

1 Department of Agriculture

2

3 Adopted Permanent Rules Relating to Local Implementation of

4 State Pesticide Control Regulations

5

6 Rules as Adopted

7 1505.4000 PURPOSE.

8 Parts 1505.4000 to ~~1505.4110~~ 1505.4130 provide the
9 administrative procedures and requirements for local units of
10 government to develop delegation agreements with the
11 commissioner for local implementation of the state pesticide
12 control law.

13 1505.4010 SCOPE.

14 Parts 1505.4000 to ~~1505.4110~~ 1505.4130 apply to all local
15 units of government. No local unit of government is allowed to
16 implement any portion of the state pesticide control law at the
17 local level except by adoption of a delegation agreement which
18 has been signed by the commissioner or as specifically provided
19 by Minnesota Statutes, section 18.81 or 18B.09. Portions of the
20 state pesticide control law which are available for delegation
21 to local units of government are limited to: Minnesota
22 Statutes, section 18B.07, subdivision 3 (identification of
23 proper posting, according to product labeling, of areas where
24 pesticides have been applied); ~~Minnesota Statutes, section~~
25 ~~18B.07, subdivision 3~~ 4 (identification of maintenance of
26 proper safeguards, according to MDA requirements as provided in
27 parts 1505.3010 to 1505.3150, to prevent incidents); ~~Minnesota~~
28 ~~Statutes, section 18B.07, subdivision 4~~ 5 (identification of
29 proper backflow prevention devices when public water supplies
30 are used in filling pesticide application equipment); ~~Minnesota~~
31 ~~Statutes, section 18B.07, subdivision 5~~ 6 (identification of
32 proper anti-backsiphoning devices when public waters are used
33 for filling pesticide application equipment); ~~Minnesota~~
34 ~~Statutes, section 18B.07, subdivision 6~~ 8 (identification of
35 proper disposal of pesticide containers); ~~Minnesota Statutes,~~

1 section ~~18B.07~~ 18B.08, subdivision ~~8~~ 1 (confirmation of the
 2 holding of valid state permits for chemigation); ~~(Minnesota~~
 3 ~~Statutes, section 18B.08, subdivision 1~~ ~~and 3~~ (identification
 4 of proper backflow prevention for chemigation
 5 systems); ~~(Minnesota Statutes, section 18B.08~~ 18B.14,
 6 subdivision 3 ~~2, paragraph (a),~~ (confirmation of the holding
 7 of valid permitting for bulk storage of pesticides); ~~(Minnesota~~
 8 ~~Statutes, section 18B.14~~ 18B.31, subdivision 2 ~~paragraph~~
 9 ~~(a)~~ subdivisions 1 to 3 (confirmation of the holding of valid
 10 state dealer licensing for wholesale or retail sale of
 11 restricted use or bulk pesticides); and ~~(Minnesota Statutes,~~
 12 ~~section 18B.31~~ sections 18B.32, subdivisions 1, and 2 ~~and 3~~);
 13 18B.33, subdivisions 1 to 3; 18B.34, subdivisions 1 and 2; and
 14 18B.36, subdivision 1 (confirmation of the holding of valid
 15 licensing or certification for commercial ~~(Minnesota Statutes,~~
 16 ~~sections 18B.32, subdivisions 1 and 2, and 18B.33, subdivisions~~
 17 ~~1, 2, and 3) or noncommercial~~ ~~(Minnesota Statutes, section~~
 18 ~~18B.34, subdivisions 1 and 2)~~ application of pesticides; ~~and~~
 19 ~~private application of restricted use pesticides~~ ~~(Minnesota~~
 20 ~~Statutes, section 18B.36, subdivision 1~~ or noncommercial or
 21 private application of restricted use pesticides). All areas of
 22 the pesticide control law related to product registration,
 23 issuance of licenses or permits, or collection of
 24 pesticide-related fees or surcharges are retained by the
 25 department. Local units of government will not be allowed to
 26 ban the use or application of specific pesticide active
 27 ingredients or formulations. Ordinances by local units of
 28 government that prohibit or regulate any matter relating to the
 29 registration, labeling, distribution, sale, handling, use,
 30 application, or disposal of pesticides ~~is~~ are preempted by
 31 Minnesota Statutes, section 18B.02.

