

Minnesota Attorney General: Administrative Rules Proceedings

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AGR[redacted]-004-HK

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF AGRICULTURE GOVERNING COMPENSATION FOR LIVESTOCK DESTROYED BY ENDANGERED SPECIES.

REPORT OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on November 3, 1977, before Howard L. Kaibel, Jr., a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 15.052, Subd. 3, was issued to the Department of Agriculture on December 15, 1977; and

WHEREAS, the Department of Agriculture has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Department of Agriculture has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, Subd. 4, and Rule HE 107; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the Department of Agriculture has met all requirements of Minn. Stat. § 15.0412, Subd. 4.

NOW, THEREFORE, upon receipt of this Report, the Department of Agriculture has the responsibility of submitting the complete hearing record and the rules as adopted by the Department to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. § 15.0412, Subd. 4.

Dated this 27th day
of December, 1977.

Duane R. Harves by HKB

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA)
(ss.
COUNTY OF RAMSEY)

AFFIDAVIT OF SERVICE

Estella Farmer, being first duly sworn, deposes and says that on the 15th day of December 1977, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Report of the Hearing Examiner File No. AGR-78-004-HK.

unstamped, by placing in the designated tray to be collected by messenger for delivery to the central mailing station as required by Minn. Stat., § 16.54 (1974), a true and correct copy thereof on all persons at the addresses shown on the attached mailing list.

Estella Farmer

Subscribed and sworn to before me
this 15th day of December, 1977.

Sandra A. Haven

SANDRA A. HAVEN
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires July 29, 1983

Mr. William Marshall
Special Assistant Attorney General
Agriculture Department
State Office Building
Wabasha Street
St. Paul, Minnesota 55155

Marshall Whitlock
Executive Secretary
Legislative Commission to Review
Administrative Rules
Room 3, State Capitol
St. Paul, Minnesota 55155

Phillips Capitol Reporter
Attention: Jeannie Dawson
459 Rice Street
St. Paul, Minnesota 55103

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed Adoption of Rules of the Department of Agriculture Governing Compensation for Livestock Destroyed by Endangered Species.

REPORT OF HEARING EXAMINER

The above-entitled matter came on for hearing before Howard L. Kaibel, Jr., duly appointed Hearing Examiner in this matter, on November 3, 1977, at 10:00 a.m. in the Roseau City Auditorium in the City of Roseau, County of Roseau, State of Minnesota, and at 7:00 p.m. in the Community Hall, Library Building, in the City of International Falls, County of Koochiching, State of Minnesota.

Members of the Department of Agriculture (hereinafter "Department") panel included: Darryl L. Anderson, Assistant Commissioner of Agriculture; Randall D. Young, Management Analyst; and William Marshall, Special Assistant Attorney General. The hearings continued until all persons or representatives of interested persons or organizations desiring to be heard were heard.

Pursuant to Minn. Stat. § 15.0412, subd. 4, this Report shall be available for review to all affected individuals upon request for at least five days.

The Department shall, if it proposes to adopt the rules as originally proposed or amended, submit the complete hearing record, including its Findings and Order, to the Chief Hearing Examiner no earlier than five days subsequent to the receipt of this Report. This submission shall clearly indicate any changes made to the rules as originally proposed, preferably in the format that will be submitted to the State Register for publication. The Chief Hearing Examiner shall complete his review and submit his report to the Department on the issues of substantial changes in the rule and compliance with Minn. Stat. § 15.0412 within ten calendar days. Thereafter, the Department shall be responsible for filing the rules with the Attorney General and for notifying persons who have indicated that they wish to be notified of such filing.

Based upon all the records and proceedings herein, the Examiner makes the following:

FINDINGS OF FACT

1. That on October 3, 1977, the Department filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules;
(b) A proposed Order for Hearing;
(c) A proposed Notice of Hearing; and
(d) A Statement of the estimated length and number of people attending the hearing.

2. That on October 3, 1977, a Notice of Hearing and a copy of the proposed rules were published at 2 State Register 694.

3. That on September 30, 1977, the Department mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice.

4. That on October 7, 1977, the Department filed the following documents:

(a) The Order for Hearing;
(b) The Notice of Hearing as mailed;
(c) The Affidavit of Receipt of the Secretary of State's list;
(d) The Affidavit of Mailing;
(e) The Secretary of State's Certificate and list;
(f) The Statement of Need; and
(g) The Statement of Evidence, including the names of witnesses to be called;
(h) The names of Department personnel who will represent the agency.

The documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of the hearing.

5. That the record remained open through November 18, 1977, for the receipt of written comments and statements.

6. That the proposed rules are needed to establish procedures and criteria for administration of a program set forth in Minn. Stat. § 3.737 (Supp. 1977) to compensate owners for livestock that are destroyed or crippled so that they must be destroyed by animals classified as endangered under the federal Endangered Special Act of 1973. The only such animal in Minnesota which is a predator of livestock is the eastern timberwolf.

The proposed rules will reasonably fulfill that need by establishing:

(a) methods and standards for determining the fair market value of livestock destroyed;

(b) criteria and standards for determining the cause of the livestock loss;

(c) the reporting procedure for notifying the Department of a suspected livestock loss caused by an endangered species; and,

(d) a procedure for making payments for livestock losses.

7. That the Department has entered into the record additional proposed changes to the Rules as Proposed during the 15-day comment period (Comment A attached and hereby incorporated) which reflect testimony presented by the public at the hearings.

8. That in general, those revised provisions of the proposed rule, with the exceptions hereinafter noted, were not subject to significant criticism and are found to be reasonable and necessary.

9. That the most significant comments on the record regarding the proposed rule dealt with the definition of "Livestock". Public testimony indicated that there were incidents of endangered species destroying turkeys and that the losses were considered substantial in number and in value. The Agency's final written comments acknowledge this testimony and include "poultry" in the definition of "Livestock". Legislators unanimously agreed that inclusion of poultry was their intent, and there was no opposition to such inclusion. Definitions of livestock in both Black's Law Dictionary and Webster's New World Dictionary (Second College Edition) include poultry. It is specifically found that Rule AGR 583, as proposed in the Department's Final Written Comments is reasonable, necessary, and that changes therein are insubstantial.

10. That, in general, the Department made an affirmative presentation of facts documenting the reasonableness of and necessity for the provisions in proposed Rule AGR 584 dealing with the reporting and investigation of losses. Changes proposed in the Department's Final Written Comments are editorial and not substantial or substantive in nature.

11. That, in particular, the Department and the U. S. Fish and Wildlife Service witnesses showed the necessity for and reasonableness of the evidence upon which a finding shall be made that an endangered species caused the livestock loss as enumerated in subsection D, 1-6.

12. That the Public's proposal to change "shall" to "may" in the last sentence agreed to by Department staff at the hearing (but not included in Comment A) will provide for a greater degree of reasonableness and guidance in determining if livestock was destroyed by an endangered species and is not a substantial change in the Rules as Proposed.

13. That there was not substantial criticism of the procedural requirements set forth in this proposed rule for notification within 24 hours of the discovery of the loss, information to be required on the claim form, or the other procedural mechanism established in the proposed rule.

