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State Register

STATE OF MINNESOTA

HIGHLIGHTS:

Energy Conservation Standards
—Adopted Rules from the Department of Administration

Inclusion of Minnesota River in the Wild and Scenic Rivers System
—Adopted Rules from the Department of Natural Resources

Conventional Home Loan Assistance and Protection Act
—Proposed Rules from the Department of Commerce

Automobile Accident Reparations Arbitration
—Proposed Rules from the Department of Commerce

Credit Life and Credit Accident Insurance
—Proposed Rules from the Department of Commerce

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—Proposed Rules from the Department of Labor and Industry

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—Proposed Rules from the Department of Labor and Industry

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—Proposed Rules from the Board of Nursing

Welfare Per-Diem Rates for Nursing Home Providers
—Proposed Temporary Rule from the Department of Public Welfare

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MCAR AMENDMENTS AND ADDITIONS

List of amendments and additions to rules contained in the Minnesota Code of Agency Rules (MCAR) as published in the State Register, Volume 2, Numbers 1-2:

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RULES

Department of Administration

Building Code Division

Energy Conservation Standards for Buildings

The rules published at State Register Vol. 1, No. 33, p. 1251, February 22, 1977 (1 S.R. 1251), are adopted and are identical in every respect to their proposed form, with the following amendments:

SBC 6005 Adoption of ASHRAE Standard 90-75 by reference.

B. Page 10, Definitions.

new building. As used hereafter shall mean new buildings, additions, remodeled elements of buildings, and certain existing public buildings.

C. Page 12, 4.2.1.1

In addition to the criteria set forth in this section, the proposed design [should] **shall** consider energy conservation in determining the orientation of the building on its site; the geometric shape of the building; the building aspect ratio (ratio of length to width); the number of stories for a given floor area requirement; the thermal mass of the building; the exterior surface color; shading or reflections from adjacent structures, surrounding surfaces or vegetation; opportunities for natural ventilation; and wind direction and speed. Calculation procedures and information contained in Chapters 17-22 of the 1972 ASHRAE HANDBOOK OF FUNDAMENTALS 1-6 may be used as guidelines to evaluate the above factors.

I. Page 22, Exceptions.

Special applications, such as but not limited to hospitals, laboratories, thermally sensitive equipment, computer rooms and supermarkets, are exempt from the requirements of this section. Where these special applications are described in the 1974 ASHRAE HANDBOOK & Product Directory, Applications Volume [1], the criteria described therein [should] **shall** be used.

J. Page 23

5.3.2.3 Ventilation. Ventilation air shall conform to ASHRAE Standard 62-73 "Natural and Mechanical Ventilation." [6]

Ventilation air quantities identified in SBC 7705 through SBC 7720 shall be used in lieu of those contained in Standard 62-73 whenever this will reduce ventilation air quantities.

K. Page 23

5.3.2.5 System design heating/cooling capacity. The rated capacity of the heating/cooling system at design conditions shall not be greater than 115% for heating, 100% for cooling at design output load calculated in accordance with Sec. 5.3., whenever appropriate equipment is available. Equipment designed for standby purposes is not included in this capacity limitation requirement. The cooling capacity of heat pumps are exempt from this limitation.

L. Page 23

5.4.3.1 One and Two-Family Dwelling Units, Attached or Detached [and Mobile Homes].

Q. Page 34.

7.8 Swimming pools.

7.8.1 Heated swimming pools shall be equipped with controls to limit heating water temperatures to no more than [80F (26.5°).] **84F (28.9°C).**

R. Page 34.

8.6 Electric energy determination. In any multitenant residential building, provisions shall be made to separately determine the energy consumed by each tenant. [where local codes and regulatory agencies permit, each tenant shall be made financially responsible for the energy he uses.]

S. Page 38. Attachment B to section 9 (9.3.4.1)

[Attachment A is not a part of this Standard.]

T. Page 41. Attachment B to section 9 (9.3.5)

[Attachment B is not a part of this Standard.]

KEY: Existing rules are printed in standard type face. Proposed additions to existing rules are printed in **boldface**, while proposed deletions from existing rules are printed within [single brackets]. Additions to proposed rules are **underlined and boldfaced**, while deletions from proposed rules are printed within [[double brackets]].

U. Page 46. Attachment C to section 9

[Attachment C is not a part of this Standard.]

V. Page 51. Appendix I

[Appendix I is not part of this Standard.]

W. Page 52. Appendix II

Appendix II is not part of this Standard.]

X. Page 53.

Sheet Metal and Air Conditioning Contractors National Association, Inc. (SMACNA)
[1611 North Kent Street, Suite 200
Arlington, VA 22209]

8224 Old Courthouse Road
Vienna, VA 22108

Y. Page 53.
Appendix III is deleted in its entirety.

Department of Natural Resources
Parks and Recreation Division

Designation Classification and Management of the Minnesota River in Lac qui Parle, Yellow Medicine, Chippewa, Renville and Redwood Counties

The rules published at State Register Vol. 1, No. 10, pp. 320-335, September 14, 1976 (1 S.R. 320-335), are adopted and are identical in every respect to their proposed form, with the following amendments:

NR 2600 E. Stipulation. The commissioner of natural resources will not request the inclusion of that portion of the Minnesota River from the Lac qui Parle dam to the Redwood County State Aid Highway 11 bridge near Franklin into the Federal Wild and Scenic Rivers System without the consent of the County Board of Commissioners of Lac qui Parle, Chippewa, Yellow Medicine, Redwood and Renville counties.

NR 2610 Classification. That portion of the Minnesota River and adjacent lands from the Lac qui Parle dam to the U.S. Highway 212 bridge in the corporate limits of Montevideo is classified as Scenic.

That portion of the Minnesota River and adjacent lands from the U.S. Highway 212 bridge in the corporate limits of Montevideo to the Great Lakes Pipeline one-quarter mile down-stream of the Minnesota Falls dam is classified as Recreational.

That portion of the Minnesota River and adjacent lands from the Great Lakes Pipeline one-quarter mile down-stream of the Minnesota Falls dam to the Redwood County State Aid Highway 11 bridge is classified as Scenic.

NR 2620 A.1.b. Conform to the provisions of NR 78-81 except for extraction of sand and gravel which shall continue to be a conditional use under the regulatory discretion of local governments.

NR 2620 A.2.b. Conform to the use, dimensional and sanitary provisions of the Recreational Development classification of NR 83 (a), NR 83 (c) (1)-(2) and (4)-(5), NR 83 (d), and the provisions of Minnesota Regulations NR 79 (3-7 (1)), 80-81.

NR 2620 A 3. [[The zoning provisions specified above shall not be changed by annexations or incorporations occurring after the date of designation.]] If land is annexed, incorporated or in any other way transferred to another jurisdiction, a moratorium shall exist on all construction, grading and filling, and vegetative cutting until the newly responsible unit of government adopts zoning for that land. The zoning shall meet the provisions of this management plan which applied to the land before the transfer. This provision does not apply to work for which lawful permits were previously issued.

NR 2620 4. All local ordinances and regulations which are more protective than those required to be adopted by this management plan [[shall]] may be continued.

NR 2620 B 4. Additional lands or interests in land may be purchased within the land use district from willing sellers to further the policies established in Minn. Stat. § 104.32 (1974) and this management plan.

NR 2620 B 5. Land acquisition authority contained in

this subsection is promulgated under Minn. Stat. § 104.37 (1974) which does not give the Commissioner of Natural Resources eminent domain authority within the river land use districts. If in the future, eminent domain authority is granted as a method of land acquisition under Minn. Stat. § 104.37, it shall not be utilized in the river land use districts without explicit repromulgation or amendment of this rule. This provision does not apply when the Commissioner of Natural Resources is ordered by the legislature to use eminent domain authority within the river land use districts.

NR 2630 B. As provided for in NR 79 (b) and the management plan, the development of public or private recreational facilities within the Scenic and Recreational river land use districts shall conform to the design specification guidelines as shown on the Recreational Site Typicals with the addition of a gate to the service trail for primitive campsites.

NR 2630 E. 2. On trails specifically designated for snowmobiling in state parks, or designated by local governments or the legislature.

NR 2630 H. 2. b. At the Department of Natural Resources access at Montevideo — a rest area.

NR 2630 I. The department's Enforcement Division shall enter into discussions with the local units of government concerning the delineation of responsibilities for the enforcement of applicable Wild, Scenic and Recreational river regulations. The Enforcement Division shall extend sufficient effort to meet enforcement responsibilities in the Minnesota River land use districts.

[[NR 2640 Recommendations.]]

[[A. Federal-State relations]]

[[1. Since the Department of Natural Resources is responsible for administering the Minnesota River as a Scenic and Recreational river, it is recommended that the State of Minnesota, through the appropriate application process, apply for those islands presently administered by the Bureau of Land Management to be transferred to the Department of Natural Resources under the authority granted the commissioner of natural resources in Minn. Stat. § 104.35 (1974).]]

[[2. It is recommended that the Agricultural Stabilization and Conservation Service give high priority for providing technical assistance and funds to alleviate bank erosion problems on the Minnesota River.]]

[[B. Other governmental units.]]

[[1. To further the purposes of the Minnesota Wild and Scenic Rivers Act, it is recommended that all State Highway Department lands within the Scenic and Recreational river land use districts be administered in accordance with the provisions of Minnesota Regulations NR 78-81 and this management plan. In particular, it is stated in Minnesota Regulations NR 79 (j) (2) (bb) (v) that:

a. Highway waysides shall be designed in such a manner so as to harmonize with the surroundings.

b. Such development plans shall be reviewed and approved by the commissioner of natural resources.]]

[[2. It is recommended that the Minnesota Pollution Control Agency be appropriated sufficient funds to conduct an ongoing analysis and monitoring of water quality information, and to allow for appropriate measures to insure that water quality regulations and standards are maintained for the Minnesota River.]]

[[3. To help insure that the outstanding heritage of the Minnesota Rivers is protected for future generations, it is recommended that the Minnesota Historical Society conduct an inventory of all historical and archaeological sites within the proposed Scenic and Recreational river land use districts and recommend appropriate methods for preservation of those sites having outstanding historical significance.]]

[[4. To further enhance the recreational potential of the Minnesota River and to complement the existing Lower Minnesota River Valley Trail, it is recommended that a corridor trail system from LeSueur to Ortonville be established through state legislation and developed by the Department of Natural Resources and local units of government.]]

