statutes, Section 471.59; provided that:

(1) Said city or county has an approved shade tree disease control program as described in Minnesota Statutes, Section 18.023, and Regulations Agr 101 to 106,

(2) Grants-in-aid may be less than but shall not exceed 50 percent of the cost of such facility, equipment, or system,

(3) Grants-in-aid shall not be paid for costs of operating such facility, equipment, or system,

(4) Grants-in-aid for site acquisitions shall be made only for land used in the actual operational site,

(5) Grants-in-aid shall not be paid by the commissioner until he receives certified evidence of the actual cost of the equipment or site.

(6) Allowable cost shall be determined by the commissioner.

(b) Criteria for Administration of Grants-In-Aid

(1) Grants-in-aid to eligible applicants may be made by the commissioner provided that such wood disposal utilization system meets the following criteria:

(aa) It aids in the control of shade tree diseases,

(bb) It aids in the recovery of material or energy from wood,

(cc) It is located to accomplish the above with maximum efficiency and use of available facilities,

(dd) It is available to all parties, public and private,

(ee) It is able to render wood pest-risk free within 72 hours of delivery to the site,

(ff) It includes adequate manpower to operate and service equipment, and

(gg) It provides for proper handling and the timely removal of processed wood from the site.

(2) In addition to the general criteria under (b) (1) above, the commissioner, as appropriate, may consider other specific criteria including, but not limited to the following in evaluating grant payment requests:

(aa) Sites for Wood Disposal Systems:

(i) Shall be selected on the basis of anticipated volumes of wood and/or the need for a wood disposal system,

(ii) Shall be accessible by roadways that permit year-round truck traffic,

(iii) Shall have adequate storage areas for both processed wood and equipment,

(iv) Shall have protective enclosures and adequate control and supervision to prevent entry of unwanted materials and unauthorized persons, and

(v) Shall be in compliance with all applicable Federal and State statutes, rules and regulations.

(vi) Shall be in conformance with regional solid waste management plans and requirements.

(bb) Equipment for Wood Disposal Systems:

(i) Shall, where feasible, be portable so that it can be used for servicing more than one site,

(ii) Shall be stationary only when the anticipated volume over a five-year period will fully utilize the facility,

(iii) Shall be capable of processing large-diameter logs, and

(iv) Shall include auxiliary units and equipment necessary to the operation of the system.

(3) Requests for grant-in-aid payments shall be made on forms provided by the commissioner. Contingent upon the availability of funds, the timeliness of applications and other administrative considerations, the commissioner may set deadlines for consideration of requests. Requests for payments shall include the following:

(aa) An itemized list of the applicant's proposed expenditures for qualifying equipment and/or site, and the total amount of these expenditures.

(bb) Additional documents or other information deemed relevant by the commissioner.

(4) Record keeping. Applicants receiving grants-in-aid under this regulation shall keep detailed records concerning the operation of the wood disposal and utilization system. Said records shall be made available to the commissioner on request and shall include hours of operation, clientele served, volume of wood handled and any other information deemed relevant by the commissioner.

(5) Annual report. Applicants receiving grants-in-aid under this regulation shall file, on or before December 1 of each year on forms provided by the commissioner an annual report concerning the operation of the wood disposal and utilization system. Said report shall contain information regarding hours of operation, clientele served, volume of wood handled and any other information deemed relevant by the commissioner.

Agr 109-120 Reserved for future use.

APPROVED AS TO FORM AND LEGALITY

AUG 22 1975 19

WARREN SPANNAUS, ATTORNEY GENERAL

BY /s/ Michael B. Miller

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
AUG 25 1975 - 8:45 am

Joan Anderson Growe
Secretary of State

FILED
RICHARD L. BRUBACHER
Commissioner of Administration

AUG 25 1975 9:00 AM

BY Eda Staudenmaier
AUTH. SIGNATURE

A-5

STATEMENT OF COMPLIANCE WITH

MANUAL OF RULEMAKING PROCEDURES

I, Special Assistant Attorney General Paul Strandberg do hereby declare that I have examined the proposed rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of RulesMaking Procedures has been followed. Any exceptions are noted below.

Paul Strandberg

Special Assistant Attorney General

Dated: August 5, 1975

Proposed rules sent with notice had several minor non-substantive changes made before hearing. These are explained in the second set of proposed rules and accompanying memorandum which were passed out at the hearing.

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE JON WEFALD

COMMISSIONER OF AGRICULTURE

In the matter of Proposed Amendments of Rules and Regulations of the Department of Agriculture Relating to Shade Tree Disease Control, Part A, Chapter 4, Agr 101 to 106, and the addition of Rules for Administration for the Grants-In-Aid Program.

ORDER FOR HEARING

To effectively bring the existing regulations captioned above into confirmity with the requirements of Minnesota Statutes 1974, Section 18.023, as amended by Laws of Minnesota 1975, Chapter 253, and to provide procedures for the administration of the grants-in-aid programs authorized by Laws 1975, Chapter 253, the commissioner of the Minnesota department of agriculture deems it necessary to consider adoption of the proposed rules captioned above pursuant to the authority vested in me by Minnesota Statutes, Section 18.023, Subdivision 2.

NOW, THEREFORE, IT IS ORDERED this 5th day of June, 1975, that a public hearing on the proposed rules captioned above be held in Room 83, ground floor, State Office Building, St. Paul, Minnesota, on July 10, 1975, commencing at 10:00 a.m., and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard.

IT IS FURTHER ORDERED, that notice of said hearing be given to all representatives of associations or other interested groups or persons who have registered their names with the Secretary of State for that purpose and to all persons who are presently members of the Minnesota Legislature.

STATE OF MINNESOTA

Jon Wefald

Jon Wefald
Commissioner of Agriculture

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE JON VEFALD

COMMISSIONER OF AGRICULTURE

In the matter of the Proposed Amendments of Rules and Regulations of the Department of Agriculture Relating to Shade Tree Disease Control, Part A, Chapter 4, Agr 101 to 106, and the addition of Rules for Administration of the Grants-In-Aid Program.

NOTICE OF HEARING

Notice is hereby given that a public hearing will be held pursuant to Minnesota Statutes 1974, Section 15.0412, in the above entitled matter in Room 83, ground floor, State Office Building, Saint Paul, Minnesota, July 10, 1975, commencing at 10 a.m., and continuing until all persons have had an opportunity to be heard concerning adoption of the proposed amendments to existing rules and rules for the administration of the grants-in-aid program as captioned above and as established by Laws 1975, Chapter 253, by submitting either oral or written data, statements or arguments. Statements may be submitted without appearing in person at the hearing.

