

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF PUBLIC SAFETY

In the Matter of the
Proposed Adoption of
Rule Amendments of the
Department of Public Safety
Governing Driver Training
Programs, Minn. Rule
Parts 7411.0100 to 7411.0800.

REPORT OF THE
ADMINISTRATIVE
LAW JUDGE

The above-entitled matter came on for hearing before Administrative Law Judge Steve M. Mihalchick on Friday, February 16, 1990, at 9:00 a.m. in conference room D, 5th floor of the Veteran's Service Building in St. Paul, Minnesota.

This report is a part of a rulemaking proceeding held pursuant to Minn. Stat. §§ 14.131 to 14.20, to hear public comment, to determine whether the Department has fulfilled all relevant substantive and procedural requirements of law or rule and to determine whether or not the rules, if modified, are substantially different from those originally proposed.

The Department panel appearing at the hearing consisted of J. Gary Cunningham, Charles E. Mertz and David E. Orren. Jeffrey Lebowksi of the Attorney General's office represented the Department.

Approximately 50 persons attended the hearing, 31 signed the hearing register. The hearing continued until all interested persons, groups, or associations had an opportunity to be heard concerning the adoption of the proposed rules. Seven written exhibits were submitted by members of the public prior to the hearing. The Department submitted eleven written exhibits. Eleven post-hearing comments were received from members of the public. The Department staff submitted one post-hearing reply to the comments.

The Department must wait at least five working days before taking any final action on the rules; during that period, this Report must be made available to all interested persons upon request.

Pursuant to the provisions of Minn. Stat. § 14.15, subd. 3 and 4, this Report has been submitted to the Chief Administrative Law Judge for his approval. If the Chief Administrative Law Judge approves the adverse findings of this Report, he will advise the Department of actions which will correct the defects and the Department may not adopt the rule until the Administrative

Law Judge determines that the defects have been corrected. However, in those instances where the Chief Administrative Law Judge identifies defects which relate to the issues of need or reasonableness, the Department may either adopt the Chief Administrative Law Judge's suggested actions to cure the defects or, in the alternative, if the Department does not elect to adopt the suggested actions, it must submit the proposed rule to the Legislative Commission to Review Administrative Rules for the Commission's advice and comment.

If the Department elects to adopt the suggested actions of the Chief Administrative Law Judge and makes no other changes and the Chief Administrative Law Judge determines that the defects have been corrected, then the Department may proceed to adopt the rule and submit it to the Revisor of Statutes for a review of the form. If the Department makes changes in the rule other than those suggested by the Administrative Law Judge and the Chief Administrative Law Judge, then it shall submit the rule, with the complete record, to the Chief Administrative Law Judge for a review of the changes before adopting it and submitting it to the Revisor of Statutes.

When the Department files the rule with the Secretary of State, it shall give notice on the day of filing to all persons who requested that they be informed of the filing.

Based upon all the testimony, exhibits and written comments, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On December 15, 1989, the Department of Public Safety (hereinafter "the Department") filed the following documents with the Chief Administrative Law Judge:

- (a) A copy of the proposed rules certified by the Revisor of Statutes.
- (b) The Order for Hearing.
- (c) The Notice of Hearing proposed to be issued.
- (d) The Statement of Need and Reasonableness.
- (e) The statement of additional notice.

2. On January 3, 1990, a corrected Order for Hearing was filed with the Chief Administrative Law Judge.

3. On January 8, 1990, a Notice of Hearing and a copy of the proposed rules were published at 14 State Register 1755.

4. On January 11, 1990, the Department mailed the Notice of Hearing to all persons and associations who had registered their names with the Department for the purpose of receiving such notice.

5. On January 19, 1990, the Department filed the following documents with the Chief Administrative Law Judge:

- (a) The Notice of Hearing as mailed.
- (b) The Department's certification that its mailing list was accurate and complete.

- (c) The Affidavit of Mailing the Notice to all persons on the Department's list.
- (d) A copy of the State Register in which the proposed rules were published.
- (e) The Affidavit of Mailing Discretionary Notice of Public Hearing.
- (f) The names of Department personnel who will represent the Department at the hearing.

These documents were available for inspection at the Office of Administrative Hearings from the date of filing to the date of the hearing. The documents listed in Findings 1 through 5 were timely filed pursuant to Minn. Rule 1400.0600.

6. The period for submission of written comment and statements remained open through February 28, 1990, the comment period having been set during the hearing at eight working days. The record remained open for an additional three working days through March 5, 1990, for responses to filed comments.

Nature of the proposed rule amendments.

7. The proposed rule amendments clarify, improve and reorganize existing rules for commercial driver training schools and motorcycle safety courses. In addition, the rules also cover, for the first time, driver education courses at private and parochial high schools and other nonpublic schools. Previously these programs were regulated by policy rather than by formally promulgated rules. These changes promote uniformity and make the rules regulating driver training in the Department of Public Safety and the Department of Education more similar, where appropriate.

Small Business Considerations

8. Minn. Stat. § 14.115 requires the Department to consider the effect on small businesses when it adopts rules. The rules as amended will have a direct effect on commercial driver training schools and on the driver training programs at private and parochial high schools and other nonpublic schools. All of the commercial schools are small businesses as defined by § 14.115, subd. 1. All of the private, parochial, and other nonpublic schools are arguably small businesses, too.

9. Section 14.115, subd. 2, states in part:

When an agency proposes a new rule, or an amendment to an existing rule, which may affect small businesses . . . , the agency shall consider each of the following methods for reducing the impact of the rule on small businesses:

(a) the establishment of less stringent compliance or reporting requirements for small businesses;

(b) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

(c) the consolidation or simplification of compliance or reporting requirements for small businesses;

(d) the establishment of performance standards for small businesses to replace design or operational standards required in the rule; and

(e) the exemption of small businesses from any or all requirements of the rule.

