

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA HIGHER EDUCATION COORDINATING BOARD

In the Matter of Proposed Rules
Governing Part-time Student Grants,
Minn. Rules Parts 4830.1550 to
4830.1555.

REPORT OF THE
ADMINISTRATIVE LAW JUDGE

The above-entitled matter came on for hearing before Administrative Law Judge Jon L. Lunde on May 22, 1991, at 9:00 a.m. in the Fifth Floor Conference Room, Veterans Services Building, 20 West Twelfth Street, St. Paul, Minnesota.

This Report is part of a rulemaking proceeding held pursuant to Minn. Stat. §§ 14.131 to 14.20, to hear public comment, to determine whether the Minnesota Higher Education Coordinating Board (HECB or Board) has fulfilled all relevant substantive and procedural requirements of law applicable to the adoption of the rules, whether the proposed rules are needed and reasonable and whether or not modifications to the rules proposed by the HECB after initial publication are impermissible substantial changes.

Nancy Joyner, Special Assistant Attorney General, 1100 Bremer Tower, St. Paul, Minnesota 55101, appeared on behalf of the HECB. The HECB's hearing panel consisted of Mary Lou Dresbach, Administrative Liason for the Board; Joe Graba, Deputy Executive Director of HECB; Cheryl Maplethorpe, Manager of State Financial Aid Programs for HECB; and Jack Rayburn, Policy Analyst for HECB.

Nineteen persons attended the hearing. Sixteen persons signed the hearing register. The hearing continued until all interested persons, groups or associations had an opportunity to be heard concerning the adoption of these rules.

The record remained open for the submission of written comments for thirteen calendar days following the date of the hearing, to June 4, 1991. Pursuant to Minn. Stat. § 14.15, subd. 1 (1988), three business days were allowed for the filing of responsive comments. At the close of business on June 7, 1991, the rulemaking record closed for all purposes. The Administrative Law Judge received written comments from interested persons during the comment period. The HECB submitted written comments responding to matters discussed at the hearings and proposing changes in the proposed rules.

The Board must wait at least five working days before the HECB takes any final action on the rule(s); 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 Board of actions which will correct the

defects and the Board may not adopt the rule until the Chief 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 Board may either adopt the Chief Administrative Law Judge's suggested actions to cure the defects or, in the alternative, if the Board 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 Board 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 Board may proceed to adopt the rule and submit it to the Revisor of Statutes for a review of the form. If the Board makes changes in the rule other than those suggested by the Administrative Law Judge and Chief Administrative Law Judge, then it shall submit the rule, with the complete hearing 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 Board 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

Procedural Requirements

1. On March 21, 1991, the HECB filed the following documents with the Chief Administrative Law Judge:

- (a) A copy of the proposed rules certified by the Revisor of Statutes;
- (b) A copy of the HECB's Authorizing Resolution;
- (c) A copy of the HECB's proposed Order for Hearing;
- (d) The Notice of Hearing proposed to be issued; and,
- (e) The Statement of Need and Reasonableness (SONAR).

2. On April 5, 1991, the HECB mailed the Notice of Hearing to all persons and associations who had registered their names with the Board for the purpose of receiving such notice.

3. On April 8, 1991, a copy of the proposed rules were published at 15 State Register 2220.

4. On April 25, 1991, the HECB filed the following documents with the Administrative Law Judge:

- (a) The Notice of Hearing as mailed;
- (b) A photocopy of the pages of the State Register containing the Notice of Hearing and the proposed rules;

- (c) a copy of the Notice of Solicitation of Outside Opinion together with all materials received in response to that notice; and,
- (d) The Board's certification that its mailing list was accurate and complete and the Affidavit of Mailing the Notice to all persons on the HECB mailing list.

5. On May 13, 1991, the HECB filed the copies of all comments received after publication of the Notice of Hearing with the Administrative Law Judge.

Nature of the Proposed Rules and Statutory Authority.