The commissioner proposes to adopt rules amending Regulations Agr 101 through 106, relating to the Shade-Tree Disease-Control Program and to add new regulations relating to the granting of aid to eligible, qualified applicants authorized by Minnesota Statutes 1974, Section 18.023, as amended by Laws 1975, Chapter 253.

A copy of the proposed and amended regulations is enclosed. Additional copies may be obtained by writing to the Office of the Commissioner, 420 State Office Building, Saint Paul, Minnesota 55155, and copies will be available at the door on the date of the hearing.

DATED: June 6, 1975

STATE OF MINNESOTA

Jon Vefald
Commissioner of Agriculture

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE JON WEFALD

COMMISSIONER OF AGRICULTURE

In the matter of the Proposed Amendments of Rules and Regulations of the Department of Agriculture Relating to Shade Tree Disease Control, Part A, Chapter 4, Agr 101 to 106, and the addition of Rules for Administration of the Grants-In-Aid Program.

CERTIFICATE

I hereby certify that the attached 423 labels + 2 sheets constitute the complete lists of persons, associations, and other interested groups who as of 4:00 o'clock p.m., this 5th day of June, 1975 has requested pursuant to M.S. 1971, Sec. 15.042 that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

Secretary of State

Joan Anderson Growe

By Neil Dion

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the matter of the Proposed Amendments of Rules and Regulations of the Department of Agriculture Relating to Shade Tree Disease Control, Part A, Chapter 4, Agr 101 to 106, and the addition of Rules for Administration of the Grants-In-Aid Program.

AFFIDAVIT OF MAILING

Joyce Walkosz, being first duly sworn, deposes and says:

That on the 6th day of June, 1975, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons listed on the attached certificate of the Secretary of State as well as to all persons listed on the attached sheet as presently being members of the Minnesota Legislature.

Joyce Walkosz

Subscribed and sworn to before me this 11th day of June, 1975

Joan LeDuc

Notary Public

Ramsey County, Minnesota

My commission expires

JOAN LeDUC
Notary Public, Ramsey Co., Mn.
MY COMMISSION EXPIRES
August 14, 1981

AFFIDAVIT

Joyce walkosz, being duly sworn on oath deposes and says:

1) That she is an employee of the Agriculture Department of the State of Minnesota.

2) That on the 5th day of June, she went to the Secretary of State's office for the State of Minnesota and requested a current list of all representatives of associations and other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to M.S. 15.0412.

3) That on the 5th day of June, in response to the above request, the Secretary of State provided her with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

Joyce L. Walkosz

Subscribed and sworn to before me this 6th day of June 1975.

Emma Copeland

Notary Public,
Ramsey County, Minnesota
My commission expires 3-17-77.

EMMA COPELAND
Notary Public, Ramsey Co., Minn.
MY COMMISSION EXPIRES
March 17, 1977

Proposed (July 10, 1975)

Rules and Regulations of the Department of Agriculture Part A, Chapter 4, Regulations Agr 101 through 106 are amended and two new regulations are added to read:

Agr 101 Purpose. It is the purpose of the rules and regulations contained herein to carry out and enforce the provisions of ~~Laws of Minnesota 1974, Chapter 355, Section 66~~ Minnesota Statutes 1974, Section 18.023, as amended by Laws 1975, Chapter 253. ~~An epidemic of Dutch elm disease and oak wilt disease is occurring in the seven county metropolitan area. Trees are an important element in the healthful environment of the seven county metropolitan area, because of the concentration of population in the area. The import of the diseases appears to be greater in the seven county metropolitan area than it does in other areas of the state, therefore, it is necessary to take extraordinary measures to control such diseases.~~ The rules relate to the control of Dutch elm disease and oak wilt by local units of government and include procedures and criteria for two grants-in-aid programs.

Agr 102 Definitions. As used in this regulation, the words and terms shall have the meanings given:

(a) "Shade tree" means any oak or elm tree situated in a disease-control area approved by the commissioner.

(b) "Shade-tree disease" means Dutch elm disease caused by Ceratocystis ulmi, or oak wilt disease caused by Ceratocystis fagacearum.

(c) "Commissioner" means the commissioner of agriculture. (Minn. Stat. Sec. 18.023, Subd. 1)

(d) "Metropolitan area" means the area comprising the counties of Hennepin, Ramsey, Anoka, Dakota, Washington, Scott and Carver. (Minn. Stat. Sec. 18.023, Subd. 1)

(e) "Municipality" means any city or town exercising municipal powers pursuant to Minnesota Statutes, Section 368.01, or any general or special law, located in the metropolitan area or any special park district as organized under Minnesota Statutes, Chapter 398, or any special purpose park district organized under the city charter of a city of the first class located in the metropolitan area, or any ~~portion of a~~ county in ~~such~~ the metropolitan area for the purposes of county owned property or any portion of a county located outside the geographic boundaries of a city or town exercising municipal powers and any municipality or county located outside the metropolitan area which ~~petitions~~ makes request to and has consent of the commissioner to come within the provisions of this ~~act~~ section. (Minn. Stat. Sec. 18.023, Subd. 1)

~~NOTE:--It is the determination of the Commissioner that any county in the metropolitan area shall for the purposes of these regulations and for Minnesota Laws 1974, Chapter 355, Section 66, be considered a "municipality" for any and all land area which is owned by said county.~~

(f) "Tree inspector" means a person who has the necessary qualifications to properly plan, direct and supervise all requirements for controlling shade tree disease in one or more governmental subdivisions within the limits of all laws, rules, and regulations governing this control and is so certified by the ~~Commissioner~~ commissioner.

(g) "Disease control area" means an area approved by the ~~Commissioner~~ commissioner within which a municipality will conduct a shade tree disease control program. (Minn. Stat. Sec. 18.023, Subd. 1)

(h) "Disease control program" means the municipal plan as approved by the commissioner to control shade tree disease. (Minn. Stat. Sec. 18.023, Subd. 1)

(i) "Subsidy program" means a municipal program of financial assistance to private property owners for the removal of diseased elm and or oak shade trees. (Minn. Stat. Sec. 18.023 Subd. 1).

(j) "Wood utilization or disposal system" means a system used for the removal and disposal of diseased shade trees which includes the collection, transportation, processing or storage of wood and which aids in the recovery of materials or energy from wood. (Minn. Stat. Sec. 18.023, Subd. 1)

Agr 103 Tree Inspector Enployment and Qualifications

(a) A municipality will employ or retain on a continuing basis a tree inspector or will employ or retain jointly with one or more municipalities a tree inspector as provided by Minnesota Statutes, Section 471.59.

(b) Provisional appointments

(1) A municipality may provisionally appoint a tree inspector for a period of not more than six (6) months.