[[5. It is recommended that the counties which border the river adopt zoning ordinances to protect bluff-lines which lay beyond the land use district boundaries.]]

[[6. To further the purposes of the Minnesota Wild and Scenic Rivers Act, it is recommended that the Indian reservation lands of the Upper Sioux Agency and Lower

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Sioux Agency be managed in a way consistent with this act.]]

[[7. It is recommended that agencies in charge of public outdoor recreation on the Minnesota River work with the Department of Natural Resources in improving and developing recreational facilities.]]

[[8. It is recommended that those lakes in the Minnesota River valley between Lac qui Parle and Franklin, which are delineated as "intended for acquisition" on the preliminary Public Waters Inventory maps, be given priority status for acquisition.]]

Land Use District Descriptions and Acreages

Description	Acreage
T 117 N - R 40 W	
Section 19	
[[N½ of SE¼ of NW¼	20.00]]
Section 33	
Government Lot 4 (YM) all but S 20	19.10
[[W½ of NE¼ of SE¼	20.00]]
T 116 N - R 40 W	
Section 3	
Government Lot 2 (C) everything W of CSAH 15 [[25.19]]	21.19
Section 13	
[[E½ of SE¼ of SW¼	20.00]]
T 115 N - R 39 W	
Section 2	
[[SE½]] SE¼ of NE¼ of SW¼	10.00
Section 11	
Government Lot 3 (C) all but S 20	33.00
Section 24	
[[E½ of SE¼ of NW¼	20.00]]
T 114 N - R 37 W	
Section 6	
Government Lot 7 (REN) only the S½	17.29
Section 8	
Government Lot 1 (RED) all but S 20	27.72
T 114 N - R 36 W	
Section 30	
Government Lot 1 [[(REN)]]	37.75
Government Lot 2 [[(REN)]]	31.70
Government Lot 3 [[(REN)]]	53.85
Government Lot 4 [[(REN)]]	32.85
Government Lot 5 [[(REN)]]	38.75
Government Lot 6 [[(REN)]]	34.75
Government Lot 7 [[(REN)]] all but S 20	37.90
Government Lot 8 [[(REN)]]	35.60
Section 19	
[[SE¼]] SW¼ of NW¼	40.00
Government Lot 1 [[(REN)]]	20.02
Government Lot 2 [[(REN)]]	13.60
Government Lot 3 [[(REN)]]	30.65
NW¼ of NW¼ everything SW of CSAH 15	1.00
[[NE¼ of NW¼ everything SW of CSAH 15	20.00]]
Section 29	
Government Lot 1 [[(REN)]]	48.90
Government Lot 2 [[(REN)]]	39.85
Government Lot 3 [[(REN)]]	28.65
Government Lot 4 [[(REN)]]	27.35
Section 32	
SE¼ of [[NE¼]] NW¼	40.00
Government Lot 1 [[(REN)]]	27.50
Government Lot 2 [[(REN)]]	34.20
Government Lot 3 [[(REN)]] all but N 20	19.98
Government Lot 4 [[(REN)]]	23.82
Government Lot 5 [[(REN)]]	44.65
Government Lot 6 [[(REN)]]	44.95
Section 33	
Government Lot 1 [[(REN)]]	30.00
Government Lot 2 [[(REN)]]	38.25
Government Lot 3 [[(REN)]]	39.10
SW¼ of [[SW¼]] NW¼	40.00
T 113 N - R 35 W	
Section 29	
Government Lot 2 a line 300 ft. from the normal high-water mark	12.00
T 113 N - R 34 W	
Section 31	
[[S½ of SW¼ of SW¼	20.00]]
[[S½ of SE¼ of SW¼	20.00]]
T 112 N - R 34 W	
Section 5	
NW¼ of NW¼ [[40.00]]	19.20
[[SW¼ of NE¼	40.00]]
Section 11	
[[NE½]] N½ of SE¼ of SW¼	20.00
Section 12	
Government Lot 1 everything W. of CSAH 11 [[44.11]]	7.00
[[Government Lot 2 everything W. of CSAH 11 and S. of CSAH 5	4.00]]
[[Section 13	
Government Lot 1 everything W. of CSAH 11	37.00]]
TOTAL [[22,644.36]]	22,290.45

PROPOSED RULES

Department of Commerce Banking Division

Proposed Repeal of Rules of the Banking Division Governing Home Loans Made Pursuant to the Conventional Home Loan Assistance and Protection Act

Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held in the Hearing Room of the Department of Commerce, Fifth Floor, Metro Square Building, 7th and Robert Streets, St. Paul, Minnesota, on Tuesday, September 20, 1977, commencing at 9:30 a.m. and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Hearing Examiner Peter Erickson, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, telephone: (612) 296-8118, either before the hearing, or within (5) five working days following the close of the hearing or for a longer period not to exceed 20 days if ordered by the Hearing Examiner.

Minnesota Rules BD 226 and 227 which the Banking Division proposes to repeal relate to the following matters:

1. The financial institutions which were authorized to make loans pursuant to section 2, subdivision 3 of the Conventional Home Loan Assistance and Protection Act, Minn. Stat. § 47.20, subd. 3 (1976), prior to its amendment by Laws of 1977, ch. 350, and

2. The loans which meet eligibility requirements for purchase by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, and which could thus be made under authority of section 2, subdivision 3 of the Conventional Home Loan Assistance and Protection Act, Minn. Stat. § 47.20, subd. 3 (1976), prior to its amendment by Laws of 1977, ch. 350.

Minnesota Rules BD 226 and 227 were published in Volume 1, *State Register*, pages 933-952 and are incorporated by reference herein. In addition, copies of the rules are now available and one free copy may be obtained by writing to the State Banking Division, Fifth Floor, Metro Square Building, 7th and Robert Streets, St. Paul, Minnesota 55101. Additional copies will be available at the door on the date of the hearing. The Banking Division's authority to repeal BD 226 and 227 is contained in Laws of 1977, ch. 350 § 1, subd. 3. A "statement of need" explaining why the agency feels BD 226 and 227 should be repealed and a "statement of evidence" outlining the testimony they will be introducing will be filed with the Hearing Examiners Office at least 25 days prior to the hearing and will be available there for public inspection.

Please be advised that Minn. Stat. ch. 10A, requires each lobbyist to register with the Ethical Practices Board within five days after he commences lobbying. Lobbying includes attempting to influence rulemaking by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than $250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, phone (612) 296-5615.

Robert A. Mampel
Commissioner of Banks

Rules as Proposed

See Volume 1, State Register, pages 933-952.

Department of Commerce Insurance Division

Automobile Accident Reparations Arbitration

Notice of Hearing

Notice is hereby given that a public hearing in the above entitled matter will be held in the Hearing Room, Commerce Department, Fifth Floor, Metro Square Building, 7th and Robert Streets, Saint Paul, Minnesota 55101, commencing at 9:00, September 8, 1977, and continuing until all persons have had an opportunity to be heard.

KEY: Existing rules are printed in standard type face. Proposed additions to existing rules are printed in **boldface**, while proposed deletions from existing rules are printed within [single brackets]. Additions to proposed rules are **underlined and boldfaced**, while deletions from proposed rules are printed within [[double brackets]].

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the Hearing. In addition, written materials may be submitted by mail to Steve Mihalchick, Hearing Examiners Office, Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104, telephone number 296-8112, either before the hearing or within 5 days after the close of the hearing.

Minnesota No Fault Law provides that in automobile accidents involving commercial vehicles, a reparation obligor (i.e. automobile insurance company or self insurer) which insures the party who is not negligent is entitled to indemnity from the reparation obligor (i.e. automobile insurance company or self insurer) which insures the negligent party. This right of indemnity is enforceable only through mandatory good faith and binding arbitration. The proposed rules establish the procedure for conducting arbitration proceedings in such disputes.

Copies of the proposed rules are now available and one free copy may be obtained by writing to the Insurance Division, Department of Commerce, 500 Metro Square Building, 7th and Robert Streets, St. Paul, Minnesota 55101. Additional copies will be available at the door on the date of the hearing. The agency's authority to promulgate the proposed rules is contained in Minn. Stat. § 65B.53, subd. 4 (1976). A "statement of need" explaining why the agency feels the proposed rules are necessary and a "statement of evidence" outlining the testimony they will be introducing will be filed with the Hearing Examiners Office at least 25 days prior to the hearing and will be available there for public inspection.

Please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the Ethical Practices Board within five days after he commences lobbying. Lobbying includes attempting to influence rulemaking by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than $250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, phone (612) 296-5615.

Berton W. Heaton
Commissioner of Insurance

Rules as Proposed

Ins 180 Authority. The rules and regulations hereinafter set forth are promulgated under the authority of Minn. Stat. § 65B.53, subd. 4 (1976).

Ins 181 Purpose and scope. These rules are designed to promote efficient settlement of claims involving economic loss between reparation obligors. As a condition precedent to arbitration, however, local representatives of the involved reparation obligors must make a sincere effort to settle controversies by direct negotiation.

Ins 182 General.

A. These rules shall be considered applicable to controversies arising out of accidents, insured events, or losses involving a commercial vehicle under the jurisdiction of the MNFAAA, § 65B.53 (1976) giving subrogation or direct action recovery rights to reparation obligors for payments or benefits paid to insureds or third parties under such statute.

B. These rules shall not be construed to create any causes of action or liabilities not existing in law or equity.

C. These rules are applicable to controversies involving reparation obligors as that term is defined in Minn. Stat. § 65B.43, subd. 9 (1974). The interest of other parties may not be arbitrated under these Rules. The fact that such parties may be insureds of reparation obligors does not alter this prohibition.

D. The monetary limits and extent of a reparation obligor's claim shall be governed by Minn. Stat. § 65B.53, subd. 1 (1974).

E. Where a claim or companion claim under these rules is also under the compulsory jurisdiction or other industry agreements sponsored by the committee on Insurance Arbitration, the jurisdiction of these rules is primary.

F. Any determination as to whether a reparation obligor is legally entitled to recovery from another reparation obligor shall be made by an arbitration panel appointed under the authority of these rules.

G. Compulsory arbitration under these rules does not apply to a controversy arising from an out-of-state accident where the party receiving benefits has a right to proceed at law for full recovery of his tort loss.

H. Under these rules the Committee on Insurance Arbitration is authorized

1. To select places where arbitration facilities are to be available.

2. To make appropriate rules and regulations to apportion equitably among reparation obligors the

operating expenses of the arbitration program set out under these rules.

