

Minnesota Attorney General: Administrative Rules Proceedings

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DEPARTMENT Attorney General

STATE OF MINNESOTA

Office Memorandum

TO : Randy Young
Department of Agriculture

DATE: July 24, 1978

FROM : Lee E. Sheehy
Special Assistant
Attorney General

PHONE: 296-1288

SUBJECT: Rules as Approved/ Shade Tree Program

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Note that they have NOT been filed with the State Register; this must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of the stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages of the rules in the approved set.

Directly following the approved rules is a complete set of required documents and transcript which must be retained with the rules by you or your agency.

If you have any questions in this regard, please contact me.

LES/dw
Enclosure

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 6/13/78 Temporary Rule ——

Resubmitted and Received 7/19

DUE DATE 7/2/78 / 7/28

a. Returned to Agency w/o filing w/Secy of State _____
b. Approved _____ Date Sent Back to Agency _____

- -

1. Rules as Adopted ✓
2. Rules as Proposed ✓
3. Certificate of Board's Authorizing Resolution, where applicable N.A.
4. Order for Hearing ✓
5. Notice of Hearing ✓
   (i) Sufficiency ✓
6. Secretary of State's List ✓
7. Certificate of Acquisition of Secretary of State's List ✓
8. Affidavit of Mailing ✓
   (i) At least 30 days prior to hearing ✓
9. Statement of Need and Evidence ✓
10. Hearing Examiner's Report ✓
11. Agency's Findings of Fact ✓
12. Certificate of Board's Resolution Adopting Rules, where applicable N.A.
13. Order Adopting ✓
14. Report of Chief Hearing Examiner ✓
    (i) Finding of No Substantial Change ✓
    (ii) Permission to Incorporate by Reference, where applicable ✓
15. Certificate of Compliance with Rulemaking Procedures ✓
16. Copy of Notice of Intent to Solicit Outside Opinion, where applicable ✓
17. Petition by Public, where applicable N.A.

finding will be needed

① No finding of need reas. to repeal?

1.0109
② p. 1 B(4) Definition of "town" = defin of municipality"? 0.U.P as used in rule a distinction

~~1.0110 B(2)~~
③ ~~p. 4 How are alt. certif. req. est.~~ ?
→ See § 1.0110(C)
p. 4

(5½) p. 4 (c) - "may" improper & "spirit"

④ p. 5 (c) - What stds. for approving "other labs"? capable of performing such ~~All~~ equivalent tests

(5½) p. 5 D (1) (c) comma need after "June 25"

④ p. 7 (5) "may" improper

⑤ p. 8 add "municipal" before "permit"
(8) How does one get a permit? On what basis are permits granted?

⑥ p. 8 (b) "should" leaves unclear whether it's mandatory or discretn? Use "shall" or "recommended" as you done elsewhere
- Also (b)(1) confusing whether mandatory or recommended.
- p. 9 (~~b~~) (3-b) now mandatory but modified by "should" again

⑦ p. 11 ~~3~~ 1.0112
~~1st "may" Only if one~~ ~~other auth. exists~~

(6TH) p. 12 (c) "may" shall to be add

(7) p. 14 (2) (3) What happens to the other 55% of the Santiago grant money just out of interest? ~~Same notes in both~~ transcripts, etc.

(8) p. 15 E(3) (1) "documentation" of what? dis personnels?
~~(2) Confusion w/ "may" o.k.~~

(9) p. 16 F(1) (f) at bottom of page - Do you want to keep 1977 cite like you did with others? (put in new)

(10) p. 17 1.0113 (c) "may" improper (Agency will change)

(11) p. 18 (1) & (2) cites to specific yr. ~~was~~ deleted to prevent problems if amended

p. 17-20

(12) ^ No criteria for granting aid e.g. of not awarding

(13) p. 18 - Improper delegation to Commissioner

Attorney General

Randall Young
Director of Planning
Minnesota Department of Agriculture

July 6, 1978

Lee E. Sheehy
Special Assistant
Attorney General

296-1288

In the Matter of the Proposed Adoption of Rules of the Department of Agriculture Governing the Shade Tree Program

As we discussed, the above-captioned rules are returned herewith and have not been filed with the Secretary of State. The following matters have been disapproved as to form and legality for the following reasons:

1. An explicit finding of fact relating to the rules repeal is necessary to clarify whether these rules are (i) entirely new proposed rules or (ii) amendments to existing rules done through the guise of new proposed rules. From our conversation, it appears that the agency intended to repeal existing rule only insofar as they were not incorporated into the proposed rules. This fact should be clear in the Agency Finding of Fact and Order Adopting Rules.

2. 1.0110(C): The use of the word "may" improperly gives the agency unbridled discretion. The word "shall" must be used. Secondly, C(4)'s reference to "spirit" seems vague and redundant. The legal term of art, "intent", is included in the rule and would appear to set forth the standard.

3. 1.0111(C): The rule fails to explicitly establish the criteria upon which other laboratories shall be approved. It strongly implies that the criteria is any laboratory capable of doing what the state laboratory does. This criteria must be clearly established.

4. 1.0111(D)(1)(c): The absence of commas, especially after "June 25", or other proper punctuation or transitional words makes the provision exceedingly confusing as written.

5. 1.0111(D)(2)(a)(8): The reference to "individual permits" must be clarified to explain that these permits are issued by municipalities. The word "municipal" must be added before the word "permit".

6. 1.0111(D)(3)(b): The use of the word "should" in the first sentence leaves unanswered the question of whether the below enumerated responsibilities are mandatory or discretionary. This confusion must be alleviated.

7. 1.0112(C): The use of the word "may" is improper. The word "shall" must be used.

8. 1.0112(E)(3): A qualifying phrase must be added following the word "documentation" to describe what type(s) of documentation is required.

9. 1.0112(F)(1)(f) and 1.0113(A)(1 and 2): These provisions contain specific date references to Minnesota statutes which the agency has deleted elsewhere in these rules as a "housekeeping" matter to avoid requiring repeated rules hearings to keep dates current following legislative action. The agency may wish to conform these sections to that "housekeeping" policy. The rule would not, however, be disapproved as to form and legality should the agency choose not to make such changes.

10. 1.0113(C): The use of the word "may" is improper. The agency must articulate the standards upon which awards will be granted or denied.

11. 1.0113(B)(6): This provision may improperly delegate to the Commissioner the setting of standards which may be agency policies of general applicability and future effect.

I have retained a copy of materials in this matter. Please do not hesitate to contact me if you have any questions.

LES:mb

Enclosure

RULES PROPOSED FOR ADOPTING
IN FINAL FORM
SHADE TREE PROGRAM
Chapter 4
3 MCAR 1.0109 Through 3 MCAR 1.0113

These rules hereby repeal previous rules and regulations AGR 101 through AGR 108.

3 MCAR 1.0109 General.

A. Purpose and Authority. The rules contained herein are prescribed by the Commissioner pursuant to Minn. Stat. ~~sec.~~ §§ 18.023, as amended, to implement a program to control Dutch elm disease and oak wilt by local units of government and to include procedures and criteria for three grant-in-aid programs. The provisions of these rules are in addition to those set forth in the act itself.

B. Definitions. For purposes of these rules, the following definitions, in addition to those in the act, shall apply:

1. "Commissioner" means the Commissioner of Agriculture or his designee.

2. "Shade tree" means any oak or elm tree situated in a disease control area approved by the Commissioner.

3. "Shade tree disease" means Dutch elm disease caused by *Ceratocystis ulmi*, or oak wilt caused by *Ceratocystis fagacearum*.

4. "Town" means township as described in Minn. Stat. ~~sec.~~ §§18.023 subd. 1 ~~(1976)~~, as amended.

5. "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 geographical limits ~~of~~ set by the Commissioner.

6. "Disease control area" means an area designated by a municipality in which it will conduct a shade tree disease control program according to these rules. The extent of this control area shall be determined by the municipality and approved by the Commissioner.

7. "Equipment" means machinery or devices which singularly or in combination are designed, constructed, or 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.

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

9. "The act" means Minn. Stat. ~~see.~~ § 18.023, as amended.

10. "Population" means the population of a municipality as published in the U.S. Bureau of Census, 1970 Census.

3 MCAR 1.0110 Tree Inspectors.

A. Tree Inspector Employment and Qualifications.

1. In order to be eligible for grants-in-aid pursuant to these rules, ~~A~~ a municipality shall either individually or jointly with one (1) or more other municipalities employ or retain a tree inspector, on a continuous year round basis as provided by the act.

2. Provisional Appointments.

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

b. This appointment shall be dependent upon approval by the Commissioner after determining the competence of the appointee.

c. The provisional appointment shall not be extended and the appointee shall pass the tree inspector examination to become certified.

d. The provisional appointment may be withdrawn for cause by the Commissioner upon notice and hearing.

3. A tree inspector shall be able to demonstrate the following qualifications:

a. Identify all native tree species, with or without leaves, common to his/her work area, and all felled or downed trees with bark intact;

b. Know and understand the biology of oak wilt and Dutch elm disease;

c. Be familiar with the problems of elm trees and oak trees other than those of Dutch elm disease and/or oak wilt, as well as identifying symptoms characteristic of these problems that affect oak and elm trees;

d. Know the proper method of collecting samples for disease diagnosis;

e. Know the appropriate Minnesota laws and rules relative to oak wilt and Dutch elm disease;

f. Know the approved control methods for oak wilt and Dutch elm disease; and,

g. Be familiar with the recommended tree species to be used in the replanting program, their planting requirements (available through the University of Minnesota Extension Service), and the care of these trees after planting.

4. If a municipality fails to appoint a tree inspector, an appointment may be made by the Commissioner pursuant to the act. Ten (10) 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 ninety (90) days, even though the municipality may appoint its own inspector prior to the expiration of ninety (90) days. This provision shall not apply to a municipality that has suspended or terminated the employment of a tree inspector for cause.

B. Certification of Tree Inspector.

1. A tree inspector shall be certified upon the passing of an examination prescribed by the Commissioner for the purpose of determining that the applicant possesses the necessary qualifications set forth in this rule. The Commissioner shall notify by mail each applicant and municipality of the time and date for such an examination. The applicant shall be notified of the results of the examination within fifteen (15) days after its administration.

2. After certification, a tree inspector shall be required to annually attend at least one (1) program of continuing education approved by the Commissioner. Failure to attend one (1) such continuing education program, or failure to meet alternative certification requirements, shall terminate certification.

C. Certification Alternatives. Upon written application, the Commissioner ~~may~~ shall grant to an individual an alternative for the certification requirement and procedures set forth in this rule provided that:

1. There is good cause why the individual cannot comply with the provision of this rule;

2. The requirements and procedures provided for in the alternative is equivalent to those set forth in this rule;

3. When an examination is involved, the subject matter and difficulty of the examination is equivalent to the examination for which the alternative is granted;

4. The ~~spirit and~~ intent of the act and these rules ~~are~~ is not violated; and,

5. The environment or the public will not be adversely affected by the alternative requirements or procedures.

3 MCAR 1.0111 Shade Tree Disease Control Program.

~~A.~~ The shade tree disease control program of all municipalities affected by these rules shall include as a minimum the following elements~~:~~. However, the ordinances or resolutions adopted by the municipality regarding the local shade tree disease control program may be more stringent than these rules.

A.~~1.~~ Control Area. Each municipality shall designate an area or areas in which the municipality shall enact control procedures for Dutch elm disease and/or oak wilt. The extent of the control areas will be determined by the municipality and approved by the Commissioner.

B ~~2.~~ Program Plan. Each municipality shall prepare a shade tree disease control program plan detailing the manner in which the requirements set forth in these rules shall be fulfilled.

C 3. Methods of Identifying Diseased Shade Trees. Diseased shade trees shall be identified by generally accepted field symptoms such as wilting, yellowing of leaves, and/or staining of wood under the bark. Confirmation, when determined to be necessary by the certified municipal tree inspector, shall be made by the Minnesota Department of Agriculture Tree Disease Laboratory, or other laboratories capable of performing such services approved by the Commissioner.

D 4. Dutch Elm Disease and Oak Wilt Control.

1 a. Tree Inventory. Each municipality shall maintain a reasonable estimate of:

a. tThe number of elms, oaks, and other tree species on both public and private property within the control area of the municipality as well as those regions of the municipality outside this control area.; Eestimates of the tree count shall be made by acceptable forest inventory procedures. These records shall be permanent and shall be filed with the Commissioner.

b. The number of high risk and low risk elm trees anticipated; and,

c. The schedule for the continuous and orderly removal of low risk elm trees. The removal of low risk trees shall commence after the removal of all of the high risk trees identified prior to June 25, shall be conducted on a continuous basis and shall be completed prior to April 1 of the following year.

2 b. Dutch Elm Disease Control.

a. (1) Sanitation. All elm bark beetles, trees affected with Dutch elm disease, and any dead or weakened elm wood arising from any cause shall be eliminated in a timely manner within the control area of the municipality. This shall include trees on private property.

(1a) Prior to April 1 of each year, municipalities shall inspect all public and private properties for elm wood or logs/stumps that could serve as bark beetle breeding sites, and require by April 1, removal, or debarking, of all wood, logs, and stumps to be retained. Before making any inspection on private property within a municipality, it shall be the duty of

the municipality to give notice of said inspection to all affected residents and property owners either through an individual, ~~an~~ oral or ~~a~~ written notice, or by publishing said notice in a local newspaper.

(2~~b~~) Each municipality shall inspect all elm trees within a control area at *least* ~~twice~~ three times during the growing season (by June 15, July 15, and August 15) for Dutch elm disease symptoms. For a control program to be most effective, it is *highly recommended* that continuous inspections be initiated in those areas where the incidence of the disease is severe.

(3~~c~~) Due to a summer generation of elm bark beetles emerging in late July, the municipality's tree inspector shall be responsible for:

(a~~i~~) Visually identifying whether a tree infected with Dutch elm disease has extensive wilt or is only showing early symptoms of the disease; and

(b~~ii~~) Categorizing trees infected with Dutch elm disease as either high risk trees or low risk trees.

(i~~aa~~) High risk elm trees shall be those trees that are dead, barren, or have extensive wilt [~~(fifty~~ thirty (~~50~~ 30) percent or more of the tree is wilted~~)~~] . Such trees shall be identified~~,~~ and marked in a distinctive manner to indicate their high risk status~~,~~ prior to June 25. ~~and removed on private and~~ These high risk trees located on public property shall be removed within twenty (20) days of ~~notification~~ identification; high risk trees located on private property shall be removed within twenty (20) days of notification of the property owner. ~~and/or by July 15, whichever is first.~~ Any high risk tree identified and marked after ~~July 15~~ June 25 shall be removed within twenty (20) days of identification on public property and within twenty (20) days of notification on private property.

(ii~~bb~~) Low risk elm trees shall be those trees that show early stages of infection in June or subsequently during the growing season with those symptoms not progressing beyond the ~~fifty~~ thirty (~~5~~30) percent wilting

point. Such trees shall be identified, marked, and removed before April 1 of the following year. Municipalities shall make every reasonable effort to remove all low risk trees on private and public property within twenty (20) days of notification, but in no case shall it be later than April 1 of the following year. Only methods of removal approved by the Commissioner shall be utilized.

~~(d) After categorization, marking, and 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 the time limit established by the municipality, not to exceed twenty (20) days. Methods of removal shall be approved by the Commissioner and shall be consistent with applicable air quality and solid waste rules.~~

(4) All dead or diseased elm trees, including any above ground parts thereof on private property which are not removed within the time periods provided for in these rules or within the time limits established by the municipality, if more stringent, shall be removed by the municipality within twenty (20) days and the costs thereof assessed against the property.

~~(e) After notification, trees or parts thereof not removed within the time limit established by the municipality, not to exceed twenty (20) days, shall be considered "high risk" and shall be removed by the municipality within twenty (20) days and the costs thereof assessed against the property.~~

(5) If upon application of the municipality the Commissioner has determined that extraordinary circumstances prevented the removal of the trees according to the schedule described above and that good cause has been shown by the municipality, the Commissioner shall establish an alternative removal schedule based upon a program which will expedite their timely removal.

(6) All diseased elm trees including the above ground parts thereof shall be properly disposed of by such methods including burning, burying, chipping, and utilization.

(7~~f~~) Stumps of *all* elm trees shall be removed or debarked

to the ground-line to eliminate all possibilities of beetle habitation.

(8g) Stockpiling and storage of elm logs with bark intact shall be prohibited except ~~is permitted~~ during the period September 15 through April 1 of the following year at locations specifically ~~approved in writing by the municipality~~ allowed by individual municipal permits or a municipal ordinance.

b.~~(2)~~ Root Graft Control. It is recommended to a municipality that all common root systems of trees growing within forty (40) to fifty (50) feet of a tree infected with Dutch elm disease should be disrupted by chemical or mechanical means as approved by the Commissioner to prevent root graft spread of Dutch elm disease. (Refer to the Agricultural Extension Service, University of Minnesota Extension Folder 211-Revised 1977, "The Dutch Elm Disease", pp. 8-12).

3e. Oak Wilt. Although Oak wilt and Dutch elm disease are both vascular infections caused by a fungus, each infection shall be dealt with separately. Control methods prescribed for each disease are different, and again, shall be dealt with separately. Oak wilt control shall include the disruption of root grafts and the prevention of infection by insect-carried spores (overland spread).

a.~~(1)~~ Root Graft Control. Since most oak trees are susceptible to the fungus through root grafts, it is recommended to a municipality that all common root systems of trees growing within forty (40) to fifty (50) feet of a diseased oak tree of the same species should be disrupted by chemical or mechanical means to prevent the root graft transmission of the oak wilt fungus as approved by the Commissioner. (Refer to Agricultural Extension Service, University of Minnesota Extension Folder 210-1975, "Oak Wilt Disease").

b.~~(2)~~ To control the overland spread of the disease, a municipality ~~should~~ shall:

(1a) Avoid pruning or other mechanical damage during the most susceptible period of May and June. A tree inspector may determine that

emergency pruning by utility companies is necessary during this susceptible period if trees interfere with utility lines. If wounding is unavoidable during this period, as in the aftermath of a storm or when the tree interferes with utility lines, a tree wound dressing shall be applied.

(2b) ~~Disrupt root grafts by chemical or mechanical means if the disease fungus is likely to spread in this manner.~~ Red oak trees diagnosed as having oak wilt ~~shall~~ may be girdled as soon as they are detected in order to reduce spore production. Girdling ~~should~~ shall be done only in areas where a weakened tree will not constitute a hazard to life and/or property should it fall.

(3c) Identify, mark, and remove from both private and public property by April 1 of the following year those trees in the Red Oak group that wilt in July and August that could have spores on them the following May or June. The trees in this group are the Northern Red Oak *(Quercus rubra)*; Northern Pin Oak *(Quercus ellipsoidalis)*; Black Oak *(Quercus velutina)*; and Scarlet Oak *(Quercus coccinea)*.

(4d) After notification by the municipality, private property owners shall remove and properly dispose of diseased oak trees including any above ground parts thereof by April 1 ~~using methods approved by the Commissioner and consistent with applicable air quality and solid waste rules.~~ by burning, burying, chipping, and utilization which includes the storage of the wood as set forth in Agricultural Extension Service, University of Minnesota Extension Folder 310-1975, "Oak Wilt Disease."

(5e) Trees or parts thereof not removed on or before April 1 by the property owner shall be removed by the municipality within twenty (20) days after notification and the cost thereof assessed against the property.

(6f) Stumps of Red Oak trees removed due to oak wilt shall be removed or debarked to the ground-line to eliminate all possibilities

of spore formation.

E5. Records.

1a. Shade tree disease program records shall be kept by each municipality and shall be made available for examination at reasonable times by the Commissioner. These records shall include~~,-but-not-be-limited-to,~~-the following:

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

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

c.~~(3)~~ An initial inventory of trees;

d.~~(4)~~ The number of diseased trees identified on private and public property, and the dates of identification;

e.~~(5)~~ The number and the dates of trees removed, both diseased and other, on private and public property; ~~and,~~

f.~~(6)~~ The number of log piles found which were a hazard in the spread of a shade tree disease~~.~~; and,

g. Other information deemed relevant and necessary by the Commissioner.

2b. A yearly report containing a summation of these records shall be made to the Commissioner by December 1.

F6. Program Review.

1a. By November of each year, municipalities shall submit to the Commissioner their shade tree disease control and replanting programs for the following calendar year. The Commissioner shall review these programs to determine if the requirements of the law and the applicable rules have been met.

2b. Final determination of municipal program compliance with the rules shall rest with the Commissioner.

3c. The Commissioner may require that changes be made in any

municipal program whenever a determination is made that such changes are needed to comply with the act or these rules.

3 MCAR 1.0112 Grants-in-Aid to Municipalities for Sanitation and Reforestation Program.

~~A.~~ The Commissioner may, in the name of the state and within the limits of appropriations provided, make grants-in-aid to a municipality with an approved disease control program for the partial funding of municipal sanitation and reforestation programs.

A1. Sanitation Grants. Grants to any municipality for sanitation shall not exceed forty-five (45) percent of the municipality's total cost for sanitation approved by the Commissioner. The total cost may include any amounts paid for sanitation by special assessments, ad valorem taxes, federal grants, or other funds. A municipality may assess to the abutting property not more than fifty (50) percent of the expense of treating with an approved method or removing diseased shade trees located on street terraces or boulevards to that abutting property.

Grants shall not be made to a municipality if the total cost of tree removal has been incurred solely by the individual property owner and the municipality has not reduced the cost to the property owner via direct subsidy or reduced special assessment. The only amount that may be included in the municipality's total cost for purposes of computing the above-described reimbursement is the reduction of the cost of the property owner.

B.2 Reforestation Grants. Grants to any municipality for reforestation shall not exceed either fifty (50) percent of the cost to the municipality for reforestation, or forty (40) dollars multiplied by the number of trees planted on public lands pursuant to the reforestation program, whichever is less.

1a. Reforestation grants to a municipality shall be limited in any calendar year to grants for not more than the number of trees removed from public lands in the sanitation program in the previous calendar year except during the first year of an approved disease control program. During the first

year of an approved disease control program, there shall be no restriction upon the number of trees for which grants may be made.

2b. Reforestation grants to any county with an approved disease control program may include up to ninety (90) percent of the cost of planting the first fifty (50) trees on public lands in a town not defined as a municipality and of less than 1,000 population, upon the town's application to the county and county's designation of the town as a disease control area.

3e. Reforestation grants to towns *with an approved disease control program* which are defined as municipalities in the act and are less than 1,000 in population may include up to ninety (90) percent of the cost of planting the first fifty (50) trees on public lands.

C3. Program Eligibility. Any municipality is eligible to receive sanitation and reforestation grants upon submitting to the Commissioner by November 15 a completed program application form provided by the Commissioner, and upon receiving notice of an approved disease control program designation. Extensions ~~may~~ shall be granted for good cause shown.

1a. The program application shall serve as the basis for approving the municipality's shade tree disease control program.

2b. Approval shall be granted only upon the municipality's agreement to conduct its sanitation program in conformance with these rules and ~~recommended~~ disease control practices ~~issued~~ designated by the Commissioner upon the recommendation of the Shade Tree Advisory Committee.

3e. Approval shall only be granted upon the municipality's agreement to conduct its reforestation program in ~~conformance with the recommended practices issued~~ a manner consistent with advice and counsel given the Commissioner by the Minnesota Agricultural Extension Service.

4d. Program approval may be revoked upon a determination by the Commissioner that the municipality has failed to conduct its sanitation and reforestation program in conformance with the standards set forth in this rule.