14. That the changes proposed in the Department's final submission are needed to meet concern raised at the hearings by members of the public regarding the factors upon which the actual fair market value will be based (subsection 585, A). The concerns revolved primarily around not fully matured and marketable livestock. It was felt that, under the Rules as Proposed, the livestock owner would not be fairly compensated for the loss. The Department, in its Final Written Comments, addressed this concern by adding an additional criterion which will allow for the replacement cost of the livestock loss to be considered in determining the fair market value. This will allow farmers to "cover" their loss wherever possible and will establish "expected value" as actual value where replacement is not reasonably available. This addition is found to be reasonable, necessary, and insubstantial based upon testimony presented at the public hearings.

15. That the other procedural requirements established in proposed rule AGR 585 dealing with the determination of fair market value and the other criteria for making that determination are reasonable and necessary. The Department has made an adequate

affirmative presentation thereof at the hearings and in the Statement of Need and Evidence. The changes proposed for this rule in the Department's Final Written Comments are editorial and not substantive.

16. That the issue of alternative methods for allocating the payment funds was discussed at length at the hearings. Some persons feared that if full payments were made as the claims were received, there would be a possibility that there would not be sufficient funds to pay later claims. No adequate specific alternative procedures were proposed at or after the hearings. In light of the legislative appropriation and LAC procedures, the importance of keeping payments speedy and simple, and the evidence herein sufficient to cover claims made, it is specifically found that the payment procedure set forth by the Department in these rules is reasonable and appropriate.

17. That the need for and reasonableness of the rules operating together as set forth in the Department's Final Written Comments was generally supported by testimony presented at hearings and is adequately documented in the Agency's Statement of Need and Evidence. The reader is referred to this Statement of Need and Evidence for more detailed justification of these rules.

CONCLUSIONS

1. That the Department gave proper notice of and has jurisdiction for the promulgation of the proposed rules.

2. That the Department has statutory authority to promulgate the proposed rules pursuant to Minn. Stat. § 3.737 (Supp. 1977).

3. That the Department has fulfilled all relevant, substantive and procedural requirements of law and rule.

4. That the Department has demonstrated the necessity for and reasonableness of the proposed rules and the suggested changes set forth in the Department's Final Written Comments with an affirmative presentation of facts.

RECOMMENDATION

IT IS HEREBY RECOMMENDED: That the proposed rules and changes as as set forth in the Department's Final Written Comments be adopted, with the additional modification suggested in Finding 12.

Dated this 15th day of December, 1977.

Karen R Harvey for Howard L Kaibel

HOWARD L. KAIBEL, JR.
Hearing Examiner

RULES AS PROPOSED FOR ADOPTION IN FINAL FORM

Compensation for Livestock
Destroyed by Endangered Species

Chapter 24

3 MCAR 1.0583 through 3 MCAR 1.0585

3 MCAR 1.0583 General.

A. Purpose and Authority. The rules contained herein are prescribed pursuant to Minn. Stat. 1977 Supp., Sec. 3.737 (Laws of Minnesota, 1977, Chapter 450, Secs. 4 and 5) by the Commissioner of Agriculture to implement procedures to compensate livestock owners for livestock that is destroyed, or is crippled and must be destroyed, by an animal classified as endangered under the federal Endangered Species Act of 1973. The procedures specified in these rules are in addition to those set forth in the act itself.

B. Definitions. For purposes of these rules, the following definitions shall apply:

~~1.--"The act" means Laws of Minnesota, 1977, Chapter 450, Secs. 4 and 5;~~

1. ~~2.~~ "Claim form" means the form provided by the commissioner to be completed by the County Extension Agent, the conservation officer and the livestock owner, containing information upon which payment for a loss shall be based~~.~~;

2. ~~3.~~ "Commissioner" means the Commissioner of Agriculture or his authorized agent;

3. ~~4.~~ "Conservation officer" means a conservation officer of the Department of Natural Resources or his designee;

4. ~~5.~~ "County extension agent" means the University of Minnesota Agricultural Extension Service's County Extension Director or his designee for the county in which the loss occurred;

5. ~~6.~~ "Endangered species" means an animal classified as endangered under the federal Endangered Species Act of 1973 at the time Minn. Stat. 1977 Supp., Sec. 3.737 was enacted;

6. ~~7.~~ "Livestock" means cattle, sheep, poultry, swine, horses, mules, and goats;

7. 8. "Livestock owner" means any ~~person~~ individual, firm, corporation, co-partnership, or association with an interest in livestock ~~suspected of being~~ destroyed, or crippled so that it must be destroyed, by an ~~animal classified as~~ endangered species; and, ~~under the federal Endangered Species Act of 1973.~~

8. 9. "Loss" means livestock destroyed, or crippled so that it must be destroyed, by an ~~animal classified as~~ endangered species. ~~under the federal Endangered Species Act of 1973; and,~~

~~10. "Person" means any individual, firm, corporation, co-partnership, or association.~~

3 MCAR 1.0584 Reporting and Investigation.

A. It shall be the responsibility of the livestock owner to notify either the conservation officer or the county extension agent of a suspected loss within two weeks of the effective date of these rules or 24 hours of the discovery of a loss, whichever is later. The livestock owner shall provide all information required to investigate the loss to the conservation officer or the county extension agent. A telephone call or personal contact shall constitute notification.

B. The conservation officer or the county extension agent contacted by the livestock owner shall be responsible for completing the claim forms ~~provided by the Commissioner~~.

C. The conservation officer or ~~and~~ the county extension agent shall secure from the livestock owner a signed statement setting forth:

1. a. All persons owning an interest in the livestock involved;

2. b. The existence and details of any insurance coverage on the livestock;

3. c. A statement that, in the owner's best judgment, the destroyed livestock was killed by an endangered species, and the facts underlying that judgment; and,

4. d. A description of the livestock owner's plan to dispose of the carcass, which must be approved by the conservation officer or the county extension agent.

D. The conservation officer or ~~and~~ the county extension agent shall investigate the loss in a timely manner and shall make a finding in writting on the claim form regarding whether the livestock was destroyed or crippled by an endangered species, the type of endangered species that caused the loss, and the owner's eligibility for compensation under these rules. Such a finding shall be based upon physical and circumstanteial evidence, including but not limited to:

1. The livestock carcass presence and condition;

2. Animal tracks;

3. The number and location of animal bites on the carcass;

4. The area of the state where the loss occurred;

5. Sitings of endangered species in the area; and,

6. Any other circumstances determined to be pertinent~~,~~ by the conservation officer and the county extension agent.

The absence of any affirmative evidence ~~shall~~ may be grounds for denial of a claim.