I. Arbitration Committees shall be appointed by the Committee on Insurance Arbitration from full-time salaried representatives of reparation obligors and shall function in the following manner:

1. Members of Arbitration Committees shall be selected on the basis of their experience and qualifications and they shall serve without compensation.

2. No arbitrator shall serve on a panel hearing a case in which his company is directly or indirectly interested.

3. The decision of the majority or an arbitration panel is final and binding upon the parties to the controversy without the right of rehearing.

J. In arbitration proceedings and practice, the reparation obligor which initiates the proceeding by filing a request for arbitration shall be known as the "applicant"; and the reparation obligor or reparation obligors against which such controverted claim or issue was asserted shall be known as "respondent(s)".

K. Submission of a case to arbitration under these rules shall have the same force and effect as to reparation obligors with regards to the applicable Statute of Limitations as if litigation has been instituted; further, if a matter within the compulsory provisions of these rules is inadvertently placed in litigation, the discontinuance of such litigation for the purpose of arbitration will be considered as a submission to arbitration with regards to the applicable Statute of Limitations as of the date such litigation was instituted.

L. Where reparation obligors are also signatory to other industry arbitration programs sponsored by the Committee on Insurance Arbitration and the claim or companion claims are within the compulsory jurisdiction of these other agreements, the signatory companies waive their rights to proceed separately under the other programs and must include all claims arising out of the same accident or insured event for disposition by an arbitration panel under these Rules, provided, however, that hearing of a matter pending before an arbitration panel under these Rules will be deferred because of pending claims or suits arising out of the same accident, occurrence or insured event, unless the involved companies waive such deferment in writing.

M. Deferment of a hearing under Ins 182 L. does not relieve a respondent reparation obligor from the obligation to file its written answer asserting therein any affirmative defense to the jurisdiction of the panel to proceed with a hearing once the subject case has been removed from a deferred status. If the jurisdiction issue is raised by the written answer, the committee will forthwith pass upon the merits of the jurisdictional question even though the hearing on the issues of liability and damages will be deferred because of pending companion claims or suits not subject to arbitration. However, for the Rule to apply, an arbitration committee must receive the applicant's filing 120 days prior to the running of the Statute of Limitations and receive the respondent's answer within 60 days thereof. If the respondent's answer is not received within the stated period, any affirmative defense running to the jurisdiction of the Committee to proceed with a hearing is waived.

N. Where there are companion claims arising out of the same accident each of which would be, or is subject to, the compulsory jurisdiction of these Rules, only one filing is necessary to determine the issue of liability as to the drivers of the respective vehicles. A panel's decision on this issue is res judicata on the liability issue in all companion matters involving the same companies within the jurisdiction of these Rules, except as to special defenses arising in the companion claim or suit.

Ins 183 Organization.

A. Reparation obligors of commercial vehicles shall furnish the Committee on Insurance Arbitration on request, a list of names, titles and local addresses of all employees who are qualified to act as arbitrators.

B. The Chairman of the Arbitration Committee shall designate one disinterested member of said Committee to serve as a panel of arbitration in each case. However, three members will constitute a panel if requested by a controverting party in a specific case.

Ins 184 Jurisdiction.

A. Compulsory arbitration under these Rules applies to controversies arising out of accidents, insured events or occurrences within this state involving commercial vehicles. Controversies arising from accidents, insured events or occurrences involving commercial vehicles outside this state can be submitted with the consent of the controverting reparation obligors.

B. Compulsory arbitration under these Rules applies where the determination of subrogation rights under the MNFAA necessarily involves a decision by the arbitrators of a question of excess and primary coverage between or among the reparation obligors.

Ins 185 Filing assessments.

A. The Committee on Insurance Arbitration by resolution will prescribe the filing assessment for the use of local arbitration facilities.

B. The obligation for the prescribed filing assessment is incurred upon filing but payment by the applicant reparation obligor to the Committee on Insurance Arbitration is deferred until the case is closed, either through hearing, settlement, or withdrawal prior to hearing. The prescribed filing assessment shall also be paid in the same manner by a respondent reparation obligor that files a counterclaim. There is no exception to a reparation obligor's obligation to pay the filing assessment.

C. The Secretary of the Committee on Insurance Arbitration is the custodian of the assessment charges collected by him and shall make expenditures therefrom to defray such arbitration expenses as may be authorized by the Committee on Insurance Arbitration.

D. The Secretary of the Committee on Insurance Arbitration will submit reports on assessments collected and disbursed during such period as may be considered desirable by the Committee on Insurance Arbitration.

Ins 186 Procedure.

A. An arbitration proceeding is commenced by the local representative of a reparation obligor filing an "Arbitration Notice" (three copies) with the Secretary of the local arbitration committee. At the same time three copies of the "Arbitration Notice" are to be submitted by the applicant directly to the local representative of the other involved reparation obligor. If there is more than one respondent reparation obligor in a case, the applicant shall so indicate on the original and all copies of the "Arbitration Notice" and send three copies thereof to each respondent reparation obligor.

B. Notice by applicants shall set forth the following information:

1. Names of applicant and respondent reparation obligor together with names and addresses of local representatives having supervision over the case in controversy;

2. Name and address of respondent reparation obligor's insured;

3. Claim file numbers of applicant and respondent, if known;

4. Date and place of alleged accident, loss or other insured event;

5. Amount of reparation obligor's claim payment and amount of any other expenses for which indemnity is requested;

6. Certification that settlement efforts have been unsuccessful;

7. Brief statement of allegation solely as to the issue in controversy;

8. Signature of applicant's representative and date signed.

C. Answers filed by respondent shall set forth the following information:

1. Supplement, if and as necessary, the information furnished by applicant as to respondent reparation obligor's name, local representative, address, name of insured, file number or kind of policy coverage;

2. Whether there is an objection to arbitration, and, if so, the grounds on which the objection is based should be fully stated;

3. Brief statement of allegations as to the issue in controversy;

4. Signature of respondent's representative and date signed;

D. The respondent has thirty days after the applicant's filing in which to file a written answer. If a respondent fails to submit its answer within thirty days after an applicant reparation obligor files with a committee, it is presumed that the applicant's claim has been denied and the case is ready for hearing on the issues. Failure to file an answer will not operate to delay the arbitration hearing. However, if affirmative defenses are available to the respondent, and are not asserted by answer prior to notice of hearing, the applicant, on request, will be entitled to an adjournment to investigate such affirmative defenses.

E. The procedure set out in the preceding paragraphs of this section is also applicable to counterclaims for damages known, or in the exercise of reasonable diligence should have been known to respondent. The "Arbitration Notice" should clearly indicate that it is submitted as a counterclaim and the original arbitration case to which it pertains shall be plainly identified. Un-

less a counterclaim is filed by a respondent and heard with the original arbitration case, the respondent reparation obligor with the counterclaim is thereafter precluded from pursuing its claim against the adverse reparation obligor.

Ins 187 Hearings.

A. When the Secretary has received the essential facts and contentions from the controverting reparation obligors, the issue in the case shall be scheduled for a hearing by the Arbitration Panel at the earliest practicable date.

B. Hearing date shall be determined by the Chairman of the Arbitration Panel, and one or more cases may be considered at any scheduled hearing.

C. Representatives of controverting parties shall be notified by the Secretary of the time and place of a scheduled hearing at least two weeks in advance of the hearing date. Notice of hearing shall be sent by certified mail, return receipt requested, to any respondent which has not filed a written answer.

D. Adjournments may be granted for cause by the Chairman of the Arbitration Committee or his designee.

E. Evidence which controverting parties desire to submit in support of their allegations shall be made available for examination by the arbitrators at the hearing. Such evidence may also be examined by the opposing parties at the hearing. If one of the controverting parties fails to produce evidence at a scheduled arbitration hearing, after due notice thereof, the arbitrators may at their discretion consider the information in the "Arbitration Notice" of such party and render a decision accordingly.

F. Procedure at Arbitration Panel Hearings shall be informal. Controverting parties are expected to present the facts of their respective cases in a brief, frank and direct manner.

G. The controverting parties shall submit for consideration to the arbitrators, briefs of the law involved when requested by the arbitration panel hearing the case.

H. Controverting parties may present witnesses at an arbitration hearing, if considered necessary, after notice to the other interested party or parties sufficiently in advance of the hearing date to permit such other party or parties also to present witnesses if desired.

I. Controverting parties may, if they so desire, be represented at arbitration hearings by members of their staff or by anyone employed or retained by them.

J. Documentary evidence submitted by controverting parties shall be left with the arbitrators for their scrutiny and consideration while reading a decision.

K. If representatives of controverting parties attend an arbitration hearing, they must withdraw after presentation of their cases and may not be present while the arbitrators are considering their decision.

Ins 188 Decisions.

A. Arbitration panels may, upon their own initiative, render a decision in favor of a respondent company without production of evidence by such respondent, if the panel unanimously agrees following presentation of the applicant's evidence that such applicant has not made out a prima facie case.

B. A decision of an arbitration panel on issues of fact or law is final and binding.

1. Upon motion to District Court, a decision may be vacated upon any of the following grounds:

a. That it was procured by corruption, fraud, or other undue means;

b. That there was partiality or corruption on the part of the arbitrators, or any one of them;

c. That the arbitrators were guilty of misconduct in refusing postponement, in refusing to hear evidence material to the controversy, or in other matters whereby the rights of the party were prejudiced;

d. That they exceeded their powers, or executed them so imperfectly that a mutual, final, and definite decision was not made;

e. That the decision is contrary to law and evidence.

2. Upon motion to District Court, a decision may be modified or corrected in the following cases:

a. Where there is a miscalculation of figures, or an evident mistake in the description of any person or thing referred to therein;

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b. Where the arbitrators have decided upon a matter not submitted to them, or not affecting the merits of the decision upon any matter submitted;

c. Where the award is imperfect in a matter of form which does not affect the merits, and where, if it had been a verdict, such defeat could have been amended or disregarded by the court.

However, the provisions of Article B., Subsection 1. and 2. do not preclude a local committee's Chairman correcting a clerical, typographical or jurisdictional error on the part of a local committee's staff, provided it is called to the local committee's attention in writing by one of the arbitrating reparation obligors within 30 days after publication of the decision; or if recognized by the local committee without notice from the arbitrating reparation obligors within 30 days after publication of the decision; provided further, that the correction be made in either event within 60 days after publication of the decision.