Such a determination or disapproval of a municipal program or control area may be appealed by the municipality and upon request, a hearing pursuant to Minn. Stat. ch. 15 shall be granted.

5e. Sanitation and reforestation grants may be terminated upon the municipality's failure to maintain an approved shade tree disease control program and upon evidence that proper record-keeping and documentation has not been maintained.

D4. Program Application. To receive a sanitation and reforestation grant, a municipality shall submit to the Commissioner by November 15 a completed program application form provided by the Commissioner.

1a. A municipality's program application shall include, but not be limited to, the following information:

a.~~(1)~~ An inventory of shade trees within the municipality's disease control area and an estimate of the distribution of these shade trees between public and private lands;

b.~~(2)~~ A complete description of the municipality's sanitation and reforestation programs which shall includes~~,-but-is-not-limited-to~~;

(1a) The method and schedule of diseased trees surveys;

(2b) The extent of disease control tree trimming activities;

(3c) The policies for removal of trees on public lands;

(4d) The policies for removal of trees on private lands;

(5e) The method and location of disposal of tree wastes;

(6~~f~~) The policies for planting new shade trees, including;

(a~~i~~) The source of nursery stock, if known;

(b~~ii~~) Species planted;

(c~~iii~~) Type of stock planted;

(d~~iv~~) Distribution of species; and

(e~~v~~) Other relevant information;

(7g) The methods of financing sanitation and reforestation

programs, including:

(a~~i~~) The use of funds derived from general tax levies;

(b~~ii~~) Special assessments;

(c~~iii~~) Federal funds;

(d~~iv~~) Other sources of funding; and,

(8~~h~~) A complete description of the municipality's subsidy program, if any.

c.~~(3)~~ A statement of planned expenditures for the sanitation and reforestation program for the calendar year.

d.~~(4)~~ A copy of local ordinances and resolutions authorizing the local shade tree program.

e. Other information deemed necessary and relevant by the Commissioner.

2~~b~~. Grants for sanitation shall be forty-five (45) percent of the applicant's planned expenditures for sanitation, unless forty-five (45) percent of the total planned expenditures for all applicants exceeds ~~forty-five-(45)-percent-of~~ the funds designated for sanitation grants; in which case, grants shall be a pro rata allocation among the eligible applicants.

3e. Except for the first fifty (50) trees for towns as set forth in 4. below, Ggrants for reforestation shall be fifty (50) percent of the applicant's planned expenditures for reforestation, unless fifty (50) percent of the total of planned expenditures for all applicants exceeds ~~fifty-(50)-percent-of~~ the funds designated for reforestation grants; in which case, grants shall be a pro rata allocation among the eligible applicants.

4d. Grants for reforestation in eligible towns shall be ninety (90) percent of the town's planned expenditures for planting the first fifty (50) trees on public lands. ~~Grants-for-planting-in-excess-of-fifty-(50)-trees-in-eligible towns-shall-be-the-lesser-of-fifty-(50)-percent-of-planned-expenditures-or-forty ($40)-dollars-times-the-number-of-trees-in-excess-of-fifty-(50)-to-be-planted.~~

E5. Request for Payment. A municipality receiving a sanitation and reforestation grant shall make request for payment upon forms provided by the Commissioner.

1a. Payment periods shall be January 1 through March 31; April 1 through June 30; July 1 through September 30; and, October 1 through December 31 of each calendar year.

2b. Requests for payment shall be due ~~fifteen~~ forty-five (~~15~~45) days after the close of the preceding payment period; unless the municipality has requested and received an extension of time from the Commissioner. Costs in one request for payment period may be carried over into a succeeding payment period, but shall not be carried over into a succeeding calendar year.

3c. Requests for payments may be for the lesser of actual costs incurred or costs not to exceed the limits established by the Commissioner during the payment period for which documentation for such costs and expenditures can be produced upon request of the Commissioner. Requests may also be made for advance payments for planned expenditures for the succeeding period.

4d. Request for payment shall include:

a. ~~(1)~~ The population of the municipality making the request for payment;

b. ~~(2)~~ A statement of actual sanitation and reforestation costs for the payment period;

c. ~~(3)~~ If advance payments for planned expenditures are sought by the municipality, a statement of planned expenditure for the succeeding payment period;

d. ~~(4)~~ The signature of an authorized agent of the municipality making the request for payment; and,

e. ~~(5)~~ Notorization of the agent's signature.

5e. Grant payments for actual sanitation and reforestation costs incurred shall be a percentage of the actual costs stated in the municipality's request

for payment; that percentage being the same percentage used to make the initial grant award.

a.~~(1)~~ Advance grant payments for planned sanitation and reforestation expenditures shall be a percentage of the planned expenditures for the succeeding payment period stated in the municipality's request for payment; that percentage being the same percentage used to make the initial grant award.

(1a) In the event that planned expenditures exceed or are less than actual costs incurred by the municipality for a payment period for which advance payment was made, the appropriate adjustments shall be made in the next request for payment submitted by the municipality.

(2b) In the event that over payment is made to the municipality by the Commissioner because of an advance over payment for the last payment period of the calendar year, the municipality shall be liable to the state for the amount of over payment, and shall make payment of this amount to the state within thirty (30) days after notice of such over payment is received.

F6. Eligible Costs. Grants shall be based upon the total eligible cost to the municipality of its sanitation and reforestation program.

1a. Sanitation activities on public and private lands which are eligible for grants shall include:

a.~~(1)~~ Diseased tree identification and inspection;

b.~~(2)~~ Disruption of common root systems;

c.~~(3)~~ Trimming of elm and oak trees for purposes of disease control;

d.~~(4)~~ Girdling of oak trees where appropriate for purposes of disease control;

e.~~(5)~~ Removal and operational costs associated with the disposal of dead or diseased wood of elm and oak trees; and,

f.~~(6)~~ Subsidies for trees removed from private property pursuant to Minn. Stat. ~~(Supp.,-1977)~~ as amended, ~~see~~ §18.023, subd. 4.

2b. Reforestation activities on public lands which are eligible for grants shall ~~include~~ be limited to:

a. ~~(1)~~ Acquisition of nursery stock; and

b. ~~(2)~~ Tree planting~~.~~ which includes only the initial cost of planting, watering, fertilizing, and staking. Maintenance costs thereafter shall not be eligible for reimbursement.

3e. Grants shall be made only for costs incurred by the municipality in the actual and direct physical performance of sanitation and reforestation activities.

4d. Grants shall be made for costs to be paid by:

a. ~~(1)~~ Ad valorem taxes;

b. ~~(2)~~ Special assessments pursuant to a municipal program whereby the sanitation activity is carried out by municipal employees or a contractor acting in behalf of the municipality; however, no assessment shall exceed the total of the sanitation cost less the amount of grant for such cost;

c. ~~(3)~~ A charge through direct invoice to a property owner pursuant to a municipal program whereby the sanitation activity is carried out by municipal employees or a contractor acting in behalf of the municipality; however, no charge against a property owner shall exceed the total sanitation cost less the amount of grant for such cost;

d. ~~(4)~~ Federal grants~~,-except-that-no-grant-shall-be-made-for costs-paid-pursuant-to-the-Federal-Comprehensive-Employment-and-Training-Act of-1973~~; and,

e. ~~(5)~~ In the case of a municipality with a population of less than 1,000, documented "in kind" services or voluntary work from or by private sources.

3 MCAR 1.0113 Grants-In-Aid for Wood Utilization and Disposal Systems.

A. The Commissioner ~~may~~ shall, within the monies 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. Such grants-in-aid ~~may~~ shall be made to:

1. Any home rule charter or statutory city of more than 40,000 population in the metropolitan area or a combination of such cities with a combined population of 40,000 under a joint powers agreement pursuant to Minn. Stat. ~~sec.~~ § 471.59 (1976);

2. Any home rule charter or statutory city of more than 20,000 population outside the metropolitan area or a combination of such cities with a combined population of 20,000 under a joint powers agreement pursuant to Minn. Stat. ~~sec.~~ § 471.59 ~~(1976)~~ as amended;

3. Any special purpose park and recreation board organized under a charter of a city of the first class;

4. Any non-profit corporation serving a city of the first class; or,

5. Any county.

B. Such grants shall be made with the following provisions:

1. The city (cities) or county has an approved shade tree disease control program as described in the act or these rules;

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

3. Grants-in-aid shall not be made 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; and,

5. Grants-in-aid shall not be made by the Commissioner until he receives certified evidence of the actual cost of the equipment or site~~; and~~,.

~~6.--Allowable-cost-shall-be-determined-by-the-Commissioner.~~

C. Criteria for Administration of Grants-In-Aid

1. Grants-in-aid to eligible applicants ~~may~~ shall be made by the Commissioner

provided that such wood disposal utilization system meets the following criteria:

a. It aids in the control of shade tree diseases;

b. It aids in the recovery of material or energy from wood;

c. It is located to accomplish the above with maximum efficiency and use of available facilities;

d. It is available to all parties, public and private;

e. It is able to render wood pest-risk free within five (5) days of delivery to the site unless an extension of time has been granted by the Commissioner based on existing circumstances of the disposal/utilization site.

f. It includes adequate manpower to operate and service equipment; and,

g. It provides for proper handling and the timely removal of processed wood from the site.

2. In addition to the general criteria under C. 1. above, the Commissioner, as appropriate, may consider other specific criteria including~~, but not limited to,~~ the following in evaluating grant payment requests:

a. Sites for Wood Disposal Systems

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

(2) Shall be accessible by roadways that permit year-round truck traffic;

(3) Shall have adequate storage areas for both processed wood and equipment;

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

(5) Shall be in compliance with regional solid waste management plans and requirements.

b. Equipment for Wood Disposal systems:

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

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

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

(4) 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 which shall be published in the State Register at least thirty (30) days prior to the deadline. Requests for payments shall include the following:

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

b. Additional documents or other information deemed relevant by the Commissioner.

4. Records.

a. Applicants receiving grants-in-aid under this rule shall keep detailed records concerning the operation of the wood disposal and utilization system and shall make these records available to the Commissioner at any reasonable time. Such records shall include~~,-but-not-be-limited-to~~:

(1) Hours of operation;

(2) Clientele served;

(3) Volume of wood handled; and,

(4) ~~Any~~ oOther information deemed necessary and relevant by the Commissioner.

b. A yearly report containing a summation of these records shall be made to the Commissioner by December 1.

APPROVED AS TO FORM AND LEGALITY
JUL. 24 1978 19___
WARREN SPANNAUS, ATTORNEY GENERAL
BY Lee E. Shelby
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JUL 24 1978
Joan Anderson Growe
Secretary of State
12:05 P.M.

434

Attorney General

Randall Young
Director of Planning
Minnesota Department of Agriculture

July 6, 1978

Lee E. Sheehy
Special Assistant
Attorney General

296-1238

In the Matter of the Proposed Adoption of Rules of the Department of Agriculture Governing the Shade Tree Program

As we discussed, the above-captioned rules are returned herewith and have not been filed with the Secretary of State. The following matters have been disapproved as to form and legality for the following reasons:

1. An explicit finding of fact relating to the rules repeal is necessary to clarify whether these rules are (i) entirely new proposed rules or (ii) amendments to existing rules done through the guise of new proposed rules. From our conversation, it appears that the agency intended to repeal existing rule only insofar as they were not incorporated into the proposed rules. This fact should be clear in the Agency Finding of Fact and Order Adopting Rules.

2. 1.0110(C): The use of the word "may" improperly gives the agency unbridled discretion. The word "shall" must be used. Secondly, C(4)'s reference to "spirit" seems vague and redundant. The legal term of art, "intent", is included in the rule and would appear to set forth the standard.

3. 1.0111(C): The rule fails to explicitly establish the criteria upon which other laboratories shall be approved. It strongly implies that the criteria is any laboratory capable of doing what the state laboratory does. This criteria must be clearly established.

4. 1.0111(D)(1)(c): The absence of commas, especially after "June 25", or other proper punctuation or transitional words makes the provision exceedingly confusing as written.

5. 1.0111(D)(2)(a)(8): The reference to "individual permits" must be clarified to explain that these permits are issued by municipalities. The word "municipal" must be added before the word "permit".

6. 1.0111(D)(3)(b): The use of the word "should" in the first sentence leaves unanswered the question of whether the below enumerated responsibilities are mandatory or discretionary. This confusion must be alleviated.

7. 1.0112(C): The use of the word "may" is improper. The word "shall" must be used.

8. 1.0112(E)(3): A qualifying phrase must be added following the word "documentation" to describe what type(s) of documentation is required.

9. 1.0112(F)(1)(f) and 1.0113(A)(1 and 2): These provisions contain specific date references to Minnesota statutes which the agency has deleted elsewhere in these rules as a "housekeeping" matter to avoid requiring repeated rules hearings to keep dates current following legislative action. The agency may wish to conform these sections to that "housekeeping" policy. The rule would not, however, be disapproved as to form and legality should the agency choose not to make such changes.

10. 1.0113(C): The use of the word "may" is improper. The agency must articulate the standards upon which awards will be granted or denied.

11. 1.0113(B)(6): This provision may improperly delegate to the Commissioner the setting of standards which may be agency policies of general applicability and future effect.

I have retained a copy of materials in this matter. Please do not hesitate to contact me if you have any questions.

LES:mb

Enclosure

Office Memorandum

434

DATE: July 24, 1972

FROM: Leon S. Peters
Special Assistant
Attorney General

SUBJECT: Rules as Approved/ Shade Tree Program

Enclosed herewith are the rules you submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Note that they have NOT been filed with the State Register; this must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of the stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages of the rules in the approved set.

Directly following the approved rules is a complete set of required documents and transcript which must be retained with the rules by you or your agency.

If you have any questions in this regard, please contact me.

LES/dw
Enclosure

to eligible applicants for the cost of facilities, equipment, and systems for the disposal or utilization of diseased shade trees. Such grants-in-aid ~~may~~ shall be made to:

1. Any home rule charter or statutory city of more than 40,000 population in the metropolitan area or a combination of such cities with a combined population of 40,000 under a joint powers agreement pursuant to Minn. Stat. ~~sec.~~ § 471.59 (1976);

2. Any home rule charter or statutory city of more than 20,000 population outside the metropolitan area or a combination of such cities with a combined population of 20,000 under a joint powers agreement pursuant to Minn. Stat. ~~sec.~~ § 471.59 ~~(1976)~~ as amended;

3. Any special purpose park and recreation board organized under a charter of a city of the first class;

4. Any non-profit corporation serving a city of the first class; or,

5. Any county.

B. Such grants shall be made with the following provisions:

1. The city (cities) or county has an approved shade tree disease control program as described in the act or these rules;

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

3. Grants-in-aid shall not be made 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; and,

5. Grants-in-aid shall not be made by the Commissioner until he receives certified evidence of the actual cost of the equipment or site~~; and~~,.

~~6. Allowable cost shall be determined by the Commissioner.~~

C. Criteria for Administration of Grants-In-Aid

1. Grants-in-aid to eligible applicants ~~may~~ shall be made by the Commissioner

3. Any special purpose park and recreation board organized under a charter of a city of the first class;

4. Any non-profit corporation serving a city of the first class; or,

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3. Grants-in-aid shall not be made 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 made by the Commissioner until he receives certified evidence of the actual cost of the equipment or site; and,

C. Criteria for Administration of Grants-In-Aid:

1. Grants-in-aid to eligible applicants shall be made by the Commissioner provided that such wood disposal utilization system meets the following criteria:

a. It aids in the control of shade tree diseases;

b. It aids in the recovery of material or energy from wood;

c. It is located to accomplish the above with maximum efficiency and use of available facilities;

d. It is available to all parties, public and private;

e. It is able to render wood pest-risk free within five (5) days of delivery to the site unless an extension of time has been granted by the Commissioner based on existing circumstances of the disposal/utilization site.

f. It includes adequate manpower to operate and service equipment; and,

g. It provides for proper handling and the timely removal of processed wood from the site.

2. In addition to the general criteria under C. 1. above, the Commissioner, as appropriate, may consider other specific criteria including the following in evaluating grant payment requests:

a. Sites for Wood Disposal Systems:

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

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION)
OF RULES OF THE DEPARTMENT OF AGRICULTURE) SUPPLEMENT ORDER ADOPTING
GOVERNING THE SHADE TREE PROGRAM) REPORT OF HEARING EXAMINER

WHEREAS, on July 6, 1978, the above captioned rules were disapproved by the Attorney General upon his review as to form and legality; and,

WHEREAS, the Attorney General has found that an explicit finding is needed for the necessity and reasonableness of repealing existing rules Agr 101 through Agr 109; and,

NOW, THEREFORE, IT IS ORDERED that it is found necessary and reasonable to repeal existing rules Agr 101 through Agr 108 only insofar as they were not incorporated into the proposed rules. The repeal of these portions of these rules is necessitated by Legislative enactment of changes in Minn. Stat. 18.023 passed in 1977.

DATE: 7/13/78

STATE OF MINNESOTA

Bill Walker

Commissioner of Agriculture

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 the Shade Tree Program) REPORT OF HEARING EXAMINER

The above-entitled matter came duly on for hearing before Hearing Examiner Howard L. Kaibel, Jr. on February 27, 1978, at 10:00 a.m. at the Department of Transportation Building, Conference Room, Highway 12 in Rochester, Minnesota and was continued at the following times and places:

February 27, 1978	7:00 p.m.	Minnesota Valley Regional Library Auditorium 100 East Main Street Mankato, Minnesota
February 28, 1978	10:00 a.m.	Veterans Service Bldg. Conference Room D 20 West 12th Street and Columbus Avenue Saint Paul, Minnesota
March 1, 1978	2:00 p.m.	Southwest State University Lecture Center Room 217 Marshall, Minnesota
March 2, 1978	10:00 a.m.	Douglas County Court House South, Wing Basement Meeting Room Alexandria, Minnesota
March 3, 1978	10:00 a.m.	University of Minnesota Duluth Campus Kirby Student Center Room 250 Duluth, Minnesota

The hearings continued until all interested persons or groups had an opportunity to be heard and heard fully concerning the adoption of the proposed rules. The record remained open for written submissions for 14 days after the end of the last hearing and closed on March 17, 1978. No transcript was prepared and this Report is based on the Hearing Examiner's notes.

Peder Hong and William Marshall, Special Assistant Attorneys General, appeared as counsel for the Department of Agriculture (hereinafter the "Department"). Randall Young, Director of

Planning and Development, Jane Meyer, Administrator, Shade Tree Program, and Meg Hanisch, Plant Health Specialist, appeared and testified on behalf of the Department.

The matter under consideration by the Department is a completely new set of rules for implementing a program to control dutch elm disease and oak wilt by local units of government, including procedures and criteria for three grant-in-aid programs, pursuant to Minn. Stat. § 18.023, as amended. The proposed new rules are intended to repeal and supercede AGR 101-AGR 108.

BACKGROUND

A week was spent conducting exhaustive hearings throughout the State primarily on the nature of the dutch elm disease problem and the Department of Agriculture's proposals for developing an optimal program for spending $28 million of the State taxpayers' money combatting it. Feelings of participants frequently were very intense and the total record is voluminous. Some basic observations regarding the hearing process and product are appropriately distilled at the outset of this Report, although not necessary to any particular Finding, as follows.

The nature of the dutch elm problem and the potential for dealing with that problem cannot be simply characterized. The state of the epidemic ranges from southern parts of the State where officials speak with despair and talk of giving in to local pressure to forget control in favor of utilizing elm wood for firewood, to cities further north, such as Minneapolis, which are at the crossroads, to cities further north, such as Moorhead, which has yet to confirm a single case of dutch elm disease. Local efforts to control this epidemic and the infecting agent, the bark beetle, range from some rural counties and townships and even some metropolitan communities where the disease is nurtured by total inaction, to municipalities such as Maplewood, which is able to remove all diseased trees within six and one-half days. The size and tax base per capita of

local units and the degree of effort that they are willing to commit to sanitation varies similarly across the board. The abilities of the personnel involved ranges from well-trained professional foresters to city clerk-administrators. The wide variation in availability of disposal sites or other facilities to accommodate diseased elms once they have been removed also has a major impact on the disease control problem.

Absent a major diversion of funds to increased monitoring (which no one supported) the enforcement of rules relating to the expenditure of these funds, except on an occasional spot-check basis, is entirely in the hands of local officials. These officials made it clear repeatedly and candidly that overly strict rules imposed by the State will either be deliberately circumvented or will cause political subdivisions to drop out of the program entirely. Municipal officials repeatedly testified, for example, that they would get around wording in the original, proposed rules requiring removal in less than 24 hours by simply making sure that no trees were inspected and marked until the cities had sufficient time for removal. To the degree that strict provisions such as marking dates on trees cause officials to inspect and mark conservatively or delay for laboratory samples, such provisions become counter-productive. This local enforcement has also proven to be a strength of the program where local units of government have exercised their authority to develop tougher ordinances and more effective programs than are mandated by the minimum standards in the statewide rules.

Much of the local inaction has been inadvertently encouraged by Department inaction. More than ten years ago, the Legislature mandated that the Commissioner of Agriculture control the disease himself upon failure of local governments and charge the costs back as a local tax levy. In 1975, the Legislature further authorized promulgation of rules "prescribing control measures" to implement this section, but no action has yet been taken by the Department. Several local officials made it clear

on the record that competing demands of state and federal regulations such as pollution control laws and state imposed property tax limits dictate lesser expenditures on this epidemic absent a clear state mandate. If such removal rules were promulgated and enforced, there would be little likelihood that municipalities would circumvent or drop out of the State grant-in-aid program.

Studies presented during the course of the hearing showed unequivocally that 20-day removal of diseased trees combined with at least three inspections each summer results in a much more effective control program that is increasingly cheaper as the years go by. The study showed a cost savings of nearly 40 percent by the third year in comparison with a less intensive conventional sanitation program. This is because inspection is the cheapest part of the sanitation program and increased removal of trees due to inadequate inspection is the most expensive part of sanitation. The Department concurred that anything less than three inspections a year would result in a considerable waste of precious disease control dollars, and no one felt that such a waste should take place. The Department consequently recommended this and a number of other changes at the final hearing in Duluth which were circulated to some of the most active hearing participants for further reaction prior to the close of the record.

Upon all testimony, evidence, arguments and written comments, the Hearing Examiner makes the following:

FINDINGS OF FACT ON PROCEDURAL REQUIREMENTS

1. On January 6, 1978, the Department filed the following documents with the Chief Hearing Examiner:

(a) A copy of the Proposed Rules;
(b) A proposed Order for Hearing; and
(c) A proposed Notice of Hearing.

2. On January 20, 1978, 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 notices, members of the Shade Tree Advisory Committee, all regional development commissions, all members of the Minnesota League of Cities, and all members of the Legislature.

3. On January 23, 1978, a Notice of Hearing and a copy of the proposed rules were published at 2 State Register 1394 et seq.

4. On February 2, 1978, the Department filed the following documents with the Chief Hearing Examiner:

(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 of Delivery; and
(f) The Statement of Need and Evidence, including the names of witnesses to be called and the names of the Department personnel who would represent the Department.