10. The Department has considered the specific methods for reducing the impact of the rules on small businesses, as required by Minn. Stat. § 14.115, subd. 2. The Department has reduced the impact of the rules on small businesses as follows:

a. Less stringent requirements. The Department has established less stringent requirements by: extending the number of years a vehicle may be used for driver training; allowing concurrent classroom and laboratory instruction; eliminating the residency requirement for instructors; reducing the number of restrictions on becoming an instructor; reducing the period of ineligibility for persons who have failed the instructor's test; removing or lessening location requirements for driver training programs; and lessening record keeping requirements.

b. Less stringent schedules. The Department has established less stringent schedules by eliminating the requirement of annual inspection of driver training vehicles.

c. Consolidation or simplification of requirements. The Department has consolidated or simplified requirements by: reorganizing the rules and rewriting certain portions to make the rules more easily understood; combining the set of rules for motorcycle driver training with the set of rules for driver training in other vehicles; and making the rules more similar, where applicable, to department of education rules governing driver education in public schools.

d. Performance standards. The Department has established performance standards by requiring that vehicles be maintained in safe operating condition rather than by requiring any set inspection or maintenance schedules.

e. Exemption. The Department has exempted private and parochial high schools and other nonpublic schools from certain requirements where there are other safeguards in place to ensure that there is quality instruction and that students' interests are protected. The Department has also exempted motorcycle instructors from some of the new requirements where there are objective criteria for showing that the instructors are competent.

11. The Department has increased requirements on small business in several instances but each of these increased requirements is justified by an overriding public concern.

The most substantial increased requirement is that a motorcycle instructor will now have to have 68 hours of instruction. Previously, the requirements were that a person had to have the 40 hours of training necessary

to teach automobile driver training plus an additional ten hours of motorcycle training. The total hours of instruction for a motorcycle student has also been increased, from 14 to 15 hours. These increased requirements in motorcycle instruction are appropriate because research has shown that driving a motorcycle is very much different than driving an automobile and is more complicated and more hazardous than driving an automobile.

The other added requirements are relatively minor and relate to physicals for instructors, instruction methods tests for instructors, and certain notification requirements for programs. These other added requirements and the reasons for them are set out in detail in the Statement of Need and Reasonableness. The impact of these rules on small businesses is reasonable and the requirements of the Minn. Stat. § 14.115 have been met.

Statutory authority.

12. There has been no challenge to the statutory authority as amply cited by the Department. There is adequate statutory authority to adopt these rules in Minn. Stat. §§ 169.974, 171.04 and 171.33 to 171.41.

Fees imposed by the rules.

13. Minn. Stat. § 16A.128, subd. 1, does not apply because the proposed amendments do not set or change any fees. Therefore, no approval is required from the Commissioner of Finance.

Fiscal impact.

14. The proposed amendments to these rules will not force any local agency or school district to incur costs. A fiscal note, as described by Minn. Stat. § 3.982, is therefore not required.

Agricultural land impact.

15. Minn. Stat. § 14.11, subd. 2, is inapplicable because the proposed amendments to these rules will not have any direct or substantial adverse impact on agricultural land.

Other statutory requirements.

16. Minn. Stat. § 115.43, subd. 1, § 116.09, subd. 6, and § 144A.29, subd. 4, do not apply to these rules as amended.

Substantive Provisions.

17. The portions of the proposed rules that received comment or otherwise need to be examined will be discussed below. Any rule not mentioned is found to be needed and reasonable. Also, any rule not mentioned is found to be authorized by statute.

7411.0900 definitions.

18. Subp. 4. certificate and Subp. 5. certified; certified program. This is the first time that certified programs have been included in the

rules. Most of the requirements for certified and licensed programs are the same, but there are a few differences. The main differences are that teacher licensing requirements and fees paid by the programs differ depending upon whether a program is either licensed or certified. The public at the hearing was confused about the distinction between certified and licensed programs. In general, private and parochial high school programs are certified by the Department of Public Safety while commercial driver training programs are licensed by the Department of Safety. While the definitions are not unreasonably worded, they could be amended to make the distinction more clear. One suggestion for appropriate language for Subp. 4 would be:

Certificate. "Certificate" refers to the written document issued by the commissioner to a private or parochial college, university or high school that offers driver training to persons under eighteen as part of the normal program for such institutions, commercial driver education/school/or/institution, indicating the department's approval of the school's or/institution's courses/in driver training education under Minn. Stat. § 171.04(1), and rules 7411.0100 through 7411.0800.

A suggestion for appropriate changes for Subp. 5 would be:

Subp. 5. Certified; certified program. "Certified" and "certified program" refer to a private or parochial college university or high school that offers driver training as part of the normal program for such institution and that holds a current certificate from the commissioner indicating that it is in compliance with department driver training requirements, commercial driver/education/school/or/institution/that/holds/a/currently/valid/certificate/from/the/commissioner/indicating/the/department's/approval/of/the/schools/or/institution's/courses/in/driver/education/under/Minn./Stat./§/171.04(1).

These changes clarify the somewhat ambiguous definitions and accurately reflect the Department's interpretation of "certificate", "certified", and "certified program".

Even if the Department had intended (which it did not) to include commercial schools under the certified program regulations, it could not do so, because this would be outside of its statutory scope of authority. Some of the requirements for certified programs contained in the rules are clearly prohibited from being applied to commercial driver training programs. For instance, Minn. Stat. § 171.34 states that instructors in commercial driver training schools can not be required to have a teacher's certificate. Yet Rule 7411.0610, Subp. 1 requires instructors in certified programs to fulfill Board of Education licensing requirements. The new language helps to clearly avoid an interpretation of the rules that would be in conflict with Minnesota Statutes.

Interested parties received adequate notice that the determination of where commercial driving schools fit in the rules could be an issue as shown

by testimony received during the hearing. The suggested language or a similar variation would not constitute a substantial change.

Part 7411.0100, Subp. 9. Commercial driver training school.

19. This definition as written refers to Minn. Stat. § 171.33, subd. 1. This statute is further modified by Minn. Stat. § 171.39, which exempts many organizations such as private schools from the commercial driver training school regulations.

The standards for form for Minnesota Rules are contained in Minn. Stat. § 14.07, subd. 3. The standards state that the rules should "minimize duplication of statutory language" and "to the extent practicable, use plain language . . ." In some cases there is a conflict between clarity and avoiding duplication of statutory language. In this case, because the definition is so crucial to understanding the rest of the rules (see Finding 17 above), and because the statutory language is fairly concise, the following changes are proposed to make the rules more clear.

Subp. 9 Commercial driver training school. "Commercial driver training school" has the meaning given it in Minn. Stat. § 171.33, subd. 1 means a business enterprise conducted by an individual, association, partnership, or corporation, which charges a fee, for the educational training of persons to drive motor vehicles or for the preparation of an applicant for a driver's license examination given by the state, and that is required to be licensed by the commissioner under Minn. Stat. §§ 181.33 through 181.41.