C. The law of the locality in which the accident, insured event, or loss occurred will control the decision on questions of liability. A finding as to the amount of damages in issue shall be based upon the facts presented to the arbitrators.

D. The amount paid shall not be at issue unless pleaded specifically.

E. Decisions of the arbitrators shall be promptly rendered after consideration of the case, and the evidence submitted by the controverting parties shall be returned promptly.

F. The arbitrators shall prepare a written decision in each case, copies of which shall be distributed by the Secretary as follows: One copy will be retained by the arbitration panel secretary; one copy shall be furnished to each party involved in the arbitration, and the original shall be furnished to the Committee on Insurance Arbitration.

G. The decisions of the Arbitration Panel shall include the following minimum information:

1. Date and place of hearing.

2. Names of panel members.

3. Names of applicant and respondent carriers and names of their respective insureds.

4. Names of respective controverting party representatives, if any, attending the hearing.

5. Brief description of the claim or controversy and amount involved therein.

6. Names of controverting insurance carrier in whose favor an award is rendered and the amount thereof.

7. Brief statement of the basis for the finding, such as lack of proof, contributory negligence, or other controlling principles of law.

8. Signature of the arbitrator who prepared the decision.

H. Decisions of an arbitration panel shall be complied with as soon as practicable. Any unwarranted delay on the part of the parties concerned should be reported to the Committee on Insurance Arbitration by the prevailing party.

Department of Commerce Insurance Division

Credit Life, Credit Accident and Health Insurance

Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held pursuant to Minn. Stat. § 15.0412, subd. 4, (1976) in the hearing room of the Department of Commerce, Fifth Floor, Metro Square Building, 7th and Robert Streets, Saint Paul, Minnesota 55101, commencing at 9 a.m. on September 13, 1977, and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have the opportunity to participate concerning the adoption of the proposed rules captioned above. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, witness statements or material may be submitted by mail to George A. Beck, Hearing Examiner, Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104, Telephone: (612) 296-6910, either before the hearing or within 5 days after the close of the hearing.

Please note that all persons have the right to be notified of the date on which the Hearing Examiner's report will be available after which date the agency may not take any final action on the rules for a period of 5 working days. All persons have the right to be informed that the hearing record

has been submitted to the Attorney General by the Insurance Division. If you desire to be so notified, you may do so by so indicating at the hearing or by written request sent to the Hearing Examiner prior to the close of the record.

All such statements will be entered into and become a part of the record. Testimony and other evidence to be submitted for consideration should be pertinent to the matter at hand. For those wishing to submit written statements or exhibits, it is requested that at least 3 copies be furnished. In addition, it is suggested to save time and to avoid duplication, those persons, organizations, or associations having a common viewpoint or interest in these proceedings join together where possible and present a single statement in behalf of such interests.

If adopted, the rule changes would affect the maximum rates charged for credit life and credit accident and health insurance sold in the State of Minnesota after the effective date of the rules. Credit insurance is insurance which a person may purchase in connection with a loan or other credit transactions to pay the existing outstanding balance on a loan or other credit transaction, if one dies or one becomes temporarily or permanently disabled. The Minnesota Insurance Commissioner has been given regulatory authority over the rates to be charged for credit life and credit accident and health insurance. This notice is to inform the public that the Commissioner is proposing to change the maximum, allowable credit insurance rates that may be charged in Minnesota. The proposed rate revisions affect credit insurance purchases in connection with loans or other credit transactions whose duration is less than 5 years and which do not involve the purchase of real property. If the proposed rules are adopted, maximum premium rates charged on credit life insurance would decrease by 20% over the existing rates and maximum premium rates charged on credit accident and health insurance would increase by 10% over existing rates. Credit life and credit accident and health insurance rates are being adjusted to take into account factors and trends found to be relevant by the Insurance Commissioner for proper rate structure to exist. Accident and health insurance rates are proposed to be increased by 10%, because the claim costs have significantly increased. Credit life insurance rates are proposed to be decreased by 20%, because claim costs and other costs have decreased since the last rate revision.

The rates charged will better reflect the cost of insurance and also provide a useful product at a reasonable rate. Credit insurance rates directly affect the costs of many credit transactions since such insurance is purchased in connection with many consumer credit transactions. For instance, if you purchase a car or borrow money for furniture, you may purchase credit life or credit accident and health insurance. These rules directly affect the maximum amount you may be charged by an insurance company for this insurance.

Copies of the proposed rules are now available, and at least one free copy may be obtained by writing the Minnesota Insurance Division, Fifth Floor, Metro Square Building, Saint Paul, Minnesota 55101. Additional copies will be available at the door on the date of the hearing. A Statement of Need explaining the Insurance Division's position relative to the necessity for the proposed rule changes and a statement of the evidence outlining the testimony and evidence which will be introduced by the Insurance Division in support of the proposed rules will be filed with the Hearing Examiners' office at least 25 days prior to the hearing and will be available there for public inspection. Statutory authority of the Insurance Division to promulgate and adopt these rules is contained in Minn. Stat. § 62B.12. Standards to be used by the Insurance Division for determining the rates proposed are contained in Minn. Stat. § 62B.07.

Please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the Ethical Practices Board within 5 days after he commences lobbying. Lobbying includes attempting to influence rulemaking by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than $250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 per year or 5 hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, phone (612) 296-5615.

Berton W. Heaton
Commissioner of Insurance and
Chairman, Commerce Commission

Rules as Proposed

Ins 90 Purpose of regulations. Section 62B.07, subd. 2, of the Minnesota Insurance Code authorizes the Commissioner of Insurance to disapprove any credit life or credit accident and health insurance forms "if the premium rates charged or to be charged are excessive in relation to benefits. . . ." After extensive research and review of such insurance transactions in the State of Minnesota, including all expenses, factors and trends relevant thereto, and after careful analysis of a study made by the National Association of Insurance

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Commissioners, it is hereby [ruled that as the basic test the premium rates are not excessive in relation to benefits as provided for] **determined that in considering the elements set forth** in § 62B.07, subd. 2, **the commissioner shall give reasonable consideration as to whether** [if] an anticipated loss ratio of "claims incurred" to "premiums earned" of [not less than] 50% is developed.

Ins 92 Rate limitations. It shall be presumed that the premiums are not excessive in relation to the benefits if the premiums or premium rates as filed with the Commissioner do not exceed the following, or actuarially equivalent rates:

A. For decreasing term credit life insurance, a single premium of [$.75] **$.60** per annum per $100.00 of initial insured indebtedness. A premium payable monthly at the rate of [$1.16] **$.92** per $1,000.00 of outstanding unpaid insured indebtedness will be deemed the actuarial equivalent of the foregoing rate. The premium rate standard set forth is applicable to a plan of death benefits with or without requirements for evidence of insurability

1. which contains no exclusions, or no exclusions other than for suicide, flight in non-scheduled aircraft, war or military service, and

2. which contains no age restrictions, or only age restrictions making ineligible for the coverage

a. debtors 65 or over at the time the indebtedness is incurred, or

b. debtors who will have attained age 66 or over on the maturity date of the indebtedness.

B. For level amount term credit life insurance a single premium of [$1.40] **$1.11** per annum per $100.00 of initial insurance. A premium payable monthly at the rate of [$1.16] **$.92** per $1,000.00 of initial insurance will be deemed the actuarial equivalent of the foregoing rate. The premium rate standard set forth above is applicable to a plan of death benefits, with or without requirements for evidence of insurability:

1. which contains no exclusions, or no exclusions other than for suicide, flight in non-scheduled aircraft, war or military service, and

2. which contains no age restrictions, or only age restrictions making ineligible for the coverage

a. debtors 65 or over at the time the indebtedness is incurred, or

b. debtors who will have attained age 66 or over on the maturity date of the indebtedness.

C. For decreasing term joint credit life insurance, a single premium of $1.00 per annum per $100.00 of initial insured indebtedness. A premium payable monthly at the rate of $1.54 per $1000.00 of initial joint credit life insurance will be deemed the actuarial equivalent of the foregoing rate. The premium rate standard set forth above is applicable to a plan of death benefits, with or without requirements for evidence of insurability:

1. which contains no exclusion, or no exclusions other than for suicide, flight in non-scheduled aircraft, war or military service, and

2. which contains no age restrictions, or only age restrictions making ineligible for the coverage

a. debtors 65 or over at the time the indebtedness is incurred or

b. debtors who will have attained age 66 or over on the maturity date of the indebtedness.

[(c)] **D.** For credit accident and health insurance the following single premium rates per $100.00 initial insured indebtedness in Schedule A or A-1, which are attached hereto and made a part of this Regulation.

An insurer may use a bracket rate, provided the bracket is either of a 3 month duration as set forth in Schedule A, or of a 6 month duration as set forth in Schedule A-1, and provided the middle rate or one of the middle rates of each bracket is the charge for any insurance falling within such 3 month or 6 month bracket, whichever the case may be.

Rates for policies of Credit Accident and Health Insurance on which premiums are paid other than in equal monthly installments or for such policies providing benefits payable other than as specified above shall be actuarially consistent with the rates specified above. Each rate filing made under this section shall be certified by the company's actuary or by an officer of the company making the filing to the effect that the rates submitted do not exceed the maximum rates set forth in this Regulation and are the actuarial equivalents.

The premium rates specified are presumed not excessive in relation to benefits for policies which:

1. contain no exclusion for pre-existing conditions except a provision excluding or denying a claim for disability resulting from pre-existing illness, disease or physical condition for which the debtor received medical advice, consultation or treatment during the six month period immediately preceding the effective date of the debtor's coverage and which would ordinarily be expected to affect materially the debtor's health during the period of coverage, provided, however, that after such coverage has been in force for six

months (12 months for contracts of more than three years), this pre-existing exclusion clause shall not operate to deny coverage for any disability commencing thereafter;

2. may except or restrict coverage for total disabilities resulting from pregnancy, intentionally self-inflicted injuries, foreign travel or residence, flight in non-scheduled aircraft, or war or military service;

3. provide or offer coverage to all debtors regardless of age or to all debtors not older than a specified age limit which shall not be less than age 65 at the time the insurance becomes effective or 66 at the scheduled maturity date of the transaction.

[(d)] **E.** If credit life or credit accident and health coverage is offered which is more restrictive than provided above, separate rate filings must be made at a level lower than that set forth, and which can reasonably be anticipated to produce a loss ratio of 50% in accordance with the basic test set forth in Section 90.