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

5. The Department is authorized to promulgate the proposed rules in Minn. Stat. § 18.023.

FINDINGS OF FACT ON SUBSTANCE OF THE PROPOSED RULES

6. A section-by-section analysis of these proposed rules and the need for and reasonableness of each of the provisions in unnecessary on this record. Such an analysis is contained in the 25-page Statement of Need and Evidence which was distributed to all hearing participants and no useful purpose would be served by repeating most of the language in this Report. Except as hereinafter specifically noted with regard to specific provisions, the proposed rules are specifically found to be needed and reasonable. The Department has adequately documented this by an affirmative presentation of facts and it has further demonstrated that the rule is statutorily authorized. Most of the provisions and sections were not opposed, and this Report is generally limited to those that were. All of the concerns discussed on the record and in written comments have been carefully considered

in the preparation of this Report. Specific reference to many, if not most, of them is omitted because they relate to matters that are not properly the subject of this Report because they concern proposed rules which are merely a continuation of existing previously adopted rules. The objection of Mr. Auer from Austin to the requirement that inspectors be able to identify all tree species is one example. This requirement is already part of State law and is contained in Minn. Rule AGR 103. Because these provisions simply continue existing rules, the Department is under no obligation to document by an affirmative presentation of facts either the need for or the reasonableness of their retention. Specific reference to many, if not most, of the other objections to new provisions is omitted because the Department has recognized their validity and agreed to rectify them in its final written comments (G) and in the revision presented at the Duluth hearing (Ex. 8).

7. 3 MCAR 1.0109 General.

This proposed rule references the Department's authority to promulgate the rules and includes ten definitions of terms used. No criticism of this rule was raised at the hearing. The agency has proposed two insubstantial "housekeeping" amendments to the definitions which will add clarity. The Statement of Need and Evidence adequately demonstrates the necessity for and reasonableness of this rule.

8. 3 MCAR 1.0110 Tree Inspectors.

This proposed rule sets forth minimum qualifications for tree inspectors employed by municipalities in order to be eligible for grants. Robert Auer, Austin Park Board, felt that the new "biological knowledge" requirements were too strict and required knowledge that was not necessary to perform the job adequately. His concern was that strict qualification requirements might preclude small municipalities from participating in the program because they could not find anyone who could qualify as a tree inspector. Later hearings disclosed the availability of

State inspectors to minimize this problem. The agency adequately demonstrated the reasonableness of and the necessity for these qualification requirements in their Statement of Need and Evidence (Ex. 1). No scientific or technical evidence to the contrary was presented. The rule moreover provides for certification alternatives where an applicant cannot meet the requirements.

The agency has proposed two changes in this rule which appear to be of no substantive consequence (Ex. 8).

9. 3 MCAR 1.0111 Shade Tree Disease Control Program.

This proposed rule sets forth the criteria for establishing a control program. Many of the provisions, in particular sections A.1.-A.3., are essentially the same as existing rules AGR 103 and 106. No significant comments were made regarding their inclusion. As a result of some public misunderstanding, the Department has proposed a change in Section A (Ex. 8) to clarify that local units of government may continue to impose more stringent requirements than those in these rules. The Department also proposed insubstantial changes to sections 2 and 3 (Ex. 8) which clarify these sections. The Department demonstrated the reasonableness of and the necessity for these provisions and their proposed changes at the hearings in Marshall and Duluth.

The "A" at the beginning of this section should be removed because there is no "B" and the remaining sections and subsections should be renumbered and relettered accordingly.

10. Proposed subsection 3 MCAR 1.0111 A.4.b.(1)(c) establishes how the tree inspector will inspect. Dave Rasmussen of Save Our Elms (hereinafter "SOE") and others suggested requiring that all trees identified as diseased be marked with the date of identification and the laboratory sample number, if any. The Department and several representatives of municipal shade tree programs stated their objections because of the difficulty and time involved. As hereinbefore discussed in the Background Section of this Report, this is the kind of state requirement

that appears counter-productive. It could still be enacted by local units of government. It also appears to be a substantial change requiring a new notice and hearing. Perhaps it is best enacted as part of statewide control rules pursuant to Minn. Stat. § 18.022.

Other subsections of 3 MCAR 1.0111 A.4. also caused a considerable amount of comment at the hearings. A representative from SOE testified that at least three inspections annually would be more economical and effective than the two inspections mandated under the proposed rules. Scientific support for this was presented without contradiction. Examination of the Department staff, as well as numerous municipal shade tree program representatives, lent support to this change. The third summer inspection would save money and would not be unduly burdensome to municipalities. In response, the Department proposed to change the language to mandate three inspections during the growing season (by June 15, July 15, and August 15). This change is specifically found to be necessary and reasonable for the effective and economical control of the disease.

The Department proposed addition of a provision to require preventive pruning of dead limbs from healthy elm trees in addition to other sanitation activities. This reduces the number of potential breeding sites for the elm bark beetles. The provision is consistent with legislative intent as demonstrated by inclusion of "trimming" in the definition of sanitation and with recommended legitimate disease control practices, necessary and reasonable.

Subsection b(1)(c)(ii)(bb) relating to low risk trees must be revised to be in accord with the substantial evidence presented in the record. This subsection relating to low risk trees should clearly provide that such trees shall be "pruned or" removed. The Staff concern that stating this clearly in the rule may allow for abuse can be cured by adding a new restriction (perhaps as a section cc) requiring use of pruning standards such as

those provided in U. of M. Extension Folder No. 211 (revised 1977) and further providing that pruning of diseased elms shall only be permitted where a municipality has obtained advance approval of the commissioner, setting forth the standards for granting such approval. Standards identified at the hearing included: The number of trees involved, the expertise of the municipal staff and the efficiency and effectiveness of the local removal effort. The addition of pruning "healthy" trees will not meet the concern of Moorhead and others that pruning be recognized as a legitimate means of sanitation for diseased trees. The documentation submitted by Moorhead (Comment E) and admissions of Department Staff, clearly establish that this is a proper accepted technique usable by municipalities who are willing to allocate additional resources to further improving their control programs.

11. The rules as originally proposed would categorize trees infected with dutch elm disease as either high risk or low risk, depending upon the degree of wilt. High risk trees would have to be removed within 20 days of notification or by July 15. Low risk trees would have to be removed before April 1 of the following year. A number of municipal shade tree program representatives and SOE criticized this mechanism for designating and removing diseased elm trees.

SOE representative, Louis Bloom, indicated that there is no scientific support for this type of high/low designation. The Department agreed, but indicated that this was the only practical way to remove the large volume of trees anticipated for removal while minimizing the spread of the infection. The Department established that there was a high probability that all diseased trees could not be removed within the 20-day removal period, so that it is reasonable and necessary that trees which are of a greater risk to other trees be removed first and those of a lower risk be removed after.

A Minneapolis forester expressed concern that the April 1

removal deadline for low risk trees, as delineated in the proposed rules, would allow municipalities to terminate removal efforts after the high risk trees were removed until the winter months. This was clearly not the intent of the Legislature in establishing the program. Based upon scientific evidence entered into the record, it would be wasteful inefficient sanitation.

In response to these concerns, proposed revised language (Ex. 8) is found to be necessary and reasonable in providing the flexibility necessary to eliminate high risk trees immediately and low risk trees thereafter, while mandating an ongoing removal program of all trees as expeditiously as possible; requiring that the annual program plan estimate the anticipated number of high risk and low risk elms for that year and schedule orderly removal of low risk trees on a continuous basis once the high risk trees have been removed.

12. Evidence presented by Dr. French and others indicated that the 50 percent wilt figure was arbitrary and was not based on any scientific principle. Dr. French testified that trees with a substantially lesser degree of wilt should be considered high risk elm trees, suggesting 30 percent as the point where root graft danger occurs. In response to this testimony, the Department proposed (Ex. 8) that the delineation between high risk and low risk elm trees be set at 30 percent rather than 50 percent as originally proposed. This change is specifically found to be necessary and reasonable as a means of distinguishing between high risk and low risk elm trees.

13. David Rasmussen of SOE suggested broadening the definition of a high risk tree. He proposed including those that "possess any barren limb of over three (3) inches in diameter". The entire tree would be removed if it possessed one barren limb. A tree with one such limb is not necessarily diseased. A branch may become barren because the tree is experiencing stress from drought conditions or because of heavy winds or lightening. A

tree may also possess a barren limb because of a disease other than dutch elm disease such as Verticillium wilt, various cankers, or Dothiorella, which result in death of portions of the tree. This would not be a prudent expansion of the definition.

14. Robert Auer of the Austin Park Board pointed out that there will be situations in which it will be physically impossible to remove a large number of high risk trees within the 20 days mandated by these rules. He cited a situation in his municipality wherein, contrary to all predictions, over 860 trees were marked as being severely diseased within a period of one week. It was physically impossible to remove that number of trees in the legal time period. Recognizing that such situations will occur, the Department has proposed a variance provision: "In the event of extraordinary circumstances when the timely removal of such high risk trees is not possible, the Commissioner upon written request of a municipality may establish an alternative removal schedule based upon a program which will expedite their timely removal." (Ex. 8) The proposed change to this section of the rules is found to be reasonable and necessary in order to provide relief for municipalities facing real time removal constraints while still keeping the integrity of the 20-day removal requirement intact. The request to insert a contested case hearing requirement on such variances by SOE is contrary to the epidemic nature of this situation.

15. The stockpiling of elm logs with bark intact also raised a degree of controversy at the public hearings. Testimony was divided between those members of the public living in the metropolitan area and the non-metropolitan area. SOE proposed that stockpiling of elm logs with bark intact be prohibited completely.

The public and representatives of shade tree programs in non-metropolitan communities wanted to see stockpiling restrictions deleted completely. Elm logs are used for residential

hearing by many individuals in the non-metropolitan area. Some persons argued that it would be administratively impossible to enforce this provisions by issuing permits to individuals wishing to stockpile elm logs during the period September 15 through April 1.

The Department has proposed new language (Ex. 8) which better states the prohibition of stockpiling and storing. Department staff also recommended that stockpiling and storage between September 15 and April 1 be allowed upon approval by the municipality in the form of individual permits to residents or in the form of an ordinance adopted by the municipality's city council. The revised language is clearly a necessary and reasonable requirement of these rules. Uncontroverted scientific evidence established that these logs were breeding grounds for the disease carrying beetles and should be eliminated as a means of controlling the disease. The winter exception to this prohibition is also found to be necessary and reasonable to allow homeowners to use this wood as firewood and heating fuel during the period when the beetles are dormant and the use of the wood is most necessary.

16. A number of other minor changes were proposed by the Department staff (Ex. 8) to 3 MCAR 1.0111. These changes are found to be necessary, reasonable and insubstantial changes, except for subsection A.3. allowing owners to request lab samples in all cases. SOE points out correctly that this potential two-week or more delay must be limited to low risk elms, where an owner cannot convince the inspector to request confirmation. High risk elms will transmit the disease through root grafts and beetle breeding during this delay time. If the Department wishes to check its inspectors it can require samples from them without delaying removal. As the Legislature put it, this is "an epidemic. . .which threatens the natural environment." To allow such delay in the case of high risk elms would also appear to be a substantial change in the rules as originally proposed.

17. 3 MCAR 1.0112 Grants-in-Aid to Municipalities for Sanitation and Reforestation Program.

The "A" at the beginning of this section should be removed because there is no "B" and the remaining sections and subsections should be renumbered and relettered accordingly.

There were a number of controversial points raised in testimony regarding this rule. Tom Bublitz, City of Mankato, and several others, testified that they believed 3 MCAR 1.0112 A.1.a. to be confusing. They testified that their interpretation of this provision of the rule set up different classifications and criteria for private property trees and public trees. They pointed out that this provision, which allowed special assessments to be levied while still providing for reimbursement to the municipalities, would provide a glaring loophole wherein municipalities could be reimbursed while not incurring any cost for the removal of private property trees.

This confusion can be remedied and the loophole limited by making two changes that are consistent with the Department's position as explained at the various hearings. First, subsection A.1.a. (relating to private property trees) should be amended by inserting between the first and second sentence, the following language:

> The only amount that may be included in the municipality's total cost for purpose of computing the above-described reimbursement is the reduction of the cost to the property owner.

Second, subsection A.6.d.(2) and (3) (relating to assessments and invoices as reimbursable costs) should be amended by inserting after the word "program" in each subsection the words "for removing trees located on street terraces or boulevards or on private property where the owner has failed to meet the deadlines imposed by these rules". These two changes would clearly state in the rules the Department's consistent position throughout the hearings that the "local effort" and "sharing" emphasis of the statute require only reimbursement of 45 percent of the

municipal out-of-pocket expenses in the case of private tree removal. (The Department position was that if private tree removal costs $100 and the property owner pays $50 of the cost, the State may only reimburse 45 percent of the total municipal subsidy of $50, namely $22.50.) These changes would also further clarify the statute involved which requires reimbursement of some special assessments, Minn. Stat. § 18.023, subd. 3a(c):

> Grants to any municipality for sanitation shall not exceed 45 percent of sanitation costs approved by the commissioner including any amount of sanitation costs paid by special assessments, ad valorum taxes, federal grants or other funds.

The above recommended language changes would give all applicants proper notice that the "special assessment" costs that will be "approved by the commissioner" are limited to "trees located on street terraces or boulevards" and to cases where municipalities are forced to remove and assess by these rules because of property owner inaction, because presumably municipalities have some clear responsibility for removal of trees in these situations. It would also explicitly state the Department position that "approved" costs in the case of private tree removal are limited to the amount of the municipal subsidy. This would also eliminate the nearly universal misunderstanding on the part of the various municipalities which was very evident at the various hearings. Every municipality appears to be handling these subsidy and reimbursement procedures differently, resulting in unequal treatment.

Without such revision, the proposed language cannot be found to be either needed or reasonable. It would limit assessment and invoice reimbursements to trees removed "by municipal employees or a contractor acting in behalf of the municipality". This limitation was objected to vigorously by Austin officials and others. At least one city attorney has advised against making contractors agents of the municipality because of the danger of liability for accidents. The provision would be discriminatory against small municipalities who do not employ their

own crews or have adequate liability insurance. The facts throughout the record indicate that the private sector contractors are doing a competitive and efficient job. No specific example can be cited in the record of a need for requiring such contractors to go through the municipalities. (Indeed, the only vigorous criticism directed towards any city was against one which utilizes its own crew and employs contractors acting on its behalf.) Several municipal officials indicated that they have developed ordinances which they feel adequately protect the public by requiring licensing, bonding and insurance. The Department listed a number of arguments at one point in the hearing for the proposed language (such as its aid in avoiding fraud) but made no affirmative presentation of facts (such as statistics or on even a single example of fraud) to document its need or reasonableness.

18. No significant issue was raised concerning proposed subsection 3 MCAR 1.0112 A.2. The Statement of Need and Evidence properly documents reasonableness and necessity (Ex. 1).

19. Proposed subsection 2 MCAR 1.0112 A.3. deals with the municipality's program eligibility. There were no significant questions or comments raised regarding this section except in relation to section b. This section would allow the Commissioner to, in effect, make rules by issuing recommended disease control practices. This is particularly significant because program approval or revocation could be based on compliance with these recommended practices. The Department argued that flexibility and quick response to newly developed practices is essential to the control of the epidemics. A six-month delay for rules promulgation could be devastating to the control efforts for an entire season. It is specifically found that immediate implementation of new disease control practices is crucial.

The Department proposed changes to the section (Ex. 8) which would put a check on the Commissioner's designation of disease control practices. It is specifically found that

section b. as amended, is necessary for the proper implementation of the program and is reasonable in that it requires the Commissioner to designate disease control practices only upon the recommendation of an outside advisory organization having expertise in the area, if the below recommended appeal hearing on approval is also included.

The public was also concerned over due process in basic decisions such as the revocation of program approval section. The Department indicated that an appeal mechanism for such revocation was in order and was omitted from the proposed rules through oversight. The newly added sentence providing this right of appeal needs to be expanded by adding after the word "determination" the words "or commissioner disapproval of a municipal program or control area". The right of a hearing in such situations was urgently sought by members of the public who had unsatisfactory experiences in this regard in the past. These decisions involve the same potential dollars and equities as revocation of approval or penalty reductions in grants. Failure to include them in the revised language was undoubtedly another oversight.

With this addition, 3 MCAR 1.0112 A.3., as amended (Ex. 8), is necessary and reasonable.

20. Proposed subsection 3 MCAR 1.0012 A.4. deals with program applications. Objection was limited to one item of information on the application. In many cases, the municipality does not know the source of nursery stock when the application is completed in November. It is therefore appropriate to require only that the source of nursery stock be provided by the applicant "if known" (Ex. 8).

Additionally, some misunderstanding was generated through various interpretations of sections c. and d. In order to clarify the intent behind these sections, the Department has proposed clarifying language (Ex. 8) which eliminates some of this confusion. These sections of the rule, as proposed in

Exhibit 8, are justified and reasonable, with the addition of the following change in subsection d. The period should be changed to a comma, adding:

> unless the total of planned expenditues for all applicants exceeds the funds designated for reforestation grants; in which case, grants shall be a prorata allocation among eligible applicants.

The words "fifty (50) percent of" should correspondingly be struck in the final clause of subsection c. The legislation sets the 45 percent (sanitation) and 50 percent (reforestation) limitations of the preceding subsections b. and c. of the rules saying that the reimbursements "may not exceed" those percentages. The law goes on to provide for the subject matter of subsection d, providing that the reimbursements "may include up to 90 percent" of the reforestation costs to towns of less than 1,000 population. All three percentages are permissive and not mandatory. It follows that if all of the other municipalities must suffer when there are not enough funds to go around, towns of under 1,000 must also suffer. To do otherwise would run afoul of the "equal protection clause" of the Constitution cited by the Department's attorney general assistant at the St. Paul hearing. No specific facts have been cited by any source which would support the need for or reasonableness of arbitrarily allowing such small towns to skim their full 90 percent reimbursement off the top of available funds, while all other state political subdivisions would have to take something less than their 50 percent.

21. Proposed subsection 3 MCAR 1.0012 A. 5. deals with the request for payment forms which municipalities submit to the Department. Mr. Fay Miller, City of Albert Lea, (and everyone else discussing the question) testified that section A.5.b. was unreasonable in requiring that the request for payment forms be submitted within 15 days after the close of the preceding payment period. This was not possible for municipalities whose records are computerized.

Additionally, Barbara Schmidt, City of Egan, testified that she would prefer an alternative payment schedule. Upon

review of the statute, the Department urged alternative language permitting more flexibility which would better accommodate individual municipalities. 3 MCAR 1.0112 A.5., as revised in Exhibit 8, is hereby found to be necessary and reasonable.

22. Proposed subsection 3 MCAR 1.0112 A.6. deals with sanitation and reforestation costs eligible for reimbursement. Three issues were raised. First, the question was raised as to whether operational costs associated with tree disposal were reimbursable. The Department staff urged adding language indicating that "operational costs associated with the disposal . . ." are eligible.

Second, Mr. Richard Haskett, Hennepin County Park Reserve District, urged at the St. Paul Hearing that maintenance costs for tree planting should be reimbursable under A.6.b.(2). The Department testified that only costs associated with the initial planting of the tree should be eligible for reimbursement, according to its interpretation of the legislative intent. Such initial costs would include the planting, watering, fertilizing, and staking of the tree at the time of planting. The Department has proposed language which would spell this out in greater detail. (Ex. 8).

The final question raised was why funds under the Federal Comprehensive Employment and Training Act of 1973 (CETA) are not eligible for reimbursement under A.6.e.(4). Local officials indicated that CETA funds are no different than other funds and that removal jobs would be ideal for the unskilled hard-core unemployable persons available for CETA job creation. Upon further consideration, the Department agreed that the exclusion of CETA funds for eligible costs is neither reasonable nor necessary.

3 MCAR 1.0112A.6. is found to be necessary and reasonable as it is amended in Exhibit 8.

23. 3 MCAR 1.0113 Grants-in-Aid for Wood Utilization and Disposal Systems.

This proposed rule is, for the most part, identical to existing rule AGR 108. The only exception is the time frame within which wood must be rendered pest-risk free. The new rule extends this time frame from 72 hours to five days. The Department testified that this was necessary because of the backlog that exists at many disposal sites. No significant testimony was raised on the record contradicting or disputing this or any other provision of 3 MCAR 1.0113. The rule, as amended in Exhibit 8, is necessary and reasonable.

A request for revision was submitted in a final written comment by the Metropolitan Inter-County Council (Comment A). It requests three revisions. The first is a definition of "wood utilization and disposal system" which is already provided in the statute. The other requests, explicitly allowing private ownership of equipment and private contracting, deserve attention by the Department on final adoption, as prohibition would appear to affect Inter-County Council plans severely. Such prohibition would appear clearly to be a substantial change requiring a new hearing.

CONCLUSIONS

1. The Department duly acquired and now has jurisdiction over the within proceeding. All substantive and procedural requirements of statute and rule have been fulfilled.

2. The need for and reasonableness of the rules as proposed, or as amended in Exhibit 8, has been shown by an affirmative presentation of facts by the Department.

3. The Department has demonstrated its statutory authority to adopt the proposed rules.

RECOMMENDATION

It is hereby recommended that the Department adopt and promulgate the proposed rules as amended in Exhibit 8 and in Comment G after attention to the additional modifications sug-

gested in these Findings.

Dated: April 17, 1978.

HOWARD L. KAIBEL, JR.
Hearing Examiner

PLEASE TAKE NOTICE that pursuant to Minn. Stat. § 15.0412, subd. 4, and Minn. Stat. § 15.052, subd. 4 (1976), the Department of Agriculture shall make this Report available to all affected individuals upon request for at least five (5) working days before the Department takes any final action on the proposed rules.

The Department shall, if it decides to adopt the rules as originally proposed or amended, submit the complete hearing record to the Chief Hearing Examiner no earlier than five (5) working days subsequent to the receipt of this Report. The Department must submit the rules as originally proposed and the rules as proposed for adoption in final form.

The submission to the Chief Hearing Examiner shall precede review by the Attorney General. The Chief Hearing Examiner shall complete his review and submit his Report to the Department on the issue of substantial changes in the rules within ten (10) calendar days. The Department is then responsible for filing rules with the Attorney General.

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

Office Memorandum

TO : Mike Miller
Special Assistant Attorney General

DATE: June 13, 1978

FROM : Randall Young RDY
Director of Planning

PHONE: 1486

SUBJECT: In the matter of the proposed adoption of rules of the Department of Agriculture governing the Shade Tree Program.

1st

Enclosed you will find two copies of the jurisdictional documents for the above captioned matter. Would you please review these pursuant to Minn. Stat. Ch.15. for form and legality.

Should you have any questions regarding these rules, please feel free to contact me.

RY: sf

Enclosure

RECEIVED
JUN 13 1978
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION)
OF RULES OF THE DEPARTMENT OF AGRICULTURE) NOTICE OF HEARING
GOVERNING THE SHADE TREE PROGRAM)

NOTICE IS HEREBY GIVEN that a public hearing in the above-entitled matter will be held at the following dates, times, and places and continuing until all persons have had an opportunity to be heard:

February 27, 1978, Minnesota Department of Transportation Building, Conference Room, Highway 52, Rochester, Minnesota at 10:00 a.m.

February 27, 1978, Minnesota Valley Regional Library, Auditorium, 100 East Main Street, Mankato, Minnesota at 7:00 p.m.

February 28, 1978, Veterans Service Building, Conference Room D, 20 West 12th Street and Columbus Avenue, Saint Paul, Minnesota at 10:00 a.m.

March 1, 1978, Southwest State University, Lecture Center Room 217, Marshall, Minnesota at 2:00 p.m.

March 2, 1978, Douglas County Courthouse, South wing basement meeting room, Alexandria, Minnesota at 10:00 a.m.

March 3, 1978, University of Minnesota Duluth Campus, Kirby Student Center Room 250, Duluth, Minnesota at 10:00 a.m.

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 hearings end, or for a longer period not to exceed 20 days if ordered by the Hearing Examiner.