(2) This appointment is dependent on approval by the ~~Commissioner~~ commissioner after determining the competence of the appointee.

(3) The provisional appointment cannot be extended and the appointee must either pass the tree inspectors examination or successfully complete the next training course approved by the ~~Commissioner~~ commissioner to be certified as a tree inspector.

(4) The provisional appointment may be withdrawn by the ~~Commissioner~~ commissioner upon notice and hearing for cause.

(c) A tree inspector must be able to demonstrate the following qualifications:

(1) Identify all native trees species common to his work area with or without leaves and all felled or down trees with bark intact.

(2) Distinguish oak wilt and Dutch elm disease from all other tree probelms of oak and elm.

(3) Know the proper method of collecting samples for disease diagnosis.

(4) Know and understand the biology of oak wilt and Dutch elm disease.

(5) Know the appropriate Minnesota laws and rules and regulations relative to oak wilt and Dutch elm disease.

(6) Know the approved control methods for oak wilt and Dutch elm disease.

(d) If a municipality fails to appoint a tree inspector by June 13, 1974, an appointment may be made by the ~~Commissioner~~ commissioner pursuant to ~~Laws of Minnesota, 1974, Chapter 355, Section 66.~~ Minnesota Statutes 1974, Section 18.023 Ten working days prior to such appointment, the ~~Commissioner~~ commissioner shall notify the municipality by mail of such pending appointment. An inspector appointed by the ~~Commissioner~~ commissioner shall be paid by the municipality for a minimum of 90 days even though the municipality may appoint their own inspector prior to the expiration of 90 days. However, this provision shall not apply to an inspector whose employment is suspended or terminated for cause.

Agr 104 Certification of Tree Inspector

(a) Certification of tree inspectors shall be accomplished by their passing an examination prescribed by the ~~Commissioner~~

commissioner for the purposes of determining that the applicant possesses the necessary qualifications. Each applicant shall be notified by the ~~Commissioner~~ commissioner by mail of the time and date of such examination. The applicant and the employing municipality will be notified of the results of the examination within fifteen (15) ~~15~~ days.

(b) After certification, a tree inspector shall be required to attend annually at least one program of continuing education as approved by the ~~Commissioner~~ commissioner. Failure to attend such programs as required may be grounds for revocation, termination, or suspension of certification.

Agr 105 Decertification of Tree Inspectors. The ~~Commissioner~~ commissioner may upon notice and hearing decertify any tree inspector for cause as provided in the law.

Agr 106 Shade Tree Disease Control Program. The tree disease control program of all municipalities affected by these regulations shall include as a minimum the following elements:

(a) Control area. Each municipality shall designate and submit for approval by the ~~Commissioner~~ commissioner a disease control area.

(b) Program plan. Each municipality shall prepare a tree disease control program plan that details the manner in which these regulations will be fulfilled.

(c) Methods of identifying diseased shade trees. Diseased shade trees will be identified by generally accepted field symptoms such as wilting, or yellowing of leaves, or staining of inner bark. Confirmation when determined to be necessary, will be made by the Minnesota ~~Department of Agriculture~~ department of agriculture tree disease laboratory, or other laboratory recognized by the ~~Commissioner~~ commissioner.

(d) Dutch elm disease and oak wilt control

(1) Tree inventory. A Each municipality shall make and record a reasonable estimate of elms, oaks, and other tree species on both public and private property ~~must be made and recorded~~. Estimates of tree members within control areas must be made and recorded separately from estimates of tree members outside of control areas. ~~This should~~ These records shall be a permanent record and shall be reported to the ~~Department of Agriculture~~ department of agriculture.

(2) Dutch elm disease control must include the following:

(aa) Sanitation. Sanitation is the major element in any Dutch elm disease control program because it is needed to eliminate elm bark beetles, diseased trees, and dead or weakened elm wood arising from any cause. This must include trees on private property.

(i) Prior to April 15, ~~check~~ each municipality shall inspect all public and private properties for elm wood or logs that could serve as bark beetle breeding sites and require removal, or de-barking if wood is to be retained. Before making any inspections on private property within a municipality, it shall be the duty of the municipality to attempt to give notice of said inspection to all affected residents either through individual, oral or written notice or by publishing said notice in a local newspaper.

(ii) ~~Check~~ Each municipality shall inspect all elm trees at least twice during the growing season(by July 1 and August 15) for Dutch elm disease symptoms.

(iii) Remove After notification by the municipality private property owners shall remove and properly dispose of diseased or dead elm trees or any above ground parts thereof within 20 days ~~after notification~~ in accordance with prescribed methods approved by the ~~Commissioner~~ commissioner and consistent with applicable air quality and solid waste regulations.

(iv) Trees or parts thereof not removed within 20 days of such notification shall be caused by the municipality to be removed and the costs thereof shall be assessed against the property.

(bb) Root Graft Control. Disrupt common root systems by chemical or mechanical means as approved by the ~~Commissioner~~ commissioner to prevent root graft spread of Dutch elm disease.

(3) Oak wilt. Oak wilt control involves both root graft treatment and prevention of infection by oak wilt spores carried by insects or other agents (overland spread).

(aa) Use chemical or mechanical means to disrupt root graft transmission of the oak wilt fungus as approved by the ~~Commissioner~~ commissioner.

(bb) Overland spread

(i) Avoid pruning or other mechanical damage during the most susceptible period in May and June. Use tree wound dressings if wounding is unavoidable during susceptible period.

(ii) Girdle diseased trees as soon as they are detected to reduce spore mat formation. Checmial or mechanical root disruption ~~should~~ shall precede girdling if root graft spread is likely to occur.

(iii) Eradicate or destroy the following diseased oaks: northern red oak, Quercus rubra, northern pin oak, Quercus ellipsoidalis, black oak, Quercus velutina, and scarlet oak,

Quercus coccinea, in accordance with prescribed methods approved by the ~~Commissioner~~ commissioner and consistent with applicable air quality and solid waste regulations.

(e) Records. Shade tree disease program records must be kept by each municipality and be available for examination at any time by the ~~Commissioner~~ commissioner. A yearly report of the summation of these records must be made to the ~~Commissioner~~ commissioner by December 1 and this report should include the following:

(1) Monies expended on personnel, equipment, and contracts listed separately.

(2) Man hours spent on tree inventory, sanitation, and any chemical control measures.

(3) Number of samples submitted for diagnosis, and the results, the number of diseased trees and the number of trees removed.

(4) Number of removal notices issued for the diseased tree located on private property.

(5) Number of notices issued for removal of wood which may be a hazard in the spread of a shade tree disease.