[(e)] **F.** An insurer may receive approval of a higher premium rate or schedule of rates to be used in connection with insurance on the debtors of a creditor or a class or classes of debtors if the insurer demonstrates, to the satisfaction of the Commissioner, that the mortality or morbidity experience which may reasonably be anticipated on such debtors of a creditor or a class or classes or debtors will develop a loss ratio in excess of 50% if the rate standards in Section 92, a, b, and c are used.

[(f)] **G.** Insurers doing credit life and/or credit accident and health insurance business in the State shall annually file with the Insurance Division a report of its credit life insurance experience and credit accident and health insurance experience on forms prescribed by the Commissioner.

[(g)] **H.** If premiums are paid monthly on outstanding balances, the monthly premium rates shall be computed by a method which is actuarially consistent with the premiums on a single premium basis.

Rule 92 shall become effective on the first day of January, 1978, and shall be applicable to all credit insurance transactions thereafter as to debtors enrolled under a group policy and to individuals insured under either group certificates or individual policies delivered or issued for delivery in this State on and after January 1, 1978.

SCHEDULE A

CREDIT ACCIDENT AND HEALTH INSURANCE PREMIUM RATES
SINGLE PREMIUM RATES PER $100 OF INITIAL INDEBTEDNESS

Number of Equal Monthly Installments	Non-Retroactive Benefits Elimination Periods				Retroactive Benefits Waiting Periods			
	14 Days		30 Days		14 Days		30 Days	
3	[$ .91]	**$1.00**	[$ .39]	**$ .43**	[$1.50]	**$1.65**	[$ .90]	**$ .99**
4	[1.06]	**1.17**	[.53]	**.58**	[1.68]	**1.85**	[1.10]	**1.21**
5	[1.18]	**1.30**	[.64]	**.70**	[1.82]	**2.00**	[1.25]	**1.38**
6	[1.29]	**1.42**	[.74]	**.81**	[1.93]	**2.12**	[1.37]	**1.51**
7	[1.37]	**1.51**	[.82]	**.90**	[2.03]	**2.23**	[1.47]	**1.62**
8	[1.45]	**1.60**	[.90]	**.99**	[2.11]	**2.32**	[1.56]	**1.72**
9	[1.52]	**1.67**	[.97]	**1.07**	[2.19]	**2.41**	[1.64]	**1.80**
10	[1.58]	**1.74**	[1.03]	**1.13**	[2.25]	**2.48**	[1.71]	**1.88**
11	[1.64]	**1.80**	[1.08]	**1.19**	[2.31]	**2.54**	[1.77]	**1.95**
12	[1.69]	**1.86**	[1.13]	**1.24**	[2.37]	**2.61**	[1.83]	**2.01**
13	[1.74]	**1.91**	[1.18]	**1.30**	[2.42]	**2.66**	[1.88]	**2.07**
14	[1.79]	**1.97**	[1.23]	**1.35**	[2.47]	**2.72**	[1.93]	**2.12**
15	[1.83]	**2.01**	[1.27]	**1.40**	[2.51]	**2.76**	[1.97]	**2.17**
16	[1.87]	**2.06**	[1.31]	**1.44**	[2.55]	**2.80**	[2.02]	**2.22**
17	[1.91]	**2.10**	[1.35]	**1.48**	[2.59]	**2.85**	[2.06]	**2.27**
18	[1.95]	**2.14**	[1.38]	**1.52**	[2.63]	**2.89**	[2.10]	**2.31**
19	[1.98]	**2.18**	[1.42]	**1.56**	[2.67]	**2.94**	[2.13]	**2.34**

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20	[2.02]	**2.22**	[1.45]	**1.60**	[2.71]	**2.98**	[2.17]	**2.39**
21	[2.05]	**2.26**	[1.49]	**1.64**	[2.74]	**3.01**	[2.21]	**2.43**
22	[2.09]	**2.30**	[1.52]	**1.67**	[2.77]	**3.05**	[2.24]	**2.46**
23	[2.12]	**2.33**	[1.55]	**1.70**	[2.81]	**3.09**	[2.27]	**2.50**
24	[2.15]	**2.36**	[1.58]	**1.74**	[2.84]	**3.12**	[2.31]	**2.54**
25	[2.18]	**2.40**	[1.62]	**1.78**	[2.87]	**3.16**	[2.34]	**2.57**
26	[2.21]	**2.43**	[1.65]	**1.82**	[2.90]	**3.19**	[2.37]	**2.61**
27	[2.24]	**2.46**	[1.68]	**1.85**	[2.93]	**3.22**	[2.40]	**2.64**
28	[2.27]	**2.50**	[1.71]	**1.88**	[2.96]	**3.26**	[2.43]	**2.67**
29	[2.30]	**2.53**	[1.74]	**1.91**	[3.00]	**3.30**	[2.47]	**2.72**
30	[2.33]	**2.56**	[1.77]	**1.95**	[3.03]	**3.33**	[2.50]	**2.75**
31	[2.36]	**2.60**	[1.80]	**1.98**	[3.06]	**3.37**	[2.53]	**2.78**
32	[2.39]	**2.63**	[1.82]	**2.00**	[3.08]	**3.39**	[2.55]	**2.80**
33	[2.42]	**2.66**	[1.85]	**2.04**	[3.11]	**3.42**	[2.58]	**2.84**
34	[2.45]	**2.70**	[1.88]	**2.07**	[3.14]	**3.45**	[2.61]	**2.87**
35	[2.48]	**2.73**	[1.91]	**2.10**	[3.17]	**3.49**	[2.64]	**2.90**
36	[2.50]	**2.75**	[1.94]	**2.13**	[3.20]	**3.52**	[2.67]	**2.94**
37	[2.53]	**2.78**	[1.97]	**2.17**	[3.23]	**3.55**	[2.70]	**2.97**
38	[2.56]	**2.82**	[1.99]	**2.19**	[3.25]	**3.58**	[2.73]	**3.00**
39	[2.59]	**2.85**	[2.02]	**2.22**	[3.28]	**3.61**	[2.76]	**3.04**
40	[2.62]	**2.88**	[2.05]	**2.26**	[3.31]	**3.64**	[2.78]	**3.06**
41	[2.64]	**2.90**	[2.08]	**2.29**	[3.34]	**3.67**	[2.81]	**3.09**
42	[2.67]	**2.94**	[2.10]	**2.31**	[3.37]	**3.71**	[2.84]	**3.12**
43	[2.70]	**2.97**	[2.13]	**2.34**	[3.39]	**3.73**	[2.86]	**3.15**
44	[2.73]	**3.00**	[2.16]	**2.38**	[3.42]	**3.76**	[2.89]	**3.18**
45	[2.75]	**3.02**	[2.18]	**2.40**	[3.45]	**3.80**	[2.92]	**3.21**
46	[2.78]	**3.06**	[2.21]	**2.43**	[3.48]	**3.83**	[2.95]	**3.24**
47	[2.81]	**3.09**	[2.24]	**2.46**	[3.50]	**3.85**	[2.97]	**3.27**
48	[2.83]	**3.11**	[2.26]	**2.49**	[3.53]	**3.88**	[3.00]	**3.30**
49	[2.86]	**3.15**	[2.29]	**2.52**	[3.56]	**3.92**	[3.03]	**3.33**
50	[2.89]	**3.18**	[2.32]	**2.55**	[3.59]	**3.95**	[3.06]	**3.37**
51	[2.92]	**3.21**	[2.34]	**2.57**	[3.61]	**3.97**	[3.09]	**3.40**
52	[2.94]	**3.23**	[2.37]	**2.61**	[3.64]	**4.00**	[3.11]	**3.42**
53	[2.97]	**3.27**	[2.39]	**2.63**	[3.66]	**4.03**	[3.14]	**3.45**
54	[2.99]	**3.29**	[2.42]	**2.66**	[3.69]	**4.06**	[3.16]	**3.48**
55	[3.02]	**3.32**	[2.45]	**2.70**	[3.72]	**4.09**	[3.19]	**3.51**
56	[3.05]	**3.36**	[2.47]	**2.72**	[3.74]	**4.11**	[3.22]	**3.54**
57	[3.07]	**3.38**	[2.50]	**2.75**	[3.77]	**4.15**	[3.24]	**3.56**
58	[3.10]	**3.41**	[2.53]	**2.78**	[3.80]	**4.18**	[3.27]	**3.60**
59	[3.12]	**3.43**	[2.55]	**2.80**	[3.82]	**4.20**	[3.29]	**3.62**
60	[3.15]	**3.46**	[2.58]	**2.84**	[3.85]	**4.24**	[3.32]	**3.65**

SCHEDULE A-1

CREDIT ACCIDENT AND HEALTH INSURANCE PREMIUM RATES
SINGLE PREMIUM RATES PER $100 OF INITIAL INDEBTEDNESS
SIX-MONTH ALTERNATIVE BRACKET RATE SCHEDULE

Number of Equal Monthly Installments	Non-Retroactive Benefits Elimination Periods				Retroactive Benefits Waiting Periods			
	14 Days		30 Days		14 Days		30 Days	
3-8	[$1.24]	**$1.36**	[$.69]	**$ .76**	[$1.87]	**$2.06**	[$1.31]	**$1.44**
9-14	[1.66]	**1.83**	[1.10]	**1.21**	[2.34]	**2.57**	[1.80]	**1.98**
15-20	[1.93]	**2.12**	[1.37]	**1.51**	[2.61]	**2.87**	[2.08]	**2.29**
21-26	[2.14]	**2.35**	[1.56]	**1.72**	[2.82]	**3.10**	[2.29]	**2.52**
27-32	[2.32]	**2.54**	[1.75]	**1.92**	[3.02]	**3.32**	[2.49]	**2.74**
33-38	[2.49]	**2.74**	[1.93]	**2.12**	[3.19]	**3.51**	[2.66]	**2.93**
39-44	[2.65]	**2.92**	[2.09]	**2.30**	[3.35]	**3.68**	[2.83]	**3.11**
45-50	[2.83]	**3.11**	[2.25]	**2.48**	[3.52]	**3.87**	[2.99]	**3.29**
51-56	[2.98]	**3.28**	[2.40]	**2.64**	[3.66]	**4.03**	[3.15]	**3.46**
57-60	[3.11]	**3.42**	[2.54]	**2.79**	[3.81]	**4.19**	[3.28]	**3.61**

Department of Labor and Industry
Labor Standards Division
Fee Employment Agencies

Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held in the State Office Building, Room 81, St. Paul, Minnesota 55155, on September 12, 1977, commencing at 9:00 a.m., and continuing until all representatives of associations or interested groups or persons have had an opportunity to be heard concerning the adoption of the proposed rules captioned above by submitting either oral or written data, statements or arguments. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Mr. Peter C. Erickson, State Office of Hearing Examiners, 1745 University Avenue, St. Paul, Minnesota 55104 (296-8118), either before the hearing or within five (5) working days after the close of the hearing unless the hearing examiner orders a longer period of time which may not exceed twenty (20) days.