The proposed rules, if adopted, would establish procedures and guidelines for administering the sanitation and reforestation programs; and would revise portions of Agr 101 through 106 dealing with the administration of the shade tree disease control program. 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 Minn. Stat. sec. 18.023 (Supp., 1977). 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 attempting to influence rulemaking 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, Saint Paul, Minnesota 55155, Phone (612) 296-5615.

STATE OF MINNESOTA

Bill Walker
Commissioner of Agriculture

Date: 1/6/78

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION)
OF RULES OF THE DEPARTMENT OF AGRICULTURE) ORDER FOR HEARING
GOVERNING THE SHADE TREE PROGRAM)

IT IS HEREBY ORDERED that a public hearing on the above-captioned rules be held at the following dates, times, and places and continuing until all persons have had an opportunity to be heard:

February 27, 1978, Minnesota Department of Transportation Building, Conference Room, Highway 52, Rochester, Minnesota at 10:00 a.m.

February 27, 1978, Minnesota Valley Regional Library, Auditorium, 100 East Main Street, Mankato, Minnesota at 7:00 p.m.

February 28, 1978, Veterans Service Building, Conference Room D, 20 West 12th Street and Columbus Avenue, Saint Paul, Minnesota at 10:00 a.m.

March 1, 1978, Southwest State University, Lecture Center Room 217, Marshall, Minnesota at 2:00 p.m.

March 2, 1978, Douglas County Courthouse, South wing basement meeting room, Alexandria, Minnesota at 10:00 a.m.

March 3, 1978, University of Minnesota Duluth Campus, Kirby Student Center Room 250, Duluth, Minnesota at 10:00 a.m.

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

Date: 1/6/78

Bill Walker
Commissioner of Agriculture

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION)	CERTIFICATE OF DELIVERY
OF RULES OF THE DEPARTMENT OF AGRICULTURE)	SECRETARY
GOVERNING THE SHADE TREE PROGRAM)	OF STATE LIST

I hereby certify that the attached 16 sheets constitute the complete list of persons, associations, and other interested groups who as of 9:15 o'clock A M., this 18th day of January, 1978, 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

_____

_____

By Randall W. Sayles

_____

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION)	AFFIDAVIT OF RECEIPT OF
OF RULES OF THE DEPARTMENT OF AGRICULTURE)	THE SECRETARY
GOVERNING THE SHADE TREE PROGRAM)	OF STATE'S LIST

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 18th day of January, 1978, 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 18th day of January, 1978, 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

25th day of January, 1978,

Notary Public, Joan LeDuc

Ramsey County, Minnesota

JOAN LeDUC
Notary Public, Ramsey County, Minn.
MY COMMISSION EXPIRES
August 14, 1981

My Commission Expires

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION)
OF RULES OF THE DEPARTMENT OF AGRICULTURE) AFFIDAVIT OF MAILING
GOVERNING THE SHADE TREE PROGRAM)

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

That on the 20th day of January, 1978, 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
25th day of January, 1978.
Notary Public, Joan LeDuc
Ramsey County, Minnesota
My Commission Expires

JOAN LeDUC
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES
August 14, 1981

Department of Agriculture

Notice of Intent to Solicit Outside Opinion Governing the Shade Tree Disease Control Program

Notice is hereby given that the Minnesota Department of Agriculture has begun consideration of proposed permanent rules governing the Shade Tree Disease Control Program. In order to adequately determine the nature and utility of such rules, the Department of Agriculture hereby requests information and comments from all interested individuals or groups concerning the subject matter of the proposed rules.

All interested or affected persons or groups are requested to participate. Statements of information and comment may be made orally or in writing. Written statements of information and comment may be addressed to:

Mr. Peter Grills
Minnesota Department of Agriculture
600 Bremer Arcade Building
Saint Paul, Minnesota 55101

Oral statements of information and comment will be received during regular business hours over the phone at (612) 296-8580, and in person at the above address.

All statements of information and comment must be received by August 8, 1977. Any written material received by the Department shall become part of the hearing record.

The proposed rules, if adopted, would establish procedures and guidelines for administering the sanitation, reforestation, and experimental use grant programs; and would revise portions of Agr 101 through Agr 106 dealing with the administration of the shade tree disease control program.

Peter Grills
Administrator

Notice of Intent to Solicit Outside Opinion Regarding Weather Modification

Notice is hereby given that the Minnesota Department of Agriculture has begun consideration of proposed rules governing weather modification. In order to adequately determine the nature and utility of such rules, the Department of Agriculture hereby requests information and comments from all interested individuals or groups concerning the subject matter of the proposed rules.

All interested or affected persons or groups are requested to participate. Statements of information and comment may be made orally or in writing. Written statements of information and comment may be addressed to:

Randall Young
Minnesota Department of Agriculture
563 State Office Building
Saint Paul, Minnesota 55155

Oral statements of information and comment will be received during regular business hours over the phone at (612) 296-7686, and in person at the above address.

All statements of information and comment must be received by August 15, 1977. Any written material received by the Department shall become part of the hearing record.

The proposed rules, if adopted, would establish procedures and guidelines for the issuance of licenses and permits, submission of reports by licensees, and administration of the program.

Randall Young
Management Analyst

Department of Commerce

Notice of Intent to Solicit Outside Opinion Governing Franchises

Notice is hereby given that the Securities Division has begun considerations of revisions in the regulations relating to franchises. In order to adequately determine the nature and utility of such rules, the Securities Division hereby requests information and comments from all interested individuals or groups concerning the subject matter of the proposed rules.

All interested or affected persons or groups are requested to participate. Statements of information and comment may be made orally or in writing. Written statements of information and comment may be addressed to:

Department of Commerce
Securities Division, Franchise Rules
500 Metro Square Building
St. Paul, Minnesota 55101

The proposed revisions, if adopted, may include, pursuant to Minn. Stat. ch. 80C, changes in the manner in which disclosures are presented to prospective franchisers, special classifications of franchises, the definition of "unfair and deceptive practices" and advertising standards.

Thomas E. Collins
Securities Division
Department of Commerce
500 Metro Square Bldg.
St. Paul, Minnesota 55101

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

IN THE MATTER OF THE PROPOSED RULES OF THE MINNESOTA DEPARTMENT OF AGRICULTURE RELATING TO THE MINNESOTA SHADE TREE PROGRAM.	REPORT OF THE CHIEF HEARING EXAMINER RELATING TO INCORPORATION BY REFERENCE

Pursuant to Minnesota Statutes, 1976, Section 15.0412, as amended by Laws of Minnesota, Chapter 443, Section 2, the Minnesota Department of Agriculture, on January 30, 1978, requested prior approval of the Chief Hearing Examiner to be allowed to incorporate by reference certain materials in the above-entitled proposed rules. The documents are as follows:

1. French, David W., Mark E. Ascerno, and Ward C. Stienstra. The Dutch Elm Disease. Agricultural Extension Service, University of Minnesota. Extension Folder 211, Revised 1977.

2. French, D. W. and Ward C. Stienstra. Oak Wilt Disease. Agricultural Extension Service, University of Minnesota. Extension Folder 310, 1975.

The Chief Hearing Examiner, having review both of the aforementioned documents, has found that each of the documents exceeds 3,000 words in length and would exceed five printed pages in the Minnesota State Register. Additionally, the Chief Hearing Examiner finds that both of the documents are readily available, free of charge, from the University of Minnesota Extension Service and the County Extension Agents, and are otherwise readily available and accessible to the public.

NOW, THEREFORE, the Chief Hearing Examiner herewith gives approval to the Minnesota Department of Agriculture for the incorporation by reference of the above-entitled documents in their proposed rules relating to the Minnesota Shade Tree Program.

Dated this 6th day
of February, 1978.

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed Adoption of Rules of the Department of Agriculture Governing the Shade Tree Program	STATEMENT OF COMPLIANCE WITH MANUAL OF RULES MAKING PROCEDURES

I, Special Assistant Attorney General Peder Hong, 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.

Peder Hong
Special Assistant Attorney General

Dated: June 12, 1978

AGR-78-008-HK

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED)
ADOPTION OF RULES OF THE DE-)
PARTMENT OF AGRICULTURE GOV-)
ERNING THE SHADE TREE PROGRAM.)

REPORT OF THE
CHIEF HEARING EXAMINER

WHEREAS, hearings were held on February 27 and 28, 1978, and March 1, 2 and 3, 1978, 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 April 17, 1978; 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 hearings 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 9th day
of June, 1978.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