This change clarifies the definition and makes the rules more easily understood. Interested parties received adequate notice that this could be an issue as shown by the numerous questions received during testimony regarding the treatment of commercial driver training schools. The suggested language or a similar variation would not constitute a substantial change.

Part 7411.0100, Subp. 12. Driver training program; program.

20. This definition can be simplified to bring it in line with the new definitions of "commercial driver training school", and "certified program". A suggestion for appropriate changes for Subp. 12A. would be:

A. A commercial driver training school that is required to be licensed by the commissioner under Minn. Stat. § 171.33, subd. 1.

The following would be an appropriate substitution for the current Subp. 12B.

B. A certified program;

The rest of Subp. 12 would remain the same. The suggested language or a similar variation would not constitute a substantial change.

Part 7411.0100, Subps. 4, 5 and 12. "Institute."

21. Dr. John Palmer suggested that the term "institute" be defined or deleted. The Department responded that the word was taken from Minn. Stat. § 171.04, subd. 1(1), and has no special meaning other than its common definition.

Findings 18, 19 and 20 suggest alternate wordings for Subps. 4, 5 and 12 that do not use the word institute. The suggested language makes these definitions more clear, and does not compromise the Department's authority. The word "institute" would add nothing more to the definitions than is already included. As noted above, the suggested language would not constitute a substantial change.

Part 7411.0100, Subp. 17. Instruction time.

22. David Aguilar asked if "instruction" included both classroom and laboratory. He preferred that classroom instruction would have some reasonable break-time provision.

Break time is not counted as instruction time under the proposed rules. The proposed requirement merely changes the wording and not the substance of the former requirement. The former requirement said: "A one-hour lesson shall mean one hour of actual instruction." Since there is no change, no justification is required.

Part 7411.0100, Subp. 19. Laboratory instruction.

23. Bob Esse suggested that the Department continue to use the term "behind-the-wheel instruction" instead of replacing it with "laboratory instruction". He said the new term would not fly with students.

The Department is using the term "laboratory instruction" because it covers both the behind-the-wheel instruction in enclosed vehicles and the astride-the-motorcycle instruction for motorcycles. When talking to students, a program is not prohibited from using the term behind-the-wheel training if it feels that this term is more descriptive. It is reasonable that the Department not change this subpart.

Part 74100.0400, Subps. 1 and 5. Vehicle inspections and maintenance records.

24. Bonnie Kittelson, Mardi Lacher, and several other commercial driver training school owners and operators submitted oral or written testimony on behalf of the Professional Associated Driving Schools of Minnesota (PADSM). PADSM is apparently made up of some, but not all, of the commercial driver training schools in Minnesota. PADSM recommended that vehicle inspections and maintenance histories be required.

The old rules required annual vehicle inspections. Under the proposed rules, annual vehicle inspections will no longer be required. In place of annual vehicle inspections, the rules will require that vehicles be maintained in safe operating condition and that unsafe vehicles be taken out of service until the unsafe condition is corrected. Also, the Commissioner retains the authority to require an inspection when there is good cause to believe that a

vehicle does not meet the requirements of the rules. This change substitutes performance standards for operational standards and establishes less stringent compliance schedules for small businesses as required by Minn. Stat. § 14.115, subd. 2. The Statement of Need and Reasonableness discusses this issue in depth. It is in the best interests of a program to keep its vehicles in top condition and maintenance records up to date. The Department does not need to add an extra layer of requirements to ensure this. The rule is necessary and reasonable as proposed.

Part 7411.0400, Subp. 2. Vehicle age for cars.

25. Mardi Lacher recommended that the age limit for cars be extended to ten years, based on her experience in encountering vehicles that are in excellent condition, but that are older than the rules will allow.

Bob Esse recommended that vehicle age be set at five years to correspond to the limit of car loans and to keep the fleet as new as possible.

The proposed rules will extend the age limit for vehicles from four model years to six years in service. This will result in savings for programs in two ways. One, the program will be able to use the vehicle for two more years than before. Two, the program will be able to purchase a vehicle at the end of the model year when prices are low without losing a year's worth of use. With the proposed rules, the Department has greatly increased the usable life of a driver training vehicle. Until the effect of this change is determined, it is not appropriate to extend the age limit for vehicles any further than it has been extended by these proposed rules. The rule is both needed and reasonable.

Part 7411.0400, Subp. 2. Vehicle age for motorcycles.

26. Karen Kadar suggested an exemption for motorcycles for up to 10 years of being in service. She said it would affect about 10% of her program's vehicles that must be retired each year.

The present rules have a vehicle age limit of four model years. The proposed rules will extend this limit to six years in service, with an extension of up to two more years for motorcycles if certain maintenance is done. With the proposed rules, the usable life of a training motorcycle has been greatly increased. At this time, it is not appropriate to extend the age limit for vehicles any further than it has been extended by these proposed rules. The rule is both reasonable and necessary.

Part 7411.0400, Subp. 4. Student driver signs on driver training vehicles.

27. The PADSM recommended that the Department drop the requirement of student driver signs on driver training vehicles. PADSM stated that there is no proof that student driver signs enhance safety and stated that student driver signs in fact provoke abusive behaviors against student drivers. Mardi Lacher and Rachel Anthony gave specific details of incidents of abusive behaviors directed against student drivers that they believe were precipitated by student driver signs. It was also stated that public school driver training vehicles often do not have any type of student signs even though such signs are required by the Department of Education rules governing public

school driver education programs.

David Aguilar wrote that he wanted to retain the option to display student driver signs even if they were no longer required. He stated that the many lane changes, turns, and parks made by a driver training vehicle coupled with a student's natural hesitation and limited judgment indicate that some people want these vehicles identified so they can keep their distance. Bob Esse was in favor of student driver signs to let the police and public know that it is a student driver.

The Department suggests that the great majority of drivers read and observe signs and will be particularly careful near a vehicle that displays a student driver sign. While the incidents described by Ms. Lacher and Ms. Anthony are serious and present a hazard to student drivers, the evidence of problems attributed to student driver signs is not outweighed by the positive effect of drivers who observe these signs. The rule is both needed and reasonable.

Part 7411.0400, Subp. 4. Other signs on driver training vehicles.