(6) The report must include the beginning inventory and indicate the number of trees removed, both diseased and others.

(f) Program Review

(1) Prior to June 13, 1974 and annually thereafter by January 1st municipalities must submit their shade tree disease control program plan to the ~~Commissioner~~ commissioner for review to determine if it meets or exceeds the requirements of the law and any rules and regulations related thereto.

(2) The ~~Commissioner~~ commissioner shall complete this review and notify the municipalities of his approval within 15 days.

(3) Final determination of municipal program compliance with these rules and regulations shall rest with the ~~Commissioner~~ commissioner.

(4) The ~~Commissioner~~ commissioner may require changes or improvements at anytime he determines they are needed in any municipal program in order to obtain compliance with these rules and regulations.

Agr 107 Grants-in-aid to Municipalities for Removal of Diseased Shade Trees

(a) Application for Grants-In-Aid

(1) A municipality may apply to participate in the grants-in-aid program provided for in this regulation by submitting annually at a time designated by the commissioner a completed application on a form provided by the commissioner.

(2) The application shall establish that the municipality is eligible for a grant-in-aid and shall include the municipality's general plan for distribution of payments to private residential property owners.

(b) Eligibility for Grants-in-aid. To the extent appropriations are provided by the legislature, the commissioner may make grants-in-aid to municipalities for the partial funding of municipal subsidy programs for the removal of diseased shade trees by owners of residential property, provided the following criteria are met:

(1) A municipality shall be eligible to receive grants-in-aid for the removal of diseased shade trees if:

(aa) The municipality is within the metropolitan area and has a shade-tree disease control program approved by the commissioner, or

(bb) The municipality is outside the metropolitan area, has an approved shade-tree disease-control program, and has petitioned and received the consent of the commissioner to come under the shade-tree disease-control program described in Minnesota Statutes, Section 18.023, and Regulations Agr 101 to 106.

(cc) The municipality has a subsidy program for tree removal complying with the requirements of Minnesota Statutes, Section 18.023 and this regulation.

(2) A grant-in-aid may be given to an eligible municipality for the removal of trees meeting the following criteria:

(aa) The tree must have been removed on or after June 1, 1975,

(bb) The tree must have been in a disease-control area,

(cc) A determination must have been made by the municipal tree inspector that the tree was a hazard to the disease-control program,

(dd) The tree must have been removed from residential private property, and

(ee) The tree must have been removed and disposed of pursuant to Regulation Agr 106.

(c) Procedures for Administration of Grants-In-Aid

(1) The commissioner may make grants-in-aid to eligible municipalities based on the number of qualifying trees removed from private residential property within the municipality. Said grants-in-aid may be less than, but shall not exceed the amount of subsidies

paid to eligible private property owners by the municipality for qualifying trees removed.

(2) In determining whether or in what amount a grant-in-aid shall be made to an eligible applicant municipality, the commissioner shall attempt to further the policy of Minnesota Statutes, Section 18.023 by considering all factors he deems to be relevant, including but not limited to the following:

(aa) The incidence of shade-tree disease in the applicant's disease-control area,

(bb) The number of shade trees within the disease-control area immediately threatened by the disease, and

(cc) The potential for and magnitude of economic and esthetic losses which may occur as a result of the spread of the disease.

(3) An eligible municipality may make requests for a grant-in-aid payment on forms provided by the commissioner. Said requests may be submitted to the commissioner by the 15th day of any calendar month, and shall include eligible trees removed during the preceding calendar month or months for which no payment had been made by the commissioner. Requests for payment shall include the following information:

(aa) A certified list of the private residential property owners qualifying for the municipal subsidy for tree removal,

(bb) The number of eligible trees removed from each specific parcel of private property,

(cc) A certification that the trees removed meet all of the requirements of paragraph (b) of this regulation,

(dd) A certification as to the total amount of subsidy payments the municipality either will pay out or has paid out to the private property owners, and

(ee) Such other information deemed relevant by the commissioner.

Agr 108. Grants-In-Aid for Wood Utilization or Disposal Systems

(a) The commissioner may, within moneys appropriated, make grants-in-aid to eligible applicants for the cost of facilities, equipment, and systems for the disposal or utilization of diseased shade trees. Said grants-in-aid may be made to cities with more than 80,000 population, or any special purpose park district organized under the charter of a city of the first class, or any nonprofit corporations serving a city of the first class, or any county; provided that:

(1) Said city or county has an approved shade-tree disease-control program as described in Minnesota Statutes, Section 18.023, and Regulations Agr 101 to 106,

(2) Such grants-in-aid may be less than but shall not exceed 50 percent of the cost of such facility, equipment, or system,

(3) Such grants-in-aid shall not be paid for costs of operating such facility, equipment, or system,

(4) Such grants-in-aid for site acquisitions shall be made only toward the cost of land used in the actual operational site,

(5) Such grants-in-aid shall not be made for equipment or land already owned.

(6) Such grants-in-aid shall not be paid by the commissioner until he receives certified evidence of the actual cost of the equipment or site.

(b) Criteria for Administration of Grants-In-Aid

(1) Grants-in-aid to eligible applicants may be made by the commissioner provided that such wood-disposal or utilization system meets the following criteria:

(aa) It aids in the control of shade-tree diseases,

(bb) It aids in the recovery of material or energy from wood,

(cc) It is located to accomplish the above with maximum efficiency and use of available facilities,

(dd) It is available to all parties, public and private,

(ee) It is able to render wood pest-risk free within 72 hours of delivery to the site,

(ff) It includes adequate manpower to operate and service equipment, and

(gg) It provides for proper handling and the timely removal of processed wood from the site.

(2) In addition to the general criteria under (b) (1) above, the commissioner, as appropriate, may consider other specific criteria including but not limited the following in evaluating grant-payment requests:

(aa) Sites for Wood Disposal Systems:

(i) Shall be selected on the basis of anticipated volumes of wood and/or the need for a wood-disposal system,

(ii) Shall be accessible by roadways that permit year-round truck traffic,

(iii) Shall have adequate storage areas for both processed wood and equipment,

(iv) Shall have protective enclosures and adequate control and supervision to prevent unwanted materials and persons, and

(v) Shall met air and noise-pollution standards of the Minnesota Pollution Control Agency.

(bb) Equipment for Wood Disposal Systems:

(i) Shall, where feasible, be portable so that it can be used for servicing more than one site,

(ii) Shall be stationary only when the anticipated volume over a five-year period will fully utilize the facility,

(iii) Shall be capable of processing large-diameter logs, and

(iv) Shall include auxiliary units and equipment necessary to the operation of the system.