3 MCAR 1.0585 Payment.

A. ~~Upon a finding by the conservation officer and the county extension agent that the loss did occur, the type of endangered species that caused the loss, and the livestock owner's eligibility for compensation under the act,~~ The conservation officer and the county extension agent shall make a written finding on the claim form of the actual fair market value of the destroyed livestock, not ~~be~~ to exceed $400 per animal, based upon, but not limited to, the following criteria deemed to be pertinent by the county extension agent or the conservation officer:

1. The number of livestock determined by the conservation officer ~~and~~ or the county extension agent in the loss;

2. The type of livestock;

3. The breed and breeding of the livestock;

4. The estimated size and weight of the livestock;

5. The estimated age of the livestock;

6. Registration of the livestock, upon proof of registration; ~~and;~~

7. Selling price of livestock at the nearest public stockyard at the time of loss~~.~~; and,

8. The replacement cost of the livestock.

B. Upon completion and signing of the claim form, the county extension agent or the conservation officer shall submit said claim form to the commissioner for review and payment ~~of the claim~~. The commissioner shall ~~review the claim form for completeness and~~ return any incomplete claim form ~~not properly completed~~ to the initiating authority, ~~and indicate~~ indicating the information necessary for proper completion. ~~The commissioner shall return a copy of the properly completed claim form to the conservation officer and the county extension agent upon issuance of a payment to the livestock owner.~~

C. If insurance coverage exists on the livestock, the commissioner shall withhold payment under these rules ~~the act~~ until the insurance claim has been paid, and evidence of payment has been submitted to the commissioner; at which time that insurance payment shall be deducted from the determined actual fair market value or $400 per animal, whichever is less. In no case shall the payment exceed $400 per animal.

D. ~~Once insurance claims have been satisfied and the claim form has been determined to be complete,~~ The commissioner shall then make payment and return a copy of the claim form to the livestock owner(s), as their interests may appear, the conservation officers, and the county extension agent.

E. The commissioner shall make only one payment for any single livestock loss.

PROPOSED RULES

Compensation for Livestock
Destroyed by Endangered Species

Chapter 24

3 MCAR 1.0583 through 3 MCAR 1.0585

3 MCAR 1.0583 General.

A. Purpose and Authority. The rules contained herein are prescribed pursuant to Laws of Minnesota, 1977, Chapter 450, Secs. 4 and 5 by the Commissioner of Agriculture to implement procedures to compensate livestock owners for livestock that is destroyed, or is crippled and must be destroyed, by an animal classified as endangered under the federal Endangered Species Act of 1973. The procedures specified in these rules are in addition to those set forth in the act itself.

B. Definitions. For purposes of these rules, the following definitions shall apply:

1. "The act" means Laws of Minnesota, 1977, Chapter 450, Secs. 4 and 5 as amended;

2. "Claim form" means the form provided by the commissioner to be completed by the County Extension Agent, the conservation officer and the livestock owner, containing information upon which payment for a loss shall be based.

3. "Commissioner" means the Commissioner of Agriculture or his authorized agent;

4. "Conservation officer" means a conservation officer of the Department of Natural Resources or his designee;

5. "County extension agent" means the University of Minnesota Agricultural Extension Service's County Extension Director or his designee for the county in which the loss occurred;

6. "Endangered species" means an animal classified as endangered under the federal Endangered Species Act of 1973;

7. "Livestock" means cattle, sheep, swine, horses, mules, and goats;

8. "Livestock owner" means any person with an interest in livestock suspected of being destroyed, or crippled so that it must be destroyed, by an animal classified as endangered under the federal Endangered Species Act of 1973.

9. "Loss" means livestock destroyed, or crippled so that it must be destroyed, by an animal classified as endangered under the federal Endangered Species Act of 1973; and,

10. "Person" means any individual, firm, corporation, co-partnership, or association.

3 MCAR 1.0584 Reporting and Investigation.

A. It shall be the responsibility of the livestock owner to notify either the conservation officer or the county extension agent of a suspected loss within two weeks of the effective date of these rules or within 24 hours of the discovery of a loss, whichever is later. The livestock owner shall provide all information required to investigate the loss to the conservation officer or the county extension agent. A telephone call or personal contact shall constitute notification.

B. The conservation officer or the county extension agent contacted by the livestock owner shall be responsible for completing claim forms provided by the Commissioner.

C. The conservation officer and the county extension agent shall secure from the livestock owner a signed statement setting forth:

a. All persons owning an interest in the livestock involved;

b. The existence and details of any insurance coverage on the livestock;

c. A statement that, in the owner's best judgment, the destroyed livestock was killed by an endangered species, and the facts underlying that judgment; and,

d. A description of the livestock owner's plan to dispose of the carcass, which must be approved by the conservation officer.

D. The conservation officer and the county extension agent shall investigate the loss in a timely manner and shall make a finding in writing regarding whether the livestock was destroyed or crippled by an endangered species. Such a finding shall be based upon physical and circumstantcial evidence, including but not limited to:

1. The livestock carcass presence and condition;

2. Animal tracks;

3. The number and location of animal bites on the carcass;

4. The area of the state where the loss occurred;

5. Sitings of endangered species in the area; and,

6. Any other circumstances determined to be pertinent, by the conservation officer and the county extension agent.

The absence of any affirmative evidence shall be grounds for denial of a claim.

3 MCAR 1.0585 Payment.

A. Upon a finding by the conservation officer and the county extension agent that the loss did occur, the type of endangered species that caused the loss, and the livestock owner's eligibility for compensation under the act, the conservation officer and the county extension agent shall make a written finding of the actual fair market value of the destroyed livestock, not be exceed $400 per animal, based upon but, not limited to:

1. The number of livestock determined by the conservation officer and the county extension agent in the loss;

2. The type of livestock;

3. The breed and breeding of the livestock;

4. The estimated size and weight of the livestock;

5. The estimated age of the livestock;

6. Registration of the livestock, upon proof of registration; and,

7. Selling price of livestock at the nearest public stockyard at the time of loss.

B. Upon completion and signing of the claim form, the county extension agent or the conservation officer shall submit said claim form to the commissioner for review and payment of the claim. The commissioner shall review the claim form for completeness and return any claim form not properly completed to the initiating authority and indicate the information necessary for proper completion. The commissioner shall return a copy of the properly completed claim form to the conservation officer and the county extension agent upon issuance of a payment to the livestock owner.

C. If insurance coverage exists on the livestock, the commissioner shall withhold payment under the act until the insurance claim has been paid, and evidence of payment has been submitted to the commissioner; at which time that insurance payment shall be deducted from the determined actual fair market value or $400 per animal, whichever is less. In no case shall the payment exceed $400 per animal.

D. Once insurance claims have been satisfied and the claim form has been determined to be complete, the commissioner shall make payment and return a copy of the claim form to the livestock owner(s), as their interests may appear.

E. The commissioner shall make only one payment for any single livestock loss.

STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed Adoption of Rules of the Department of Agriculture Governing Compensation for Livestock Destroyed by Endangered Species	ORDER ADOPTING REPORT OF HEARING EXAMINER

I, Special Assistant Attorney General William Marshall, 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 Rule Making Procedures has been followed. Any exceptions are noted below.

William Marshall
William Marshall
Special Assistant Attorney General

Dated: 12/27/77

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

RECEIVED
OCT 7 1977
OFFICE OF HEARING EXAMINERS

IN THE MATTER OF THE PROPOSED ADOPTION)	AFFIDAVIT OF RECEIPT OF
OF RULES OF THE DEPARTMENT OF AGRICULTURE)	THE SECRETARY
GOVERNING COMPENSATION FOR LIVESTOCK)	OF STATE'S LIST
DESTROYED BY ENDANGERED SPECIES)	

Nancy A. Orlich being duly sworn on oath deposes and says:

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

2) That on the 28th day of September, 1977, she went to the Secretary of State's Office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearing relating to the promulgation of rules pursuant to M.S. 15.0412.