32 1505.4020 DEFINITIONS.

33 Subpart 1. **Scope.** The definitions in this part and in
 34 Minnesota Statutes, section 18B.01, apply to parts 1505.4000 to
 35 ~~1505.4110~~ 1505.4130.

1 Subp. 2. **Commissioner.** "Commissioner" means the
2 commissioner of agriculture.

3 Subp. 3. **Delegation agreement.** "Delegation agreement"
4 means a written agreement between the commissioner and a local
5 unit of government or joint powers organization formed under
6 Minnesota Statutes, section 471.59, for performance of specific
7 regulatory duties.

8 Subp. 4. **Department.** "Department" means the Department of
9 Agriculture.

10 Subp. 5. **Local implementation proposal.** "Local
11 implementation proposal" means a document developed by a local
12 unit of government to be submitted to and evaluated by the
13 commissioner regarding merits of a proposed program for the
14 implementation of the state pesticide control law by the local
15 unit of government.

16 Subp. 6. **Local implementation program.** "Local
17 implementation program" means the program to be carried out by
18 the local unit of government upon completion and adoption of a
19 delegation agreement.

20 1505.4030 PROCEDURE.

21 Subpart 1. **Applicability.** A local unit of government that
22 decides to develop a delegation agreement for the implementation
23 of the state pesticide control law must use the procedure
24 provided in this part to facilitate the development of the local
25 implementation proposal, provide for public participation, and
26 promote intergovernmental coordination.

27 Subp. 2. **Resolution to develop a local ~~control~~**
28 **implementation proposal.** The governing body, council, or board
29 of a local unit of government that decides to develop a
30 delegation agreement for the purpose of local implementation of
31 the state pesticide control law must adopt a resolution to
32 develop a local implementation proposal.

33 Subp. 3. **Notice of decision to develop proposal.** Within
34 30 days after adoption of a resolution to develop a local
35 implementation proposal, the governing body or its agent must:

1 A. send a copy of the resolution, as adopted, along
2 with any description or supporting documents to the
3 commissioner; and

4 B. publish the resolution, as adopted, along with any
5 description or supporting documents in a minimum of ~~two~~
6 ~~newspapers~~ one newspaper of general circulation that serve the
7 geographic area affected. The resolution, description, or
8 supporting documents must include a name, address, and telephone
9 number of a contact person.

10 The commissioner shall, within ~~±5~~ 30 days of receipt of a
11 copy of the resolution, provide notification of the local unit
12 of government's ~~decision~~ resolution to the general public
13 through publication of a notice in the State Register.

14 Subp. 4. **Public informational meetings.** Within 90 days of
15 adoption of the resolution to develop a local implementation
16 proposal, and before the local unit of government submits its
17 proposal to the department for review, the local unit of
18 government must hold at least one public informational meeting
19 for the purpose of public education and receipt of public
20 input. Notice of the public meeting must be published in at
21 least one newspaper of general circulation in the affected
22 geographic area. Public informational meetings must provide:

23 A. a description of the proposed local implementation
24 program;

25 B. the current status of the development of the
26 proposal; and

27 C. an opportunity for public input or discussion.

28 Subp. 5. **Meetings with other local units of government.** A
29 local unit of government developing a proposal under this part
30 must conduct a meeting or meetings with all other local units of
31 government who exercise authorities in the geographic area
32 affected. This must be accomplished before submittal of the
33 proposal to the department. The purpose of this meeting or
34 meetings will be to inform and seek input from other local units
35 of government of in an effort to gain consensus with those
36 potentially affected by the planned local implementation program.

1 Subp. 6. **Record of meetings.** A local unit of government
 2 shall maintain a record of each meeting held for the purpose of
 3 proposal development. The record must include minutes or a
 4 transcription and a list of persons in attendance and who they
 5 represented. Records of meetings must be supplied to the
 6 department with the submittal of the local implementation
 7 proposal.

8 Subp. 7. **Public participation.** Meetings held for the
 9 purpose of public participation must be conducted as required by
 10 Minnesota Statutes, section 471.705.