(3) Requests for grant-in-aid payments shall be made on forms provided by the commissioner. Contingent upon the availability of funds, the timeliness of applications and other administrative considerations, the commissioner may set deadlines for consideration of requests. Requests for payments shall include the following:

(aa) An itemized list of the applicant's proposed expenditures for qualifying equipment and/or site, and

(bb) A certification of the total amount the applicant proposed to spend for qualifying equipment and/or site, and

(cc) Additional documents or other information deemed relevant by the commissioner.

(4) Record keeping. Applicants receiving grants-in-aid under this regulation shall keep detailed records concerning the operation of the wood disposal and utilization system. Said records shall be made available to the commissioner on request and shall include hours of operation, clientele served, volume of wood handled and any other information deemed relevant by the commissioner.

(5) Annual report. Applicants receiving grants-in-aid under this regulation shall file, on forms provided by the commissioner, an annual report concerning the operation of the wood disposal and utilization system. Said report shall contain information regarding hours of operation, clientele served, volume of wood handled and any other information deemed relevant by the commissioner.

Agr 109-120 Reserved for future use

Hearing: July 10, 1975

Changes or additions indicated by Underline, deletions by ~~strikeout~~.

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE
STATE OFFICE BUILDING
SAINT PAUL, MINN. 55155
612-296-2856

LAND OF QUALITY FOODS

OFFICE OF THE COMMISSIONER

July 10, 1975

Changes in the "Proposed (July 10, 1975) Rules and Regulations of the Department of Agriculture Part A, Chapter 4, Regulations Agr 101 - 108"

The Proposed Rules & Regulations sent out with the Notice of Hearing on June 6, 1975 have been corrected for omissions and spelling and further amended after a meeting with the Shade Tree Advisory Committee. The changes exclusive of punctuation, capitalization and spelling are as follows:

Agr 102 - Add following after "the" in the first sentence.

Agr 102 (e) - Add any before "town"

Agr 103 (b) (4) - Add after "withdrawn" for cause and delete "~~for cause~~" at end of the sentence.

Agr 103 (d) - Delete "~~by June 13, 1974~~"

Agr 106 (c) - Third line, delete "~~inner~~" and add wood under

Agr 106 (d) (1) - Third line after "must be made and recorded" add the following sentence:
Estimates of tree numbers outside a control area may be made by acceptable forest inventory procedures.

Agr 106 (f) (1) - Delete "~~Prior to June 13, 1974 and annually thereafter by~~" and add By. Also after "January" delete ~~1st~~, add 1 of each year

Agr 107 (a) (2) - Delete "~~establish~~" and add state

Agr 107, (b) (1), (bb) - Delete "~~Petitioned~~" and add made request

Agr 107 (c) (2) - Add after (cc) the following:

(dd) The extent of conformance of the municipality to its respective approved shade tree disease control program.

Agr 107 (c) (3) (cc) - Add after "(b)" the following: (2) (aa) through (ee)

Agr 108 (a) - Eighth line after "county" add or any combination thereof so provided by Minnesota Statutes, Section 471.59

Agr 108 (a) (5) - Add after "owned" by the applicant.

Agr 108 (b) (2) - Third line after "limited" add to

Agr 108 (b) (2) (aa) (iv) - After "prevent" add entry of

Agr 108 (b) (2) (aa) after (v) - Add the following:

(vi) Shall be in conformance with regional solid waste management plans and requirements.

Agr 108 (b) (5) - Second line after "file" add, on or before December 1 of each year

All above changes are incorporated in the First Revision of the Proposed Rules and Regulations as prepared for and made available at the July 10, 1975 Public Hearing.

Changes or additions indicated by underline; deletions by ~~strikeout~~.

Jon Wefald
Commissioner

Proposed (July 10, 1975)
Rules and Regulations of the Department of Agriculture
Part A, Chapter 4, Regulations Agr 101 through 106 are amended and two new regulations are added to read:

Agr 101 ~~Statement of Public Policy~~ Purpose: It is the purpose of the rules and regulations contained herein to carry out and enforce the provisions of ~~Laws of Minnesota 1974, Chapter 355, Section 66~~ Minnesota Statutes 1974, Section 18.023, as amended by Laws 1975, Chapter 253. ~~An epidemic of Dutch elm disease and oak wilt disease is occurring in the seven county metropolitan area. Trees are an important element in the healthful environment of the seven county metropolitan area, because of the concentration of population in the area. The impact of the diseases appears to be greater in the seven county metropolitan area than it does in other areas of the state, therefore, it is necessary to take extraordinary measures to control such diseases.~~ The rules relate to the control of Dutch elm disease and oak wilt by local units of government and include procedures and criteria for two grants-in-aid programs.

Agr 102 Definitions. As used in this regulation, the following words and terms shall have the meaning given:

(a) "Shade tree" means any oak or elm tree situated in a disease control area approved by the ~~Commissioner~~ commissioner.

(b) "Shade tree disease" means Dutch elm disease caused by Ceratocystis ulmi, or oak wilt disease caused by Ceratocystis fagacearum.

(c) "Commissioner" means the ~~Commissioner of Agriculture~~ commissioner of agriculture. (Minn. Stat. Sec. 18.023, Subd. 1)

(d) "Metropolitan area" means the area comprising the counties of Hennepin, Ramsey, Anoka, Dakota, Washington, Scott and Carver. (Minn. Stat. Sec. 18.023, Subd. 1)

(e) "Municipality" means any city or any town exercising municipal powers pursuant to Minnesota Statutes, Section 368.01, or any general or special law, located in the metropolitan area, or any special park district as organized

under Minnesota Statutes, Chapter 398, or any special purpose park district organized under the city charter of a city of the first class located in the metropolitan area, or any ~~portion of a~~ county in ~~such~~ the metropolitan area for the purposes of county owned property or any portion of a county located outside the geographic boundaries of a city or town exercising municipal powers and any municipality or county located outside the metropolitan area which ~~petitions~~ makes request to and has consent of the ~~Commissioner~~ commissioner to come within the provisions of this ~~act~~ section. (Minn. Stat. Sec. 18.023, Subd. 1)

~~NOTE: It is the determination of the Commissioner that any county in the metropolitan area shall for the purposes of these regulations and for Minnesota laws 1974, Chapter 355, Section 66, be considered a "municipality" for any and all land area which is owned by said county.~~

(f) "Tree inspector" means a person who has the necessary qualifications to properly plan, direct and supervise all requirements for controlling shade tree disease in one or more governmental subdivisions within the limits of all laws, rules, and regulations governing this control and is so certified by the ~~Commissioner~~ commissioner.