3) That on the 28th day of September, 1977, 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. Nancy A. Orlich

Subscribed and sworn to before me this

30th day of September, 1977,

Notary Public, Joan LeDuc

Ramsey County, Minnesota

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

My Commission Expires

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

RECEIVED
OCT 7 1977
OFFICE OF HEARING
EXAMINERS

IN THE MATTER OF THE PROPOSED ADOPTION)	CERTIFICATE OF DELIVERY
OF RULES OF THE DEPARTMENT OF AGRICULTURE)	SECRETARY
GOVERNING COMPENSATION FOR LIVESTOCK)	OF STATE LIST
DESTROYED BY ENDANGERED SPECIES)	

I hereby certify that the attached 491 Labels 5 sheets consttute the complete list of persons, associations, and other interested groups who as of 8:15 o'clock A M., this 28th day of September, 1977, have requested pursuant to M.S. 1974, Sec. 15.0412, that their name 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 Cheri Mattson

STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION)
OF RULES OF THE DEPARTMENT OF AGRICULTURE) NOTICE OF HEARING
GOVERNING COMPENSATION FOR LIVESTOCK)
DESTROYED BY ENDANGERED SPECIES)

RECEIVED
OCT 7 1977
OFFICE OF HEARING
EXAMINERS

NOTICE IS HEREBY GIVEN that a public hearing in the above entitled matter will be held in the Roseau City Auditorium, Roseau, Minnesota on November 3, 1977, commencing at 10:00 a.m., or as soon thereafter as possible, and in the Community Hall, Library Building, International Falls, Minnesota on November 3, 1977, commencing at 7:00 p.m., as soon thereafter as possible, and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Howard L. Kaibel, Jr., Office of Hearing Examiners, 1745 University Avenue, Room 300, Saint Paul, Minnesota 55104, phone (612) 296-8107 either before the hearing or after the hearing until the record is closed. The record will remain open for five working days after the public hearing ends or for a longer period not to exceed 20 days if ordered by the Hearing Examiner.

The proposed rules, if adopted, would establish rules to provide methods of valuation of livestock destroyed, criteria for determination of the cause for livestock loss, notice requirements by the owner of destroyed livestock, and any other matters necessary to carry out the provisions of laws of Minnesota, 1977, Chapter 450, Secs. 4, and 5. Copies of the proposed rules are now available and one free copy may be obtained by writing to the Minnesota Department of Agriculture, 420 State Office Building, Saint Paul, Minnesota 55155. Additional copies will be available at the door on the date of the hearing. The department's authority to promulgate the proposed rules is contained in Laws of Minnesota, 1977, Chapter 450, Secs. 4 and 5. A "statement of need" explaining why the department feels the proposed rules are necessary and a "statement of evidence" outlining the testimony they will be introducing, will be filed with the Hearing Examiners Office at least 25 days prior to the hearing and will be available there for public inspection.

Please be advised that Minnesota Statutes; Chapter 10A, requires each lobbyist to register with the Ethical Practices Board within five days after he commences lobbying. Lobbying includes attemption to influence rule making by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than $250.00 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250.00 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, phone (612) 296-5615.

STATE OF MINNESOTA

Bill Walker
Commissioner of Agriculture

Date: September 16, 1977

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION)
OF RULES OF THE DEPARTMENT OF AGRICULTURE) ORDER OF HEARING
GOVERNING COMPENSATION FOR LIVESTOCK)
DESTROYED BY ENDANGERED SPECIES)

IT IS HEREBY ORDERED that a public hearing on the above-captioned rules be held in the Roseau City Auditorium, Roseau, Minnesota on November 3, 1977, commencing at 10:00 a.m., or as soon thereafter as possible, and in the Community Hall, Library Building, International Falls, Minnesota on November 3, 1977, commencing at 7:00 p.m., or as soon thereafter as possible, and continuing until all persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that a Notice of Hearing be mailed to all persons, representatives of associations, and other interested groups who have registered their names with the Secretary of State for that purpose.

IT IS FURTHER ORDERED that the Notice of Hearing be published in the State Register.

STATE OF MINNESOTA

Bill Walker
Commissioner of Agriculture

Date: September 16, 1977

STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

RECEIVED
OCT 7 1977
OFFICE OF HEARING EXAMINERS

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF AGRICULTURE GOVERNING COMPENSATION FOR LIVESTOCK DESTROYED BY ENDANGERED SPECIES

STATEMENT OF NEED AND EVIDENCE

ATTORNEY GENERAL
SOLICITOR GENERAL
RECEIVED
A.M. DEC 19 1977

The above captioned rules are not amendments to existing rules of the Department of Agriculture.

The need to adopt these rules arises from Laws of Minnesota, 1977, Ch. 450, Secs. 4 and 5, which direct the Commissioner of Agriculture to adopt rules to carry out the provisions of the law including: (a) methods of valuation of livestock destroyed; (b) criteria for determination of the cause for livestock loss; (c) notice requirements by the owner of destroyed livestock; and (d) any other matters determined necessary by the commissioner to carry out the provisions of the law. The law establishes a program for compensating livestock owners for livestock that is destroyed, or is crippled so that it must be destroyed, after July 1, 1977 by an animal classified as endangered under the federal Endangered Species Act of 1973.

The Department will call the following outside expert witnesses to testify: representative(s) of the University of Minnesota Agricultural Extension Service; representative(s) of the Department of Natural Resources; and a representative from the U. S. Fish and Wildlife Service.

The Department will be represented by the following staff: Darryl L. Anderson, Assistant Commissioner; Dave G. Velde, Assistant Commissioner; Randall D. Young, Management Analyst; and, Peder Hong, Special Assistant Attorney General.

The Department intends to introduce no manuals, books, scientific treatisies, or other documentary evidence.

INTRODUCTION

The 1977 Minnesota Legislature passed the livestock compensation program in Laws of Minnesota, 1977, Ch. 450, Secs. 4 and 5 requiring the Commissioner of Agriculture to promulgate rules for implementation and operation of the program. It is the purpose of these rules to interpret the law consistent with the legislative intent behind its passage. In doing so, every attempt has been made to create a mechanism that is equitable, reasonable, and predictable for all affected parties. It should be kept in mind that these rules must be read and interpreted in conjunction with Laws of Minnesota, 1977, Ch. 450, Secs. 4 and 5. The Department has attempted to avoid duplication of statutory language except in cases where such statutory language is necessary to identify and clarify the contents of the rule.

RULE JUSTIFICATION

The format used in preparing this Statement of Need and Evidence is to state each section of the rule followed by an explanation of the intent of the rule; the need for the rule, and the reasonableness of the rule.

3 MCAR 1.0583 GENERAL

A. Purpose and Authority. The rules contained herein are prescribed pursuant to Laws of Minnesota, 1977, Chapter 450, Secs. 4 and 5 by the Commissioner of Agriculture to implement procedures to compensate livestock owners for livestock that is destroyed, or is crippled and must be destroyed, by an animal classified as endangered under the federal Endangered Species Act of 1973. The procedures specified in these rules are in addition to those set forth in the act itself.