11 Subp. 8. **Initial review.** Within 120 days of adoption of a
 12 resolution to develop a local implementation proposal, the
 13 governing body of the local unit of government must submit for
 14 the department's review its proposal, records of meetings held,
 15 and supporting documents. The department must complete its
 16 review within 90 days of receipt of the proposal. The primary
 17 contact person or other officials of the local unit of
 18 government bringing the proposal may be asked to meet with the
 19 department during the 90-day review period for the purposes of
 20 presentation or clarification of points of the local
 21 implementation proposal.

22 The department must inform the governing body of the local
 23 unit of government of its findings in writing.

24 Subp. 9. **Review criteria.** The department shall review the
 25 local implementation proposal based on the criteria in items A
 26 to E D.

27 ~~A. Does-the-proposed-local-implementation-program~~
 28 ~~fulfill-the-mandates-of-FIFRA?~~

29 ~~B.--Does~~ Is the proposed local implementation program
 30 ~~fulfill~~ consistent with the mandates of Minnesota Statutes,
 31 chapters 18B and 18D, and rules and orders of the department?

32 ~~E. B.~~ Do staff identified to carry out the proposed
 33 local implementation program have the education, training, and
 34 experience required as identified in part 1505.4070?

35 ~~D. C.~~ Has the local unit of government identified a
 36 funding source or sources for the proposed local implementation

1 program and is funding adequate to carry out the program as
2 proposed on an ongoing basis?

3 E- D. Does the proposed local implementation program
4 demonstrate consistency with department procedures and policies?

5 Subp. 10. **Notice of review.** The department shall, within
6 ~~±5~~ 30 days of receipt of a local implementation proposal,
7 publish the local implementation proposal in the State Register
8 for the purpose of the solicitation of outside opinion. The
9 department may apply information received through this process
10 in the review of the local implementation proposal.

11 Consideration of outside opinion must be based on the same
12 review criteria as the local implementation proposal.

13 Subp. 11. **Negotiation.** Upon receipt of a positive finding
14 on the part of the department regarding the local implementation
15 proposal, the local unit of government may enter into
16 negotiations toward the development of the final delegation
17 agreement. A final version of the delegation agreement must be
18 completed within 90 days of notification of the department's
19 positive findings. If the delegation agreement is not completed
20 within the specified time period the proposal is nullified and
21 cannot be resubmitted for consideration for one year from the
22 end of the 90-day negotiation period.

23 Subp. 12. **Completion.** The commissioner's signature of a
24 delegation agreement constitutes final department approval.
25 Upon signing of the delegation agreement by the commissioner,
26 the local unit of government has 60 days to adopt the delegation
27 agreement by resolution of its governing body. If the governing
28 body has not adopted the delegation agreement within the 60-day
29 period, the agreement is nullified. Upon adoption, the
30 delegation agreement must be implemented according to the
31 conditions and schedule stipulated in the delegation agreement.

32 Subp. 13. **Notice of adoption.** Within 15 days of adoption
33 of the delegation agreement, the local unit of government ~~will~~
34 must notify the commissioner by sending a notarized copy of the
35 adopting resolution. The department shall, within ~~±5~~ 30 days of
36 receipt of the copy of the adopting resolution, publish the

1 delegation agreement in the State Register as a means of
2 informing the general public. The local unit of government must
3 publish a copy of the adopting resolution and provide notice of
4 locations where the delegation agreement is available for public
5 review.

6 1505.4040 CONTENT OF LOCAL IMPLEMENTATION PROPOSALS.

7 Subpart 1. **Title sheet.** A local implementation proposal
8 must contain a title sheet that provides the formal title of the
9 proposal, the submittal date, and the title of the governing
10 body submitting the proposal.

11 Subp. 2. **Table of contents.** A local implementation
12 proposal must contain a table of contents outlining the
13 paragraphs or sections contained within the proposal and the
14 correlating pages on which the paragraphs or sections appear.

15 Subp. 3. **Map and description of geographic area affected.**
16 A local ~~center~~ implementation proposal must contain a map
17 describing the geographic area affected, its location within the
18 state and county, and local geographic setting. The local
19 implementation proposal must also, within the same section,
20 contain a written description, by geographic indicator, of the
21 area affected. The written description must, at a minimum,
22 describe the boundaries of the affected area and may be a legal
23 description.