(g) "Disease control area" means an area approved by the ~~Commissioner~~ commissioner within which a municipality will conduct a shade tree disease control program. (Minn. Stat. Sec. 18.023, Subd. 1)

(h) "Disease control program" means the municapl plan as approved by the commissioner to control shade tree disease. (Minn. Stat. Sec. 18.023, Subd. 1)

(i) "Subsidy program" means a municipal program of financial assistance private property owners for the removal of diseased elm and/or oak shade trees. (Minn. Stat. Sec. 18.023, Subd. 1)

(j) "Wood utilization or disposal system" means a system used for the removal and disposal of diseased shade trees which includes the collection,

transportation, processing or storage of wood and which aids in the recovery of materials or energy from wood. (Minn. Stat. Sec. 18.023, Subd. 1)

Agr 103 Tree Inspector Employment and Qualifications

(a) A municipality will employ or retain on a continuing basis a tree inspector or will employ or retain jointly with one or more municipalities a tree inspector as provided by ~~M.S.~~ Minnesota Statutes, Section 471.59.

(b) Provisional appointments

(1) A municipality may provisionally appoint a tree inspector for a period of not more than ~~6~~ six (6) months.

(2) This appointment is dependent on approval by the ~~Commissioner~~ commissioner after determing the competence of the appointee.

(3) The provisional appointment cannot be extended and the appointee must either pass the tree ~~inspectors~~ inspector examination or successfully complete the next training course approved by the ~~Commissioner~~ commissioner to be certified as a tree inspector.

(4) The provisional appointment may be withdrawn for cause by the ~~Commissioner~~ commissioner upon notice and hearing ~~for cause~~.

(c) A tree inspector must be able to demonstrate the following qualifications:

(1) Identify all native tree species common to his work area, with or without leaves, and all felled or down trees with bark intact.

(2) Distinguish oak wilt and Dutch elm disease from all other tree problems of oak and elm.

(3) Know the proper method of collecting samples for disease dignosis.

(4) Know and understand the biology of oak wilt and Dutch elm disease.

(5) Know the appropriate Minnesota laws and rules and regulations relative to oak wilt and Dutch elm disease.

(6) Know the approved control methods for oak wilt and Dutch elm disease.

(d) If a municipality fails to appoint a tree inspector ~~by June 13, 1974~~, an appointment may be made by the ~~Commissioner~~ commissioner pursuant to ~~Laws of Minnesota, 1974, Chapter 355, Section 66~~ Minnesota Statutes 1974, Section 18.023. Ten working days prior to such appointment, the ~~Commissioner~~ commissioner shall notify the municipality by mail of such pending appointment. An inspector appointed by the ~~Commissioner~~ commissioner shall be paid by the municipality for a minimum of 90 days even though the municipality may appoint their own inspector prior to the expiration of 90 days. However, this provision shall not apply to an inspector whose employment is suspended or terminated for cause.

Agr 104 Certification of Tree Inspector

(a) Certification of tree inspectors shall be accomplished by their passing an examination prescribed by the ~~Commissioner~~ commissioner for the purposes of determining that the applicant possesses the necessary qualifications. Each applicant shall be notified by the ~~Commissioner~~ commissioner by mail of the time and date of such examination. The applicant and the employing municipality will be notified of the results of the examination within 15 days.

(b) After certification, a tree inspector shall be required to attend annually at least one program of continuing education as approved by the ~~Commissioner~~ commissioner. Failure to attend such programs as required may be grounds for revocation, termination, or suspension of certification.

Agr 105 Decertification of Tree Inspectors. The ~~Commissioner~~-commissioner may upon notice and hearing decertify any tree inspector for cause as provided in the law.

Agr 106 Shade Tree Disease Control Program. The tree disease control program of all municipalities affected by these regulations shall include as a minimum the following elements:

(a) Control area. Each municipality shall designate and submit for approval by the ~~Commissioner~~ commissioner a disease control area.

(b) Program plan. Each municipality shall prepare a tree disease control program plan that details the manner in which these regulations will be fulfilled.

(c) Methods of identifying diseased shade trees. Diseased shade trees will be identified by generally accepted field symptoms such as wilting, or yellowing of leaves, or staining of ~~inner~~ wood under bark. Confirmation when determined to be necessary, will be made by the Minnesota ~~Department of Agriculture~~ department of agriculture tree disease laboratory, or other laboratory recognized by the ~~Commissioner~~ commissioner.

(d) Dutch elm disease and oak wilt control

(1) Tree inventory. ~~A~~Each municipality shall make and record a reasonable estimate of elms, oaks, and other tree species on both public and private property ~~must be made and recorded~~. Estimates of tree numbers outside a control area may be made by acceptable forest inventory procedures. Estimates of tree numbers within control areas must be made and recorded separately from estimates of tree numbers outside of control areas. ~~This should~~ These records shall be ~~a~~ permanent ~~record~~ and shall be reported to the ~~Department of Agriculture~~ department of agriculture.

(2) Dutch elm disease control must include the following:

(aa) Sanitation. Sanitation is the major element in any Dutch elm disease control program because it is needed to eliminate elm bark beetles, diseased trees, and dead or weakened elm wood arising from any cause. This must include trees on private property.

(i) Prior to April 15, ~~check~~ each municipality shall inspect all public and private properties for elm wood or logs that could serve as bark beetle breeding sites and require removal, or ~~de-barking~~ debarking if wood is to be retained. Before making any inspections on private property

within a municipality, it shall be the duty of the municipality to attempt to give notice of said inspection to all affected residents either through individual, oral or written notice or by publishing said notice in a local newspaper.

(ii) ~~Check~~ Each municipality shall inspect all elm trees at least twice during the growing season (by July 1 and August 15) for Dutch elm disease symptoms.

(iii) ~~Remove~~ After notification by the municipality, private property owners shall remove and properly dispose of diseased or dead elm trees or any above ground parts thereof within 20 days ~~after notification~~ in accordance with prescribed methods approved by the ~~Commissioner~~ commissioner and consistent with applicable air quality and solid waste regulations.

(iv) Trees or parts thereof not removed within 20 days of such notification shall be caused by the municipality to be removed and the costs thereof shall be assessed against the property.

(bb) Root Graft Control. Disrupt common root systems by chemical or mechanical means as approved by the ~~Commissioner~~ commissioner to prevent root graft spread of Dutch elm disease.

(3) Oak wilt. Oak wilt control involves both root graft treatment and prevention of infection by oak wilt spores carried by insects or other agents (overland spread).

(aa) Use chemical or mechanical means to disrupt root graft transmission of the oak wilt fungus as approved by the ~~Commissioner~~ commissioner.