... This section of 3 MCAR 1.0583 merely sets forth the authority by which the commissioner shall promulgate these rules and the intent of the program.

B. Definitions. For purposes of these rules, the following definitions shall apply:

1. "The act" means Laws of Minnesota, 1977, Chapter 450, Secs. 4 and 5;

2. "Claim form" means the form provided by the commissioner to be completed by the County Extension Agent, the conservation officer and the livestock owner, containing information upon which payment for a loss shall be based.

... Because the law set forth no definitions of terms, the proposed rules must do so. The definition of "The act" and "Claim form" are simply to provide a more precise understanding of the terms when used in the rules, as well as to minimize the amount of wordage needed in the rules.

3. "Commissioner" means the Commissioner of Agriculture or his authorized agent;

... This definition gives the Commissioner of Agriculture the standard authority to delegate the responsibility of processing the claims and operating the program to a subordinate.

4. "Conservation officer" means a conservation officer of the Department of Natural Resources or his designee;

5. "County extension agent" means the University of Minnesota Agricultural Extension Service's County Extension Director or his designee for the county in which the loss occurred;

... These definitions allow for similar delegations of authority. It is especially important that, should the conservation officer or the County Extension Director be unable to personally respond to a call from a livestock owner immediately because he is on another assignment, ill, on leave, etc., a designee have the authority to respond to the call immediately while the evidence is still fresh.

6. "Endangered species" means an animal classified as endangered under the federal Endangered Species Act of 1973;

... This definition simply minimizes the amount of wordage required in the rules by shortening the term to "endangered species."

7. "Livestock" means cattle, sheep, swine, horses, mules, and goats;

... The definition for livestock is taken from Minn. Stat. 1976, Sec. 17A.03, Subd. 5 (Livestock Market Agency and Dealer Licensing Act). It is also the definition which the State and Federal Crop and Livestock Reporting Service uses in compiling its statistics. Other domestic animals such as poultry were not included because of the standard definition. In addition, their inclusion cannot be justified on a cost/effective basis. It was estimated that the administrative cost of investigating and processing a claim for a turkey loss, for example, could be in excess of $125 for a claim payment of approximately $15. These expenses would only reduce the number of larger, more economically damaging claims which could be paid.

8. "Livestock owner" means any person with an interest in livestock suspected of being destroyed, or crippled so that it must be destroyed, by an animal classified as endangered under the federal Endangered Species Act of 1973.

9. "Loss" means livestock destroyed, or crippled so that it must be destroyed, by an animal classified as endangered under the federal Endangered Species Act of 1973; and,

10. "Person" means any individual, firm, corporation, co-partnership, or association.

... These three definitions simply clarify terms used throughout the rules so as to minimize wordage required in the text of the rules.

3 MCAR 1.0584 REPORTING AND INVESTIGATION

A. It shall be the responsibility of the livestock owner to notify either the conservation officer or the county extension agent of a suspected loss within two weeks of the effective date of these rules or 24 hours of the discovery of a loss, whichever is later. The livestock owner shall provide all information required to investigate the loss to the conservation officer or the county extension agent. A telephone call or personal contact shall constitute notification.

... Because of the rapid deterioration of physical evidence necessary to determine if livestock was killed by an endangered species, prompt investigation is essential. For that reason, the rules provide that phone contact is sufficient notification. This section also requires that the livestock owner promptly, within 24 hours of discovery, notify the proper authority of the loss. It should be kept in mind that this is within 24 hours of "discovery" and not of "death." It would be unreasonable to expect a livestock owner to report a loss within a fixed period of time after death if the owner did not have knowledge or could not be expected to reasonably have knowledge of the loss.

In following the legislative intent behind this act, this section also provides that livestock owners suffering losses prior to the promulgation of these rules, but after the effective date of the law (July 1, 1977) are eligible for compensation if they file a claim through the normal procedure set forth in these rules and within 14 days of the effective date of these rules and meet the other provisions of the rules.

B. The conservation officer or the county extension agent contacted by the livestock owner shall be responsible for completing claim forms provided by the Commissioner.

C. The conservation officer and the county extension agent shall secure from the livestock owner a signed statement setting forth:

a. All persons owning an interest in the livestock involved;

b. The existence and details of any insurance coverage on the livestock;

c. A statement that, in the owner's best judgment, the destroyed livestock was killed by an endangered species, and the facts underlying that judgment; and,

d. A description of the livestock owner's plan to dispose of the carcass, which must be approved by the conservation officer.

... This section of the rule sets forth the information required of the livestock owner. The owner will be required to:

a. Indicate all persons having a financial interest in the livestock lost so that payment may be made to the proper persons and so that any financial liens on the livestock may be paid off;

b. The livestock owner will have to provide insurance information on the livestock so that the provision of Laws of Minnesota, 1977, Ch. 450, Sec. 4, Subd. 2, which requires that any insurance payments be deducted from the payments awarded under this act, may be administered.

c. This provision has the owner affirm that he/she believes that the loss was caused by an endangered species and the reasons leading the owner to that conclusion. Basically, this is anticipated to entail the physical evidence such as animal tracks, siting of an endangered species, etc., which the owner noticed when he/she discovered the livestock loss.

d. One of the major causes of reported recurring losses by endangered species is the improper disposal of the original carcass. In order to minimize these recurring losses and claims, the owner will be required to indicate his/her plan for disposing of the carcass properly (approved by the conservation officer). The conservation officer will assist owners who have no plan by suggesting possible means of disposal.

D. The conservation officer and the county extension agent shall investigate the loss in a timely manner and shall make a finding in writing regarding whether

the livestock was destroyed or crippled by an endangered species. Such a finding shall be based upon physical and circumstantial evidence, including but not limited to:

1. The livestock carcass presence and condition;

2. Animal tracks;

3. The number and location of animal bites on the carcass;

4. The area of the state where the loss occurred;

5. Sitings of endangered species in the area; and,

6. Any other circumstances determined to be pertinent, by the conservation officer and the county extension agent.

The absence of any affirmative evidence shall be grounds for denial of a claim.

... Because of the importance of immediate investigation of losses, this provision requires that the conservation officer and the county extension agent investigate the loss as soon as they physically can do so.

The rule also sets forth the criteria for determining if an endangered species killed the livestock. The list of criteria is exhaustive so that other criteria deemed relevant may be considered by the conservation officer and the county extension agent in making their finding.

This section also requires that affirmative evidence be present for a claim to be valid.

3 MCAR 1.0585 PAYMENT

A. Upon a finding by the conservation officer and the county extension agent that the loss did occur, the type of endangered species that caused the loss, and the livestock owner's eligibility for compensation under the act, the conservation officer and the county extension agent shall make a written finding of the actual fair market value of the destroyed livestock, not to exceed $400 per animal, based upon:

1. The number of livestock determined by the conservation officer and the county extension agent in the loss;

2. The type of livestock;

3. The breed and breeding of the livestock;

4. The estimated size and weight of the livestock;

5. The estimated age of the livestock;

6. Registration of the livestock, upon proof of registration; and,

7. Selling price of livestock at the nearest public stockyard at the time of loss.

... The section of the rule sets forth the criteria to be used in finding the fair market value of the livestock loss once it has been found that the livestock was killed by an endangered species. these factors are the normal basis for trade and setting price in the livestock industry.