28. The PADSM stated that the Department should not require approval of advertising signs of driver training vehicles.

The approval of signs other than student driver signs on vehicles is necessary so that these signs do not distract from or obscure the student driver signs. Further, this requirement remains unchanged from existing rules. This rule is reasonable and necessary.

Part 7411.0400, new subpart. Maximum size for a motorcycle.

29. Karen Kadar recommended that the Department adopt 500 cc's as the maximum size for motorcycles used in the basic rider training. She stated that Motorcycle Safety Foundation (MSF) guidelines have a 350 cc limit, but that many organizations feel that 350 cc's may be too restrictive and that the MSF may consider changing its limit. She cited statistics that show large displacement motorcycles are underrepresented in accidents, but overrepresented in injury severity.

While it may make some sense to set a limit on the size of motorcycles to be used in basic rider training, there is no consensus among motorcycle safety experts at this time as to what the limit should be. Therefore, it is reasonable that the rules set no limit at this time.

Part 7411.510, Subp. 3. Classroom curriculum.

30. James Harelson stated that the classroom curriculum was too rigid to allow him the flexibility to meet the needs of all his students.

The classroom curriculum objectives are minimum standards. There is nothing in the rules that prevents the program from doing more to meet the needs of its students. This rule is both reasonable and necessary.

Part 7411.0510, Subp. 4. Three hours of classroom instruction per day.

31. The PADSMM recommended that six hours of classroom instruction be allowed each day. Cordelia and Paul Sanvik of Range Driver Training also recommended that the three hour limit be extended to six hours. PADSMM stated that seminars, workshops, and school days are longer than the three hour maximum permitted under the present and the proposed rules. PADSMM stated that this was detrimental to students in obtaining instruction on a timely basis.

Dr. John Palmer wrote in favor of keeping this limit at three hours per day. He stated that the three hour limit would ensure that the driver training course would be spread out over at least a ten day period as opposed to a five day period if there were a six hour limit. This would allow for a greater opportunity for the students to do homework. He also stated that the attention span of 15 and 16 year old persons indicates that there should be many short sessions as opposed to a few long sessions. Bob Esse also wrote in favor of keeping the three hour limit because learning tends to diminish after three hours.

The three hour limit is reasonable. It is hard to see how limiting the number of hours of instruction in one day will prevent any significant number of students from obtaining instruction. Further, even though students at this age have a school day that lasts six or more hours, it is unlikely that they have any one class that lasts more than three hours in a day. This rule is both reasonable and necessary.

Part 7411.0510, Subp. 4. Sequence of classroom curriculum.

32. Dr. John Palmer proposed that the following sentence be added to this subpart, "The classroom curriculum guide must specify the beginning lesson for classroom instruction, and students must begin classroom during this lesson." Dr. Palmer based his proposal on the premise that instruction, by its nature, must normally proceed from simple to complex.

Dave Moore of D & E Driving School explained that his school and several other commercial driver training schools use a curriculum that has ten lessons of three hours each. He disagreed with Dr. Palmer's premise that the lessons had to build on each other. He said that the lessons used by his school have been designed so that they build within the lesson, but that they do not depend on any of the other lessons. Paul Sanvik of Range Driver Training echoed Mr. Moore's comments and also stated that his curriculum was designed so that it did not need to be presented in a particular order.

There is not enough evidence at this time to justify changing the rule. The rule as written is reasonable and necessary.

Part 7411.0510, Subp. 6. Concurrent classroom and laboratory instruction.

33. James Harelson was opposed to concurrent instruction. He said it was contrary to the general commercial driver training philosophy. David Aguilar also objected to concurrent instruction on the basis that a student would have little incentive to return to the class after receiving a permit.

The Department believes that it is possible to adequately conduct driver's training while integrating the two phases of instruction. The Department has seen no evidence to the contrary. It is true that a student who is very close to being 18 years old may have very little incentive to continue driver training. Most students, however, are relatively young, and the incentive for continuing and completing driver training is the ability to obtain a driver's license before attaining age 18. This rule is both reasonable and necessary.

Part 7411.0510, Subp. 7. "Satisfactory" completion of instruction.

34. David Aguilar questioned the use of "successfully" and "satisfactorily" in relation to a student completing the classroom phase of instruction.

It has been Department policy to interpret "satisfactory" or "successful" completion of instruction to mean that the student has completed the required topics and hours of instruction. This interpretation is based on the Department's position that driver training programs provide instruction, but the state has the responsibility to test a student to determine whether the student is qualified to obtain a driver's license. The Department has proposed changes to the first and third sentences of part 7411.0510, Subp. 7 as follows:

When a program conducts the classroom and laboratory phases of instruction during separate time periods for those wishing to obtain a class C license, the program may not provide laboratory instruction to a student until the student has ~~successfully~~ completed the required classroom instruction phase.

When a student has ~~satisfactorily~~ completed the required classroom instruction phase, an authorized operator or instructor may complete a certificate of enrollment indicating when laboratory instruction will begin.

This change clarifies ambiguous requirements and accurately reflects the Department's interpretation of the meaning of "satisfactory" or "successful" completion of instruction. This change does not constitute a substantial change. Interested parties received adequate notice that this could be an issue as is shown by the submission of testimony on this subject. This change makes the rule both reasonable and necessary and ensures that programs will issue certificates and verifications of completion in a consistent manner.

Part 7411.0510, Subp. 7. Maximum time period between classroom and laboratory instruction.

35. Several people spoke against the six-month maximum time period between classroom and laboratory instruction. PADSM was also opposed to this provision, saying that it was not clearly worded and that it was not workable. Several examples were given of why students could not begin laboratory instruction within six months of completing classroom instruction. In its post-hearing comments, the Department agreed with the testimony and proposed to delete the sentence in this subpart that states:

The time period between the two phases of instruction may not exceed six months.

The change removes an unclear and unworkable provision and does not constitute a substantial change.

Part 7411.0510, Subp. 8. Laboratory curriculum.

36. James Harelson stated that the laboratory curriculum was too rigid to allow him the flexibility to meet the needs of all his students.

The laboratory curriculum objectives are minimum standards. There is nothing in the rules that prevents a program from doing more to meet the needs of its students. The rule is both reasonable and necessary.

Part 7411.0510, Subp. 9, Item D. Substitution of simulator training for laboratory training.