6. The Minnesota Legislature has found that encouraging the educational development of economically disadvantaged men and women is in the best interest of the state. Minn. Stat. § 136A.095 (1990). In Minn. Stat. § 136A.132, the Legislature established a part-time student grant program for students attending less than full-time. The formula to calculate the amount of each grant is left to be established by rules adopted by the HECB. Minn. Stat. § 136A.132, subds. 4 and 5. The rules proposed by the HECB in this proceeding modify the formula used to calculate individual awards under the part-time grant program. The Administrative Law Judge concludes that the HECB has statutory authority to adopt these rules.

Small Business Considerations in Rulemaking.

7. Minn. Stat. § 14.115, subd. 2, provides that state agencies proposing rules affecting small businesses must consider methods for reducing adverse impact on those businesses. The rules proposed by the HECB will not have any impact on small businesses. The HECB has complied with Minn. Stat. § 14.115, subd. 2.

Fiscal Notice.

8. Minn. Stat. § 14.11, subd. 1, requires the preparation of a fiscal notice when the adoption of a rule will result in the expenditure of public funds in excess of \$100,000 per year by local public bodies. The notice must include an estimate of the total cost to local public bodies for a two-year period. The proposed rules will not require expenditures by local governmental units or school districts in excess of \$100,000 in either of the two years immediately following adoption, and thus no notice is needed.

Impact on Agricultural Land.

9. Minn. Stat. § 14.11, subd. 2 (1988), imposes additional statutory requirements when rules are proposed that have a "direct and substantial adverse impact on agricultural land in this state." The statutory requirements referred to are found in Minn. Stat. §§ 17.80 to 17.84. The rules proposed by the HECB will have no substantial adverse impact on agricultural land within the meaning of Minn. Stat. § 14.11, subd. 2 (1988).

Rule 4830.1552 - Application and Distribution of Funds for Grants.

10. The proposed rules as published in the State Register modify Minnesota Rule part 4830.1552. The new language simplifies the formula by which the funding for part-time grants at individual schools is set. The former system required reporting of prior usage by schools to set the next

year's allocation. Presumptive usage levels are set for those schools whose reports were not timely. The new rule would use the previous year's funding level as one variable in the formula to calculate each school's initial allocation. No commentators objected to the proposed rule language. The proposed language is found to be needed and reasonable.

11. The HECB modified the language of subpart 1 in rule 4830.1552 after the hearing in this matter. The modification requires the HECB to calculate registration levels by dividing the student's credit load by 15, rather than 12, beginning on July 1, 1992. This change conforms the existing rule to statutory changes signed into law on June 4, 1991. (S.F. 1535, Article 8, Section 2). Although the change was proposed in post-hearing comment, the modified language merely conforms the rule to the statute, once the statute becomes effective. Since the statute would control in any event, the new language does not constitute a substantial change. The alteration from 12 credits to 15 credits, effective July 1, 1992, is needed and reasonable.

Rule 4830.1553 - Determination of Eligibility.

12. The new language proposed in the State Register for rule part 4830.1553 introduces a requirement that a student be registered for at least 1/12 of the full-time enrollment level. Under the previously promulgated rule, there was no minimum enrollment requirement. The HECB has added this requirement to ensure that students are making at least minimal progress toward a degree. SONAR, at 8. No commentators objected to this provision. Placing a minimum enrollment requirement on students as an eligibility requirement is needed and reasonable.

13. Because the language of the statute passed in the last legislative session differs from that of the rule as published, the HECB modified the proposed rule after the hearing. The modifications alter the minimum enrollment to 3/15th of full time enrollment and eliminate the ability of the Board or a school to define full-time enrollment for purposes of eligibility. These changes conform the language of rule 4830.1553 with the new statute. (S.F. 1535, Article 8, Sections 1, 2, and 15). The Board has added language conforming the effective dates of the new language to the effective dates of the statute on which the changes are modeled. The new language is needed and reasonable. The modifications conform the rule to a newly adopted statute and do not constitute substantial changes.

Rule 4830.1554 - Awards.

14. Proposed Rule 4830.1554 replaces the former method of awarding grants, located in subparts 1-3 (to be repealed as part of this proceeding). The new language is located in subparts 4-6. Each subpart will be discussed individually.