The $400 per animal limit is set in the act.

B. Upon completion and signing of the claim form, the county extension agent or the conservation officer shall submit said claim form to the commissioner for review and payment of the claim. The commissioner shall review the claim form for completeness and return any claim form not properly completed to the initiating authority and indicate the information necessary for proper completion. The commissioner shall return a copy of the properly completed claim form to the conservation officer and the county extension agent upon issuance of a payment to the livestock owner.

... The section of the rule authorizes the Commissioner of Agriculture to perform the ministerial function of receiving and reviewing the claim form before payment is authorized. This is to assure that complete and accurate information is available upon which to base payment.

C. If insurance coverage exists on the livestock, the commissioner shall withhold payment under the act until the insurance claim has been paid, and evidence of payment has been submitted to the commissioner; at which time that insurance payment shall be deducted from the determined actual fair market value of $400 per animal, whichever is less. In no case shall the payment exceed $400 per animal.

D. Once insurance claims have been satisfied and the claim form has been determined to be complete, the commissioner shall make payment and return a copy of the claim form to the livestock owner(s), as their interests may appear.

... In accordance with Laws of Minnesota, 1977, Ch. 450, Sec. 4, Subd. 2, insurance payments made on a livestock loss shall be deducted from the state payment under this act. In order to assure the double payments are not made, the commissioner is required by this provision of the rule to withhold the state compensation until the insurance payment has been made to the owner. Also, according to the act, the total payment for an animal is limited to $400. The livestock owner would be entitled to that full payment, but would not be eligible for any state compensations.

E. The commissioner shall make only one payment for any single livestock loss.

... This provision is included in the rules to prohibit any fraud which might take place by multiple claims filed by an individual or by different individuals on the same carcass.

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF AGRICULTURE GOVERNING COMPENSATION FOR LIVESTOCK DESTROYED BY ENDANGERED SPECIES	ORDER ADOPTING REPORT OF HEARING EXAMINER

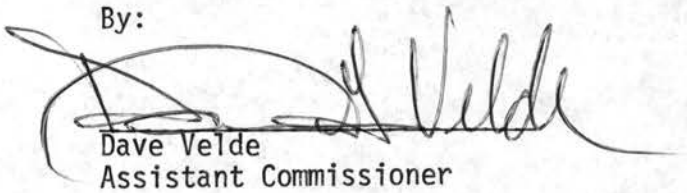
The above-entitled matter came on for hearing before Hearing Examiner Howard L. Kaibel, Jr. of the Minnesota Office of Hearing Examiners on November 3, 1977, at 10:00 a.m. in the Roseau City Auditorium in the City of Roseau, County of Roseau, State of Minnesota, and at 7:00 p.m. in the Community Hall, Library Building, in the City of International Falls, County of Koochiching, State of Minnesota, pursuant to an Order for Hearing of the Commissioner (hereinafter "the Agency") dated September 16, 1977.

The Report of Hearing Examiner in the above-entitled matter was issued by Howard L..Kaibel, Jr. on December 15, 1977, recommending that the proposed rules be promulgated, approved, and adopted as proposed by the Minnesota Department of Agriculture except for changes proposed in the Department's Final Written Comments, the change suggested by the Hearing Examiner in Finding 12, and the striking of "Upon a finding by the conservation officer and the county extension agent that the loss did occur, the type of endangered species that caused the loss, and the livestock owner's eligibility for compensation under the act," in 3 MCAR 1.0585A and ""Once insurance claims have been satisfied and the claim form has been determined to be complete," in 3 MCAR 1.0585D. Having reviewed these Findings of Fact and having concurred with the recommendation of the Hearing Examiner;

NOW, THEREFORE, IT IS ORDERED: That the aforementioned Report of Hearing Examiner is adopted this 23rd day of December, 1977.

Bill Walker
Commissioner of Agriculture

By:



Dave Velde
Assistant Commissioner

State of Minnesota

Department of Agriculture

In the Matter of the Proposed Adoption of Rules of the Department of Agriculture Governing Compensation for Livestock Destroyed by Endangered Species	)	ORDER ADOPTING RULES

The above-entitled matter came on for hearing before Howard L Kaibel, Jr , a Hearing Examiner of the State Office of Hearing Examiners on November 3, 1977 at 10:00 a.m. in the Roseau City Auditorium in the City of Roseau, County of Roseau, State of Minnesota, and at 7:00 p.m. in the Community Hall, Library Building, in the City of International Falls, County of Koochiching, State of Minnesota, after proper notice required by Minn. Stat. sec. 15.0412 (1976) was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

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 vidence adduced and upon the records, files and proceedings herein, and applicable statutory standards or criteria, and having confirmed the need for the above captioned rules and the reasonableness thereof.

NOW, THEREFORE, IT IS ORDERED that these rules identified as Rules As Proposed For Adoption in Final Form, 3 MCAR 1.0583 through 3 MCAR 1.0585, are adopted this 28th day of December, 1977, pursuant to authority vested in me by Minn. Stat. sec. 15.0412 (1976) and Minn. Stat. sec. 3.737 (1977, Supp.).

MINNESOTA DEPARTMENT OF AGRICULTURE

Bill Walker
Commissioner

by

David G. Velde
Assistant Commissioner

RULES AS PROPOSED FOR ADOPTION IN FINAL FORM

Compensation for Livestock
Destroyed by Endangered Species

Chapter 24

3 MCAR 1.0583 through 3 MCAR 1.0585

3 MCAR 1.0583 General.

A. Purpose and Authority. The rules contained herein are prescribed pursuant to Minn. Stat. 1977 Supp., Sec. 3.737 (Laws of Minnesota, 1977, Chapter 450, Secs. 4 and 5) by the Commissioner of Agriculture to implement procedures to compensate livestock owners for livestock that is destroyed, or is crippled and must be destroyed, by an animal classified as endangered under the federal Endangered Species Act of 1973. The procedures specified in these rules are in addition to those set forth in the act itself.

B. Definitions. For purposes of these rules, the following definitions shall apply:

1. "Claim form" means the form provided by the commissioner to be completed by the County Extension Agent, the conservation officer and the livestock owner, containing information upon which payment for a loss shall be based;

2. "Commissioner" means the Commissioner of Agriculture or his authorized agent;

3. "Conservation officer" means a conservation officer of the Department of Natural Resources or his designee;

4. "County extension agent" means the University of Minnesota Agricultural Extension Service's County Extension Director or his designee for the county in which the loss occurred;

5. "Endangered species" means an animal classified as endangered under the federal Endangered Species Act of 1973 at the time Minn. Stat. 1977 Supp., Sec. 3.737 was enacted;

6. "Livestock" means cattle, sheep, poultry, swine, horses, mules, and goats;

7. "Livestock owner" means any individual, firm, corporation, co-partnership, or association with an interest in livestock destroyed, or crippled so that it must be destroyed, by an endangered species; and,

8. "Loss" means livestock destroyed, or crippled so that it must be destroyed, by an endangered species.