(bb) Overland spread

(i) Avoid pruning or other mechanical damage during the most susceptible period in May and June. Use tree wound dressings if wounding is unavoidable during susceptible period.

(ii) Girdle diseased trees as soon as they are detected to reduce spore mat formation. Chemical or mechanical root disruption ~~should~~ shall precede girdling if root graft spread is likely to occur.

(iii) Eradicate or destroy the following diseased oaks: northern red oak, Quercus rubra, northern pin oak, Quercus ellipsoidalis, black oak, Quercus velutina, and scarlet oak, Quercus coccinea, in accordance with prescribed methods approved by the ~~Commissioner~~ commissioner and consistent with applicable air quality and solid waste regulations.

(e) Records. Shade tree disease program records must be kept by each municipality and be available for examination at any time by the ~~Commissioner~~ commissioner. A yearly report of the summation of these records must be made to the ~~Commissioner~~ commissioner by December 1 and this report should include the following:

(1) Monies expended on personnel, equipment, and contracts, listed separately.

(2) Man hours spent on tree inventory, sanitation, and any chemical control measures.

(3) Number of samples submitted for diagnosis, and the results, the number of diseased trees and the number of trees removed.

(4) Number of removal notices issued for the diseased ~~tree~~ trees located on private property.

(5) Number of notices issued for removal of wood which may be a hazard in the spread of a shade tree disease.

(6) The report must include the beginning inventory and indicate the number of trees removed, both diseased and others.

(f) Program Review

(1) ~~Prior to June 13, 1974 and annually thereafter by~~ By January ~~1st~~ 1 of each year, municipalities must submit their shade tree disease control program plan to the ~~Commissioner~~ commissioner for review to determine if it meets or exceeds the requirements of the law and any rules and regulations related thereto.

(2) The ~~Commissioner~~ commissioner shall complete this review and notify the municipalities of his approval within 15 days.

(3) Final determination of municipal program compliance with these rules and regulations shall rest with the ~~Commissioner~~ commissioner.

(4) The ~~Commissioner~~ commissioner may require changes or improvements at anytime he determines they are needed in any municipal program in order to obtain compliance with these rules and regulations.

Agr 107 Grants-in-aid to Municipalities for Removal of Diseased Shade Trees

(a) Application for grants-in-aid

(1) A municipality may apply to participate in the grants-in-aid program provided for in this regulation by submitting annually at a time designated by the commissioner a completed application on a form provided by the commissioner.

(2) The application shall state that the municipality is eligible for a grant-in-aid and shall include the municipality's general plan for distribution of payments to private, residential property owners.

(b) Eligibility for grants-in-aid. To the extent appropriations are provided by the legislature, the commissioner may make grants-in-aid to municipalities for partial funding of municipal subsidy programs for the removal of diseased shade trees by owners of residential property, provided the following criteria are met:

(1) A municipality shall be eligible to receive grants-in-aid for the removal of diseased shade trees if:

(aa) The municipality is within the metropolitan area and has a shade tree disease control program approved by the commissioner, or

(bb) The municipality is outside the metropolitan area, has an approved shade tree disease control program, and has ~~petitioned~~ made request and received the consent of the commissioner to come under the shade tree disease control program described in Minnesota Statutes, Section 18.023, and Regulations Agr 101 to 106.

(cc) The municipality has a subsidy program for tree removal complying with the requirements of Minnesota Statutes, Section 18.023 and this regulation.

(2) A grant-in-aid may be given to an eligible municipality for the removal of trees meeting the following criteria:

(aa) The tree must have been removed on or after June 1, 1975,

(bb) The tree must have been in a disease control area,

(cc) A determination must have been made by the municipal tree inspector that the tree was a hazard to the disease control program,

(dd) The tree must have been removed from residential private property, and

(ee) The tree must have been removed and disposed of pursuant to Regulation Agr 106.

(c) Procedures for administration of grants-in-aid

(1) The commissioner may make grants-in-aid to eligible municipalities based on the number of qualifying trees removed from private residential property within the municipality. Said grants-in-aid may be less than, but shall not exceed the amount of subsidies paid to eligible, private property owners by the municipality for qualifying trees removed.

(2) In determining whether or in what amount a grant-in-aid shall be made to an eligible applicant municipality, the commissioner shall attempt to further the policy of Minnesota Statutes, Section 18.023 by considering all factors he deems to be relevant, including but not limited to the following:

(aa) The incidence of shade tree disease in the applicant's disease control area,

(bb) The number of shade trees within the disease control area immediately threatened by the disease, and

(cc) The potential for and magnitude of economic and esthetic losses which may occur as a result of the spread of the disease.

(dd) The extent of conformance of the municipality to its respective approved shade tree disease control program.

(3) An eligible municipality may make requests for a grant-in-aid payment on forms provided by the commissioner. Said requests may be submitted to the commissioner by the 15th day of any calendar month, and shall include eligible trees removed during the preceding calendar month or months for which no payment had been made by the commissioner. Requests for payment shall include the following information:

(aa) A certified list of the private, residential property owners qualifying for the municipal subsidy for tree removal,

(bb) The number of eligible trees removed from each specific parcel of private property,

(cc) A certification that the trees removed meet all of the requirements of paragraph (b) (2) (aa) through (ee) of this regulation,

(dd) A certification as to the total amount of subsidy payments the municipality either will pay out or has paid out to the private property owners, and

(ee) Such other information deemed relevant by the commissioner.

Agr 108 Grants-In-Aid for Wood Utilization or Disposal Systems

(a) The commissioner may, within moneys appropriated, make grants-in-aid to eligible applicants for the cost of facilities, equipment, and systems for the disposal or utilization of diseased shade trees. Said grants-in-aid may be made to cities with more than 80,000 population, or any special purpose park district organized under the charter of a city of the first class, or any non-profit corporation serving a city of the first class, or any county, or any combination thereof so provided by Minnesota Statutes, Section 471.59; provided that:

(1) Said city or county has an approved shade tree disease control program as described in Minnesota Statutes, Section 18.023, and Regulations Agr 101 to 106,

(2) Such grants-in-aid may be less than but shall not exceed 50 percent of the cost of such facility, equipment, or system,

(3) Such grants-in-aid shall not be paid for costs of operating such facility, equipment, or system,

(4) Such grants-in-aid for site acquisitions shall be made only toward the cost of land used in the actual operational site,

(5) Such grants-in-aid shall not be made for equipment or land already owned by the applicant,

(6) Such grants-in-aid shall not be paid by the commissioner until he received certified evidence of the actual cost of the equipment or site.