FINLEY JAMES F
920 MINN BLDG
ST PAUL MN
55101

FINNEGAN J.R.
55 E. 4TH
ST.PAUL MN
55101

FLEMING FREDERICK A
1860 HIGHLAND PARKWAY
ST PAUL MN
55116

FLADLAND CLINT MN L&P BUR
795 RAYMOND AVE
ST PAUL MN
55114

FOX W.E. LINDQUIST & VENNUM
4200 IDSCTR 80 S.8TH ST
MINNEAPOLIS MN
55402

FRANKLIN ROBERT B MPLS TRIB
426 PORTLAND
MPLS MN
55415

FREDRIKSON BYRON ET AL
47TH FLR IDS CENTER M
PLS MN
55402

FRIESEN MILLER A
RAHR BD 624 13TH ST S
VIRIGINIA MN
55792

GALVIN M J JR
W2162 1ST NATL BK BLDG
ST PAUL MN
55101

GARDNER HDW - R A JOHNSON
515 WASHINGTON AVE N
MPLS MN
55401

GIEL DAVID
RM B-28 STATE CAPITOL
ST PAUL MN
55155

GLEESON MICHAEL
909 SOC SC BLDG U OF M
MPLS MN
55455

GOLDBERG PROF MELVIN
WM MITCHELL COL OF LAW
ST PAUL MN
55105

GOODMAN DF TEL CABLE TV
302 E SUPERIOR
DULUTH MN
55802

GREATER MET AREA HOSPITALITY
5152 CEDAR AVE S
MPLS MN
55417

GREEN DEL CITY MGR
BLOOMINGTON CITY HALL
BLOOMINGTON MN
55431

GRUMMERT REV DONALD
1435 ADAMS ST
MPLS MN
55413

GUSTAFSON DAN-LABOR TEMPLE
312 CENTRAL
MPLS MN
55414

H B FULLER CO
2400 KASOTA AVE
ST PAUL MN
55108

HAFNER DR A J
BOX393 MAYO U OF M
MPLS MN
55455

HAROLD J WESTIN CONSTRUCTORS
45 E 8TH ST
ST PAUL MN
55101

HARRY RICK
RT 1 BOX 138
KETTLE RIVER MN
55757

HART PATRICK V
112 E LIBERTY BOX 3271
MANKATO MN
56001

HARTFELDT WILL
434 HAMM BLDG
ST PAUL MN
55102

HEANEY BILL
30 W SUPERIOR ST
DULUTH MN
55802

HEARING EX.OFF. M GREENBE
1745 UNIV AVE
ST PAUL MN
55104

HELTZER JAMES DAYTON HUDSON
777 NICOLLET MALL
MPLS MN
55402

HENDRICKSON A WM
100 FREEMAN DRIVE
ST PETER MN
56082

HOLEY GEORGE
1509 SW SIXTH STREET
FARIBAULT MN
55021

HOLMES EUSTIS ET AL
4610 IDS CENTER
MPLS MN
55402

HOLT JOHN
517 4TH ST NW
FARIBUALT MN
55021

HOULE MELVIN
881 W HWY 96
SHOREVIEW MN
55112

HUMAN RIGHTS
200 CAPITOL SQ BLDG
ST PAUL MN
55101

HUMAN SERVICES
414 LAFFAYETTE RD 5THFL
ST PAUL MN
55101

HYLAND DEAN
1501 W 50TH ST
MPLS MN
55419

INGVALSON VERN MN.FARM BU
1976 WOODDALE BOX 43370
ST PAUL MN
55164

INS FED OF MINN
902 SOO LINE BLDG
MPLS MN
55402

IVERSON DR JOS DEPT ED
ST OLAF COLLEGE
NORTHFIELD MN
55057

IZAAK WALTON MN DIV
111 E FRANKLIN RM-210
MPLS MN
55404

JENOS INC
525 LAKE AVE SO
DULUTH MN
55801

JENSEN ARTHUR,CITY CLK
2215 W OLD SHAKOPEE RD
BLOOMINGTON MN
55431

JOHANSEN BUS SERV INC
19 DAYTON RD
CHAMPLIN MN
55316

JOHNSON & SANDERSON
ST MARYS HOSPITAL
ROCHESTER MN
55901

JOHNSON LEROY
9939 BLUEBIRD ST NW
COON RAPIDS MN
55433

JOHNSON M.D. FRUNDT & FRU

BLUE EARTH MN
56013

KABLE RICHARD W

BETHEL MN
55006

HEADWATERS REG DEV. COMM
BOX 584 MENTAL HEALTH
BEMIDJI MN
56601

HEALTH MANPOWER C LARSON
717 DELAWARE ST SE
MPLS MN
55440

HEIM PAUL M
3944 IDS CENTER 80 S 8
MPLS MN
55402

HEISENFELT WM
BOX 516
BEMIDJI MN
56601

HENDRICKSON MRS VIRGINIA
3324 COUNTRY WOOD DR
BURNSVILLE MN
55337

HINRICHSEN PATRICK
MANKATO FREE PRESS
MANKATO MN
56001

HOPKINS WM.B. DIR.MISCCA
3915 GOLDEN VALLEY ROAD
GOLDEN VALLEY MN
55422

HORNER WALDORF – KAZIUKEWICZ
PO BOX 3260
ST PAUL MN
55165

HOUSE APPROPRIATIONS COMM
RM 109 STATE CAPITOL
ST PAUL MN
55101

HULSTRAND ANDERSON & LARSON
PO BOX 130
WILLMAR MN
56201

HUSEBYE, CRAIG J.
5036 FRANCE S.
EDINA MN
55410

HUTCHISON R.M. ANOKA CO.COMP
COURT HOUSE
ANOKA MN
55303

IMAGE
BOX 3215
ST PAUL MN
55165

INGEBRIGTSEN DR K H
23 SE 4TH ST
MPLS MN
55414

INTERSTATE POWER RW STEELE
1000 MAIN ST
DUBUQUE IA
52001

IUOE LOC 49 CHAS SWENSON
2580 UNIV AVE
ST PAUL MN
55101

JAIN NIRMAL ENIV PROCESS
1220 GLENWOOD AVE
MPLS MN
55405

JENSEN CARL A
127 E MAIN ST
SLEEPY EYE MN
56085

JENSEN MRS GAYNOLD
111 WEST 107TH ST
MPLS MN
55420

JOHNSON CLARENCE IBEW LU 292
3615 37TH AVE S
MPLS MN
55406

JOHNSON G ROBERT
4344 IDS CENTER
MPLS MN
55402

JOHNSON LANCE J
265 S LAFAYETTE RD
ST PAUL MN
55107

JONES C NORTHSIDE RES REDEV
1800 OLSON MEMORIAL HWY
MPLS MN
55411

KEENAN RICHARD J
4444 IDS BLDG
MPLS MN
55402

KJERVIK DIANE
4302 POWEL HALL U OF M
MPLS MN

KNOPP TIMOTHY
COLLEGE FORESTRY U OF M
ST PAUL MN
55108

KNUTSON DR KEITH, BIOLOGY
ST CLOUD STATE
ST CLOUD MN
56301

KOPP MRS VERNON
2050 65TH ST E
INVER GR HGHT MN
55075

KRAMER ERNEST W
717 DELAWARE ST SE
MPLS MN
55440

KROON H CLIFTON
210 E WALNUT
MANKATO MN
56001

KUHL CARL
4421 4TH ST NE
COL HEIGHTS MN
55421

LABELLE JUANITA MRS
5816 AQUILA AVE NO
NEW HOPE MN
55428

LAKE SUPERIOR INDUSTRIAL
828 FIRST AM. BK. BLDG.
DULUTH MN
55802

LAPP LAZAR LAURIE ET AL
1200 BUILDERS EXCHANGE
MINNEAPOLIS MN
55402

LARSON C L
3800 MINNEHAHA AVE SO
MPLS MN
55406

LEAGUE WOMEN VOTERS OF MINN
555 WABASHA
ST PAUL MN
55102

LEG.REF.LIB-Z. DEWITT
RM 111 STATE CAPITOL
ST PAUL MN
55155

LEWIS DR.G.M JR.
ABBOTT 110 E 18TH ST
MPLS MN
55403

LIBBEY LEONARD
BOX 17011 NOKOMIS STA
MPLS MN
55417

LOWE DOUG
2701 N LEXINGTON AVE
ROSEVILLE MN
55113

LUTH SOC SERVICE OF MN
2414 PARK AVE
MPLS MN
55404

MADSON HUGH
AETNA 212 S 6TH ST
MPLS MN
55402

MALONE E I COMM LABOR & INDU
444 LAFAYETTE RD 5TH FL
ST PAUL MN
55101

MANKATO STAT STUDENT SENA
CENTENNIAL STUDENT UN
MANKATO MN
56001

MARRINAN MARGARET M
1117 COMMERCE BLDG
ST PAUL MN
55101

MASTOR & MATTSON LTD
315 PEAVEY BLDG
MPLS MN
55402

KAVANEY RICHARD
1220 NORTHERN FED BLDG
ST PAUL MN
55102

KEABLE MIKE
909 6TH AVE N
ST CLOUD MN
56301

KLOSTER MARION PEAVEY CO
730 2ND AVE S
MPLS MN
55402

KLUZ STEVEN J
1910 1ST NATL BK BLDG
MPLS MN
55402

KNUTSON R N GRANNIS ETAL
F J SCHULT BLDG
ST ST PAUL MN
55075

KOLLER MR & MRS ERWIN A
1568 DULUTH ST
ST PAUL MN
55108

KROEGER CHARLES
122 NW 7TH STREET
FARIBAULT MN
55021

KRONLOKKEN J E
10048 NORD RD
BLOOMINGTON MN
55437

KVB ENGINEERING INC
600 S CO RD 18
MPLS MN
55426

LANAHAN E F - SIBLEY CO
184 E 6TH ST
ST PAUL MN
55101

LANGVIN DAVID
7500 80TH ST S
COTTAGE GROVE MN
55016

LARSON HANS P DIV HOSP SERV
717 DELAWARE ST SE
MPLS MN
55440

LEAGUE MN MUNIC
300 HANOVER 480 CEDAR
ST PAUL MN
55101

LEVEY JESS MET STATE UNIV
METRO SQ RM 121
ST PAUL MN
55101

LEAVEY THOS
829 22ND AVE SE
MPLS MN
55414

LINDALL & JONATHAN DEVELOP.
VILLAGE ONE CENTER
CHASKA MN
55318

LOCKNER GARY
R R 1 BOX 23
BAUDETTE MN
56623

LYNCH DONALD SIBLEY CO
184 E 6TH ST
ST PAUL MN
55102

MAHCF RICK CARTER
2850 METRO DR SUITE 431
BLOOMINGTON MN
55420

MALECKI JAMES
1 SO STATE ST
NEW ULM MN
56073

MANKATO STATE STUDENT ASSN
BOX 58 MANKATO COLLEGE
MANKATO MN
56001

MANTHEY T J PICKANDS MATHER
1100 SUPERIOR AVE
CLEVELAND OH
44114

MCCLURG EUNICE
1061 109TH AVE NE
BLAINE MN
55434

MCDONALD PHILIP M
2077 SELBY AVE
ST PAUL MN
55104

MCLELLAN LARKIN
215 ADM BLDG ST CAPITOL
ST PAUL MN
55101

MCNEILLY GREG MNDSVIEW ED
41 SHERBURNE AVE
ST PAUL MN
55103

MET TFR MEN ASSN A ROSENTHAL
1821 UNIV AVE
ST PAUL MN
55104

METROPOLITAN COUNCIL LIBR
300 METRO SQUARE
ST PAUL MN
55155

MILLER M ADMIN AGENCIES DIV
G19K STATE ADM BLDG
ST PAUL MN
55155

MILLER PAUL J PHARMACY SE
ST MARYS HOSP
ROCHESTER MN
55901

MINN APT ASSN
GRIGGS-MIDWAY BLDG
ST PAUL MN
55104

MINN ASPHALT PAVEMENT ASS
555 WABASHA RM 209
ST PAUL MN
55102

MINN. ASSN. PET RETAILERS
1115 2ND AVE. SO.
MINNEAPOLIS MN
55403

MINN ASSN VOL SOC SERVICE
1821 UNIV SUITE 389
ST PAUL MN
55114

MINN COMM FOR HANDICAPPED
METRO SQ 492 7TH & ROBT
ST PAUL MN
55101

MINN COMMUNITY DEVELOP SE
512 ROSSMOR BLDG
ST PAUL MN
55101

MINN FOOD RETAILERS ASSN
555 WABASHA
ST PAUL MN
55101

MINN GOV ENG COUNCIL
2400 SHERWOOD HILL RD
MINNETONKA MN
55343

MINN HOUSING INST N T CARTER
1573 SELBY AVE APT 101
ST PAUL MN
55104

MINN HWYS MANAGEMENT SERV
407 HWY BLDG
ST PAUL MN
55101

MINNE MINE CREDIT UNION
3000 HUDSON PK S 100
ST PAUL MN
55119

MINN.MTR.TRANSP. .J.N.D
1821 UNIV.
ST.PAUL MN
55104

MINN POULTRY & HATCHERY ASSN
BOX 158
MADELIA MN
56062

MN REP STATE CENTRAL COMM
555 WABASHA AVE
ST PAUL MN
55102

MINN RETAIL HARDWARE ASSN
3033 EXCELSIOR BLVD 313
MPLS MN
55416

MINN STATE BAR ASSN
100 MINN FED BLDG
MPLS MN
55402

MAUL WARREN E
320 S 4TH ST
MPLS MN
55415

MAYO FOUNDATION G ORWOLL
200 FIRST AVE NW
ROCHESTER MN
55901

MCFADDEN G H DISPATCH-PRESS
55 E 4TH ST
ST PAUL MN
55101

MCKIBBON MRS SHIRLEY
11 EVERGREEN LN
BABBITT MN
55706

MET. WASTE CONTOL COMM.
350 METRO SQ BLG
ST PAUL MN
55101

MEIEROTTO, JOAN
1794 SO LEXINGTON
ST PAUL MN
55118

MEYER HERBERT
10824 ZENITH AVE S
BLOOMINGTON MN
55431

MIDLAND GLASS-HD SPURLING
PO BOX 69
SHAKOPEE MN
55379

MILLER RICHARD A
1020 PLYMOUTH BLDG
MPLS MN
55402

MILLER TOM
2311 PILLSBURY AVE S
MPLS MN
55404

MINN ASSN COOPERATIVES
55 SHERBURNE AVE
ST PAUL MN
55103

MINN ASSN ELEC COOPERATIVES
4901 W 77TH ST
MPLS MN
55435

MINN ASSN WATERSHED DIST'S
ADA MN
56510

MINN CHAP ASSOC BLDRS-CONTRS
7204 W 27TH ST
MPLS MN
55426

MINN DEPT HEALTH J C MCKASY
717 DELAWARE S E
MPLS MN
55440

MINNESOTA FARMERS UNION
1717 UNIVERSITY AVE
ST PAUL MN
55104

MINN HEREFORD-LJ SCHAFER
BUFFALO LAKE MN
55314

MINN. HOTEL & MTR. ASSN
2001 UNIVERSITY AVE
ST PAUL MN

MINN LAND USE COMMITTEE
4344 IDS CENTER
MPLS MN
55402

MINN LP GAS ASSN
7515 WAYZATA BLVD 106
MPLS MN
55426

MINN PETROLEUM COUNCIL
1020 NORTHERN FED BLDG
ST PAUL MN
55102

MINN POLLUTION CONTROL AGCY
1935 W CO RD B2
ROSEVILLE MN
55113

MINN RESTAURANT ASSN
2001 UNIVERSITY AVE.
ST PAUL MN
55104

MINN RETAIL FED INS
131 METRO SP
ST PAUL MN
55101

MINN STATE MEDICAL ASSOC
STE 900 AM NATL BK BLDG
STPAUL MN
55101

MINN STATE RETIREMENT SYS
529 JACKSON ST
ST PAUL MN
55101

MINN.TURKEY GROWERS ASSN
2383 UNIV AVE
ST PAUL MN
55114

MINN VETERANS MED ASSN
2175 W HWY 36
ROSEVILLE MN
55113

MN AUTOMOBILE DEALERS ASSN
277 UNIV AVE
ST PAUL MN
55103

MN. ASN.C&IND H.D.PETERSO
480 CEDAR ST.
ST.PAUL MN
55101

MN ELECTRICAL ASSN
3100 HUMBOLT SO
MPLS MN
55408

MN PUB INT RESEARCH GROUP
3036 UNIV AVE SE
MPLS MN
55414

MN STATE SER BLIND-K NATARDY
1745 UNIVERSITY AVE
ST PAUL MN
55104

MIXA FRANK LK MNTKA CONS
402 E LAKE ST
WAYZATA MN
55391

MORTON BUILDINGS INC
R #1
FOLEY MN
56329

MOSS DR JEROME
125 PEIK 159 PILLSBURY
MPLS MN
55455

MPLS ASSN RETARDED CITIZENS
3100 W LAKE ST
MPLS MN
55416

MPLS CITY ATTORNEY
325M CITY HALL
MPLS MN
55415

MT OLIVET ROLLING ACRES
R 1 BOX 576
EXCELSIOR MN
55331

MURPHY DIANA E
4200 IDS-LINDQUIST VENN
MPLS MN
55402

NASS GEO V HENN CO GEN HO
5TH AND PORTLAND AVE
MPLS MN
55415

NATL FAMILY INS CO
2147 UNIV AVE
ST PAUL MN
55114

NCEC INC C/O DR DAHLBERG
CONCORDIA COLLEGE
MOORHEAD MN
56560

NEUMAN RALPH W
RT 2 BOX 125
EMBARRASS MN
55732

NO SUB MONTESSORI-S SADDL
2487 HELEN COURT
NO ST PAUL MN
55109

NURSING HOME RES ADV CO.
111 E FRANKLIN S210
MPLS MN
55404

NUTTER JULIA
743 W MONTANA
ST PAUL MN
55117

MINN STATE BD PHARMACY
717 DELAWARE ST SE #351
MPLS MN
55414

MINN STATE EMP UNION COUNC 6
236 E PLATO BLVD
ST PAUL MN
55107

MINN TEAMSTERS CREDIT UNION
2021 HENN AVE E
MPLS MN
55413

MINN TBR PRODUCERS ASSN
200 CHRISTIE BLDG
DULUTH MN
55802

MINN WATER RESOURCES BD
RM 206 555 WABASHA ST
ST PAUL MN
55102

MINN-WISC BOUNDARY AREA COMM
600 2ND ST
HUDSON WI
54016

MN AFL-CIO L.O. LASHCMB
175 AURORA
ST PAUL MN
55103

MN.BD OF NURSING
717 DELAWARE ST SE
MPLS MN
55414

MN SOC SERV ASS J HOOD
614 PORTLAND
ST PAUL MN
55102

MN ST PHARMACEUTICAL ASSN
2469 UNIVERSITY AVE
ST PAUL MN
55114

MOFFITT R C
RM 301 M MPLS CITYHALL
MPLS MN
55415

MOOD R BLOOMINGTON HLTH DEPT
10200 PENN SO
BLOOMINGTON MN
55431

MOTOR VEHICLE MFRS ASSN
411 MAIN ST (215)
ST PAUL MN
55102

MPIRG
BOX 45 ST MARYS COLLEGE
WINONA MN
55987

MPLS STAR PRESS ROOM
STATE CAPITOL
ST PAUL MN
55101

MPLS TRIBUNE CITY DESK
425 PORTLAND AVE
MPLS MN
55415

MURPHY PATRICK SSR INC
BOX 986 COURTHOUSE STA
ARLINGTON VA
22216

MURPHY PATRICK DUFFY
1440 SUMMITT AVE
ST PAUL MN
55105

NATL CAR RENTAL ATT D MITZEL
5501 GREEN VALLEY DR
MPLS MN
55437

NATL COUNCIL JEWISH WOMEN
4330 CEDAR LK RD
MPLS MN
55416

NELSON JOHN
4809 180TH ST N
HUGO MN
55038

NEREN MADONNA
376 NEAL AVE S
AFTON MN
55001

NORTH CENTRAL ELEC ASSN
PO BOX 202
BATTLE LAKE MN
56515

NURSING HOME ADMRS BD EXAMRS
RM 340 717 DELAWARE SE
MPLS MN
55414

NW REG. DEV. COMM
425 WOODLAND AVE
CROOKSTON MN
56716

NYQUIST DEAN A
3707 53RD PL N
BROOKLYN CTR MN
55429

O'CONNELL RAY
MN GAS CO 733 MARQ AVE
MPLS MN
55402

OFFICE OF THE GOVERNOR
130 STATE CAPITOL
ST PAUL MN
55101

OTTER TAIL POWER CO.
215 S. CASCADE ST.
FERGUS FALLS MN
56537

PAYNE WM B
2400 FIRST NATL BK BLDG
MPLS MN
55402

PETERSON GARY
854 MIDLAND BK BLDG
MPLS MN
55401

PHILLIPS LEGISLATIVE SERVICE
459 RICE ST
ST PAUL MN
55103

PINNETTI NICK M HALEY & A
40 CENTRAL PARK S
NEW YORK NY
10019

PORTER LYLE O

TRACY MN
56175

PORT AUTH CITY OF ST PAUL
330 MINNESOTA BLDG
ST PAUL MN
55101

PRAUSE JOS.C.
2220 105TH AVE.N.W.
COON RAPIDS MN
55433

PROCTOR&GAMBLE L THEOHAR
IVORYDALE TECH CENTER
CINCINNATI OH
45217

RADMAN RICHARD-LABOR TEMP
418 AUDITORIUM
ST PAUL MN
55102

RAUENHORST CORP-C ANDERSON
7900 XERXES S. S-2200
MPLS MN
55431

REAGAN MICHAEL
% MINN LEARNING CTR
BRAINERD MN
56401

RED OWL STORES INC
215 E EXCELSIOR AVE
HOPKINS MN
55343

REGION FIVE REG. DEV. COM
102 6TH ST N
STAPLES MN
56479

RENNER R.H. ST PAUL AREA CC
300 OSBORN BLDG.
ST PAUL MN
55102

RENQUIST ARTHUR NSP CO
414 NICOLLET MALL
MPLS MN
55401

RIEKE DAVID
PO BOX 9311
MPLS MN
55440

ROE DAVID
175 AURORA
ST PAUL MN
55103

NW BELL TEL CO LEGAL DEPT
224 S 5TH ST RM 2000
MPLS MN
55402

NW COUNTRY ELEVATOR ASSN
802 GRAIN EXCH BLDG
MPLS MN
55415

O'BRIEN J.DENNIS
1100 1ST NATL.BANK BLDG
MINNEAPOLIS MN
55402

OLOFSON ARTHUR MBO & MAINC
927 SOO LINE BLDG
MPLS MN
55402

OLSON KATHLEEN
192 SEYMOUR AVE SE
MPLS MN
55414

PATTISON ORVIS
BOX 645
WILLMAR MN
56201

PAYNE COL ALVIN

DEGRAFF MN
56233

PFEIFER AND SHULTZ, INC
1433 UTICA AVE S
MPLS MN
55416

PHAR MFGRS ASSN WM D PATTON
1155 15TH ST NW
WASHINGTON DC DC
20005

POPOVICH PETER S
314 MINN BLDG
ST PAUL MN
55101

PORTER DAVID
3002 27 AVE S
MPLS MN
55406

POSS DONALD G
6301 SHINGLE CREEK PKWY
BROOKLYN CTR MN
55430

POYZER ROBT
BOX 675
FERGUS FALLS MN
56357

PULSCHER RBT SPRINGSTED INC
813 OSBORN BLDG
ST PAUL MN
55102

RALPH BURKE ASSOCIATES
7710 COMPUTER #S101
MPLS MN
55435

RAMSEY CO MEDICAL SOC
908 AM NATL BK BLDG
ST PAUL MN
55101

REARDON MRS HELEN
1125 S E 6TH ST
WILLMAR MN
56201

REID DAVID H
6469 N GRAHAM RD
INDIANAPOLIS IN
46220

REGION NINE DEV. COMM.
709 N FRONT ST
MANKATO MN
56001

REINO O LAINE 3M COMPANY
3M CENTER
ST PAUL MN
55101

RICHARDSON THOS
7851 METRO PKWY S 103
MPLS MN
55420

RICHARDS MONTGOMERY ET AL
1430 RAND TOWER
MPLS MN
55402

ROBERTS DAVID E
1260 NW NATL BK BLDG
ST PAUL MN
55101

ROSS ALFRED
6356 WARE RD
LINO LAKES MN
55014

SAN SIMEON DEVELOP CORP
OLD 1ST STATE BK BLDG
PAYNESVILLE MN

SE MN REG DEV COMM
301 MARQ BK BLDG
ROCHESTER MN
55901

SPRAGUE CHARLOTTE B
AREA HOSPITAL BOX 339
WINDOM MN
56101

SW REGIONAL DEV COMM
2811 BDWY
SLAYTON MN
56172

SCARBOROUGH WILLIAM
DIV.ED. U.M.
MORRIS MN
56267

SCHMIDT D R MN ASSN REALTORS
6101 WAYZATA BLVD
MPLS MN
55416

SCHMIDT H W TCHRS RETIREM
302 CAPITOL SQ BLDG
ST PAUL MN
55101

SCHNEIDER MAHLON
GREEN GIANT
LESUEUR MN
56058

SCHUTZ LINDA
RM 328 CAPITOL BLDG
ST PAUL MN
55155

SCHWINN ROBT.P.
1400 SOO LINE BLDG.
MPLS. MN
55402

SCHNEIDER & NEESER
706 1ST ST SO PO BX 876
WILLMAR MN
56201

SENATE COUNSEL OFFICE
ROOM 480 STATE OFF BLDG
ST PAUL MN
55055

SENATE FINANCE COMMITTEE
ROOM 121 STATE CAPITOL
ST PAUL MN
55155

SHAW ROBERT M
616 MOBIL OIL BLDG
MPLS MN
55402

SILVERMAN JUDITH
8545 W 28TH ST
ST LOUIS PARK MN
55426

SIX W REG. DEV. COMM
128 W SORENSON
APPLETON MN
56208

SMERIKA WM.
BOISE CASCADE PAPERS
INTL FALLS MN
56649

SNYDER, R.W. U OF M
RM 248C CLASS OFF BLDG.
ST PAUL MN
55108

SODERBERG HAROLD J
1500 MIDWEST PLAZA BLDG
MPLS MN
55402

STATE BD VETERINARY EXAMINER
C/O DR A C SPANNAUS DVM
WACONIA MN

STD AM LIFE & ANNUITY CO
3801 W 50TH ST
MPLS MN
55410

ROBBIE JOSEPH
904 CARGILL BLDG NO CTR
MPLS MN
55402

ROBERTS DR ALAN
BOX 297 MAYO U OF M
MPLS MN
55455

ROSS ROY J
CLK TREAS
LITCHFIELD MN
55355

ROWLEY STEPHEN
4305 15TH AVE S
MPLS MN
55407

SANFORD S M
7000 PORTLAND AVE
RICHFIELD MN
55423

SAX DOVE & STENSON
310 ENDICOTT BLDG
ST PAUL MN
55101

ST PAUL BUR HLTH DR P COX
555 CEDAR ST
ST PAUL MN
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ST PAUL FOOD RETAILERS ASSN
1220 ARCADE
ST PAUL MN
55106

SCHAEN ETHEL
1745 UNIVERSITY AVE
ST PAUL MN
55104

SCHLICHT REV ROBT
611 W MAIN ST
BELLE PLAINE MN
56011

SCHMIDT LARRY WCCO-TV NEWS
50 S 9TH ST
MPLS MN
55402

SCHMIDT WARREN WELLCOME MH5
GARDEN CITY
MN
56034

SCHWARTAU NEAL METH HOSP
201 W CENTER ST
ROCHESTER MN
55901

SCHWERMAN EARL JR
1535 8TH AVE SE
ROCHESTER MN
55901

SCHROEDER ALFRED H
2172 CARROLL AVE
ST PAUL MN
55104

SELECTVISION INC FR VALENTIN
1 DAG HAMMARSKJOLD PL
NEW YORK NY
10017

SENATE GOV OP COMM
RM 303 STATE CAPITOL
ST PAUL MN
55155

SHABATURA EUGENE H
2833 LAKE AVE SO
DULUTH MN
55811

SITE ENGINEER INC
12 OLD DEERFIELD RD
WELCH MN
55089

SIX EAST REG. DEV. COMM.
311 W 6TH ST
WILLMAR MN
56201

SMITH MICHAEL
128 PLEASANT STREET SE
MPLS MN
55455

SNELL LYN
BOX 314
EDEN VALLEY MN
55329

SODERMAN ANTHONY
1414 FOSHAY TOWER
MPLS MN
55402

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PO BOX 116
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55440

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MIDTOWN BLDG
AUSTIN MN
55912

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MPLS MN
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VANDERVOORT T J MET WASTE
350 METRO SQUARE BLDG
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55101

VIITALA, W.C. HONEYWELL
HONEYWELL PLAZA
MPLS MN
55408

WANQUIST ALLEN
RM 252 FEDERAL BLDG
ST PAUL MN
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WEST CENTRAL REG. DEV.
ADM BLDG,COMMUNITY COLL
FERGUS FALLS MN
56537

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7316 BAILEY ROAD
NEWPORT MN
55055

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PITTSBURGH PA
15222

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3M CENTER 220/6W
ST PAUL MN
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5270 HANSON COURT
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UNION STOCK YARDS
ATTN PRES
SO ST PAUL MN
55075

VAN DRAKE STEPHEN R
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PELICAN RAPID MN
56572

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2100 RADIO DRIVE
WOODBURY MN
55042

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4510 W 77TH ST STE 235
MPLS MN
55435

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110506 WINDMILL COURT
CHASKA MN
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WESTIN CHAS W
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DULUTH MN
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STEELWORKERS CREDIT UNION
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BABBITT MN
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P O BOX 339
FOREST LAKE MN
55025

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5824 FRANCE AVE S
EDINA MN
55410

TENNESSEN SEN ROBERT J
RM 309 STATE CAPITOL
ST PAUL MN
55165

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55901

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2829 UNIV SE SUITE 304
MPLS MN
55414

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4610 IDS CENTER
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700 TORREY BLDG
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11120 NE 7TH ST
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2137 BURNS AVE
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Sunkist Growers, Inc.
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Senior High School
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501 Huron SE
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Koppers Bldg.
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Land O'Lakes Creameries Inc.
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Marysville, Ohio 43040

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A copy of the Shade Tree Rules and Regulations have been sent to all State Legislators.

December 14, 1977

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STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED)
ADOPTION OF RULES OF THE DEPART-)
MENT OF AGRICULTURE GOVERNING) STATEMENT OF NEED AND EVIDENCE
THE SHADE TREE PROGRAM)

The above captioned rules are amendments to existing rules of the Department of Agriculture. These rules will repeal all existing rules of the Department relating to the Shade Tree Program and will repromulgate some of these rules in these proposed rules and this proposed organization.

The need to adopt these rules arises from Laws of Minnesota, 1977, ch. 90, subd. 2, which directs the Commissioner of Agriculture to adopt rules which shall prescribe control measures to be used to prevent the spread of shade tree diseases and shall include the following: (a) a definition of shade tree, (b) qualifications for tree inspectors, (c) methods of identifying diseased shade trees, (d) procedures for giving reasonable notice of inspection of private real property, (e) measures for the removal of any shade tree which may contribute to the spread of shade tree disease, and for reforestation of disease control areas, (f) approved methods of treatment of shade trees, (g) criteria for priority designation areas in an approved disease control program, and (h) any other matters determined necessary by the commissioner to prevent the spread of shade tree disease and enforce the provisions of this section. The law establishes a program and provides funds to assist local units of government in the implementation of shade tree disease control programs by conducting sanitation and reforestation programs and expanding diseased wood utilization and disposal sites.

The Department will call no outside witnesses to testify.

The Department will be represented by the following staff: Jane Meyer, Admininstrator, Shade Tree Program; Meg Hanisch, Plant Health Specialist; Randall Young, Director of Planning and Development; and, Peder Hong, Special Assistant Attorney General.

The Department intends to introduce the following documentary evidence: Agricultural Extension Service, University of Minnesota Extension Folder 211 - Revised 1977, "The Dutch Elm Disease" and University of Minnesota Extension Folder 310 - 1976, "Oak Wilt Disease".

INTRODUCTION

The 1977 Minnesota Legislature passed the Shade Tree Program in Laws of Minnesota, 1977, ch. 90 requiring the Commissioner of Agriculture to promulgate rules for the implementation and operation of the program. The purpose of these rules is to interpret the law consistent with the legislative intent behind its passage. In so doing, every attempt has been made to create a mechanism that is equitable, reasonable, and predictable for all affected parties. It should be noted that these rules must be read and interpreted in conjunction with Laws of Minnesota, 1977, ch. 90. 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.

Agr 101 Purpose
- Now appears as 3 MCAR 1.0109 General

Agr 102 Definitions
- Now appears as 3 MCAR 1.0109 General; no substantial changes are made

Agr 103 Tree Inspector Employment and Qualifications
- Now appears as 3 MCAR 1.0110 Tree Inspectors; no substantial changes are made

Agr 104 Certification of Tree Inspector
- Now appears as 3 MCAR 1.0110 Tree Inspectors

Agr 105 Decertification of Tree Inspectors
- Now appears as 3 MCAR 1.0110 Tree Inspectors

Agr 106 Shade Tree Disease Control Program
- Now appears as 3 MCAR 1.0111 Shade tree disease control program

Agr 107 Grants-In-Aid to Municipalities for Removal of Diseased Shade Trees
- Now appears as 3 MCAR 1.0112 Grants-in-aid to municipalities for sanitation and reforestation program

Agr 108 Grants-In-Aid for Wood Utilization or Disposal Systems
- Now appears as 3 MCAR 1.0113 grants-in-aid for wood utilization and disposal systems

Minnesota Department of Agriculture

Date 2-3-78

Bill Walker
Commissioner

3 MCAR 1.0109 General

A. Purpose and Authority. The rules contained herein are prescribed by the commissioner pursuant to Minn. Stat. sec. 18.023, as amended, to implement a program to control Dutch elm disease and oak wilt by local units of government and to include procedures and criteria for three grant-in-aid programs. The provisions of these rules are in addition to those set forth in the act itself.

...This section of 3 MCAR 1.0109 sets forth the authority by which the Commissioner shall promulgate these rules and the intent of the Shade Tree Program.

The previous rules and regulations (AGR 101 through AGR 108) have been repealed because of the substantial modifications and additions that have been made.

B. Definitions. For purposes of these rules, the following definitions, in addition to those in the act, shall apply:

1. "Commissioner" means the Commissioner of Agriculture or his designee.

...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.

2. "Shade tree" means any oak or elm tree situated in a disease control area approved by the Commissioner.

...This limits the program to oak or elm trees located in an area designated by the municipality as a disease control area. This limitation is set forth because of the devastation caused by Dutch elm disease and oak wilt in many parts of the state.

3. "Shade tree disease" means Dutch elm diseased by "Ceratocystis ulmi", or oak wilt caused by "Ceratocystis fagacearum".

...This definition identifies the causal agent for oak wilt and Dutch elm disease.

4. "Town" means township as described in Minn. Stat. sec. 18.023 subd. 1 (1976).

...The definition of town is necessary because of the specific provisions in the law pertaining only to towns. The Legislature intended that towns be provided with special incentives to participate in the Shade Tree Program. These incentives are necessary because towns do not have the revenue generating ability cities have.

5. "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 the Commissioner.

6. "Disease control area" means an area designated by a municipality in which it will conduct a shade tree disease control program according to these rules. The extent of this control area shall be determined by the municipality and approved by the Commissioner.

7. "Equipment" means machinery or devices which singularly or in combination are designed, constructed, or 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.

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

9. "The act" means Minn. Stat. sec. 18.023, as amended.

10. "Population" means the population of a municipality as published in the U.S. Bureau of Census, 1970 Census.

...These definitions simply clarify terms used throughout the rules and minimize the wordage required in the text of the rules.

3 MCAR 1.0110 Tree Inspectors.

A. Tree Inspector Employment and Qualifications.

1. A municipality shall either individually or jointly with one (1) or more other municipalities employ or retain a tree inspector, on a continous year round basis as provided by the act.

2. Provisional Appointments.

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

b. This appointment shall be dependent upon approval by the Commissioner after determining the competence of the appointee.

c. The provisional appointment shall not be extended and the appointee shall pass the tree inspector examination to become certified.

d. The provisional appointment may be withdrawn for cause by the Commissioner upon notice and hearing.

3. A tree inspector shall be able to demonstrate the following qualifications:

a. Identify all native tree species, with or without leaves, common to his/her work area, and all felled or downed trees with bark intact;

b. Know and understand the biology of oak wilt and Dutch elm disease;

c. Be familiar with the problems of elm trees and oak trees other than those of Dutch elm disease and/or oak wilt, as well as identifying symptoms chacteristic of these problems that affect oak and elm trees;

d. Know the proper method of collecting samples for disease diagnosis;

e. Know the appropriate Minnesota laws and rules relative to oak wilt and Dutch elm disease:

f. Know the approved control methods for oak wilt and Dutch elm disease; and,

g. Be familiar with the recommended tree species to be used in the replanting program, their planting requirements (available through the University of Minnesota Extension Service), and the care of these trees after planting.

4. If a municipality fails to appoint a tree inspector, an appointment may be made by the Commissioner pursuant to the act. Ten (10) 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 ninety (90) days, even though the municipality may appoint its own inspector prior to the expiration of ninety (90) days. This provision shall not apply to a municipality that has suspended or terminated the employment of a tree inspector for cause.

...All previous provisions pertaining to the employment and qualifications of any municipal tree inspector have remained the same as existing rule Agr 103. In addition, tree inspectors are required to have the following qualifications. First, they must be familiar with all the diseases common to elm and oak trees to insure that trees marked for removal have been properly identified as being infected with Dutch elm disease or oak wilt. This additional requirement will enable the tree inspectors to assume more responsibility in the correct diagnosis of diseased trees. And, second, to insure a low mortality rate among newly planted trees, it is necessary that tree inspectors be knowledgeable about the planting and maintenance of new stock.

B. Certification of Tree Inspector.

1. A tree inspector shall be certified upon the passing of an examination prescribed by the Commissioner for the purpose of determining that the applicant possesses the necessary qualifications set forth in this rule. The Commissioner shall notify by mail each applicant and municipality of the time and date for such an examination. The applicant shall be notified of the results of the examination within fifteen (15) days after its administration.

2. After certification, a tree inspector shall be required to annually attend at least one (1) program of continuing education approved by the Commissioner. Failure to attend one (1) such continuing education program, or failure to meet alternative certification requirements, shall terminate certification.

...All provisions providing for the certification of the tree inspector have remained the same as existing rule Agr 104.