Subpart 4 - Award Amount.

15. Subpart 1 establishes the formula by which schools calculate the amount students can receive under the part-time student grant program. The formula begins with the "cost of attendance" (as calculated in subpart 6), and from that figure subtracts: the grant applicant contribution of at least 50 percent of the cost of attendance; a "parental contribution" (or independent

student contribution); and the amount of any Pell grant awarded. The result of this subtraction is an award calculated to cover the amount remaining to be paid. The formula is intended to cover the reasonable cost of education, by coordinating student, parent, state government and federal government contributions.

The only aspect of this shared responsibility which attracted critical comment relates to Pell grants. Barbara Blacklock, LISW, Office for Students with Disabilities of the University of Minnesota, objected to the rule on the ground that the Pell grant eligibility language would require students to take two classes (as the minimum courseload for which students can receive a Pell grant). Ms. Blacklock argued that many of those students with whom she works cannot handle that courseload and thus would be foreclosed from the benefits of the part-time student grant program. The rules as proposed, however, do not require that a student be eligible for a Pell grant to receive a part-time student grant. If the student is eligible and receives a Pell grant, however, that grant cannot be used in addition to the part-time grant. Subpart 4 requires that any Pell grant received be used to offset costs before the state grant is awarded.

Fran Van Slyke-Zaslofsky, Coordinator of Financial Aid for Continuing Education and Extension for the University of Minnesota, and Christopher Halling, Director of the University's Office of Student Financial Aid, objected to the apparent merger of the part-time student grant system into the Minnesota state grant system. Both commentators advocated that the two programs be kept separate to promote flexibility, efficiency, and a simple methodology to calculate grant amounts. Public Exhibit 1, at 1. Jim Schmidt, Financial Aid Officer for Austin Technical College, also objected to the proposed method of calculating awards. Mr. Schmidt introduced into the rulemaking record a copy of Austin Technical College's part-time student grant application form. Public Exhibit 2. This form is a two-page document. The first page consists of student information and the second page contains a worksheet on which the award is calculated, including income guidelines which limit student eligibility for the awards.

The HECB responded to these objections by noting that the Legislative changes to the part-time grant system will merge the part-time grant system and the Minnesota grant system by July 1, 1993. (S.F. 1535, Article 8, Section 1). In addition, the HECB introduced a two-page sample form, showing how the award calculation would not become noticeably more complex. The sample form requires student information on the first page, and provides space for the calculation of the part-time grant award for students enrolled from one to five credits. The second page is completely filled by two tables. The first table sets out the contribution amounts for dependent students based on the household size and income. The second table provides the same information for independent students. The HECB has shown that the proposed method of award calculation is needed and reasonable. The blending of the part-time award calculation methodology with that used in the Minnesota grant system is consistent with the intent of the Legislature.

Income/Contribution Charts.

16. Despite the foregoing Finding, however, the manner in which the HECB has written proposed subpart 4 is defective. As modified by the Board in its

post-hearing comment, proposed rule 4830.1554, subp. 4, item B, reads:

B. for an applicant who is not an independent student, a contribution by the grant applicant's parents, as determined by the income/contribution chart provided by the board or a higher amount as determined by the school, divided by the number of terms in the school's academic year.

Item C of subpart 4 has identical language for applicants who are independent students. Both of these items refer to a document (the income/contribution chart) without identifying the source of the document or the standards for calculating the figures contained in the document. Without a reference, the income/contribution charts violate Minn. Stat. § 14.07, subd. 4, which sets the requirements for incorporation by reference. Since the charts are compiled by the Board, the method used to prepare the charts must be defined. With no reference to an outside document or standards to prepare the charts, the Board is not bound by the example of the income/contribution charts put into the record. Therefore, the HECB may change the contribution levels at will. The result is unbridled agency discretion which violates Minn. Stat. Chapter 14 (the Administrative Procedures Act (APA)). G. Beck, L. Bakken & T. Muck, Minnesota Administrative Procedure § 24.4 (1987). Stating only that the tables will be provided by the Board results in an unpromulgated rule which violates the APA. See White Bear Lake Care Center, Inc. v. Minnesota Department of Public Welfare, 319 N.W.2d 7, 9 (Minn. 1982).