37. James Harelson stated his opposition to the use of simulator training as a substitute for laboratory training. He stated that commercial schools do not believe in the use of simulators and do not use them. He stated that the six hours of laboratory training are best spent on the streets. The PADSME also stated its opposition to simulators. PADSME feels that all six laboratory hours need to be on the street.

Dr. John Palmer submitted a statement in support of the use of simulators. He said that simulators allow the teacher to completely control the driving environment, unlike on-street instruction. Using the maximum substitution of three hours of laboratory at a four hours for one hour ratio, a student would receive nine more hours of instruction than if the student received on-street instruction only.

A driver training program is not required to use simulators to substitute for laboratory training, if the program operator feels that simulators are not an adequate substitute for on-street instruction. However, as Dr. Palmer's comments demonstrate, simulators can be used successfully by some trainers. The rule is necessary and reasonable.

Part 7411.0510, Subp. 11. Outside practice.

38. James Harelson was opposed to requiring a program or instructor to encourage students to practice outside the school instruction course. He recommended that this be left up to the discretion of the instructor.

This subpart requires that outside practice be encouraged when permissible by law. Homework and practice outside of class is normally important for every student, but there may be occasions where practice driving would be dangerous and inappropriate. Such occasions may arise where the student has not mastered basic skills or would not have qualified supervision. Such practice would probably not be "permissible by law," but this provision could be improved and clarified by adding "and deemed appropriate by the instructor."

Part 7411.0550, Subp. 2. Classroom curriculum; additions.

39. Karen Kadar suggested that the Department add the following classroom curriculum items:

- Differences between cars and motorcycles;
- Risk awareness and risk acceptance;
- Procedures for advanced braking, cornering, and swerving maneuvers; and
- Procedures for carrying passengers or loads.

These items are not contained as main curriculum items in the MSF material submitted by Ms. Kadar. Before making changes, there should be a consensus among motorcycle safety experts, or more persuasive evidence than is available at this time. The rule is both reasonable and necessary as proposed.

Part 7411.0550, Subp. 2. Classroom curriculum; evaluation.

40. Karen Kadar pointed out that the proposed rules require programs to evaluate students, but do not identify standards that students must meet to pass the course. She suggested that the Department set a minimum standard of performance that students must meet in order to pass or that the Department require programs to identify their evaluation criteria.

The Department sets standards that students must meet to drive on Minnesota roads. The students must demonstrate they meet these standards when they take the Minnesota driving and endorsement tests. Programs must provide the training set out in these rules, but the Department will determine if the student is qualified to operate a motor vehicle on the streets and highways of this state. The Department requires a program to evaluate a student so that the student gets feedback on how he or she is doing. The rule is both reasonable and necessary.

Part 7411.0550, Subp. 3. Sequence of classroom curriculum.

41. This issue and its disposition are the same as discussed under Part 7411.0510, Subp. 4. Dr. John Palmer proposed that a sentence be added relating to the sequence of classroom curriculum. Dave Moore disagreed with Dr. Palmer's premise. The Department's position on this issue is that it does not want to change classroom curriculum requirements at this time, but that it would be willing to listen to any evidence that there is a problem with the current way of doing things. The rule is both reasonable and necessary.

Part 7411.0550, Subp. 5. Laboratory curriculum; additions.

42. Karen Kadar suggested that the Department add "selecting a safe speed in cornering maneuvers" as a laboratory curriculum item. She also suggested that the Department change from required to optional the following curriculum items: Tight u-turns (counterbalancing); decreasing radius turns; and surmounting obstacles. She included a copy of the MSF Overview of the Instructional Plan which indicated that these were positions taken by the MSF.

The Department was persuaded by Ms. Kadar's testimony. Since rules are mandatory, not optional, the Department agreed to remove optional items. The

Department proposes that Part 7411.0550, Subp. 5, Items E and H, be changed to read:

- E. Scanning techniques for recognizing, and responding to ~~//and~~ ~~surrounding~~ obstacles;
- H. ~~Counter/balancing/and/decreasing/radius/turns~~ Selecting a safe speed in cornering maneuvers;

These changes clarify certain curriculum objectives that relate to safety and do not constitute substantial changes. Interested parties received adequate notice that this could be an issue as is shown by the submission of testimony on this subject. This change will ensure that programs will focus on curriculum objectives that are recognized as relating to safety by motorcycle safety experts. The rule as changed is both reasonable and necessary.

Part 7411.0550, Subp. 5. Laboratory curriculum; evaluation.

43. Karen Kadar suggested that the Department set a minimum standard of performance that students must meet to pass the laboratory portion of motorcycle training.

As discussed above, the Department sets standards that students must meet to drive on Minnesota roads. The rule is both reasonable and necessary.

Part 7411.0500, Subp. 6. Eight hours of laboratory training for motorcycle instruction.

44. Duane Mettler gave his opinion that it was not cost effective to increase the number of required motorcycle laboratory hours from six to eight. He referred to statistics that showed decreasing motorcycle fatalities in recent years in Minnesota and asked why we should change.

Karen Kadar responded that the MSF recommends at least eight hours of laboratory training. She stated that the Minnesota Motorcycle Safety Program has been giving eight hours of laboratory training to its students over the last few years and conjectured that the decrease in fatalities could be due to this training. The rule is both reasonable and necessary.

Part 7411.0550, Subp. 7, Item A. Ratio of students to instructor for motorcycle rider training.

45. Bob Esse recommended that the ratio be ten students to one instructor for motorcycle training on a driving range and five students to one instructor for motorcycle training on the road.

As stated in the Department's Statement of Need and Reasonableness, it is necessary to limit an instructor to a small number of students because of the many safety concerns involved in riding a motorcycle. This provision sets the same limits as the Department of Education Rules Part 3500.500, Subp. 8. The rule is both reasonable and necessary.

Part 7411.0550, Subp. 7, Item F. Range size.

46. The proposed rules require that a driving range used for motorcycle training be at least 160 feet by 60 feet. The proposed rules provide for a waiver of these minimum dimensions if the program demonstrates that the curriculum objectives can be met without compromising the safety of the students. Karen Kadar said that this size range was the absolute minimum safe size. She suggested that the provision for giving waivers be deleted.