C. Certification Alternatives. Upon written application, the Commissioner may grant to an individual an alternative for the certification requirement and procedures set forth in this rule provided that:

1. There is good cause why the individual cannot comply with the provision of this rule;

2. The requirements and procedures provided for the alternative is equivalent to those set forth in this rule.

3. When an examination is involved, the subject matter and difficulty of the examination is equivalent to the examination for which the alternative is granted;

4. The spirit and intent of the act and these rules are not violated; and,

5. The environment or the public will not be adversely affected by the alternative requirements or procedures.

...Occassionally, a highly qualified person is unable to pass the written exam which rpovides for the certification of a tree inspector. To certify this person as a municipal tree inspector, it is necessary to employ alternative certification methods that are equivalent to the standard written examination. One such alternative is an oral examination based on the written test. In instances of inclement weather or illness, the examination will be re-scheduled.

3 MCAR 1.0111 Shade Tree Disease Control Program.

A. The shade tree disease control program of all municipalities affected by these rules shall include as a minimum the following elements:

1. Control Area. Each municipality shall designate an area or areas in which the municipality shall enact control procedures for Dutch elm disease and/or oak wilt. The extent of the control areas will be determined by the municipality and approved by the Commissioner.

2. Program Plan. Each municipality shall prepare a shade tree disease control program plan detailing the manner in which these rules shall be fulfilled.

3. Methods of Identifying Diseased Shade Trees. Diseased shade trees shall be identified by generally accepted field symptoms such as wilting, yellowing of leaves, and/or staining of wood under the bark. Confirmation, when determined to be necessary by the certified municipal tree inspector, shall be made by the Minnesota Department of Agriculture Tree Disease Laboratory, or other laboratories approved by the Commissioner.

...All provisions pertaining to the control area of the municipality, the program plan of the municipality, and the methods of identifying diseased shade trees have remained the same as existing rule Agr 103 and Agr 106.

4. Dutch Elm Disease and Oak Wilt Control.

a. Tree Inventory. Each municipality shall maintain a reasonable estimate of the number of elms, oaks, and other tree species on both public and private property within the control area of the municipality as well as those regions of the municipality outside this control area. Estimates of the tree count shall be made by acceptable forest inventory procedures. These records shall be permanent and shall be filed with the Commissioner.

...All provisions providing for the maintenance of a municipal tree inventory have remained the same as existing rule Agr 106.

b. Dutch Elm Disease Control.

(1) Sanitation. All elm bark beetles, trees affected with Dutch elm disease, and any dead or weakened elm wood arising from any cause shall be eliminated in a timely manner within the control area of the municipality. This shall include trees on private property.

...All aspects of sanitation relating to Dutch elm disease have remained the same as existing rule Agr 106.

(a) Prior to April 1 of each year, municipalities shall inspect all public and private properties for elm wood or logs/stumps that could serve as bark beetle breeding sites, and require by April 1, removal, or debarking, of all wood, logs, and stumps to be retained. Before making any inspection on private property within a municipality, it shall be the duty of the municipality to give notice of said inspection to all affected residents either through an individual, an oral or a written notice, or by publishing said notice in a local newspaper.

...To reduce the population of Native elm bark beetles and the smaller European elm bark beetles, it is necessary that all non-debarked elm material which could serve as breeding sites be removed. Because the first emergence of the Native elm bark beetle occurs in April, with the first emergence of the smaller European bark beetle occuring in June, it is essential that all non-debarked elm material be removed by April 1.

(b) Each municipality shall inspect all elm trees within a control area at LEAST twice during the growing season (by June 15 and August 15) for Dutch elm disease symptoms. For a control program to be most effective it is HIGHLY RECOMMENDED that continous inspections be initiated in those areas where the incidence of the disease is severe.

...It is necessary that at lease one inspection be completed before June 15 in order that trees diseased with a carry-over infection from the previous year can be identified, marked, and removed early in the growing season. It is necessary that another inspection be completed by August 15 in order that trees carrying a recently developed infection can be identified, marked, and removed within the same year as the infection occured. These requirements are reasonable because they specify the minimum effort necessary to conduct an effective sanitation program and do not severely over-burden municipal officials. Although only two inspections are required each year, the most successful municipal control program provides for continual inspections throughout the year (the "active" growing season).

(c) Due to a summer generation of elm bark beetles emerging in late July, the municipality's tree inspector shall be responsible for:

(i) Visually identifying whether a tree infected with Dutch elm disease has extensive wilt or is only showing early symptoms of the disease; and

(ii) Categorizing trees infected with Dutch elm disease as either high risk trees or low risk trees.

(aa) High risk elm trees shall be those trees that are dead or have extensive wilt (fifty (50) percent or more of the tree is wilted). Such trees shall be identified, marked in a distinctive manner to indicate their high risk status, and removed on private and public property within twenty (20) days of notification and/or by July 15, whichever is first. Any high risk tree identified and marked after July 15 shall be removed within twenty (20) days of notification.

...All potential breeding sites of the bark beetles must be eliminated as quickly as possible to reduce the beetle population. Since these beetles breed in any dead and dying elm material, it is essential that all heavily infected trees, or those trees that are already dead, be categorized as high risk and removed as quickly as possible within a twenty (20) day time period. This twenty (20) day limit allows the municipality sufficient time to remove the hazardous tree, possibly harboring a new generation of bark beetles, before the life-cycle of the beetle is completed and beetle emergence occurs. Since a second generation of beetles emerges in July, it is necessary that all high risk trees be removed no later than July 15. If a high risk tree is identified and marked after July 15, it is extremely important to remove it as soon as possible and within twenty (20) days so that the danger it represents as a potential breeding site is eliminated. It is

necessary to mark these high risk trees in a distinctive manner so that they are recognizable as a hazard to Dutch elm disease control. This requirement is reasonable because it accomplishes the objective of eliminating the most hazardous trees while allowing the city to spread-out over a long period of time the removal of trees that constitute a lesser hazard to Dutch elm disease control.

(bb) Low risk elm trees shall be those trees that show early stages of infection in June or subsequently during the growing season with those symptoms not progressing beyond the fifty (50) percent wilting point. Such trees shall be identified, marked, and removed before April 1 of the following year. Municipalities shall make every reasonable effort to remove all low risk trees on private and public property within twenty (20) days of notification, but in no case shall it be later than April 1 of the following year. Only methods of removal approved by the Commissioner shall be utilized.

...Since those trees which are dead or rapidly dying represent the greatest danger to limiting the beetle population, it is necessary to eliminate these trees first. Trees that exhibit the early states of Dutch elm disease must be categorized as low risk and removed no later than April 1 of the following year. It is important, however, that the municipality makes every reasonable effort to remove these trees within twenty (20) days after being identified and marked, in order that the infected tree does not reach a high risk status. However, all low risk trees must be removed by April 1 of the following year so that the danger of the infection spreading rapidly through the tree, causing its death and, thus, creating a potential breeding site, is eliminated before the first beetle emergence of the year occurs.

(d) After categorization, marking, and 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 the time limit established by the municipality, not to exceed twenty (20) days. Methods of removal shall be approved by the Commissioner and shall be consistent with applicable air quality and solid waste rules.

...All provisions pertaining to the proper disposal of diseased or dead elm trees within the twenty (20) day time period have remained the same as existing rule Agr 106.

(e) After notification, trees or parts thereof not removed within the time limit established by the municipality, not to exceed twenty (20) days, shall be considered "high risk" and shall be removed by the municipality within twenty (20) days and the costs thereof assessed against the property.

...A low risk tree that has not been removed within the designated twenty (20) day time period has the capacity of becoming a high risk tree if it remains standing. To insure the timely removal of the delinquent low risk trees, it is necessary for the municipality to define them as being of a high risk status so that they will be removed as quickly as possible after the designated twenty (20) day limit has passed.

(f) Stumps of ALL elm trees shall be removed or debarked to the ground-line to eliminate all possibilities of beetle habitation.

...Since there is the possibility of beetles breeding in the non-debarked stumps of any elm tree, it is necessary that all stumps be removed or debarked to eliminate potential breeding sites.

(g) Stockpiling of elm logs with bark intact is permitted during the period September 15 through April 1 of the following year at locations specifically approved in writing by the municipality.

...Elm logs, with the bark intact, may be stockpiled during the period September 15 through April 1 of the following year as there is minimal danger of a beetle emergence at this time. Since many municipalities have had problems with non-debarked elm material being retained beyond the expiration of this time period, it will be at their discretion where this material can be stockpiled. This flexibility will allow for a more reasonable administration of the program. The municipality will thus be aware of any violations relating to the stockpiling of non-debarked elm material.

(2) Root Graft Control. It is recommended to a municipality that all common root systems of trees growing within forty (40) to fifty (50) feet of a tree infected with Dutch elm disease should be disrupted by chemical or mechanical means as approved by the Commissioner to prevent root graft spread of Dutch elm disease. (Refer to the Agricultural Extension Service, University of Minnesota Extension Folder 211 - Revised 1977, "The Dutch Elm Disease", pp. 8-12).

...All provisions pertaining to the mechanical and/or chemical means of disrupting common root systems have remained the same as existing rule Agr 106.

c. Oak Wilt. Although oak wilt and Dutch elm disease are both vascular infections caused by a fungus, each infection shall be dealt with separately. Control methods prescribed for each disease are different, and again, shall be dealt with separately. Oak wilt control shall include the disruption of root grafts and the prevention of infection by insect-carried spores (overland spread).

...With the incidence of both Dutch elm disease and oak wilt increasing, it is becoming more important to emphasize that these diseases are separate and should be considered individually.

(1) Root Graft Control. Since most oak trees are susceptible to the fungus through root grafts, it is recommended to a municipality that all common root systems of trees growing within forty (40) to fifty (50) feet of a diseased oak tree of the same species should be disrupted by chemical or mechanical means to prevent the root graft transmission of the oak wilt fungus as approved by the Commissioner. (Refer to Agricultural Extension Service, University of Minnesota Extension Folder 310-1975, "Oak Wilt Disease").

...All provisions pertaining to the mechanical and/or chemical means of disrupting common root systems have remained the same as existing rule Agr 106.

(2) To control the overland spread of the disease, a municipality should:

(a) Avoid pruning or other mechanical damage during the most susceptible period of May and June. A tree inspector may determine that emergency pruning by utility companies is necessary during this susceptible period if trees interfere with utility lines. If wounding is unavoidable during this period, as in the aftermath of a storm or when the tree interferes with utility lines, a tree wound dressing shall be applied.

...Although pruning of oak trees should be avoided during the months of May and June when the trees are most susceptible to the oak wilt fungus, there are circumstances when pruning becomes necessary. Utility companies must remove all obstacles coming in contact with utility lines. At the determination of the municipal tree inspector, utility companies can prune oak trees at this time. It is best to apply a tree wound dressing when any pruning is done, but it becomes especially important to apply it during May and June when oak trees are pruned. These recommendations are reasonable and necessary because they establish the best procedures for controlling the spread of oak wilt. These recommendations are based on the most recent biological information available to the Department.

(b) Disrupt root grafts by chemical or mechanical means if the disease fungus is likely to spread in this manner. Red oak trees diagnosed as having oak wilt shall be girdled as soon as they are detected in order to reduce spore production. Girdling should be done only in areas where a weakened tree will not constitute a hazard to life and/or property should it fall.

...Although girdling is an acceptable method of preventing spore formation on diseased red oak trees, this process can be dangerous because it greatly weakens the tree and may cause it to fall during a storm or strong wind. Therefore, girdling should be used only in those areas where a falling tree will not be hazardous to life and/or property. Disrupting common root systems by chemical and/or mechanical means is still the most effective way of preventing the spread of the fungus, as most infections of oak wilt develop from root grafts. Although girdling is an effective method of controlling the spread of oak wilt, it is reasonable and necessary to inform municipalities of the possible hazards involved with girdling.

(c) Identify, mark, and remove from both private and public property by April 1 of the following year those trees in the Red Oak group that wilt in July and August that could have spores on them the following May or June. The trees in this group are the Northern Red Oak (Quercus ruira); Northern Pin Oak (Quercus ellipsoidalis); Black Oak (Quercus velutina); and Scarlet Oak (Quercus coccinea).

...Since the overland spread of oak wilt is completed through the transmission of fungal spores, it is most important that this oak wilt fungus be prevented from sporulating. Spores form readily on Red Oaks, rarely, if ever, on Bur Oaks, and, generally, never on White Oaks. Therefore, to prevent the sporulation of this fungus, it is most important to remove the red oak trees that are infected with oak wilt.

(d) After notification by the municipality, private property owners shall remove and properly dispose of diseased oak trees including any above ground parts thereof by April 1 using methods approved by the Commissioner and consistent with applicable air quality and solid waste rules.

...To prevent the additional spread of oak wilt, it is essential that diseased trees be removed and disposed of properly. Trees diseased with oak wilt must be removed by April 1 in order to prevent sporulation.

(e) Trees or parts thereof not removed on or before April 1 by the property owner shall be removed by the municipality within twenty (20) days after notification and the cost thereof assessed against the property.

...To insure the timely removal of trees infected with oak wilt, it is necessary for the municipality to assune the responsibility of removing those trees on private property which are still standing after the initial twenty (20) day time period has expired. When the municipality assumes the responsibility of removing a delinquent tree, all removal costs are then assessed against the private property.

(f) Stumps of Red Oak trees removed due to oak wilt shall be removed or debarked to the ground-line to eliminate all possibilities of spore formation.

...Since there is the possibility of spores forming on the non-debarked stumps of those red oak trees removed due to oak wilt, all these stumps must be removed or debarked in order to prevent sporulation.

5. Records.

a. Shade tree disease program records shall be kept by each municipality and shall be made available for examination at reasonable times by the Commissioner. These records shall include, but not be limited to, the following:

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

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

(3) An initial inventory of trees;

(4) The number of diseased trees indentified on private and public property, and the dates of identification;

(5) The number and the dates of trees removed, both diseased and other, on private and public property; and,

(6) The number of log piles found which were a hazard in the spread of a shade tree disease.

b. A yearly report containing a summation of these records shall be made to the Commissioner by December 1.

...All provisions pertaining to the information required on the municipal shade tree disease program, except for the date by which this disease program is to be submitted, remain the same as existing rule Agr 106.

6. Program Review.

a. By November 15 of each year, municipalities shall submit to the Commissioner their shade tree disease control and replanting programs for the following calendar year. The Commissioner shall review these programs to determine if the requirements of the law and the applicable rules have been met.

b. Final determination of municipal program compliance with the rules shall rest with the Commissioner.

c. The Commissioner may require that changes be made in any municipal program whenever a determination is made that such changes are needed to comply with the act or these rules.

...All provisions pertaining to the submission and reviewal of the shade tree disease control and replanting programs of each municipality have remained the same. However, these reports must now be submitted to the Minnesota Shade Tree Program by November 15 so that the Department of Agriculture has sufficient time to review the programs, inform municipalities of any program correction that is needed, and inform the municipalities about the State reimbursement percentages before the start of the new growing season so that the municipalities can plan accordingly.

3 MCAR 1.0112 Grants-in-Aid to Municipalities for Sanitation and Reforestation Programs.

A. The Commissioner may, in the name of the state and within the limits of appropriations provided, make grants-in-aid to a municipality with an approved disease control program for the partial funding of municipal sanitation and reforestation programs.

1. Sanitation Grants. Grants to any municipality for sanitation shall not exceed forty-five (45) percent of the municipality's total cost for sanitation approved by the Commissioner. The total cost may include any amounts paid

for sanitation by special assessments, ad valorem taxes, federal grants, or other funds. A municipality may assess to the abutting property not more than fifty (50) percent of the expense of treating with an approved method or removing diseased shade trees located on street terraces or boulevards to that abutting property.

...The provisions of this section are as specified in the law. According to the law, sanitation grants may not exceed 45%, but they may be less than 45%. The law also provides that revenue generated by special assessments, ad valorem taxes, federal grants or other funds may be used by the city to pay the cost of the municipal sanitation program and that the total of such municipal costs is eligible for reimbursement from the state. The statutory language is repeated to clarify the following provision.

a. Grants shall not be made to a municipality if the total cost of tree removal has been incurred solely by the individual property owner and the municipality has not reduced the cost to the property owner via direct subsidy or reduced special assessment. Provision is made for municipalities with populations of less than 1000 pursuant to Minn. Stat. sec. 18.023, subd. 3c, as amended.

...A careful reading of the law manifests a clear intent by the Legislature to promote cost-sharing between the State and the municipality in dealing with the financial burden incident to shade tree disease control and reforestation. The law specifies that the Commissioner may make grants to certain municipalities "...for the partial funding of municipal sanitation and reforestation programs." This refers to sanitation and reforestation activities carried out by or at the expense of the municipality and is necessary to assume that state funds are expended in the types of cases for which the Legislature intended funds to be expended.

2. Reforestation Grants. Grants to any municipality for reforestation shall not exceed either fifty (50) percent of the cost to the municipality for reforestation, or forty (40) dollars multiplied by the number of trees planted on public lands pursuant to the reforestation program, whichever is less.

a. Reforestation grants to a municipality shall be limited in any calendar year to grants for not more than the number of trees removed from public lands in the sanitation program in the previous calendar year except during the first year of an approved disease control program. During the first year of an approved disease control program, there shall be no restriction upon the number of trees for which grants may be made.

b. Reforestation grants to any county with an approved disease control program may include up to ninety (90) percent of the cost of planting the first fifty (50) trees on public lands in a town not defined as a municipality and of less than 1000 population, upon the town's application to the county and the county's designation of the town as a disease control area.

c. Reforestation grants to towns with an approved disease control program which are defined as municipalities in the act and are less than 1000 in population may include up to ninety (90) percent of the cost of planting the first fifty (50) trees on public lands.

...The provisions of this section are as specified in the law. This section more clearly sets forth the statutory standards.

3. Program eligibility. Any municipality is eligible to receive sanitation and reforestation grants upon submitting to the Commissioner by November 15 a completed program application form provided by the Commissioner, and upon receiving notice of an approved disease control program designation. Extensions may be granted for good cause shown.

a. The program application shall serve as the basis for approving the municipality's shade tree disease control program.

b. Approval shall be granted only upon the municipality's agreement to conduct its sanitation program in conformance with these rules and recommended disease control practices issued by the Commissioner.

c. Approval shall only be granted upon the municipality's agreement to conduct its reforestation program in conformance with the recommended practices issued by the Minnesota Agricultural Extension Service.

d. Program approval may be revoked upon a determination by the Commissioner that the municipality has failed to conduct its sanitation and reforestation program in conformance with the standards set forth in this rule.

e. Sanitation and reforestation grants may be terminated upon the municipality's failure to maintain an approved shade tree disease control program and upon evidence that proper record-keeping and documentation has not been maintained.

...This section establishes the criteria for program eligibility. It specifies the basis upon which program approval will be awarded and the grounds upon which that approval may be revoked. In addition, this section specifies the condition upon which sanitation and reforestation grants may be terminated. These conditions are necessary to comply with the intent of the Legislature that grants be made only upon sufficient evidence that a municipality is actively engaged in controlling the spread of shade tree diseases via an effective sanitation program and that the reforestation program is conducted in accord with established practices for the area. These conditions are reasonable because they establish the standards by which these programs must be conducted.

4. Program Application. To receive a sanitation and reforestation grant, a municipality shall submit to the Commissioner by November 15 a completed program application form provided by the Commissioner.

a. A municipality's program application shall include, but not be limited to, the following information:

(1) An inventory of shade trees within the municipality's disease control area and an estimate of the distribution of these shade trees between public and private lands;

...This section specifies the information that must be submitted for program approval. This information is essential to the Department to adequately review the program submitted by each municipality and to provide any technical assistance that might be useful. It is reasonable to request this information because the municipality should already have developed it in designing a program that responds to local needs and circumstances. Specifically, a tree inventory is necessary to gauge the size of the problem and to plan accordingly.

(2) A complete description of the municipality's sanitation and reforestation programs which includes, but is not limited to:

(a) The method and schedule of diseased trees surveys;

(b) The extent of disease control tree trimming activities;

(c) The policies for removal of trees on public lands;

(d) The policies for removal of trees on private lands;

(e) The method and location of disposal of tree wastes;

...This information is necessary because it enables the Department to assess the effectiveness of a municipality's program and to recommend areas that might be improved. The tree surveys are a vital aspect of a successful sanitation program for they allow the municipality to identify and schedule the prompt removal of potential beetle breeding sites, a major concern of the Legislature.

(f) The policies for planting new shade trees, including;

(i) The source of nursery stock;

(ii) Species planted;

(iii) Type of stock planted;

(iv) Distribution of species; and,

(v) Other relevant information;

...This section provides the information necessary for the Department to evaluate a municipality's reforestation program. In particular, the Department will be able to assess whether the tree species to be planted conform

to the type recommended for that growing region by the Minnesota Agricultural Extension Service.

(g) The methods of financing sanitation and reforestation programs, including:

(i) The use of funds derived from general tax levies;

(ii) Special assessments;

(iii) Federal funds;

(iv) Other sources of funding; and,

(h) A complete description of the municipality's subsidy program, if any.

...The law provides that funds from the above sources may be used to finance a municipality's sanitation and reforestation program. A description of the subsidy program is necessary to enable the Department to determine that portion of the municipality's total costs that is eligible for state reimbursement.

(3) A statement of planned expenditures for the sanitation and reforestation program for the calendar year.

...The budget figures provided by the municipality are the basis upon which the reimbursement rates for the calendar year are calculated. Without these, the reimbursement rates could not be determined. As such, this is necessary and reasonable information to require of the municipality.

(4) A copy of local ordinances and resolutions authorizing the local shade tree program.

...This information is necessary for the Department to understand the local shade tree program. It enables the Department to answer queries from constituents about the program in their municipality and to assure compliance with legal requirements.

b. Grants for sanitation shall be forty-five (45) percent of the applicant's planned expenditures for sanitation, unless the total planned expenditures for all applicants exceeds forty-five (45) percent of the funds designated for sanitation grants; in which case, grants shall be a pro rata allocation among the eligible applicants.

...The law specifies that sanitation grants may not exceed 45% of the municipality's planned expenditures, but they may be less. The actual reimbursement rate is calculated by dividing the available appropriation by the total sanitation expenditures for all eligible municipalities that sent in applications. All applicants in the metropolitan area and all applicants in the nonmetropolitan area will receive the same reimbursement rate. This method of

of calculating the reimbursement rate is necessary and reasonable because the appropriation available in each calendar year is predetermined by law. Depending on the budgets submitted, the available appropriation may not be sufficient to reimburse all municipalities at the 45% rate. Therefore, since the appropriation is fixed, the reimbursement rate will increase or decrease as total budgets increase or decrease.

c. Grants for reforestation shall be fifty (50) percent of the applicant's planned expenditures for reforestation, unless the total of planned expenditures for all applicants exceeds fifty (50) percent of the funds designated for reforestation grants; in which case, grants shall be a pro rata allocation among the eligible applicants.

...By law, reforestation grants may not exceed 50% of the municipality's planned expenditures, but they may be less. The procedure for determining the actual reforestation reimbursement rate is the same as that described above for sanitation grants.

d. Grants for reforestation in eligible towns shall be ninety (90) percent of the town's planned expenditures for planting the first fifty (50) trees on public lands. Grants for planting in excess of fifty (50) trees in eligible towns shall be the lesser of fifty (50) percent of planned expenditures or forty ($40) dollars times the number of trees in excess of fifty (50) to be planted.

...The law contains a special provision for certain towns for reforestation grants. These towns are eligible for 90% reimbursement for expenses incurred in planting the first 50 trees on public property. After the initial 50 trees are planted, these towns receive the same reforestation reimbursement rate as do other eligible municipalities.