(b) Criteria for Administration of Grants-In-Aid

(1) Grants-in-aid to eligible applicants may be made by the commissioner provided that such wood disposal utilization system meets the following criteria:

(aa) It aids in the control of shade tree diseases,

(bb) It aids in the recovery of material or energy from wood,

(cc) It is located to accomplish the above with maximum efficiency and use of available facilities,

(dd) It is available to all parties, public and private,

(ee) It is able to render wood pest-risk free within 72 hours of delivery to the site,

(ff) It includes adequate manpower to operate and service equipment, and

(gg) It provides for proper handling and the timely removal of processed wood from the site.

(2) In addition to the general criteria under (b) (1) above, the commissioner, as appropriate, may consider other specific criteria including, but not limited to the following in evaluating grant payment requests:

(aa) Sites for Wood Disposal Systems:

(i) Shall be selected on the basis of anticipated volumes of wood and/or the need for a wood disposal system,

(ii) Shall be accessible by roadways that permit year-round truck traffic,

(iii) Shall have adequate storage areas for both processed wood and equipment,

(iv) Shall have protective enclosures and adequate control and supervision to prevent entry of unwanted materials and unauthorized persons, and

(v) Shall meet air and noise pollution standards of the Minnesota Pollution Control Agency.

(vi) Shall be in conformance with regional solid waste management plans and requirements.

(bb) Equipment for Wood Disposal Systems:

(i) Shall, where feasible, be portable so that it can be used for servicing more than one site,

(ii) Shall be stationary only when the anticipated volume over a five-year period will fully utilize the facility,

(iii) Shall be capable of processing large-diameter logs, and

(iv) Shall include auxiliary units and equipment necessary to the operation of the systen.

(3) Requests for grant-in-aid payments shall be made on forms provided by the commissioner. Contigent upon the availability of funds, the timeliness of applications and other administrative considerations, the commissioner may set deadlines for consideration of requests. Requests for payments shall include the following:

(aa) An itemized list of the applicant's proposed expenditures for qualifying equipment and/or site, and

(bb) A certification of the total amount the applicant proposes to spend for qualifying equipment and/or site, and

(cc) Additional documents or other information deemed relevant by the commissioner.

(4) Record keeping. Applicants receiving grants-in-aid under this regulation shall keep detailed records concerning the operation of the wood disposal and utilization system. Said records shall be made available to the commissioner on request and shall include hours of operation, clientele served, volume of wood handled and any other information deemed relevant by the commissioner.

(5) Annual report. Applicants receiving grants-in-aid under this regulation shall file, on or before December 1 of each year on forms provided by the commissioner an annual report concerning the operation of the wood disposal and utilization system. Said report shall contain information regarding hours of operation, clientele served, volume of wood handled and any other information deemed relevant by the commissioner.

Agr 109-120 Reserved for future use.

Hearing: July 10, 1975

Changes or additions indicated by Underline, deletions by ~~strikeout~~.

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE JON WEFALD

COMMISSIONER OF AGRICULTURE

In the matter of the Proposed Amendments of Rules and Regulations of the Department of Agriculture Relating to Shade Tree Disease Control, Part A, Chapter 4, Agr 101 to 106, and the addition of Rules for Administration of the Grants-In-Aid Program.

STATEMENT OF NEED

The need to amend the above captioned rules arises because the Legislature enacted two new grants-in-aid programs the administration of which is not covered by existing rules and regulations. In addition, the rules governing present programs need amendment for greater clarity and to improve their usefulness in the Department of Agriculture enforcement program.

COMMISSIONER OF AGRICULTURE

JON WEFALD

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE JON WEFALD

COMMISSIONER OF AGRICULTURE

In the matter of the Proposed Amendments of Rules and Regulations of the Department of Agriculture Relating to Shade Tree Disease Control, Part A, Chapter 4, Agr 101 to 106, and the addition of Rules for Administration of the Grants-In-Aid Program.

FINDINGS OF FACT

The above-entitled matter came on for hearing before the Agriculture Commissioner of the State of Minnesota on the 10th day of July, 1975, at 10 a.m., in Room 83, ground floor, State Office Building, St. Paul, Minnesota, after proper notice required by Minnesota Statutes 1974, Section 15.0412 was served on all persons, associations and other interested groups registered with the Secretary of State for that purpose, and to all members of the Minnesota Legislature.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon records, files and proceedings herein, I find the following:

1. That the legislature in Minn. Laws 1975, Chapter 253, appropriated money to the Minnesota Department of Agriculture to enable the department to make grants-in-aid to assist in the control of shade tree disease.

2. That Regulations Agr 107 and 108 assist the department in fulfilling its responsibility under Minn. Laws 1975, Chapter 253, by defining the eligibility requirements for grants-in-aid and by outlining procedures to be used in making said grants.

3. That most of the technical amendments to the proposed regulations offered at the hearing by the Metropolitan Inter-County Council improve the regulations and should be adopted.

4. That proposed new definitions of "equipment" and "facility" offered at the hearing by Metropolitan Inter-County Council are acceptable because they clarify the rules.

5. That no evidence or testimony was offered to support the proposed provision in Regulation Agr 108 prohibiting grants for previously owned land and equipment and that therefore, since this requirement would be difficult to administer, it should be deleted.

6. That the proposed amendments to Regulations Agr 101 through 106 improve the regulations' usefulness by making the regulations more understandable.

STATE OF MINNESOTA

JON WEFALD
COMMISSIONER OF AGRICULTURE

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE JON WEFALD

COMMISSIONER OF AGRICULTURE

In the matter of the Proposed Amendments of Rules and Regulations of the Department of Agriculture Relating to Shade Tree Disease Control, Part A, Chapter 4, Agr 101 to 106, and the addition of Rules for Administration of the Grants-In-Aid Program.

ORDER ADOPTING RULES

The above-entitled matter came on for hearing before the Agriculture Commissioner of the State of Minnesota on Thursday, the 10th day of July, 1975, at 10 a.m., in Room 83, ground floor, State Office Building, St. Paul, Minnesota, after proper notice required by Minnesota Statutes 1974, Section 15.0412 was served on all persons, associations and other interested groups registered with the Secretary of State for that purpose, and to all members of the Minnesota Legislature.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards and criteria, and having confirmed the need for the above captioned rules,

NOW, THEREFORE, IT IS ORDERED that the amendments to the rules Agr 101 through Agr 106 and the addition of the rules Agr 107 and Agr 108, identified as Rules of the State Department of Agriculture Relating to Shade Tree Disease Control are adopted this 5th day of August, 1975, pursuant to the authority vested in me by Minnesota Statutes 1974, Section 15.0412 and Minn. Law 1975, Ch. 253.

STATE OF MINNESOTA

Jon Wefald

JON WEFALD
COMMISSIONER OF AGRICULTURE