The proposed rules, if adopted, would amend the existing rules and regulations relating to fee employment agencies. Present rules and regulations have not been changed or revised since December, 1974. The purpose of the proposed rules is to eliminate duplications and conflicts currently existing between Minn. Stat. § 184 (1977) and the current rules and regulations. In addition, their purpose is to clarify the existing rules and to eliminate unnecessary and confusing language contained therein. The specific rules to which amendments or language changes are proposed are Fee Employment Agency Rules and Regulations, FEA 1, 3, 7, 8, 13, 16, 22, 27, 44, and 57. Copies of the proposed rules are now available and one free copy may be obtained by writing to the Department of Labor and Industry, Space Center Building, 444 Lafayette Road, St. Paul, Minnesota 55101. Additional copies of the proposed rules will be available at the door on the day of the hearing.

These rules are proposed pursuant to the authority vested in the Department of Labor and Industry by the provisions of Minn. Stat. § 184.24, subd. 1 (1976), and Minn. Stat. § 175.171, subd. 2 (1976). A "statement of need" explaining why the agency feels the proposed rules are necessary and a "statement of evidence" outlining the testimony they will be introducing will be filed with the Hearing Examiners Office at least 25 days prior to the heraing and will be available there for public inspection.

Please be advised that pursuant to Minn. Stat. § 10A.01, subd. 11 (1976) any individual engaged for pay or other consideration for the purpose of representing persons or associations attempting to influence administrative action, such as the promulgation of these rules, must register with the State Ethics Commission as a lobbyist within five days of the commencement of such activity by the individual.

E. I. Malone
Commissioner
Department of Labor and Industry

Rules as Proposed

FEA 1 Accept. Accept means that the applicant has agreed with the employer on a specific position, wages, hours, working conditions and a specific starting date and has signed an acceptance form in which the agency has designated the terms of the acceptance. Within three weekdays of signing the acceptance form, **excluding Saturday, Sunday and legal holidays,** the applicant may withdraw the acceptance by notifying the agency in writing, provided that the applicant did not actually start the job. [The three-day withdrawal period does not apply if the total fee is paid directly to the agency by the employer.]

FEA 3(e) "Fee negotiable" means that the employer [has stated that he] and the applicant will confer to settle the matter of fee responsibility prior to the acceptance of a job.

FEA 7 Persons to be licensed. An employment agency license shall be obtained by any individual or entity whose agents **physically** operate in Minnesota as described in Minn. Stat. § 184.21, subd. 2, irrespective of whether such operations are on a short-term or a transient basis.

FEA 8 Examination by department. The department shall examine the recruitment, search, counseling, and/or placement activities of a business in order to determine whether an employment agent's license shall be obtained. After considering its findings and any recommendations of the Employment Agency advisory [Board] **Council**, the department shall decide whether an employment agency license shall be required.

KEY: Existing rules are printed in standard type face. Proposed additions to existing rules are printed in **boldface**, while proposed deletions from existing rules are printed within [single brackets]. Additions to proposed rules are **underlined and boldfaced,** while deletions from proposed rules are printed within [[double brackets]].

FEA 13 License endorsement. An employment agent shall return to the department within five calendar days the license of any manager or counselor who leaves the employ of that agent. An employment agent requesting consent to **change the name or address provided on the license** shall return the license to the department for endorsement no less than 10 calendar days prior to the requested date of change, along with a new bond or bond rider covering the change.

FEA 16 Fee information on contracts. Applicant contracts shall contain all of the following statements **unless language less restrictive to the applicant is approved by the department**.

FEA 16 (c) **I understand that only one fee is payable for a position.** If I am referred to the same position by two agencies, the fee shall be due the agent who first described the specific opening and gave the name of the employer, provided the interview with the employer is arranged by the agent within 10 calendar days and is **subsequently consummated**.

FEA 16 (d) Effective December 1974 is repealed. [I understand that if I voluntarily leave a fee paid or split fee position after 90 calendar days of employment or am terminated at any time for any reason other than misconduct, the agency shall not demand any money from me because of refunds to the employer.]

FEA 16 [(e)] (d) I understand that if the agency sends an employer my resume and I contact that employer on my own before being notified of the agency contact, I am not obligated to the agency for a fee unless I specifically request that the agency pursue this particular contact.

FEA 22 (c) [Gross income based totally or partially on commissions or bonuses is the average monthly income of the applicant during the twelve months of employment or during the agreed period of employment. A fee shall be based upon actual gross earnings if employment is terminated before the end of the time fixed in the agreement.] **For positions where income is based totally or partially on commissions or bonuses, the agent may assess a fee based on a reasonable estimate of the applicant's expected first year's earnings. If employment is terminated for any reason prior to the end of the first year, the fee shall be recomputed at the rate applicable to the actual gross earnings as listed on the agent's fee schedule.**

FEA 27 Two referrals to same employer. When an applicant is referred to an employer for a position to which he **or she** is not employed, and another agent refers the same applicant to the same employer for another position to which he **or she** is employed, the fee is payable to the second agent.

FEA 29 An agency may not demand any money from an applicant on a fee paid or split fee position after 90 calendar days of employment. Fees may be charged, however, to applicants who voluntarily leave or are terminated due to misconduct within 90 calendar days of employment on a fee paid or split fee position, provided the applicant contract fully explains the nature of the potential liability.

FEA 44 Display of licenses. [Each manager or counselor shall display his license in a conspicuous place on or near his desk.] **Each manager or counselor license shall be displayed in a conspicuous place on or near the individual's desk.**

FEA 57 Initiating the contested case.

(a) Initiation by complaint.

(1) Any person authorized by law to submit to the department a complaint that [his] **their individual** rights or privileges are being denied or that duties owed [him] are being defaulted upon may initiate a contested case by filing a complaint.

(2) (iv) Signature of the complainant or **the complainant's** attorney.

Department of Labor and Industry
Labor Standards Division
Minimum Wages
Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held in the State Office Building, Room 81, St. Paul, Minnesota 55155, on September 13, 1977, commencing at 9:00 a.m., and continuing until all persons have had an opportunity to be heard concerning the adoption of the proposed rules captioned above by submitting either oral or written data, statements, or arguments. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Mr. Peter C. Erickson, State Office of Hearing Examiners, 1745 University Avenue, St. Paul, Minnesota 55104, telephone: 296-8118, either before the hearing or within five (5) working days after the close of the hearing unless the hearing examiner orders a longer period of time which may not exceed twenty (20) days.

The proposed rules are intended to amend and revise Labor Standards Regulations, LS 1-18, which relate to Minnesota's Fair Labor Standards Act and which were adopted pursuant to Laws of 1973, ch. 721. Those rules have never been amended or revised. The purposes of the proposed rules are to update and revise the existing rules and to provide consistency with statutory changes which were made to the Fair Labor Standards Act by Laws of 1977, ch. 183 and Laws of 1977, ch. 369. The specific regulations which are to be amended are Labor Standard Regulations 1, 2, 3, 4, 5, 6, 7, 8, 9, 12, 14, 15, 16, 17, and 18.

These rules are proposed pursuant to the authority vested in the Commissioner by the provisions of Minn. Stat. § 177.28 (1976) and pursuant to the general authority vested in the Department of Labor and Industry by the provisions of Minn. Stat. § 175.171, subd. 2 (1976).

A copy of the proposed rules may be obtained by writing the Department of Labor and Industry, Space Center Building, 444 Lafayette Road, St. Paul, Minnesota 55101. Additional copies of the proposed rules will be available at the door on the day of the hearing. A "statement of need" explaining why the agency feels the proposed rules are necessary and a "statement of evidence" outlining the testimony they will be introducing will be filed with the Hearing Examiners Office at least 25 days prior to the hearing and will be available there for public inspection.

Please be advised that pursuant to Minn. Stat. § 10A.01, subd. 11 (1976) any individual engaged for pay or other consideration for the purpose of representing persons or associations attempting to influence administrative action, such as the promulgation of these rules, must register with the State Ethics Commission as a lobbyist within five days of the commencement of such activity by the individual.

E. I. Malone,
Commissioner
Department of Labor and Industry

Rules as Proposed

LS 1 Minimum wage rate for minors. Employers claiming an employee is under 18 must have his **or her** birthdate substantiated by a birth certificate or an age certificate issued by the Department of Labor and Industry (through the local Superintendent of Schools) **or a photocopy of the employee's driver's license** included in the payroll records kept for such employee. **Failure to provide proof of the ages of minors employed makes the employer liable for the adult minimum wage. The Child Labor Standards Act provides as follows: Minn. Stat. § 181A.06, subd. 1. Every employer shall require proof of the age of any minor employee or prospective employee by requiring the minor to submit an age certificate, a copy of his birth certificate, or a copy of his driver's license. Upon the request of a minor, an age certificate shall be issued by or under the authority of the school superintendent of the district in which the applicant resides. Superintendents, principals, or headmasters of independent or parochial schools shall issue age certificates to minors who attend such schools. § 181A.12, subd. 1. Any employer who hinders or delays the department or its authorized representative in the performance of its duties under §§ 181A.01 to 181A.12 or refuses to admit the commissioner or his authorized representative to any place of employment or refuses to make certificates or lists available as required by §§ 181A.01 to 181A.12, or otherwise violates any provisions of §§ 181A.01 to 181A.12 or any regulations issued pursuant thereto shall, upon conviction therefor, be guilty of a gross misdemeanor. Subd. 2. Any other person violating any provision of §§ 181A.01 to 181A.12 or any regulations issued pursuant thereto or assisting another in such violation is guilty of a misdemeanor.**

LS 2 Learners or apprentices. A learner is a student enrolled in a state approved high school vocational on-the-job training program in which supervision is provided by the school for the on-the-job experiences, a training plan is established for each individual student learner, and school credit is given for job experiences. For the first 300 hours of employment, the learner shall be paid at a rate of not less than [$1.89 per hour] **the wage rate for minors**.