5. Request for Payment. A municipality receiving a sanitation and reforestation grant shall make request for payment upon forms provided by the Commissioner.

...Municipalities with approved disease control and reforestation programs are eligible for state reimbursement of costs incurred according to the allowable percentages and the initial allocation. The Request for Payment forms provided by the Commissioner insure a uniform and consistent vehicle for such reimbursements. The forms specify the information required to make the grant.

a. Payment periods shall be January 1 through March 31; April 1 through June 30; July 1 through September 30; and, October 1 through December 31 of each calendar year.

b. Requests for payment shall be due fifteen (15) days after the close of the preceding payment period.

...A quarterly reimbursement schedule is considered reasonable and necessary because it enables the participating municipalities to conduct more effective and extensive programs because the grants are made available on a regular basis throughout the year. This reimbursement schedule also allows the Department to monitor the programs between payment periods. If evidence is presented that a municipality is not adhering to these rules, the grant may be withheld until performance in the delinquent area(s) is improved. This is necessary and reasonable to insure that state funds are expended for the purposes for which they were intended.

c. Requests for payments may be for the lesser of actual costs incurred or costs not to exceed the limits established by the Commissioner during the payment period for which documentation can be produced upon request of the Commissioner. Requests may also be made for advance payments for planned expenditures for the succeeding period.

...In most instances municipalities will be reimbursed for a percentage of actual costs incurred in the given quarter. The municipality must maintain careful records and document all such expenses for which reimbursement is requested. In some situations municipalities have no evidence of the actual cost. An example of this is municipally owned equipment for which a usage rate (cost per mile or hour) has not been established by the municipality. Consequently, the Department has established usage rates for equipment commonly used in sanitation and reforestation activities. These rates are based on the average cost of such equipment depreciated over time and were derived upon consultation with municipal and state engineers. Municipalities must report their actual equipment costs or the rates established by the Department, whichever is less. The law also provides that municipalities may request advance payments for costs anticipated in the succeeding period.

d. Request for payment shall include:

(1) The population of the municipality making the request for payment;

(2) A statement of actual sanitation and reforestation costs for the payment period;

(3) If advance payments for planned expenditures are sought by the municipality, a statement of planned expenditure for the succeeding payment period;

(4) The signature of an authorized agent of the municipality making the request for payment; and,

(5) Notorization of the agent's signature.

...This section details the information that must be reported on each Request for Payment form. The population is necessary to determine if the applicant is eligible for reimbursements for in-kind contributions. The total sanitation and reforestation costs for the period are necessary to calculate the reimbursement to be made by the State. The authorized signature and notarization attest to the veracity of the information and costs included on the Request for Payment form.

e. Grant payments for actual sanitation and reforestation costs incurred shall be a percentage of the actual costs stated in the municipality's request for payment; that percentage being the same percentage used to make the initial grant award.

...The procedure for determining the reimbursement rates was described previously. These rates are applied to the original budget estimate submitted by the applicants. This is the basis upon which the initial award is made. This initial award is in the form of a statement to the applicant indicating the total amount of money from the State for which the applicant is eligible. It is not a payment. Payments are made only when a Request for Payment form is submitted giving the actual municipal expenses for the quarter. The percentage derived previously will be used to calculate the actual amount to be reimbursed.

(1) Advance grant payments for planned sanitation and reforestation expenditures shall be a percentage of the planned expenditures for the succeeding payment period stated in the municipality's request for payment; that percentage being the same percentage used to make the initial grant award.

...The law provides that advance payments be made to program participants for sanitation and reforestation programs to be conducted in the succeeding quarter if the applicant specifies an advance is necessary. Advance payments may be necessary in some municipalities because the revenue to conduct such programs may not be readily available or sufficient to meet the costs. The Legislature intended that such payments be made available to these municipalities so that sanitation and reforestation activities might be conducted on a regular and on-going basis.

Advance payments are made in the same manner as described above.

(a) In the event that planned expenditures exceed or are less than actual costs incurred by the municipality for a payment period for which advance payment was made, the appropriate adjustments shall be made in the next request for payment submitted by the municipality.

(b) In the event that over payment is made to the municipality by the Commissioner because of an advance over payment for the last payment period of the calendar year, the municipality shall be liable to the state for the amount of over payment, and shall make payment of this amount to the state within thirty (30) days after notice of such over payment is received.

...These sections detail how advance payments will be reconciled from one payment period to the next. If an advance payment is made in the first quarter, no additional payment will be made in the succeeding quarter unless actual expenses exceed the projected cost upon which the advance payment was made. Over payments must be returned to the Department of Agriculture at the end of each calendar year. All municipalities will be notified of any over payment. This is necessary and reasonable because grants are made only on the basis of actual costs incurred. If a municipality actually spends less than originally estimated when the advance was requested, it cannot profit from the advance payment.

6. Eligible Costs. Grants shall be based upon the total eligible cost to the municipality of its sanitation and reforestation program.

a. Sanitation activities on public and private lands which are eligible for grants shall include:

(1) Diseased tree identification and inspection;

(2) Disruption of common root systems;

(3) Trimming of elm and oak trees for purposes of disease control;

(4) Girdling of oak trees where appropriate for purposes of disease control;

(5) Removal and disposal of dead or diseased wood of elm and oak trees; and,

(6) Subsidies for trees removed from private property pursuant to Minn. Stat. (Supp., 1977), sec. 18.023, subd. 4.

...The eligible costs listed in this section are in accord with the definition of "sanitation" given in the law. Only the personnel, equipment and miscellaneous supply costs involved in carrying out these activities are eligible for reimbursement. Administrative and over head costs are not eligible for several reasons. First, the law is quite specific in its definition of "sanitation". Second, to include administrative and over head costs would serve to lower the reimbusement rate because the overall budgets would be considerably increased. Small cities with low administrative costs would be penalized at the expense of large cities with a large full time administrative staff and high over-head costs.

b. Reforestation activities on public lands which are eligible for grants shall include:

(1) Acquisition of nursery stock; and,

(2) Tree planting.

...The law specifically states that only reforestation activities on public property are eligible for state reimbursement. Only the cost of the trees and the labor and equipment involved in planting the trees is eligible for reimbursement. Tree maintenance costs after the initial planting are not eligible. This restriction is necessary and reasonable because of the limited appropriation available for reforestation. If other costs were allowed for the purposes of the grant, the reimbursement rate might drop substantially. This might, then, discourage municipalities from even attempting a limited reforestation program. In addition, the grant from the state was not meant to supplant the local program but rather to supplement it.

c. Grants shall be made only for costs incurred by the municipality in the actual and direct physical performance of sanitation and reforestation activities.

...This section limits reimbursements to costs incurred by the municipality in the actual and direct physical performance of activities relating to sanitation and reforestation. Administrative and overhead costs related thereto are not eligible. The reasons for eliminating these costs have been stated previously.

d. Grants shall be made for costs to be paid by:

(1) Ad valorem taxes;

(2) Special assessments pursuant to a municipal program whereby the sanitation activity is carried out by municipal employees or a contractor acting in behalf of the municipality; however, no assessment shall exceed the total of the sanitation cost less the amount of grant for such cost;

(3) A charge through direct invoice to a property owner pursuant to a municipal program whereby the sanitation activity is carried out by municipal employees or a contractor acting in behalf of the municipality; however, no charge against a property owner shall exceed the total sanitation cost less the amount of grant for such cost;

(4) Federal grants, except that no grant shall be made for costs paid pursuant to the Federal Comprehensive Employment and Training Act of 1973; and,

(5) In the case of a municipality with a population of less than 1000, documented "in-kind" services or voluntary work from or by private sources.

...This section refers to the sources of revenue which accrue to the municipality for the purpose of covering municipal expenses relating to sanitation and reforestation. The sources listed above are stated in the law.

If special assessments of charges through direct invoice are to be used, however, the municipality must become directly involved in the activity as described above. This is necessary to meet the intent of the Legislature to promote cost-sharing between the state and the municipality.

3 MCAR 1.0113 Grants-In-Aid for Wood Utilization and Disposal Systems.

A. The Commissioner may, within the monies 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. Such grants-in-aid may be made to:

1. Any home rule charter or statutory city of more than 40,000 population in the metropolitan area or a combination of such cities with a combined population of 40,000 under a joint powers agreement pursuant to Minn. Stat. sec. 471.59 (1976);

2. Any home rule charter or statutory city of more than 20,000 population outside the metropolitan area or a combination of such cities with a combined population of 20,000 under a joint powers agreement pursuant to Minn. State. sec. 471.59 (1976);

3. Any special purpose park and recreation board organized under a charter of a city of the first class;

4. Any non-profit corporation serving a city of the first class; or,

5. Any county.

...The law has broadened the eligibility for grants in this area. Previously, grants-in-aid were restricted to cities with populations exceeding 80,000, and to the entities described in 3 - 5 above. As the diseases spread throughout the state it is important to make such assistance available to a larger number of cities. This has necessitated these provisions.

B. Such grants shall be made with the following provisions:

1. The city (cities) or county has an approved shade tree disease control program as described in the act or these rules;

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

3. Grants-in-aid shall not be made 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 made by the Commissioner until he receives certified evidence of the actual cost of the equipment or site; and,

6. Allowable cost shall be determined by the Commissioner.

...All provisions in this section are the same as existing rule Agr 108.

C. 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:

a. It aids in the control of shade tree diseases;

b. It aids in the recovery of material or energy from wood;

c. It is located to accomplish the above with maximum efficiency and use of available facilities;

d. It is available to all parties, public and private;

e. It is able to render wood pest-risk free within five (5) days of delivery to the site unless an extension of time has been granted by the Commissioner based on existing circumstances of the disposal/utilization site.

f. It includes adequate manpower to operate and service equipment; and,

g. It provides for proper handling and the timely removal of processed wood from the site.

...Only one provision in this section has been changed from existing rule Agr 108. The time frame within which the wood must be rendered pest-risk free has been extended from 72 hours to 5 days. The time extension was made because the volumes in some areas have increased so rapidly. The optimal situation remains the same, however. All diseased wood should be disposed of immediately upon removal and delivery to the site.

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

a. Sites for Wood Disposal System:

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

(2) Shall be accessible by roadways that permit year-round truck traffic;

(3) Shall have adequate storage areas for both processed wood and equipment;

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

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

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

b. Equipment for Wood Disposal System:

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

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

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

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

4. Records.

a. Applicants receiving grants-in-aid under this rule shall keep detailed records concerning the operation of the wood disposal and utilization system and shall make these records available to the Commissioner at any reasonable time. Such records shall include, but not be limited to:

(1) Hours of operation;

(2) Clientele served;

(3) Volume of wood handled; and,

(4) Any other information deemed relevant by the Commissioner.

b. A yearly report containing a summation of these records shall be made to the Commissioner by December 1.

...The remaining section of the rules relating to the grant-in-aid program for wood utilization and removal remained the same as existing rule Agr 108.

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JUN / 1978
OFFICE OF HEARING EXAMINERS

State of Minnesota
Department of Agriculture

IN THE MATTER OF THE PROPOSED)
ADOPTION OF RULES OF THE DEPART-)
MENT OF AGRICULTURE GOVERNING)
THE SHADE TREE PROGRAM)

ORDER ADOPTING
REPORT OF
HEARING EXAMINER

The above-captioned matter came on for hearing before Hearing Examiner Howard L. Kaibel, Jr. of the Minnesota Hearing Examiner's Office. The hearing commenced on February 27, 1978 at 10:00 a.m. at the Minnesota Department of Transportation Building, Conference Room, Highway 12 in Rochester, Minnesota and was continued at the following times and places:

February 27, 1978	7:00 p.m.	Minnesota Valley Regional Library Auditorium 100 E. Main Street Mankato, Minnesota
February 28, 1978	10:00 a.m.	Veterans Service Building Conference Room D 20 W. 12th Street and Columbus Ave. St. Paul, Minnesota
March 1, 1978	2:00 p.m.	Southwest State University Lecture Center Room 217 Marshall, Minnesota
March 2, 1978	10:00 a.m.	Douglas County Court House South Wing Basement Meeting Room Alexandria, Minnesota
March 3, 1978	10:00 a.m.	University of Minnesota Duluth Campus Kirby Student Center Room 250 Duluth, Minnesota

The hearings were conducted pursuant to an Order for Hearing of the Commissioner (herinafter "the Department") dated January 1, 1978 and after proper notice required by Minn. Stat. §15.0412 (1977 Supp.) was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose and was published in the State Register.

The Report of Hearing Examiner in the above-entitled matter was issued by Howard L. Kaibel, Jr. on April 17, 1978, recommending that the proposed rules be adopted and promulgated as amended in Exhibit 8 and in Comment G after attention was given to the additional modifications suggested in the findings.

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 6th day of June, 1978 with the following changes:

(1) Background. Delete the last paragraph on page 3 which carries over to page 4.

The Department is of the opinion that this issue is not germane to this matter and is not appropriate to these findings.

(2) Finding 10. Delete the fourth paragraph dealing with 3 MCAR 1.0111 a. 4. b. (1) (c) (ii) (bb).

The Department has found that the evidence on the record supporting the allowance of the "pruning" of diseased trees as an alternative to the removal of low risk trees is not substantial and was outweighed by other evidence on the record showing that such an allowance, no matter how carefully worded, would open this provision to abuse.

Too many cities might view such a provision as a relaxation of the rules and of the need for on-going, aggressive sanitation programs. In the absence of a shade tree field staff and a larger regulatory staff, the monitoring of such a provision would be impossible. Close regulation would be essential if pruning of low risk elm trees were allowed. If not carefully and selectively administered, pruning, instead of removing, low risk elm trees could be hazardous to effective shade tree disease control efforts.

(3) Finding 17. Delete paragraph 3 starting with "Second, subsection A. 6. d. (2) and (3) (relating to assessments...", and all of paragraph 4.

The Department agrees that there is some degree of confusion regarding the eligibility of special assessments, and that this provision opens the possibility of a "loop-hole" in eligibility for grant reimbursement. The suggestion by the Hearing Examiner is contrary to the Legislative intent for this provision in the Act. Such restrictions on eligibility would be more restrictive than the Act itself. This was stated on the record by the Department. The inclusion of 3 MCAR 1.0112 A. 6. d. (2) and (3) are found to be necessary and reasonable based upon the evidence submitted by the Department supporting its inclusion.

(4) Finding 20. Delete paragraph 2 following "These sections of the rule, as proposed in Exhibit 8 are justified and reasonable..." and add a period.

The Department believes the provision in the Act pertaining to reforestation grants for eligible towns of less than 1000 population was made deliberately permissive, not restrictive, to allow for such grants to be made at 90%. The Legislature deviated from the more restrictive language used in reference to other reforestation grants and to sanitation grants. In both instances, the phrase "may not exceed" is used. However, when addressing the issue of reforestation grants to towns of less than 1000 population, the phrase "may include up to 90%" is used.

Although that language does not imply a mandatory grant of 90%, it does connote the intent of the Legislature to provide special incentives to these particular towns. This provision was included to make reforestation expecially appealing to such towns. That appeal may be severely diminished if the reimbursement rate were reduced significantly. As such, the Department does not agree the rule should be changed.

STATE OF MINNESOTA

Bill Walker
Commissioner of Agriculture

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OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION)
OF RULES OF THE DEPARTMENT OF AGRICULTURE) ORDER ADOPTING RULES
GOVERNING THE SHADE TREE PROGRAM)

The above-captioned matter came on for hearing before Hearing Examiner Howard L. Kaibel, Jr. of the Minnesota Hearing Examiner's Office. The hearing commenced on February 27, 1978 at 10:00 a.m. at the Minnesota Department of Transportation Building, Conference Room, Highway 12 in Rochester, Minnesota and was continued at the following times and places:

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March 2, 1978	10:00 a.m.	Douglas County Court House South Wing, Basement Meeting Room Alexandria, Minnesota
March 3, 1978	10:00 a.m.	University of Minnesota Duluth Campus Kirby Student Center Room 250 Duluth, Minnesota

The hearings were conducted after proper notice required by Minn. Stat. § 15.0412 (1977 Supp.) was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose and was published in the State Register.

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 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 3 MCAR 1.0109 through 3 MCAR 1.0113--Rules in Final Form are adopted this 6th day of June, 1978, pursuant to authority vested in me by Minn. Stat. § 15.0412 (1977 Supp.) and Minn. Stat. § 18.023.

It is also ordered that rules AGR 101 through AGR 108 are repealed upon final promulgation of 3 MCAR 1.0109 through 3 MCAR 1.0113.

STATE OF MINNESOTA



Bill Walker

Commissioner of Agriculture

PROPOSED RULES

Pursuant to the provisions of Minn. Stat. § 15.0411 to 15.052, the *State Register* publishes notices of hearing on proposed new or amended rules, including the full text of the new or amended rules, including the full text of the new or amended rule proposed for adoption, at least 30 days before the date set for the hearing.

Pursuant to Minn. Stat. § 15.0412, subd. 4, an agency may, with approval of the chief hearing examiner, incorporate by reference into the text of a rule, provisions of federal law, or rule, or other material which are 3000 words or more in length or would require five or more pages of print in the *State Register* and which are conveniently available to interested persons.

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend, or repeal a rule does not allow for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Agriculture

Proposed Rules Governing the Shade Tree Program

Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held at the following dates, times, and places and continuing until all persons have had an opportunity to be heard:

February 27, 1978, Minnesota Department of Transportation Building, Conference Room, Highway 52, Rochester, Minnesota at 10:00 a.m.

February 27, 1978, Minnesota Valley Regional Library, Auditorium, 100 East Main Street, Mankato, Minnesota at 7:00 p.m.

February 28, 1978, Veterans Service Building, Conference Room D, 20 West 12th Street and Columbus Avenue, Saint Paul, Minnesota at 10:00 a.m.

March 1, 1978, Southwest State University, Lecture Center Room 217, Marshall, Minnesota at 2:00 p.m.

March 2, 1978, Douglas County Courthouse, South wing basement meeting room, Alexandria, Minnesota at 10:00 a.m.

March 3, 1978, University of Minnesota Duluth Campus, Kirby Student Center Room 250, Duluth, Minnesota at 10:00 a.m.

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 hearings end, or for a longer period not to exceed 20 days if ordered by the Hearing Examiner.

The proposed rules, if adopted, would establish procedures and guidelines for administering the sanitation and reforestation programs; and would revise portions of Agr 101 through 106 dealing with the administration of the shade tree disease control program. 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 Minn. Stat. § 18.023 (Supp., 1977). 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 Minn. Stat. ch. 10A, requires each lobbyist to register with the Ethical Practices Board within five days after he commences lobbying. Lobbying includes attempting to influence rulemaking 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, Saint Paul, Minnesota 55155, Phone (612) 296-5615.

Bill Walker
Commissioner of Agriculture

Rules as Proposed

Chapter Four: 3 MCAR 1.0109 Through 3 MCAR 1.0113

These rules hereby repeal previous rules and regulations AGR 101 through AGR 108.

3 MCAR 1.0109 General.

A. Purpose and Authority. The rules contained herein are prescribed by the Commissioner pursuant to Minn. Stat. § 18.023, as amended, to implement a program to control Dutch elm disease and oak wilt by local units of government and to include procedures and criteria for three grant-in-aid programs. The provisions of these rules are in addition to those set forth in the act itself.

B. Definitions. For purposes of these rules, the following definitions, in addition to those in the act, shall apply:

1. "Commissioner" means the Commissioner of Agriculture or his designee.

2. "Shade tree" means any oak or elm tree situated in a disease control area approved by the Commissioner.

3. "Shade tree disease" means Dutch elm disease caused by *Ceratocystis ulmi*, or oak wilt caused by *Ceratocystis fagacearum*.

4. "Town" means township as described in Minn. Stat. § 18.023 subd. 1 (1976).

5. "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 the Commissioner.

6. "Disease control area" means an area designated by a municipality in which it will conduct a shade tree disease control program according to these rules. The extent of this control area shall be determined by the municipality and approved by the Commissioner.

7. "Equipment" means machinery or devices which singularly or in combination are designed, constructed, or 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.

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

9. "The act" means Minn. Stat. § 18.023, as amended.

10. "Population" means the population of a municipality as published in the U.S. Bureau of Census, 1970 census.

3 MCAR 1.0110 Tree inspectors.

A. Tree inspector employment and qualifications.

1. A municipality shall either individually or jointly with one (1) or more other municipalities employ or retain a tree inspector, on a continuous year round basis as provided by the act.

2. Provisional appointments.

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

b. This appointment shall be dependent upon approval by the Commissioner after determining the competence of the appointee.

c. The provisional appointment shall not be extended and the appointee shall pass the tree inspector examination to become certified.

d. The provisional appointment may be withdrawn for cause by the Commissioner upon notice and hearing.

3. A tree inspector shall be able to demonstrate the following qualifications:

a. Identify all native tree species, with or without leaves, common to his/her work area, and all felled or downed trees with bark intact;

b. Know and understand the biology of oak wilt and Dutch elm disease;

c. Be familiar with the problems of elm trees and oak trees other than those of Dutch elm disease and/or oak wilt, as well as identifying symptoms characteristic of these problems that affect oak and elm trees;

d. Know the proper method of collecting samples for disease diagnosis;

e. Know the appropriate Minnesota laws and rules relative to oak wilt and Dutch elm disease;

f. Know the approved control methods for oak wilt and Dutch elm disease; and,

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3 MCAR 1.0110

g. Be familiar with the recommended tree species to be used in the replanting program, their planting requirements (available through the University of Minnesota Extension Service), and the care of these trees after planting.

4. If a municipality fails to appoint a tree inspector, an appointment may be made by the Commissioner pursuant to the act. Ten (10) 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 ninety (90) days, even though the municipality may appoint its own inspector prior to the expiration of ninety (90) days. This provision shall not apply to a municipality that has suspended or terminated the employment of a tree inspector for cause.

B. Certification of tree inspector.

1. A tree inspector shall be certified upon the passing of an examination prescribed by the Commissioner for the purpose of determining that the applicant possesses the necessary qualifications set forth in this rule. The Commissioner shall notify by mail each applicant and municipality of the time and date for such an examination. The applicant shall be notified of the results of the examination within fifteen (15) days after its administration.

2. After certification, a tree inspector shall be required to annually attend at least one (1) program of continuing education approved by the Commissioner. Failure to attend one (1) such continuing education program, or failure to meet alternative certification requirements, shall terminate certification.

C. Certification alternatives. Upon written application, the Commissioner may grant to an individual an alternative for the certification requirement and procedures set forth in this rule provided that:

1. There is good cause why the individual cannot comply with the provision of this rule;

2. The requirements and procedures provided for the alternative is equivalent to those set forth in this rule;

3. When an examination is involved, the subject matter and difficulty of the examination is equivalent to the examination for which the alternative is granted;

4. The spirit and intent of the act and these rules are not violated; and,

5. The environment of the public will not be adversely affected by the alternative requirements or procedures.

3 MCAR 1.0111 Shade tree disease control program.

A. The shade tree disease control program of all municipalities affected by these rules shall include as a minimum the following elements:

1. Control area. Each municipality shall designate an area or areas in which the municipality shall enact control procedures for Dutch elm disease and/or oak wilt. The extent of the control areas will be determined by the municipality and approved by the Commissioner.

2. Program plan. Each municipality shall prepare a shade tree disease control program plan detailing the manner in which these rules shall be fulfilled.