3 MCAR 1.0584 Reporting and Investigation.

A. It shall be the responsibility of the livestock owner to notify either the conservation officer or the county extension agent of a suspected loss within two weeks of the effective date of these rules or 24 hours of the discovery of a loss, whichever is later. The livestock owner shall provide all information required to investigate the loss to the conservation officer or the county extension agent. A telephone call or personal contact shall constitute notification.

B. The conservation officer or the county extension agent contacted by the livestock owner shall be responsible for completing the claim forms.

C. The conservation officer or the county extension agent shall secure from the livestock owner a signed statement setting forth:

1. All persons owning an interest in the livestock involved;

2. The existence and details of any insurance coverage on the livestock;

3. A statement that, in the owner's best judgment, the destroyed livestock was killed by an endangered species, and the facts underlying that judgment; and,

4. A description of the livestock owner's plan to dispose of the carcass, which must be approved by the conservation officer or the county extension agent.

D. The conservation officer or the county extension agent shall investigate the loss in a timely manner and shall make a finding in writing on the claim form

regarding whether the livestock was destroyed or crippled by an endangered species, the type of endangered species that caused the loss, and the owner's eligibility for for compensation under these rules. Such a finding shall be based upon physical and circumstantial evidence, including but not limited to:

1. The livestock carcass presence and condition;
2. Animal tracks;
3. The number and location of animal bites on the carcass;
4. The area of the state where the loss occurred;
5. Sitings of endangered species in the area; and,
6. Any other circumstances determined to be pertinent by the conservation officer and the county extension agent.

The absence of any affirmative evidence may be grounds for denial of a claim.

3 MCAR 1.0585 Payment.

A. The conservation officer and the county extension agent shall make a written finding on the claim form of the actural fair market value of the destroyed livestock, not to exceed $400 per animal, based upon any of the following criteria deemed to be pertinent by the county extension agent or the conservation officer:

1. The number of livestock determined by the conservation officer or the county extension agent in the loss;
2. The type of livestock;
3. The breed and breeding of the livestock
4. The estimated size and weight of the livestock;
5. The estimated age of the livestock;
6. Registration of the livestock, upon proof of registration;
7. Selling price of livestock at the nearest public stockyard at the time of loss; and,
8. The replacement cost of the livestock.

B. Upon completion and signing of the claim form, the county extension agent or the conservation officer shall submit said claim form to the commissioner for review and payment. The commissioner shall return any incomplete claim form to the initiating authority, indicating the information necessary for proper completion.

C. If insurance coverage exists on the livestock, the commissioner shall withhold payment under these rules until the insurance claim has been paid, and evidence of payment has been submitted to the commissioner; at which time that insurance payment shall be deducted from the determined actual fair market value or $400 per animal, whichever is less. In no case shall the payment exceed $400 per animal.

D. The commissioner shall then make payment and return a copy of the claim form to the livestock owner(s), as their interests may appear, the conservation officers, and the county extension agent.

E. The commissioner shall make only one payment for any single livestock loss.

STATE OF MINNESOTA)
(ss.
COUNTY OF RAMSEY)

AFFIDAVIT OF SERVICE

Estella Farmer, being first duly sworn, deposes and says that on the 15th day of December 1977, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Report to all interested parties, File No. AGR078-004-HK.

unstamped, by placing in the designated tray to be collected by messenger for delivery to the central mailing station as required by Minn. Stat., § 16.54 (1974), a true and correct copy thereof on all persons at the addresses shown on the attached mailing list.

Estella Farmer

Subscribed and sworn to before me
this 15th day of December, 1977.

Sandra A. Haven

SANDRA A. HAVEN
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires July 29, 1983

Rules Hearing Only

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS
ROOM 300 - 1745 UNIVERSITY AVENUE
ST. PAUL, MINNESOTA 55104
(612) 296-5910

December 15, 1977

TO ALL INTERESTED PARTIES:

Re: In the Matter of the Proposed Adoption of Rules of the Department of Agriculture Governing Compensation for Livestock Destroyed by Endangered Species.

File No. AGR-78-004-HK.

The Report of the Hearing Examiner in the above-entitled matter has been submitted to the Department of Agriculture. Please note that the Report is a recommendation only and that the Department may accept, modify or reject any part of it. However, the Department may not take any final action on the proposed rule until at least five working days have expired. During that time, the Department and the Office of Hearing Examiners will make a copy of the Report available for review by any interested individual. Copies will be furnished by the Office of Hearing Examiners for $0.85 each. Please use the order form on the reverse side.

A copy of the Report has also been filed with the Legislative Reference Library.

Sincerely,

Susan K. Derus

SUSAN K. DERUS
Administrative Assistant

SKD:sw

(Revised October 12, 1977)

AN EQUAL OPPORTUNITY EMPLOYER

TO: Office of Hearing Examiners
Room 300
1745 University Avenue
St. Paul, Minnesota - 55104

Please send me _____ copy(ies) of the Report of the Hearing Examiner in Docket No. AGR-78004-HK. I have enclosed a check in the amount of $_____ made payable to: State Treasurer - Hearing Examiners' account.

_____ (name)

_____ (address)

_____ (city)

(Please type or print the above information clearly.)

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION)
OF RULES OF THE DEPARTMENT OF AGRICULTURE)
GOVERNING COMPENSATION FOR LIVESTOCK)
DESTROYED BY ENDANGERED SPECIES)

FINAL WRITTEN COMMENTS

The Agency has had an opportunity to review and consider the comments entered into the record at the public hearings held November 3, 1977 at Roseau and International Falls on the above captioned proposed rules. As a result of public testimony and the Agency's desire to further clarify the intent of the rules the following changes to its Rules as Proposed are being offered into the record. The Agency feels that these changes are based on the record of the hearings and do not substantially change the Rules as Proposed in nature or substance.

Three changes of particular importance deal with the definitions of "Livestock", and "Endangered Species", and the criteria of determining the fair market value of livestock losses. Due to the number and severity of poultry losses due to timberwolf, the Agency is proposing to include poultry in the definition of "Livestock", thus affording poultry growers the opportunity for compensation under these rules.

The definition of "Endangered Species" is being clarified to assure an interpretation which is in compliance with the legislative intent and legal standards for the delegation of authority by establishing animals covered by the Endangered Species Act of 1973 as being animals classified at the time of enactment of Minn. Stat. 1977 Supp., Sec. 3.737.

Finally, the Agency is proposing to include "Replacement Cost" as a criteria which may be used in determining the fair market value of livestock lost in order to provide a means for allowing fair compensation for losses of livestock not ready for market.

3 MCAR 1.0583 General.

A. Purpose and Authority. The rules contained herein are prescribed pursuant to Minn. Stat. 1977 Supp., Sec. 3.737 (Laws of Minnesota, 1977, Chapter 450, Secs. 4 and 5) by the Commissioner of Agriculture to implement procedures to compensate livestock owners for livestock that is destroyed, or is crippled and must be destroyed, by an animal classified as endangered under the federal Endangered Species Act of 1973. The procedures specified in these rules are in addition to those set forth in the act itself.