Ordinarily, the best way to cure this defect is to incorporate the charts into the proposed rule. The charts are in the rulemaking record, on the back of the sample application form prepared by the Board. This course is not available to the HECB, however, due to the lack of any affirmative facts in the rulemaking record showing that the figures of the income/contribution charts are needed and reasonable. Aside from a comment that charts are based on the "Congressional Methodology," the way in which the Board calculated those figures is not apparent from the record.

The Board identified the particular methodology used to calculate the tables as the "Congressional Methodology." If the Board used that methodology without change, the HECB can alter the language of items B and C to incorporate the citation identifying that methodology, and provide the charts to aid in the operation of the program. Such an alteration would cure the defect found in this subpart and provide for the efficient operation of the part-time grant system.

If the HECB made changes in the methodology to calculate the figures in the income/contribution charts, the Board can change the language of item B to read:

B. for an applicant who is not an independent student, a contribution by the grant applicant's parents, as determined by a financial need analysis performed by the board or a higher amount as determined by the school, divided by the number of terms in the school's academic year.

The change replaces the references to charts with "financial need analysis", a

term defined in Minn. Rule 4830.0100, subd. 8 as:

a system for analyzing a family's financial strength to determine the expected parental and student contributions to educational costs. The system is a federally approved system or an equivalent need analysis system adopted each year by the board for the appropriate processing year.

The suggested language has two advantages. First, it incorporates existing terms which are not subject to this rulemaking proceeding. Second, the standards needed to control agency discretion are incorporated without unduly restricting the Board's ability to alter the income/contribution charts on an annual basis. The Board must also make a similar change to item C. Under either option, the suggested language cures the defect found in subpart 4 and does not constitute a substantial change in the rules as published in the State Register.

Child Care Expenses.

17. A number of commentators suggested that the proposed rules would have the most adverse impact on those students who incur child care expenses while enrolled in part-time post-secondary programs. The rules being replaced in this proceeding allowed for child care expenses as part of the direct educational expense incurred by students. Minn. Rule 4830.1554, subp. 3. Responding to these comments, the HECB added language to subpart 4 which states:

The award amount may include funds to cover child care expenses related to the student's school attendance if the student is not eligible for AFDC and is not eligible for child care funds under MN statutes 136A.125.

The new language does not clearly state whether the "funds to cover child care expenses" are intended to be awarded in addition to the amount intended to cover the "cost of attendance" as defined in Minn. Stat. § 136A.121, subd. 6. The distinction is important, since child care expenses are not part of the statutory "cost of attendance" formula and awards may not exceed the applicant's cost of attendance under this proposed subpart. The prior rules did incorporate child care into the overall grant formula as a direct educational expense. If the Board does not intend that funds be awarded in addition to the "cost of attendance" award, the new language should not be adopted, since it will only constitute surplusage. If the Board does intend to permit an additional amount to be awarded specifically for child care the new language is a defect, since it conflicts with the award limitation expressed earlier in subpart 4. To cure this defect, the HECB should adopt language similar to the following:

Funds in addition to the award amount may be granted to cover child care expenses related to the student's school attendance if the student is not eligible for AFDC and is not eligible for child care funds under Minnesota Statute § 136A.125.

This suggested language eliminates any ambiguity as to what may be included in an award under proposed subpart 4. Awarding funds for child

support expenses is needed and reasonable to permit single parents to complete their degrees as intended under the part-time grant program. The change clarifies the rule and does not constitute a substantial change.

Minimum Award Amount.

18. The Board changed the minimum amount which can be awarded under the part-time grant program from \$100 divided by the number of terms in the particular school's academic program to \$100. The effect of this change is to reduce the number of small awards which may be granted to students. The Board changed the provision in proposed subpart 4 to comply with a newly enacted statute setting the minimum award at \$100. (S.F. 1535, Article 8, Section 16). The Board's modification conforms the rule to the statute and is needed and reasonable. The modification was made after the hearing, but it does not constitute a substantial change.