3. Methods of identifying diseased shade trees. Diseased shade trees shall be identified by generally accepted field symptoms such as wilting, yellowing of leaves, and/or staining of wood under the bark. Confirmation, when determined to be necessary by the certified municipal tree inspector, shall be made by the Minnesota Department of Agriculture Tree Disease Laboratory, or other laboratories approved by the Commissioner.

4. Dutch elm disease and oak wilt control.

a. Tree inventory. Each municipality shall maintain a reasonable estimate of the number of elms, oaks, and other tree species on both public and private property within the control area of the municipality as well as those regions of the municipality outside this control area. Estimates of the tree count shall be made by acceptable forest inventory procedures. These records shall be permanent and shall be filed with the Commissioner.

b. Dutch elm disease control.

(1) Sanitation. All elm bark beetles, trees affected with Dutch elm disease, and any dead or weakened elm wood arising from any cause shall be eliminated in a timely manner within the control area of the municipality. This shall include trees on private property.

(a) Prior to April 1 of each year, municipalities shall inspect all public and private properties for elm wood or logs stumps that could serve as bark beetle breeding sites, and require by April 1, removal, or debarking, of all wood, logs, and stumps to be retained. Before making any inspection on private property within a municipality, it shall be the duty of the municipality to give notice of said inspection to all affected residents either through an individual, an oral or a written notice, or by publishing said notice in a local newspaper.

(b) Each municipality shall inspect all elm trees within a control area at *least* twice during the growing

season (by June 15 and August 15) for Dutch elm disease symptoms. For a control program to be most effective, it is *highly recommended* that continuous inspections be initiated in those areas where the incidence of the disease is severe.

(c) Due to a summer generation of elm bark beetles emerging in late July, the municipality's tree inspector shall be responsible for:

(i) Visually identifying whether a tree infected with Dutch elm disease has extensive wilt or is only showing early symptoms of the disease; and

(ii) Categorizing trees infected with Dutch elm disease as either high risk trees or low risk trees.

(aa) High risk elm trees shall be those trees that are dead or have extensive wilt (fifty (50) percent or more of the tree is wilted). Such trees shall be identified, marked in a distinctive manner to indicate their high risk status, and removed on private and public property within twenty (20) days of notification and/or by July 15, whichever is first. Any high risk tree identified and marked after July 15 shall be removed within twenty (20) days of notification.

(bb) Low risk elm trees shall be those trees that show early stages of infection in June or subsequently during the growing season with those symptoms not progressing beyond the fifty (50) percent wilting point. Such trees shall be identified, marked, and removed before April 1 of the following year. Municipalities shall make every reasonable effort to remove all low risk trees on private and public property within twenty (20) days of notification, but in no case shall it be later than April 1 of the following year. Only methods of removal approved by the Commissioner shall be utilized.

(d) After categorization, marking, and 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 the time limit established by the municipality, not to exceed twenty (20) days. Methods of removal shall be approved by the Commissioner and shall be consistent with applicable air quality and solid waste rules.

(e) After notification, trees or parts thereof not removed within the time limit established by the municipality, not to exceed twenty (20) days, shall be considered "high risk" and shall be removed by the municipality within twenty (20) days and the costs thereof assessed against the property.

(f) Stumps of *all* elm trees shall be removed or debarked to the ground-line to eliminate all possibilities of beetle habitation.

(g) Stockpiling of elm logs with bark intact is permitted during the period September 15 through April 1 of the following year at locations specifically approved in writing by the municipality.

(2) Root graft control. It is recommended to a municipality that all common root systems of trees growing within forty (40) to fifty (50) feet of a tree infected with Dutch elm disease should be disrupted by chemical or mechanical means as approved by the Commissioner to prevent root graft spread of Dutch elm disease. (Refer to the Agricultural Extension Service, University of Minnesota Extension Folder 211-Revised 1977, "The Dutch Elm Disease", pp. 8–12).

c. Oak wilt. Although oak wilt and Dutch elm disease are both vascular infections caused by a fungus, each infection shall be dealt with separately. Control methods prescribed for each disease are different, and again, shall be dealt with separately. Oak wilt control shall include the disruption of root grafts and the prevention of infection by insect-carried spores (overland spread).

(1) Root graft control. Since most oak trees are susceptible to the fungus through root grafts, it is recommended to a municipality that all common root systems of trees growing within forty (40) to fifty (50) feet of a diseased oak tree of the same species should be disrupted by chemical or mechanical means to prevent the root graft transmission of the oak wilt fungus as approved by the Commissioner. (Refer to Agricultural Extension Service, University of Minnesota Extension Folder 310-1975, "Oak Wilt Disease").

(2) To control the overland spread of the disease, a municipality should:

(a) Avoid pruning or other mechanical damage during the most susceptible period of May and June. A tree inspector may determine that emergency pruning by utility companies is necessary during this susceptible period if trees interfere with utility lines. If wounding is unavoidable during this period, as in the aftermath of a storm or when the tree interferes with utility lines, a tree wound dressing shall be applied.

(b) Disrupt root grafts by chemical or mechanical means if the disease fungus is likely to spread in this

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manner. Red oak trees diagnosed as having oak wilt shall be girdled as soon as they are detected in order to reduce spore production. Girdling should be done only in areas where a weakened tree will not constitute a hazard to life and/or property should it fall.

(c) Identify, mark, and remove from both private and public property by April 1 of the following year those trees in the red oak group that wilt in July and August that could have spores on them the following May or June. The trees in this group are the northern red oak (*Quercus rubra*); northern pin oak (*Quercus ellipsoidalis*); black oak (*Quercus velutina*); and scarlet oak (*Quercus coccinea*).

(d) After notification by the municipality, private property owners shall remove and properly dispose of diseased oak trees including any above ground parts thereof by April 1 using methods approved by the Commissioner and consistent with applicable air quality and solid waste rules.

(e) Trees or parts thereof not removed on or before April 1 by the property owner shall be removed by the municipality within twenty (20) days after notification and the cost thereof assessed against the property.

(f) Stumps of red oak trees removed due to oak wilt shall be removed or debarked to the ground-line to eliminate all possibilities of spore formation.

5. Records.

a. Shade tree disease program records shall be kept by each municipality and shall be made available for examination at reasonable times by the Commissioner. These records shall include, but not be limited to, the following:

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

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

(3) An initial inventory of trees;

(4) The number of diseased trees identified on private and public property, and the dates of identification;

(5) The number and the dates of trees removed, both diseased and other, on private and public property; and,

(6) The number of log piles found which were a hazard in the spread of a shade tree disease.

b. A yearly report containing a summation of these records shall be made to the Commissioner by December 1.

6. Program review.

a. By November 15 of each year, municipalities shall submit to the Commissioner their shade tree disease control and replanting programs for the following calendar year. The Commissioner shall review these programs to determine if the requirements of the law and the applicable rules have been met.

b. Final determination of municipal program compliance with the rules shall rest with the Commissioner.

c. The Commissioner may require that changes be made in any municipal program whenever a determination is made that such changes are needed to comply with the act or these rules.

3 MCAR 1.0112 Grants-in-aid to municipalities for sanitation and reforestation program.

A. The Commissioner may, in the name of the state and within the limits of appropriations provided, make grants-in-aid to a municipality with an approved disease control program for the partial funding of municipal sanitation and reforestation programs.

1. Sanitation grants. Grants to any municipality for sanitation shall not exceed forty-five (45) percent of the municipality's total cost for sanitation approved by the Commissioner. The total cost may include any amounts paid for sanitation by special assessments, ad valorem taxes, federal grants, or other funds. A municipality may assess to the abutting property not more than fifty (50) percent of the expense of treating with an approved method or removing diseased shade trees located on street terraces or boulevards to that abutting property.

a. Grants shall not be made to a municipality if the total cost of tree removal has been incurred solely by the individual property owner and the municipality has not reduced the cost to the property owner via direct subsidy or reduced special assessment. Provision is made for municipalities with population of less than 1,000 pursuant to Minn. Stat. sec. 18.023, subd. 3c, as amended.

2. Reforestation grants. Grants to any municipality for reforestation shall not exceed either fifty (50) percent of the cost to the municipality for reforestation, or forty (40) dollars multiplied by the number of trees planted on public lands pursuant to the reforestation program, whichever is less.

a. Reforestation grants to a municipality shall be limited in any calendar year to grants for not more than the number of trees removed from public lands in the sanitation program in the previous calendar year except during the first year of an approved disease control program. During the

first year of an approved disease control program, there shall be no restriction upon the number of trees for which grants may be made.

b. Reforestation grants to any county with an approved disease control program may include up to ninety (90) percent of the cost of planting the first fifty (50) trees on public lands in a town not defined as a municipality and of less than 1,000 population, upon the town's application to the county and county's designation of the town as a disease control area.

c. Reforestation grants to towns *with an approved disease control program* which are defined as municipalities in the act and are less than 1,000 in population may include up to ninety (90) percent of the cost of planting the first fifty (50) trees on public lands.

3. Program eligibility. Any municipality is eligible to receive sanitation and reforestation grants upon submitting to the Commissioner by November 15 a completed program application form provided by the Commissioner, and upon receiving notice of an approved disease control program designation. Extensions may be granted for good cause shown.

a. The program application shall serve as the basis for approving the municipality's shade tree disease control program.

b. Approval shall be granted only upon the municipality's agreement to conduct its sanitation program in conformance with these rules and recommended disease control practices issued by the Commissioner.

c. Approval shall only be granted upon the municipality's agreement to conduct its reforestation program in conformance with the recommended practices issued by the Minnesota Agricultural Extension Service.

d. Program approval may be revoked upon a determination by the Commissioner that the municipality has failed to conduct its sanitation and reforestation program in conformance with the standards set forth in this rule.

e. Sanitation and reforestation grants may be terminated upon the municipality's failure to maintain an approved shade tree disease control program and upon evidence that proper record-keeping and documentation has not been maintained.

4. Program application. To receive a sanitation and reforestation grant, a municipality shall submit to the Commissioner by November 15 a completed program application form provided by the Commissioner.

a. A municipality's program application shall include, but not be limited to, the following information:

(1) An inventory of shade trees within the municipality's disease control area and an estimate of the distribution of these shade trees between public and private lands;

(2) A complete description of the municipality's sanitation and reforestation programs which includes, but is not limited to:

(a) The method and schedule of diseased trees surveys;

(b) The extent of disease control tree trimming activities;

(c) The policies for removal of trees on public lands;

(d) The policies for removal of trees on private lands;

(e) The method and location of disposal of tree wastes;

(f) The policies for planting new shade trees, including;

(i) The source of nursery stock;

(ii) Species planted;

(iii) Type of stock planted;

(iv) Distribution of species; and,

(v) Other relevant information;

(g) The methods of financing sanitation and reforestation programs, including:

(i) The use of funds derived from general tax levies;

(ii) Special assessments;

(iii) Federal funds;

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3 MCAR 1.0111

(iv) Other sources of funding; and,

(h) A complete description of the municipality's subsidy program, if any.

(3) A statement of planned expenditures for the sanitation and reforestation program for the calendar year.

(4) A copy of local ordinances and resolutions authorizing the local shade tree program.

b. Grants for sanitation shall be forty-five (45) percent of the applicant's planned expenditures for sanitation, unless the total planned expenditures for all applicants exceeds forty-five (45) percent of the funds designated for sanitation grants; in which case, grants shall be a pro rata allocation among the eligible applicants.

c. Grants for reforestation shall be fifty (50) percent of the applicant's planned expenditures for reforestation, unless the total of planned expenditures for all applicants exceeds fifty (50) percent of the funds designated for reforestation grants; in which case, grants shall be a pro rata allocation among the eligible applicants.

d. Grants for reforestation in eligible towns shall be ninety (90) percent of the town's planned expenditures for planting the first fifty (50) trees on public lands. Grants for planting in excess of fifty (50) trees in eligible towns shall be the lesser of fifty (50) percent of planned expenditures or forty ($40) dollars times the number of trees in excess of fifty (50) to be planted.

5. Request for payment. A municipality receiving a sanitation and reforestation grant shall make request for payment upon forms provided by the Commissioner.

a. Payment periods shall be January 1 through March 31; April 1 through June 30; July 1 through September 30; and, October 1 through December 31 of each calendar year.

b. Requests for payment shall be due fifteen (15) days after the close of the preceding payment period.

c. Requests for payments may be for the lesser of actual costs incurred or costs not to exceed the limits established by the Commissioner during the payment period for which documentation can be produced upon request of the Commissioner. Requests may also be made for advance payments for planned expenditures for the succeeding period.

d. Request for payment shall include:

(1) The population of the municipality making the request for payment;

(2) A statement of actual sanitation and reforestation costs for the payment period;

(3) If advance payments for planned expenditures are sought by the municipality, a statement of planned expenditure for the succeeding payment period;

(4) The signature of an authorized agent of the municipality making the request for payment; and,

(5) Notorization of the agent's signature.

e. Grant payments for actual sanitation and reforestation costs incurred shall be a percentage of the actual costs stated in the municipality's request for payment; that percentage being the same percentage used to make the initial grant award.

(1) Advance grant payments for planned sanitation and reforestation expenditures shall be a percentage of the planned expenditures for the succeeding payment period stated in the municipality's request for payment; that percentage being the same percentage used to make the initial grant award.

(a) In the event that planned expenditures exceed or are less than actual costs incurred by the municipality for a payment period for which advance payment was made, the appropriate adjustments shall be made in the next request for payment submitted by the municipality.

(b) In the event that over payment is made to the municipality by the Commissioner because of an advance over payment for the last payment period of the calendar year, the municipality shall be liable to the state for the amount of over payment, and shall make payment of this amount to the state within thirty (30) days after notice of such over payment is received.

6. Eligible costs. Grants shall be based upon the total eligible cost to the municipality of its sanitation and reforestation program.

a. Sanitation activities on public and private lands which are eligible for grants shall include:

(1) Diseased tree identification and inspection;

(2) Disruption of common root systems;

(3) Trimming of elm and oak trees for purposes of disease control;

(4) Girdling of oak trees where appropriate for purposes of disease control;

(5) Removal and disposal of dead or diseased wood of elm and oak trees; and,

(6) Subsidies for trees removed from private property pursuant to Minn. Stat. § 18.023, subd. 4. (Supp., 1977)

b. Reforestation activities on public lands which are eligible for grants shall include:

(1) Acquisition of nursery stock; and,

(2) Tree planting.

c. Grants shall be made only for costs incurred by the municipality in the actual and direct physical performance of sanitation and reforestation activities.

d. Grants shall be made for costs to be paid by:

(1) Ad valorem taxes;

(2) Special assessments pursuant to a municipal program whereby the sanitation activity is carried out by municipal employees or a contractor acting in behalf of the municipality; however, no assessment shall exceed the total of the sanitation cost less the amount of grant for such cost;

(3) A charge through direct invoice to a property owner pursuant to a municipal program whereby the sanitation activity is carried out by municipal employees or a contractor acting in behalf of the municipality; however, no charge against a property owner shall exceed the total sanitation cost less the amount of grant for such cost;

(4) Federal grants, except that no grant shall be made for costs paid pursuant to the Federal Comprehensive Employment and Training Act of 1973; and,

(5) In the case of a municipality with a population of less than 1,000, documented "in kind" services or voluntary work from or by private sources.

3 MCAR 1.0113 grants-in-aid for wood utilization and disposal systems.

A. The Commissioner may, within the monies 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. Such grants-in-aid may be made to:

1. Any home rule charter or statutory city of more than 40,000 population in the metropolitan area or a combination of such cities with a combined population of 40,000 under a joint powers agreement pursuant to Minn. Stat. § 471.59 (1976);

2. Any home rule charter or statutory city of more than 20,000 population outside the metropolitan area or a combination of such cities with a combined population of 20,000 under a joint powers agreement pursuant to Minn. Stat. § 471.59 (1976);

3. Any special purpose park and recreation board organized under a charter of a city of the first class;

4. Any non-profit corporation serving a city of the first class; or,

5. Any county.

B. Such grants shall be made with the following provisions:

1. The city (cities) or county has an approved shade tree disease control program as described in the act or these rules;

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

3. Grants-in-aid shall not be made 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 made by the Commissioner until he receives certified evidence of the actual cost of the equipment or site; and,

6. Allowable cost shall be determined by the Commissioner.

C. 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:

a. It aids in the control of shade tree diseases;

b. It aids in the recovery of material or energy from wood;

KEY: Existing rules are printed in standard type face, with ~~strike outs~~ to indicate deleted language and underlining to indicate new language. Strike outs and underlining in proposed rules indicate changes from original to proposed new language. Strike outs and underlining in adopted rules indicate changes from proposed to adopted language.

3 MCAR 1.0113

c. It is located to accomplish the above with maximum efficiency and use of available facilities;

d. It is available to all parties, public and private;

e. It is able to render wood pest-risk free within five (5) days of delivery to the site unless an extension of time has been granted by the Commissioner based on existing circumstances of the disposal/utilization site.

f. It includes adequate manpower to operate and service equipment; and,

g. It provides for proper handling and the timely removal of processed wood from the site.

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

a. Site for wood disposal systems:

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

(2) Shall be accessible by roadways that permit year-round truck traffic;

(3) Shall have adeuqate storage areas for both processed wood and equipment;

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

(5) Shall be in compliance with all applicable federal and state statutes, rules, and regulations; and,

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

b. Equipment for wood disposal systems:

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

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

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

(4) 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 timelines of applications and other administrative considerations, the Commissioner may set deadlines for consideration of requests which shall be published in the *State Register* at least thirty (30) days prior to the deadline. Requests for payments shall include the following:

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

b. Additional documents or other information deemed relevant by the Commissioner.

4. Records.

a. Applicants receiving grants-in-aid under this rule shall keep detailed records concerning the operation of the wood disposal and utilization system and shall make these records available to the Commissioner at any reasonable time. Such records shall include, but not be limited to:

(1) Hours of operation;

(2) Clientele served;

(3) Volume of wood handled; and,

(4) Any other information deemed relevant by the Commissioner.

b. A yearly report containing a summation of these records shall be made to the Commissioner by December 1.

Department of Education
Board of Education
Temporary Rules Governing Instructional Materials for Pupils Attending Nonpublic Schools

Notice of Opportunity for Public Comment

The State Board of Education has proposed the following temporary rules in response to the United States District Court ,Order (MCLU v Casmey), directing that the Minnesota Department of Education shall adopt such temporary rules pursuant to Laws of 1977, ch. 443, § 2, subd. 5, as are necessary to incorporate the terms of that Order. The temporary rule in the *State Register*, October 3, 1977, Vol. 2, Number 13, page 693 is superseded.

TEST PATTERN TEST PATTERN
ADDRESS TEST ADDRESS
CITY TESTCITY MN
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CITY TESTCITY MN
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ALLENDORF MARSHALL
220 GRAIN EX 400 S 4TH
MPLS MN
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ALLERS JOHN
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BLOOMINGTON MN
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ANCHOR BLOCK COMPANY
PO BOX 3360
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ANDERSON HERBERT
418 8TH ST. SO.
VIRGINIA MN
55792

ANDERSON MARY
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EDINA MN
55436

ANDERSON STANFORD P
14600 MINNETONKA BLVD
MINNETONKA MN
55343

ARNOLD ROBERT MESPA
41 SHERBURNE
ST PAUL MN
55103

ARROWHEAD ECONOMIC OP AGENCY
CO S BRUSTUN BOX 1066
VIRGINIA MN
55792

ASMUSSEN,DENNIS,MPIRG
3036 UNIV AVE SE
MPLS MN
55414

ASSOCIATED GEN CONTROF MN
48 E 8TH STREET
ST PAUL MN
55101

BABCOCK LOCHER NELSON ET AL
118 E MAIN ST
ANOKA MN
55303

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CITY TESTCITY MN
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CITY TESTCITY MN
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MPLS MN
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AMER CAMPING ASSN
3639-21/2 ST N.E.
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BOX 3047
MANKATO MN
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ANDERSON JAMES
7703 NORMANDALE RD
MPLS MN
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ANTHONY DICK WDSM RADIO
230 E SUPR ST
DULUTH MN
55102

ANTI-TRUST DIV.ATTY GEN.
160 STATE OFF BLDG
ST PAUL MN
55155

ARROWHEAD REG. DEV COMM.
211 W 2ND ST
DULUTH MN
55802

ARROWHEAD REGIONAL DEV CO
200 ARROWHEAD PLACE
DULUTH MN
55802

ASSN OF MINN COUNTIES
55 SHERBURNE AVE #203
ST PAUL MN
55103

ASSN RESIDENCES FOR RETAR
459 RICE SUITE 301
ST PAUL MN
55103

BADALICH JOHN P
2025 THOMPSON AVE
SO ST PAUL MN
55075

BARATTO DIVINE M
1192 BUSH ST
ST PAUL MN
55106

BARRETT FRED
ST LOUIS CO COURT HOUSE
DULUTH MN

BARTHOLOW HAROLD E FIRE CHF
2600 109 AVE N W
COON RAPIDS MN
55433

BEMIDJI STATE COLLEGE
PLACEMENT BUR. J. C. BRADY
BEMIDJI MN
56601

BERGERUD ALF
300 ROANOKE BLDG
MPLS MN
55402

BEUTEL ROBERT
2200 SILVER LAKE RD
NEW BRIGHTON MN
55112

BLADIN PAPER CO W J LICKE
115 1ST ST SW
GRAND RAPIDS MN
55744

BOLTON MALCOLM
422 ALDRICH AVE NO
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55405

BOWMAN & BRUNS ATTN P MASON
1616 PIONEER BLDG
ST PAUL MN
55101

BRIGGS & MORGAN - B F FRIEL
2200 W 1ST NATL BK BLDG
ST PAUL MN
55101

BROEKER JOHN
2850METRO DR. SUITE 504
BLOOMINGTON MN
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BROWN H D
4961 KINGSBERRY LANE
MINNETONKA MN
55343

BRUBACHER RICHARD COMM ADM
208 ADM BLDG
ST PAUL MN
55101

BUCHHOLTZ CHARLES
5044 BRENT AVE E
INV GRV HTS MN
55075

BURGER ALBERT
600 DEGREE OF HONOR BLD
ST PAUL MN
55101

CABLE COMM SYST-H SARRAZIN
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HECTOR MN
55342

CARLSON CARL L
7516 80TH ST S
COTTAGE GROVE MN
55016

CARLSON VERNE E
BOX 755 CITY HALL
WILLMAR MN
56201

CHAVARRIA ADAM
1325 W 251/2 ST APT 206
MPLS MN
55405

CHERCHES CHRIS CITY MGR
5005 MIKA BLVD
ST LOUIS PARK MN
55416

CHRISTIANSEN FREDRIK
RM 505 CAPITOL SQ BLDG
ST PAUL MN
55155

CHRYSALIS CENTER FOR WOMEN
2104 STEVENS AVE S
MPLS MN
55404

CITY OF ROBBINSDALE
C LARSON 4221 LAKE RD
ROBBINSDALE MN
55422

CLARKSON J.B.
2350 I.D.S. CENTER
MINNEAPOLIS MN
55402

BECK PAT
953 HYACINTH AVE
ST PAUL MN
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212 N ELK ST
BELLE PLAINE MN
56011

BERGSETH THOMAS
1011 NICOLLET MALL
MPLS MN
55403

BEST FLANAGAN ET AL
4040 IDS CENTER
MPLS MN
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BLOMQUIST BARRY L

NORTH BRANCH MN
55056

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BLOOMINGTON MN
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BREHL JAMES W
332 HAMM BLDG
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BRICK PHILIP D
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DOW CHEMICAL
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MIDLAND MI
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COURT HOUSE
BRAINERD MN
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STATE PLAN 101 CAP SQ
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PRESS RM STATE CAPITOL
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