B. Definitions. For purposes of these rules, the following definitions shall apply:

~~1.--"The-act"-means-Laws-of-Minnesota,-1977,-Chapter-450,-Sees.-4-and-5;~~

1. ~~2.~~ "Claim form" means the form provided by the commissioner to be completed by the County Extension Agent, the conservation officer and the livestock owner, containing information upon which payment for a loss shall be based~~.~~;

2. ~~3.~~ "Commissioner" means the Commissioner of Agriculture or his authorized agent;

3. ~~4.~~ "Conservation officer" means a conservation officer of the Department of Natural Resources or his designee;

4. ~~5.~~ "County extension agent" means the University of Minnesota Agricultural Extension Service's County Extension Director or his designee for the county in which the loss occurred;

5. ~~6.~~ "Endangered species" means an animal classified as endangered under the federal Endangered Species Act of 1973 at the time Minn. Stat. 1977 Supp., Sec. 3.737 was enacted;

6. ~~7.~~ "Livestock" means cattle, sheep, poultry, swine, horses, mules, and goats;

7. 8. "Livestock owner" means any ~~person~~ individual, firm, corporation, co-partnership, or association with an interest in livestock ~~suspected of being~~ destroyed, or crippled so that it must be destroyed, by an ~~animal classified as~~ endangered species; and, ~~under the federal Endangered Species Act of 1973;~~

8. 9. "Loss" means livestock destroyed, or crippled so that it must be destroyed, by an ~~animal classified as~~ endangered species. ~~under the federal Endangered Species Act of 1973; and,~~

~~10. "Person" means any individual, firm, corporation, co-partnership, or association.~~

3 MCAR 1.0584 Reporting and Investigation.

A. It shall be the responsibility of the livestock owner to notify either the conservation officer or the county extension agent of a suspected loss within two weeks of the effective date of these rules or 24 hours of the discovery of a loss, whichever is later. The livestock owner shall provide all information required to investigate the loss to the conservation officer or the county extension agent. A telephone call or personal contact shall constitute notification.

B. The conservation officer or the county extension agent contacted by the livestock owner shall be responsible for completing the claim forms ~~provided by the Commissioner~~.

C. The conservation officer or ~~and~~ the county extension agent shall secure from the livestock owner a signed statement setting forth:

1. ~~a.~~ All persons owning an interest in the livestock involved;

2. ~~b.~~ The existence and details of any insurance coverage on the livestock;

3. ~~c.~~ A statement that, in the owner's best judgment, the destroyed livestock was killed by an endangered species, and the facts underlying that judgment; and,

4. ~~d.~~ A description of the livestock owner's plan to dispose of the carcass, which must be approved by the conservation officer or the county extension agent.

D. The conservation officer or and the county extension agent shall investigate the loss in a timely manner and shall make a finding in writting on the claim form regarding whether the livestock was destroyed or crippled by an endangered species, the type of endangered species that caused the loss, and the owner's eligibility for compensation under these rules. Such a finding shall be based upon physical and circumstanteial evidence, including but not limited to:

1. The livestock carcass presence and condition;

2. Animal tracks;

3. The number and location of animal bites on the carcass;

4. The area of the state where the loss occurred;

5. Sitings of endangered species in the area; and,

6. Any other circumstances determined to be pertinent, by the conservation officer and the county extension agent.

The absence of any affirmative evidence shall be grounds for denial of a claim.

3 MCAR 1.0585 Payment.

A. Upon a finding by the conservation officer and the county extension agent that the loss did occur, the type of endangered species that caused the loss, and the livestock owner's eligibility for compensation under the act, Tthe conservation officer and the county extension agent shall make a written finding on the claim form of the actual fair market value of the destroyed livestock, not be to exceed $400 per animal, based upon, but not limited to, the following criteria deemed to be pertinent by the county extension agent or the conservation officer:

1. The number of livestock determined by the conservation officer and or the county extension agent in the loss;

2. The type of livestock;

3. The breed and breeding of the livestock;

4. The estimated size and weight of the livestock;

5. The estimated age of the livestock;

6. Registration of the livestock, upon proof of registration; ~~and~~,

7. Selling price of livestock at the nearest public stockyard at the time of loss~~.~~; and,

8. The replacement cost of the livestock.

B. Upon completion and signing of the claim form, the county extension agent or the conservation officer shall submit said claim form to the commissioner for review and payment ~~of the claim~~. The commissioner shall ~~review the claim form for completeness and~~ return any incomplete claim form ~~not properly completed~~ to the initiating authority, ~~and indicate~~ indicating the information necessary for proper completion. ~~The commissioner shall return a copy of the properly completed claim form to the conservation officer and the county extension agent upon issuance of a payment to the livestock owner.~~

C. If insurance coverage exists on the livestock, the commissioner shall withhold payment under these rules ~~the act~~ until the insurance claim has been paid, and evidence of payment has been submitted to the commissioner; at which time that insurance payment shall be deducted from the determined actual fair market value or $400 per animal, whichever is less. In no case shall the payment exceed $400 per animal.

D. Once insurance claims have been satisfied and the claim form has been determined to be complete, ~~T~~the commissioner shall then make payment and return a copy of the claim form to the livestock owner(s), as their interests may appear, the conservation officers, and the county extension agent.

E. The commissioner shall make only one payment for any single livestock loss.

Bill Walker,
Commissioner of Agriculture

Dated: November 17, 1977

Ex 2

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STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF AGRICULTURE GOVERNING COMPENSATION FOR LIVESTOCK DESTROYED BY ENDANGERED SPECIES

PROPOSED CHANGES IN RULES AS PROPOSED

The department proposes to make the following changes to the above captioned Rules as Proposed. None of these changes are substantive in nature or materially change the original meaning or intent of the Rules as Proposed.

3 MCAR 1.0583 General.

D. The conservation officer and the county extension agent shall investigate the loss in a timely manner and shall make a finding in writting regarding whether the livestock was destroyed or crippled by an endangered species. Such a finding shall be based upon physical and circumstanteial evidence, including but not limited to:

3 MCAR 1.0585 Payment.

A. Upon a finding by the conservation officer and the county extension agent that the loss did occur, the type of endangered species that caused the loss, and the livestock owner's eligibility for compensation under the act, the conservation officer and the county extension agent shall make a written finding of the actual fair market value of the destroyed livestock, not ~~be~~ to exceed $400 per animal, based upon, but not limited to:

MINNESOTA DEPARTMENT OF AGRICULTURE

Bill Walker
Commissioner

Dated: October 27, 1977

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

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OFFICE OF HEARING EXAMINERS

IN THE MATTER OF THE PROPOSED ADOPTION)
OF RULES OF THE DEPARTMENT OF AGRICULTURE) AFFIDAVIT OF MAILING
GOVERNING COMPENSATION FOR LIVESTOCK)
DESTROYED BY ENDANGERED SPECIES)

Nancy A. Orlich being first duly sworn, deposes and says:

That on the 30th day of September, 1977, 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 and associations at the addresses listed on the attached Certificate of the Secretary of State.

Nancy A. Orlich

Subscribed and sworn to before me this
30th day of September, 1977,
Notary Public, Joan LeDuc
Ramsey County, Minnesota
My Commission Expires

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