LS 3 Handicapped worker permits. Subminimum wage rates may be paid to handicapped workers only after receiving a permit from the Labor Standards Division. If no permit is issued, a worker, no matter how severely handicapped, shall be paid the minimum wage. The subminimum rate will be based on the extent to which the worker's performance is limited but in no case may it fall below 50% of minimum wage. [Permits issued prior to January 1, 1974, will remain in effect for the duration stated therein.]

No profit-making organization may employ handicapped workers at a subminimum wage for more than 10% of its total work force unless granted a special permit by the Commissioner of Labor and Industry to exceed the 10% limitation.

Sheltered workshops are excluded from the above percent-

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age limitations of numbers of employees and percentage of minimum wage, but not from the permit requirement.

LS 4 Equal pay for handicapped. Where a handicapped person is now performing or is being considered for employment where he **or she** will perform work which is equal to work performed by a non-handicapped person such handicapped person shall be paid the same wage as a non-handicapped person with similar experiences.

LS 5 Part-time rates. Part-time employees may not be paid wages below the minimum rates established for adults and minors, **except as provided for under Minn. Stat. § 177.23, subds. 11 and 12.**

LS 6 Meal allowance. A meal allowance is credited toward the minimum wage only when the meal is furnished by the employer and accepted by the employee. The employer shall not require the employee to accept meals as a condition of employment. A meal is defined as an adequate portion of a variety of wholesome, nutritious foods and shall include at least one food from each of the following four groups: fruits or vegetables; cereals, bread or potatoes; eggs, meat or fish; milk, tea or coffee, except that for breakfast, eggs, meat or fish may be omitted if both cereal or bread are offered. The employer must keep a record of each meal accepted by the employee.

Meals must be consistent with the employee's work shift. Meal periods of less than twenty minutes may not be deducted from hours worked, nor may meal periods be deducted where the employee is not entirely free from work responsibility.

The meal allowance is [$.90] **$1.15** per meal.

LS 7 Lodging allowance. A lodging allowance is credited toward the minimum wage only for lodging furnished by the employer and accepted by the employee. Lodging means living accommodations which are adequate, decent, and sanitary according to usual and customary standards.

The lodging allowance is [$1.15] **$1.50** per day.

LS 8 **Tip credit — definitions and clarifications.**

A. Minn. Stat. § 177.28, subd. 4 "provides that a tip credit may not be taken unless at the time the credit is taken the employer has received a signed statement for that pay period from the tipped employee stating that he did receive and retain during that pay period all gratuities received by him in an amount equal to or greater than the credit applied against the wages due by his employer. The statements shall be maintained by the employer as part of his business records."

B. The department in its investigations and audits shall require the employer to provide the signed tip statements at the time of its audit or no tip credit will be allowed.

C. Tip credit is based on the actual amount of tips received by the employee divided by the number of hours worked in a given pay period. A maximum tip credit may be allowed up to 20% of the applicable minimum wage. The employer's records must also indicate that the individual employee received at least $35.00 per month in gratuities in order that any tip credit be allowed in that period.

D. Tip pooling may not be a condition of employment. Tip sharing or pooling shall be on an individual person-to-person basis. Another employee who benefits because the recipient shares the gratuity with him or her shall not have such remuneration considered in the calculation of his or her wages.

E. A gratuity is presented indirectly when the sum of money is included in the statement of charges and no notice is made on the statement indicating that the amount is not a tip to be presented to the employee as a gratuity.

F. A service person is one who in a given situation performs the main service for a customer and is to be considered the recipient of the gratuity for purposes of wage calculation.

G. Gratuities presented to a service person via inclusion on a charge or credit card shall be credited to that pay period for which they appear on the service person's tip statement.

H. Money presented by customers, guests or patrons at a banquet as a gratuity to be divided among the service people shall be credited to that time period for which it appears on the service person's tip statement.

I. Where a tip is given by a customer through a credit or charge card, the full amount of tip must be allowed the service person minus only the percentage deducted from the tip in the same ratio as the percentage deducted from the total bill by the service company.

J. Tip credit may only be claimed or allowed consistent with the provisions of this rule.

LS 9 Deductions. Deductions from the minimum wage, **whether direct or indirect,** may not be made for shortages in money receipts or merchandise, for **the purchase or maintenance of** uniforms, **for spoilage,** for breakage, **for cash shortages or losses resulting from walkouts, bad checks or robbery or for fines for disciplinary purposes.** These are considered matters separate from wages. [No

employee shall be required to contribute directly or indirectly from the minimum wage for the purchase or maintenance of uniforms.] The term "uniform" means wearing apparel and accessories [of distinctive design or color] required by the employer to be worn by the employee as a condition of employment.

LS 12 Hours worked. Hours worked include training time, call time, cleaning time, waiting time, or any other time when the employee must be either on the premises of the employer or involved in the performance of duties in connection with his **or her** employment. Rest periods of less than 20 minutes may not be deducted from total hours worked.

LS 14 Workweek. The period of time used for determining compliance with the minimum wage rate, overtime compensation, and designation as a part-time employee is the workweek, which is defined as a fixed and regular recurring period of 168 hours — seven consecutive 24 hour periods. This is true whether the employee is paid on an hourly, piecework, commission, or any other basis. Once the workweek is established, it remains fixed, although it may be changed if the change is intended as permanent rather than as an evasion of the overtime provisions. If no workweek is designated, it shall follow the calendar week.

The Commissioner of Labor and Industry may upon receiving application made by an employer establish a different period of time to be used as workweek for purposes of this regulation.

No employer shall be deemed to have violated Section 5, Minn. Stat. § 177.25, subd. 1 by employing any employee of a retail or service establishment for a workweek in excess of the applicable workweek specified therein, if (1) the regular rate of pay of such employee is in excess of one and one-half times the minimum hourly rate applicable to him under [section 4], **Minn. Stat. § 177.24** and (2) more than half [his] **the** compensation for a representative period (not less than one month) represents commissions on goods or services. In determining the proportion of comepnsation representing commissions, all earnings resulting from the application of a bona fide commission rate shall be deemed commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.

LS 15 Executive, administrative, professional personnel. **The primary duties of the employee are determinative of his or her status under this exemption. Only where the employee's primary duties meet all the criteria under a particular test may the employer consider the employee to be exempt from the overtime wage provisions.**

A. Manage. For purposes of this rule, the term manage means to control and direct the business operations of a given enterprise, department or branch establishment. Duties involved in managing must be other than routine and repetitious and must involve the making of decisions and the issuance of directions to other employees which involve skill and judgement. The term includes those employees that act primarily and principally in a directive capacity as opposed to those who primarily do the actual work.

B. Discretionary powers. The thrust of this criteria is to distinguish between those employees empowered to independently commit their employers on matters of importance and those employees who merely make day to day decisions which, although necessary to the daily operations of the employer's business, are routine, or follow prescribed procedures, or involve a determination of whether specific standards are met, or are lacking in substantial importance to the employer's business as a whole. One test which should be utilized in determining whether an employee exercises discretionary powers is to ask whether the decisions being made involve a discretion as to company policy or procedure or commit the employer on matters of substantial importance. Mere recommendations with respect to policies and procedures are not sufficient unless it can be shown that the employer consistently accepted and followed those recommendations.

C. Sole charge. Only one employee per enterprise, department or branch establishment may be considered to be in sole charge regardless of the number of work shifts per day.

D. In determining exempt and non-exempt work under this rule, work directly related to executive or administrative work may be included if the executive work which it relates to is actually performed by the employee. It is not sufficient to claim certain work is exempt where the executive or administrative function it might be directly related to is not performed by the employee.

E. Monetary amounts on salary tests will coincide and adjust with current Federal Fair Labor Standards Act.

EXECUTIVE Test I

(a) receives at least [$200] **$250** per week in salary

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(b) manages the enterprise by which he is employed or a recognized department of subdivision thereof;

(c) customarily directs the work of two or more other employees.

EXECUTIVE Test II

(a) receives at least [$125] **$155** per week in salary;

(b) manages **and supervises** a department of at least two other full-time people **(a full-time employee is defined as one who works at least 35 hours in a workweek)**;

(c) has authority to hire or fire [or] **and** suggest changes in employees' status;

(d) regularly exercises discretionary powers;

(e) either

(1) devotes less than 20% of time worked (or 40% in retail or service establishments) to non-exempt work, or

(2) owns 20% or more of the business, or

(3) has sole charge of an independent or branch establishment.

ADMINISTRATIVE Test I

(a) receives at least [$200] **$250** per week in salary or fee;

(b) either

(1) performs office or nonmanual work directly related to management policies or general business operations, or

(2) performs functions in the administration of a school system or subdivision thereof, in work directly relating to academic instruction;

(c) regularly exercises discretion or independent judgement.

ADMINISTRATIVE Test II

(a) receives at least [$125] **$155** per week in salary or fee;

(b) either

(1) performs office or nonmanual work directly related to business operations or management policies, or

(2) administers an educational system or subdivision thereof in work relating to academic instruction;

(c) regularly exercises discretion and independent judgement and makes important decisions;

(d) either

(1) directly assists owner of bona fide executive or administrative employee, or

(2) performs supervised work only along lines requiring special training or experience, or

(3) executes special assignments;

(e) devotes less than 20% of time worked (or 40% in retail or service establishments) to non-exempt work.

PROFESSIONAL Test I

(a) receives at least [$200] **$250** per week in salary or fee;

(b) either

(1) performs work requiring advanced knowledge in a field of science or learning, or

(2) performs work as a teacher in the activity of imparting knowledge, or

(3) performs work requiring invention, imagination, or talent in a recognized field of artistic endeavor;

(c) consistently exercises discretion and judgement.

PROFESSIONAL Test II

(a) receives at least [$140] **$170** per week in salary or fee;

(b) either

(1) performs work requiring advanced knowledge in a field of learning customarily acquired by prolonged specialized intellectual study (not a general academic education, an apprenticeship, or training in routine mental or physical processes), or

(2) performs original work dependent on his own creativeness in a recognized field of artistic endeavor, or

(3) is a certified teacher working as such or recognized as such in the school system where he works;

(c) consistently exercises judgement and discretion;

(d) performs predominantly intellectual work so varied that the output cannot be standardized by time necessary for accomplishment;

(e) devotes less than 20% of his hours worked to activities not essential to his professional work.