If Ms. Kadar is correct in her assertion that any range smaller than 160 by 60 would be unsafe, then it will not be possible for any program to prove to the Commissioner that a smaller range is safe, and no waivers will be granted. It would therefore be unnecessary to delete the waiver provision. However, there may be ranges that deviate from the minimums only slightly and not in ways that would compromise safety. Specifically, the full length and width of a range is usually used in the training, but not the full extent of all four corners. A small part of a corner of a range that is not paved would be enough to make the range non-standard, but may not be enough to make it unsafe for motorcycle rider training. The rule is both needed and reasonable.

Part 7411.0610, Subp. 4. Instructor's driving record.

47. James Harelson recommended that a person be ineligible to be an instructor for five years after having his or her driver's license suspended instead of the three years under the proposed rules. He said that his insurance rates would go up if he hired an instructor whose license had been suspended within the last five years. Paul Sanvik also recommended that a person be ineligible to be an instructor for five years after the person has had his or her driver's license revoked or suspended for a traffic violation. He said this would ensure quality instructors.

The rules set minimum standards. There is nothing in the rules that requires a program to hire any person as an instructor. If a program's insurance rates would go up for hiring a certain person as an instructor, the program can choose to not hire that person. If a person cannot demonstrate to a program that he or she would be a quality instructor, the program can choose to not hire that person. The rule is reasonable and necessary.

Part 7411.0610, Subp. 8. 40 hours of required training for car, bus, and truck instructors.

48. This rule generated quite heated discussion. Dr. John Palmer proposed that the number of hours of training required to become an instructor be increased from 40 hours to 80 hours. He also proposed that the instructor training correspond to that required by the Board of Teaching, with the exception of the practicum and organization and administration requirements. He attested to the increasing complexity of the driving task as the reason for recommending this increase in instructor training. Fred Schreiber made a similar recommendation. He urged that the Department increase the required instructor training to include the following three courses required by the Board for teaching: Driver education classroom; driver education laboratory; and driver education practicum.

PADSM recommended that the Department adopt the requirements for training instructors put forward by national professional associations such as North American Driver Education Association and Driving Schools of America. These requirements would involve 20 hours of classroom and 30 to 60 hours of laboratory training for a person to qualify as an instructor. PADSM pointed out that this training was greatly different than the training required by the Board of Teaching.

Paul Sanvik, Bob Esse, James Harelson, Nancy Waldschmidt, David Aquilar, and others recommended that the training requirement of 40 hours remain unchanged. Paul Sanvik stated he was a licensed teacher and a licensed driver training instructor and that the training his program gives to all of his instructors is better than the training he received as a teacher. Bonnie Kittelson also stated that she had received both kinds of training and found the commercial school instructor training to be superior. Bob Esse asked whether proof could be provided that one kind of instructor training was any better than any other, and stated that there was no evidence that training beyond the 40 hours was necessary for an instructor to be qualified. Nancy Waldschmidt said that 40 hours of training is often not enough for her instructors, but that she felt the decision to give more training should be left up to the owner of the program.

Any increase of the number of required hours on the order suggested by Dr. Palmer would be a substantial change in the proposed rule. There is no proof in this record that instructors trained under the present system are inadequate. The present requirement of 40 hours of training for instructors is a minimum, and programs are free to give more training as they think necessary. The rule is both reasonable and necessary. The Department may wish to gather further evidence and propose a rule change at some future time.

Part 7411.0610, Subp. 10. 68 hours of required training for motorcycle instructors.

49. Duane Mettler suggested that the approved course must be taken through a university for credit as part of a course of study in traffic safety education. Dr. John Palmer of St. Cloud State University described the SCSU traffic safety education program. Dr. Palmer and Karen Kadar confirmed that the course offered for credit by SCSU is identical to the instructor training offered for no credit by the Minnesota Motorcycle Safety Program. No evidence was presented that instructors who have received credit for taking the course are any more qualified than those who have not received credit for taking the course.

There is no evidence that Mr. Mettler's suggestion would increase the quality of motorcycle rider training. The rule is both reasonable and necessary as proposed.

Part 7411.0700, Subp. 1. Insurance requirements.

50. Jeffrey Bartels wrote that he would like to see a requirement by the Insurance Commissioner to set a standard rate for driver training with public, private, and commercial schools all charged equally.

The Department has no statutory authority to set insurance rates charged to driver training programs.

Part 7411.0700, Subp. 2, Item B. Separate license for each permanent location.

51. PADSM recommended that a program not have to pay an extra license fee if it has an additional permanent location.

Under the former rules, each program location had to be permanent and each location had to be licensed. Under the proposed rules, temporary locations are allowed. Because of the provision for temporary locations, commercial driver training schools can now serve the public in areas where public schools no longer offer driver training. This rule decreases the amount of regulation and allows programs to be more flexible. However, where there are separate permanent locations, it is not unreasonable to require separate licenses or certificates for each. The rule is reasonable and necessary.

Part 7411.0700, Subp. 3, Item A. Instruction record.

52. Paul Sanvik wrote that he did not feel it was necessary to include the name of the instructor in the record of each student. He also stated that a student's middle initial, not the middle name, should serve the Department's purpose.

The instructor's name is required so that any questions concerning the course or the student can be directed to the right person. The Department keeps its driver's license records filed according to each person's full first, middle, and last names. Students must also supply their full names so that the Department can cross-reference to the student's driver's license. This rule is reasonable and necessary.

Part 7411.0700, Subp. 5. Agreements and contracts.

53. Bob Esse suggested that there be a minimum price and that a school be prohibited from charging students less than this minimum amount for driver training. He said this would help upgrade instructor wages without the fear of being undercut.

Removing price competition would probably be a disservice to the public and is not within the Department's authority. The rule is reasonable as proposed.

Part 7411.0700, Subp. 5, Item G. No refund.

54. The PADSM objected to this item which requires that contracts between programs and students must not contain the term "No Refund". PADSM recommended that company policy be specified in a disclaimer such as "refunds will not be given if the company is ready, willing and able to fulfill its contract with the student."

What the rule prohibits is a program demanding full payment prior to giving instruction and then refusing to give a refund under any circumstances. There is no conflict between the requirement of the rule and a

statement of company policy that indicates that a refund will not be given after a program has relied on the contract to its detriment. The proposed rule is unchanged from the present requirements. It is reasonable that there be no change.

Part 7411.0700, Subp. 7. Use of a driver training vehicle for the state driver's license road test.