Subpart 5 - Registration Load.

19. This proposed subpart defines "registration load" as "the quantity of course work or educational instruction (for example, credits, courses, clock hours) used by the school to define a student's level of enrollment." This definition is important to the rules since the cost of attendance is defined in terms of fractions of a registration load. No commentator objected the definition of "registration load." Proposed subpart 5 is found to needed and reasonable.

Subpart 6 - Cost of Attendance.

20. As originally published in the State Register, proposed subpart 6 established three levels of education costs. The first level, for students registered for at least 9/12 of the full time registration load, the cost of attendance is calculated as 75 percent of the statutory cost of attendance for a full year and divided by the number of terms in that school's academic year. The following level, for students registered less than 9/12 but no less than 6/12, uses 50 percent in the same formula. For those students registered less than 6/12, the formula is the statutory cost of attendance divided by the registration load for a full year, and then multiplied by the particular student's courseload. Expressed algebraically, the three levels are as follows:

$$1) \quad \frac{.75 \cdot Y}{T} = \text{cost of attendance}$$

$$2) \quad \frac{.50 \cdot Y}{T} = \text{cost of attendance}$$

$$3) \quad \frac{Y}{T^*} \cdot R = \text{cost of attendance}$$

In these formulas, Y represents the statutory cost for attendance over a full year, T is the number of terms in the academic year, T* is the full year registration load, and R is the individual student's registration load for a full year.

Assuming a student registers at a school on the quarter system which requires 60 hours per year and charges tuition for a full year of \$2000, the cost of attendance at each level would be:

$$1) \quad \frac{.75 \cdot \$2000}{4} = \$375$$

$$2) \quad \frac{.50 \cdot \$2000}{4} = \$250$$

$$3) \quad \frac{\$2000}{60} \cdot 7 = \$233$$

[The registration load of 7 hours was chosen for the less than half-time student to clearly show the difference between that category and half-time students, since the Board stressed the importance of ensuring that less than half-time students not have an incentive to register for fewer courses.]

Due to the legislative change to a 15 credit system effective July 1, 1992, the categories described above are only usable until June 30, 1992. (S.F. 1535, Article 8, Sections 2 and 3). After the hearing, the Board added a sunset date to the beginning of subpart 6 to reflect the statutory change. The HECB has shown that this portion of subpart 6 is needed and reasonable to incorporate the actual costs of attendance into the grant award. The change to the proposed rule reflects a statutory change after the rule was published. The change is not a substantial change.

21. On July 1, 1992, half-time students must be registered for at least 8/15 of the full-time registration load, statutorily defined as 15 credits per quarter or semester (or its equivalent). (S.F. 1535, Article 8, Sections 2 and 3). The Board added additional language after the hearing to incorporate this new requirement. The new language was added as items 1-4 at the end of subpart 6. Using the same variables used for the expiring formulas, the new formulas to calculate the cost of attendance at various registration loads are as follows:

$$1) \quad \frac{.80 \cdot Y}{T} = \text{cost of attendance for at least 12/15 of full-time}$$

$$2) \quad \frac{.60 \cdot Y}{T} = \text{cost of attendance - at least 9/15 but less than 12/15}$$

$$3) \quad \frac{.60(.53?) \cdot Y}{T^*} \cdot R = \text{cost of attendance for 8/15 full-time}$$

$$4) \quad \frac{Y}{T^*} \cdot R = \text{cost of attendance for less than 8/15 full-time}$$

The two numbers in the third formula are taken verbatim from the Board's post-hearing comment. While this appears to be a typographical error, the record has closed and no further information can be introduced as to which percent was intended by the Board. A deeper problem is revealed, however,

when the variables are replaced by the hypothetical situation used in the preceding Finding. The outcomes are as follows:

- 1) $\frac{.80 \cdot \$2000}{4} = \400
- 2) $\frac{.60 \cdot \$2000}{4} = \300
- 3a) $\frac{.60 \cdot \$2000}{60} \cdot 8 = \160
- 3b) $\frac{.53 \cdot \$2000}{60} \cdot 8 = \141
- 4) $\frac{\$2000}{60} \cdot 7 = \233

Using either percentage, the Board's formula results in a cost of attendance (and thereby a possible award) which is higher for less than half-time students than the award for half-time or more students. This outcome is the opposite of what the Board intended. SONAR, at 3. This constitutes a defect in the proposed rules, since the Board has not shown that the rule is rationally related to the desired result. See Mammenga v. Department of Human Services, 442 N.W.2d 786, 789-90 (Minn. 1989). To cure this defect the Board must replace the language in item 3 with either of the two following suggestions:

3a) for students registered at least 8/15 but less than 9/15 of the full-time registration load for one academic term, the cost of attendance is 53 percent of the amount defined in Minnesota Statutes, section 136A.121, subdivision 6, divided by the number of terms in the academic school year;

~~3b)~~ for students registered at least 8/15 but less than 9/15 of the full-time registration load for one academic term, the cost of attendance is the amount defined in Minnesota Statutes, section 136A.121, subdivision 6, divided by the full-time registration load for one academic year, multiplied by the student's registration load;

Using the suggested language results in the following outcomes:

- 1) $\frac{.80 \cdot \$2000}{4} = \400
- 2) $\frac{.60 \cdot \$2000}{4} = \300
- 3a) $\frac{.53 \cdot \$2000}{4} = \265
- 3b) $\frac{\$2000}{60} \cdot 8 = \267
- 4) $\frac{\$2000}{60} \cdot 7 = \233

Option 3a follows the formula for categories 1 and 2 dividing a percentage of the cost of attendance by the number of terms in the academic year. Option 3b uses the formula for category 4, dividing the cost by the full year registration load and multiplying by the student's registration load. Either option is needed and reasonable. The HECB may also choose to use a different formula, so long as the outcome is consistent with the Board's intent that awards do not decrease as registration loads increase. The changes suggested by the Administrative Law Judge in this Finding are consistent with the expressed intention of the Board and do not constitute substantial changes.

The Board may also wish to consider reorganizing items 1-4 into a new subpart. The Judge suggests subpart 6a as the proper designation. Each item would then be denoted as A, B, C and D, respectively. This reordering would eliminate confusion as to the relationship of subpart 6(C) to items 1-4. The reordering would not be a substantial change.

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

CONCLUSIONS

1. The Minnesota Higher Education Coordinating Board (HECB) gave proper notice of this rulemaking hearing.
2. The HECB has substantially fulfilled the procedural requirements of Minn. Stat. §§ 14.14, subds. 1, 1a and 14.14, subd. 2, and all other procedural requirements of law or rule so as to allow it to adopt the proposed rules.
3. The HECB has demonstrated 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, subd. 1, 14.15, subd. 3 and 14.50 (i) and (ii).
4. The HECB 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 at Findings 16, 17 and 21.
5. The additions and amendments to the proposed rules which were suggested by the HECB after 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, and Minn. Rule 1400.1000, subp. 1 and 1400.1100.
6. The Administrative Law Judge has suggested language to correct the defects cited in Conclusion 4, as noted at Findings 16, 17 and 21.
7. Due to Conclusions 4 and 6, this Report has been referred to the Chief Administrative Law Judge for his approval pursuant to Minn. Stat. § 14.15, subd. 3.
8. Any Findings which might properly be termed Conclusions and any Conclusions which might properly be termed Findings are hereby adopted as such.

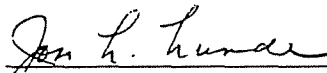
9. A Finding or Conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage the HECB from further modification of the proposed rules based upon an examination of the public comments, provided that no substantial change is made from the 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 otherwise noted above.

Dated this 3rd day of July, 1991.



JON L. LUNDE
Administrative Law Judge

Reported: Tape Recorded; No Transcript.