24 Subp. 4. **Primary contact.** A local implementation proposal
25 must identify a primary contact for communication with the
26 commissioner, including the contact's name, official title,
27 official address, telephone number, and facsimile number if
28 available.

29 Subp. 5. **Executive summary.** A local implementation
30 proposal must contain an executive summary briefly describing
31 the substance and salient points of the proposal.

32 Subp. 6. **Detailed description of proposed program.** A
33 local implementation proposal must present a detailed
34 description of the proposed local implementation program,
35 including implementation measures, a dated schedule, and

1 expected outcomes for the local implementation program on an
2 annual basis. This section must also describe educational and
3 informational efforts, training programs, data collection
4 procedures, data and information management procedures, and
5 coordination efforts with other government units or entities.

6 Subp. 7. **Administering agency.** A local implementation
7 proposal must describe the agency authorized by the local unit
8 of government to administer the local implementation program.

9 This section must:

- 10 A. name the authorized agency;
- 11 B. provide an official address and telephone number
12 for contact; and
- 13 C. describe the education, training, and experience
14 qualifications of personnel within the authorized agency who
15 will be responsible for the administration of the local
16 implementation program.

17 Subp. 8. **Administrative procedures.** A local
18 implementation proposal must outline procedures through which
19 the local implementation program will be administered by the
20 authorized agency. Administrative procedures must include, but
21 are not limited to:

- 22 A. financial reporting and auditing;
- 23 B. document management by the local unit of
24 government and transfer to the department; and
- 25 C. program tracking and reporting procedures.

26 Subp. 9. **Implementation procedures.** A local
27 implementation proposal must outline the procedures to be
28 followed in implementation of the proposed program.

29 Implementation procedures must provide for:

- 30 A. notice of inspection;
- 31 B. documentation of inspections;
- 32 C. stages of effort to gain compliance;
- 33 D. referral of cases of noncompliance or violation to
34 the department; and
- 35 E. demonstration of consistency with department
36 enforcement procedures and policies.

1 Subp. 10. **Financial considerations.** A local
2 implementation proposal must provide information describing the
3 source of funding for the local implementation program. The
4 funding source must be consistent with part 1505.4010, which
5 stipulates that funds may not be collected from pesticide
6 related fees or surcharges. This section must provide an
7 estimate of the annual budget for the local implementation
8 program and a detailed outline of disbursement of those funds in
9 implementation of the program.

10 Subp. 11. **Draft delegation agreement.** A local
11 implementation proposal must present a draft delegation
12 agreement to be used as the basis for the development of a final
13 delegation agreement for signature by the commissioner.

14 1505.4050 CONTENTS OF DELEGATION AGREEMENT.

15 The local unit of government shall submit a delegation
16 agreement as described in this part. The delegation agreement
17 may ~~must~~ be based on ~~appropriate-sections-of-the~~ an approved
18 local implementation proposal. The department may produce and
19 provide model delegation agreements to assist local units in the
20 development of specific delegation agreements.

21 1505.4060 COORDINATION.

22 To ensure that there is no overlap in carrying out
23 implementation of delegated authority, local units must
24 coordinate activities in regard to local implementation. Two or
25 more local units of government who exercise authorities within
26 the same geographic area may not obtain delegation of the same
27 or separate authorities for each of the local units. In cases
28 where such a multiple delegation is requested, the department
29 may require the local units involved to apply as a group formed
30 under a joint powers agreement pursuant to Minnesota Statutes,
31 section 471.59.

32 1505.4070 MINIMUM QUALIFICATIONS OF INSPECTION PERSONNEL.