55. PADSME objected to the requirement that an instructor must accompany an applicant to a driver's license road test when a driver training vehicle is used.

Bob Esse wrote in favor of keeping this requirement. He stated that students are under a program's protection and that to allow non-instructors to drive a student to a road test would be considered negligence in case of an accident.

The Department conducts driving record, health, vision, and criminal history checks of persons before licensing them as instructors. The Department conducts no such checks of anyone else who might be sent with a student to a driver's license road test. Where a program's car is being used, it should be considered as part of the program. This rule is reasonable and necessary.

Part 7411.0700, Subp. 8, Items A, B and D. "Satisfactory" completion of instruction.

56. PADSME recommended that references to "satisfactorily" or "successfully" completing instruction should be deleted because they are ambiguous. PADSME recommended that the certificates and verifications of course completion should be issued when the student has completed the required hours of instruction. Dr. John Palmer recommended that the Department establish criteria for successfully completing or passing the driver training course.

As stated above at Part 7411.0510, Subp. 7, it has been Department policy to interpret "satisfactory" or "successful" completion of instruction to mean that the student has completed the required topics and hours of instruction. This interpretation is based on the premise that driver training programs provide instruction, but the state has the responsibility to test a student to determine whether the student is qualified to obtain a driver's license.

The recommendation of PDSME is clearly consistent with Department policy and the Department now proposes to change Part 7411.0700, Subp. 8, as follows:

Subp. 8 Authorized official; certificates. A program shall designate an authorized official to perform the following duties:

A. The authorized official shall furnish the student:

(1) A certificate of course completion within 15 calendar days after a student ~~satisfactorily~~

completes instruction, including both the required course of classroom instruction and the required course of laboratory instruction; or

(2) A verification statement of completion of classroom instruction within 15 calendar days after the student ~~satisfactorily~~ completes the required course of classroom instruction and notifies the program that the student tends to complete laboratory instruction with another program.

B. The authorized official shall notify the Department's driver and vehicle services division within a reasonable period of time of when a student who is 15 years of age fails to continue or ~~successfully~~ complete the required automobile driver training course, including laboratory instruction.

C. The authorized official shall issue:

(1) A certificate of enrollment within 15 calendar days after a student ~~satisfactorily~~ completes the classroom phase of the required motorcycle safety course and enrolls in the laboratory phase of the course, on a form provided by the Department that must be presented to a driver's license examiner at the time of application for a motorcycle instruction permit or endorsement; or

(2) A certificate of course completion within 15 calendar days after a student ~~satisfactorily~~ completes both phases of the required motorcycle safety course, on a form provided by the Department that must be presented to a driver's license examiner at the time of application for a motorcycle instruction permit or endorsement and that may be presented by the student, one time only, for renewing the motorcycle instruction permit.

This change clarifies ambiguous requirements and accurately reflects the Department's interpretation of the meaning of "satisfactory" or "successful" completion of instruction. This change does not constitute a substantial change. Interested parties received adequate notice that this could be an issue as is shown by the submission of testimony on this subject. This change ensures that programs will issue certificates and verifications of completion in a consistent manner. This rule as changed is both reasonable and necessary.

Part 7411.0700, Subp. 8, Item A(1). Certificate of course completion.

57. James Harelson suggested that a program not be required to issue a certificate of course completion if a student has not paid for the course. He said this is the only way to ensure payment.

The proposed rules require a program to issue the certificate within 15 days of course completion. This is designed to ensure that programs issue the certificate in a timely manner. The Department states that the certificate was not intended to be used as a collection tool. Nevertheless, no school or university will allow a course to be completed or issue a diploma if tuition is not paid and there seems to be no justification for requiring a driver training program to do so. While the programs may have all the regular legal remedies available to attempt debt collection, those remedies are quite often meaningless, particularly after the fact and particularly where young people are involved. Moreover, collecting debts of less than \$200.00 often costs more than the debt itself. The proposed 15-day rule, without any proviso for non-paying students, has not been demonstrated to be reasonable. The rule is unreasonable as proposed because it would, in some circumstances, require programs to go without being paid for the services they provide. There appears to be no rational basis for such a requirement. This defect could be cured by adding a new provision such as the following:

D. Nothing in these rules shall require a program to issue any certificate to a student who has not paid the agreed-upon fees.

Such a change would not be a substantial change.

Part 7411.0700, Subp. 8, Item B. Notification when a 15 year old student fails to complete the course.

58. David Aquilar asked why this requirement applies only to 15 year old students.

This item requires a program to notify the Department when a 15 year old student fails to continue or complete the course. This item applies only to 15 year old students because only 15 year old students are required to continue and complete driver training in order to maintain their instruction permits under Minn. Stat. § 171.05. The rule is reasonable and necessary as written and no change is required.

Part 7411.0700, Subp. 11. Limitation on students taught by certified programs.

59. The PADSM questioned the limitation on the age of students that may be served by certified driver training programs. PADSM suggested that a student should be able to begin driver training prior to age 15 since the student can legally obtain an instruction permit upon reaching age 15. PADSM also questioned why certified programs could not offer a course to a student more than 18 years of age.

This subpart deals with the certified driver training programs and does not directly affect PADSM members who are all licensed driver training programs. The authority to regulate certified programs comes from Minn. Stat. § 171.04, (1), which deals with 15, 16 and 17 year old persons who must take an approved driver training course before obtaining an instruction permit or driver's license. A certified program is exempt from the licensing requirements for commercial driver training schools because of Minn. Stat. § 171.39. If a certified program did not fit within these exemptions, it would need to obtain a commercial school license.

The Department stated that PADS's point regarding students younger than 15 was well taken. A certified program could offer driver training to a student younger than age 15 and still be exempt from obtaining a commercial school license under § 171.39. Further, under § 171.39, a certified program conducted by a college, university, or high school could give driver training lessons to 18 year old students as part of the normal program for such institution. The Department proposes that the second paragraph of Part 7411.0700, Subp. 11, be changed to read:

A certified program shall not offer a course in driver education to a student unless the student is ~~at least 15~~ ~~and~~ not more than 18 years of age and the student is taking the course to qualify for a class C instruction permit or driver's license or unless the program is conducted by a college, university, or high school as part of the normal program for such institution.

This change clarifies the limitations on certified programs and is consistent with Minn. Stat. § 171.39. This is not a substantial change. Interested parties were given adequate notice that this could be an issue at the hearing. Further, this change will not adversely affect any party to this proceeding.

Part 7411.0700, Subp. 13. Situations requiring programs to notify the Department.

60. The Professional Associated Driving Schools of Minnesota recommended that the Department be notified of traffic violations or accidents for all categories of instructor, including commercial, public, private, or parochial. PADS also gave the opinion that the Department could easily get this information from its own computer system.

The Department does not have the statutory authority to regulate driver training instructors at public high schools. The Department does not have the computer capability to automatically obtain updates to the driving records of instructors. No change is necessary. The rule as written is reasonable.

Part 7411.0700, Subp. 14. Types of instruction.

61. PADS stated that the word "complete" was not defined and suggested that this subpart be clarified.

The Department agreed that this subpart should be clarified. A "complete" course is one that covers the required topics and continues for the required number of hours. The Department proposed to change Part 7411.0700, Subp. 14, as follows:

Subp. 14. Types of instruction. A program shall offer a driver training student under 18 years of age ~~with~~ complete the required course of classroom instruction and complete the required course of laboratory instruction.

This change clarifies the requirement of this subpart and does not constitute a substantial change. Interested parties received adequate notice

that this could be an issue as is shown by the submission of testimony on this subject. This change will not adversely affect any party to this proceeding.

Part 7411.0800, Subp. 8, Item G.

62. This item is one of a list of grounds for license discipline. The PADSM stated that the wording of this item was "balky and tenuous." PADSM proposed that the item read: "The program or instructor has conducted business in a way that substantially departs from commonly accepted instructional or business practices."

Item G, as proposed, refers to "commonly accepted practices as used by other driver training programs and instructors." The substance of the rule is unchanged from previous versions. A program regulated by these rules will be held to the commonly accepted practices of other programs regulated by these rules. From the diversity of opinions and practices advocated at the hearing, it is clear that a wide variety of businesses are currently operating under the rules. The Department desires to restrict accepted practices to those used in the driver training business, not all business. That is appropriate. The rule as written is reasonable and necessary.

Part 7411.0800, Subp. 8. Suspension and revocation; and Subp. 8a administrative review. Time frame for a review of an action against a program or instructor license.

63. James Harelson stated that there is no time frame stated between the receipt of a request for a review of an adverse action against a program or a licensee and the review. He said that any long delay in getting a hearing would put most commercial schools out of business.

The Department responded:

There is no provision in this subpart that makes a license action effective before a review is held. A program may continue operating while a review or the outcome of a review is pending. Note that the license action will automatically become effective if a program does not request a review within the time frames set out in this subpart.

The rule is not entirely clear that proposed licensing actions do not become effective until thirty days has elapsed or, if a review or hearing is requested, until completion of those proceedings. It would be helpful to add such a provision to clarify the Department's intent.

Similarly, the first sentence of Subp. 8A, Item B (formal hearing) could be changed in the following way to more correctly indicate the intent of the rule.

B. The program or instructor may request a formal hearing with or without undergoing the review process in Item A. The request must be in writing and must be received within 30 days after the program or instructor receives notice of the revocation, suspension, or refusal, or within 10

days after the party receives notice of an adverse determination under A, whichever period is longer.

This change would insure that an informal appeal could be completed before the more costly and time consuming formal hearing process is started. This seems to be the intent of the rules. In theory, the informal process would have to be completed within 20 days. Then another 10 days is allowed in order to file an appeal for a formal hearing. The above change would preserve the right to a formal hearing even if the informal review were delayed.

The above changes clarify ambiguities and more accurately reflect the Department's intent. Interested parties received adequate notice that this could be an issue as shown by testimony received at the hearing. The suggested language or a similar variation would not constitute a substantial change.

Fees.

64. PADSM questioned the fees that apply to the different types of driver training programs operating in Minnesota.

The fees for obtaining a commercial driver training school or instructor's license are set by Minn. Stat. § 171.36. Minn. Stat. § 171.39 exempts certified programs from paying a fee. The Department has no statutory authority to set the fees.

"Driver training" versus "driver education".

65. Duane Mettler suggested that the Department use "driver education" instead of "driver training" in the rules because it carries a more professional connotation.

Minn. Stat. §§ 171.33 to 171.41, give the Department authority to regulate "commercial driver training schools." The terms "driver training" and "driver education" both refer to instruction given to help a person learn how to drive. We "train" pilots and astronauts. The term "driver training" is reasonable for these rules.

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Department gave proper notice of the hearing in this matter.
2. The Department has fulfilled the procedural requirements of Minn. Stat. § 14.14, and all other procedural requirements of law or rule.
3. The Department has documented its statutory authority to adopt the proposed rules, and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 14.05, subds. 1, 14.15, subd. 3, and 14.50(i) and (ii).

4. The Department has demonstrated the need for and reasonableness of the proposed rules by an affirmative presentation of facts in the record within the meaning of Minn. Stat. § 14.14, subd. 2 and 14.50(iii), except as noted in Finding 57.

5. The additions and amendments to the proposed rules that were suggested by the Department after the publication of the proposed rules in the State Register do not result in rules which are substantially different from the proposed rules as published in the State Register within the meaning of Minn. Stat. § 14.15, subd. 3, Minn. Rule 1400.1000, Subp. 1 and 1400.1100.

6. The Administrative Law Judge has suggested action to correct the defect cited in Conclusion 4 as noted at Finding 57.

7. Due to Conclusion 4, this report has been submitted to the Chief Administrative Law Judge for approval pursuant to Minn. Stat. § 14.15, subd. 3.

8. Any Findings that might properly be termed Conclusions and any Conclusions that might properly be termed Findings are hereby adopted as such.

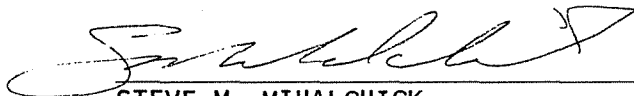
9. A finding or conclusion of need and reasonableness in regard to any particular rule subpart does not preclude and should not discourage the Department from further modification of the rules based upon an examination of the public comments, provided that no substantial change is made from the proposed rules as originally published and provided that the rule finally adopted is based upon facts appearing in this rule hearing record.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the proposed rules be adopted except where specifically noted otherwise above.

Dated this 2nd day of April, 1990.



STEVE M. MIHALCHICK
Administrative Law Judge