33 Persons who perform the duties of implementation related to
34 field surveillance, inspection, collection of samples, or other

1 activities regarding the collection, preservation, and
2 documentation of evidence are required to meet minimum
3 requirements of education, training, and experience. The
4 minimum requirement is a score of at least 70 percent on an
5 experience and training rating administered by the department.
6 The experience and training rating must have a possible total
7 score of 100 percent. The experience and training rating must
8 be based on the following criteria:

9 A. a passing score on the commercial pesticide
10 applicator certification examination or a currently valid
11 license as a commercial pesticide applicator in categories
12 appropriate to the local implementation program; and

13 B. a bachelor's degree in agronomy, chemistry,
14 ecology, entomology, horticulture, plant pathology, geology,
15 hydrology, public health, environmental health, soil science, or
16 a similar field of study; or

17 C. a master's degree in one of the fields listed in
18 item B; or

19 D. experience enforcing or ensuring compliance with
20 laws, rules, and regulations pertaining to pesticides; or

21 E. experience providing technical advice in the use,
22 storage, handling, and disposal of pesticides; or

23 F. professional research or analytical experience
24 pertaining to properties, use, effectiveness, safety, or
25 regulation of pesticides.

26 Bonus points will be awarded, if a passing score of 70
27 percent is achieved, for possession of six or more quarter
28 credits or four or more semester credits in pesticide-related
29 courses.

30 A resume that details the qualifications of identified
31 inspection personnel of the local unit of government must be
32 submitted for department review when submitting the delegation
33 agreement for the commissioner's signature.

34 1505.4080 ENFORCEMENT.

35 The commissioner of agriculture has sole responsibility and

1 authority for enforcement of the State Pesticide Control Law
2 pursuant to Minnesota Statutes, chapter 18D. Any compliance
3 issue or alleged violation referred from a locally implemented
4 program to the department for enforcement ~~must~~ shall be
5 reviewed, prioritized, and processed according to standards and
6 timelines of the Agronomy Services Division, Enforcement Unit.
7 Local units of government must be apprised of the disposition of
8 a case referred from their respective local implementation
9 program.

10 1505.4090 REPORTING REQUIREMENTS.

11 A local unit of government shall submit a two-part annual
12 report to the commissioner. Part one must provide the planned
13 activities for the local implementation program for the upcoming
14 year. Part two must provide information describing the
15 accomplishments and activities of the local implementation
16 program for the preceding year. Inspection personnel, their
17 resumes and training programs, and all schedules, implementation
18 measures, and outcomes must be identified for the local
19 implementation program for both parts one and two.

20 1505.4100 PERFORMANCE REVIEW AND EVALUATION.

21 Review and evaluation of the performance on the part of a
22 local unit of government in implementation of the delegation
23 agreement will be carried out by the department. The review and
24 evaluation of the delegation agreement and the local
25 implementation program will be accomplished in the following
26 manner:

27 A. verification of the qualifications of staff on an
28 annual basis;

29 B. performance of joint inspections with department
30 field staff;

31 C. spot check inspections by department field staff;
32 and

33 D. verification of ongoing education and training of
34 staff.

35 A complete on-site program evaluation must be performed

1 between the department and the local unit of government within
2 every third year of the adoption of the delegation agreement.

3 1505.4110 COMPLIANCE.

4 The commissioner may inspect documents and monitor
5 activities of the local unit of government associated with the
6 local implementation program. The commissioner shall determine
7 compliance of the local unit of government regarding the local
8 implementation program based on the agreement, annual reports,
9 and other records regarding the local implementation program of
10 the local unit of government. The contact person must be
11 notified in the case of noncompliance and procedures that must
12 be undertaken by the local unit of government regarding the
13 noncompliance must be presented in writing. The local unit of
14 government has 90 days from the time of notification regarding
15 noncompliance with the delegation agreement to meet the
16 requirements of the agreement according to the guidance provided
17 by the department.

18 1505.4120 APPEALS.

19 A delegation agreement receives departmental approval upon
20 signature by the commissioner. This shall be considered a final
21 agency action. Any appeals must be filed with the Minnesota
22 Court of Appeals.

23 1505.4130 TERMINATION.

24 Subpart 1. **Termination.** Either party to the delegation
25 agreement may dissolve the agreement and void the local
26 implementation program upon 60 days' notification of the other
27 party or parties of the delegation agreement.

28 Subp. 2. **Notice of termination.** The department must
29 publish notification of termination of a delegation agreement in
30 the State Register within ~~±5~~ 30 days of termination of the
31 delegation agreement. The local unit of government must publish
32 a notice of termination in one newspaper of general circulation
33 within the affected geographic area within ~~±5~~ 30 days of
34 termination of the delegation agreement.