LS 16 Outside [Salesman] **salesperson**. [Salesman] **Salesperson** is defined as one who makes sales of, or obtains orders or contracts for, materials, services, or the use of facilities for which payment will be made. Incidental deliveries, collections, and other non-sales or non-solicitation work that is directly related to the primary sales duties shall be considered the work of a [salesman] **salesperson**. An outside [salesman] **salesperson** is hired for the express purpose of performing such duties away from [his] **the** employer's place(s) of business and conducts no more than 20% of [his] sales on those premises. [His] **The** hours of non-outside sales work may not exceed 20% of the hours worked by employees who are not outside [salesmen] **salespersons**.

LS 17 Gratuitous service. Gratuitous service is voluntarily donated work performed by a person who receives for it no monetary compensation or other valuable consideration. [He] **The individual** may be reimbursed for out-of-pocket expenses needed to perform the services, but only if these expenses are itemized. The acceptance of an expense allowance (that is, a gross sum provided him with no itemized list of expenses) makes the individual non-exempt. **(See ch. 177.23 subd. 7(5))**

"Non-profit organization" is defined as a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earning of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation. **(See ch. 177.23 subd. 7(5))**

LS 18 **Wages, how often paid. The payment of wages due must be made at least once every 30 days.**

LS Regulation #18 adopted 1-1-74 is repealed.

Livestock Sanitary Board

Importation of Dogs and Swine and State-Federal Approved Markets for Swine

Notice of Hearing

Notice is hereby given that a public hearing in the above entitled matter will be held pursuant to Minn. Stat. § 15.0412, subd. 4 (1976), in Conference Room D, Veterans Service Building, 20 West 12th Street or Columbus Avenue, Thursday, September 8, 1977 commencing at 10:00 A.M., and continuing until all interested or affected persons have had an opportunity to be heard.

Relevant statements or written material may be submitted for the record at the hearing or to Peter C. Erickson, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, phone: 612-296-8118 before the hearing or within 5 working days after the close of the hearing.

Statutory authority to promulgate the proposed rules is vested in the Livestock Sanitary Board by Minn. Stat. § 35.03 (1976).

The LSB proposes to amend LSB 2:

1. To allow certain dogs to be imported without a health certificate and in some circumstances without rabies vaccination.

2. To adopt duration of immunity intervals for vaccines as recommended by the Association of State Public Health Veterinarians, Inc.

The LSB proposes to amend LSB 5:

1. To eliminate the requirement for prior permits to import swine into Minnesota.

2. To eliminate the need for a health certificate for swine going from farms in other states to Minnesota markets.

3. To require a negative test for pseudorabies on all breeding swine 6 months of age and over imported into Minnesota.

The LSB proposes to amend LSB 42:

1. To define PRV as pseudorabies virus.

2. To delete references to hog cholera, to types of markets and to prior permits for imports.

3. To clarify requirements for movement of swine into State-Federal approved markets for swine.

4. To substitute a slaughter statement for the affidavit for swine sold for slaughter only.

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5. To require that all slaughter swine be tattooed.

6. To require a negative PRV test on all breeding swine 6 months of age and over originating from other states.

7. To require a health certificate with negative brucellosis and PRV test results be issued on breeding swine from other states sold at the market.

A free copy of the proposed rule is available and can be obtained from the Minnesota Livestock Sanitary Board, 555 Wabasha, St. Paul, Minnesota 55102. Additional copies will be available at the hearing.

A "statement of need" explaining why the Board feels the proposed rules are necessary and a "statement of evidence" outlining the testimony they will introduce will be filed with the Hearing Examiner at least 25 days prior to the hearing and will be available for public inspection.

Please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the Ethical Practices Board within 5 days after he commences lobbying. Lobbying includes attempting to influence rulemaking by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than $250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 per year or five hours per month at lobbying. The statute provides certain exemptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155. Phone: 612-296-5615.

J. G. Flint, D.V.M.
Secretary and Executive Officer

[LSB 2] **3 MCAR § 2.002** Importation of dogs.

[(a) All dogs shipped, transported, or moved into Minnesota for any purpose with the exception of performing dogs shipped for a limited period of time within the state, must be accompanied by a certificate of health issued by the state or government veterinary officials, or by an approved veterinarian, stating that the animal or animals, to the best knowledge and belief of the veterinarian issuing the certificate, have not been exposed to rabies within the preceding 12 months, and are free from symptoms of any communicable disease. The health certificate for all dogs six months of age or over, shall also include a statement the dog or dogs have been vaccinated against rabies within 12 months with killed vaccine or within 24 months with modified live virus vaccine prior to shipment, giving the date of vaccination and the product used.]

[(b) One copy of the health certificate shall be attached to the waybill if the dog is shipped by railroad, or in possession of the person in charge of the animal if moved into the state by other vehicle or on foot, and one copy approved by the Livestock Sanitary Official of the state of origin must be immediately forwarded to the State Livestock Sanitary Board, St. Paul, Minnesota.]

[(c) The rules and regulations governing the Importation of Dogs into the State of Minnesota adopted by the Board November 4, 1960, approved by the Attorney General December 19, 1960 and filed with the Secretary of State December 21, 1960, are hereby rescinded.]

A. All dogs imported into Minnesota shall be accompanied by a health certificate issued by an accredited veterinarian except:

1. Performing dogs in professional animal acts.

2. Dogs for exhibition which are covered by Rule 3 MCAR § 2.040.

3. Dogs for research at educational and scientific institutions.

4. Dogs entering a veterinary facility for treatment, surgery, or diagnostic procedures.

B. Health certificates shall:

1. Certify that the dog or dogs have been inspected and are free of visible signs of infectious, contagious, or communicable disease.

2. Include a statement of rabies vaccination for all dogs three months of age and older,

a. Giving the date of vaccination, the product name, serial number, and the manufacturer's name.

3. The date of vaccination shall be within the established duration of immunity period recommended in the most recently published Compendium of Animal Rabies Vaccines as published by the Association of State Public Health Veterinarians, Inc.

4. A copy shall be forwarded to the Minnesota Livestock Sanitary Board by the approving agency of the state of origin.

[LSB 5] **3 MCAR § 2.005** Importation of swine into Minnesota.

[(a) Importation permits required.

(1) A permit shall be obtained from the Minnesota State Livestock Sanitary Board for all swine imported into Minnesota except:

(aa) Swine consigned to a public stockyard or slaughtering establishment where the Federal government maintains inspection.

(bb) Slaughter swine consigned to an approved state-federal market.

(cc) Swine for exhibition which must comply with Regulation LSB-40 (Exhibition of Poultry and Livestock in Minnesota).

(2) Permits will be issued only in the name of bona fide resident of the State of Minnesota, or a market approved under Part 76.16 Code of Federal Regulations, who is named as the consignee on the health certificate.

(3) Permit numbers shall be indicated on the health certificate.]

[(b) Health certificate. No swine shall be imported into the State of Minnesota, except slaughter swine consigned to public stockyards or slaughtering establishments under Federal inspection or state-federal approved markets, unless accompanied by a health certificate issued by an accredited veterinarian. A copy of the certificate, approved by the Livestock Sanitary Official of the state of origin, shall be promptly forwarded to the Minnesota State Livestock Sanitary Board. The health certificate shall indicate the date of the issuing veterinarian's inspection and that the swine inspected show no visible symptoms of infectious, contagious, or communicable disease. The certificate shall include the individual identification of all swine included in the shipment.]

[(c) Identification of swine. Individual identification is required on all swine except slaughter swine consigned to public stockyards or slaughtering establishments under Federal inspection or state-federal approved market. Identification shall be by ear tag, tattoo, registration number, or other suitable identification. Such identification shall be indicated on all health certificates.]

[(d) Swine may be imported only from the following points.

(1) Swine from a farm of origin provided the farm has not been used as a concentration point for swine within the past six months, or

(2) From markets approved under Part 76.16, Code of Federal Regulations, provided such swine enter Minnesota within 48 hours after removal from farm of origin. Swine that have moved through more than one market are not allowed entry into Minnesota.]

[(e) Breeding swine. Breeding swine six (6) months of age and over may be imported only if found negative to the brucellosis card test within thirty days prior to date of importation, unless they originate in a validated brucellosis-free herd. Tests to be conducted at a state-federal laboratory. The health certificate shall include the record of the brucellosis tests, or if from a validated brucellosis-free herd, shall include the validated certificate number and date of last qualifying test.]

[(f) Quarantines. All swine shall be quarantined at the farm of destination to be held separate and apart from all other swine on the premises for a period of 30 days.]

[(g) Transportation. All swine imported shall be shipped in cleaned and disinfected vehicles. Swine shall not be unloaded enroute. The health certificate and permit shall be attached to the waybill if shipped by rail, or in the possession of the truck driver if shipped by truck. All swine in the shipment shall be delivered only to the destination shown on the health certificate.]

A. Swine shall not be imported into the State of Minnesota from herds or areas under quarantine for infectious diseases of swine except swine accompanied by a shipping permit sent directly to slaughtering establishments under federal inspection.

B. All swine imported into the State of Minnesota shall be accompanied by a health certificate issued by an accredited veterinarian, except:

1. Feeding and slaughter swine consigned to a public stockyard.

2. Feeding and slaughter swine consigned to a market operating under a permit from the Board.

3. Swine going directly to slaughter at a slaughtering establishment having federal inspection.

C. Health certificates:

1. Shall show the individual identification numbers of the swine. Acceptable individual identification shall be:

a. Eartag.

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b. Tattoo.

c. Registration number.

d. Approved ear notch system.

2. Shall show the date, name of the laboratory, and results of tests required in Section D. 1., and 2.

3. Shall show the validated brucellosis-free herd number or other disease-free herd status if originating from such herds.

4. One copy of the health certificate approved by the animal health department of the state of origin shall be forwarded to the Minnesota Livestock Sanitary Board.

D. Breeding swine six months of age and over shall be:

1. Negative to the Brucellosis Buffered Antigen Test conducted at a state or federal laboratory within 30 days prior to importation, or originate from a Validated Brucellosis-free swine herd.

2. Negative to the Serum Neutralization Test for pseudorabies at a state or federal laboratory within 30 days prior to importation or originate from a herd of swine recognized as qualified pseudorabies-free under a national plan approved by the United States Animal Health Association.

E. Quarantine and isolation. All swine except swine for exhibition, slaughter, or entering a market or a public stockyards shall be quarantined and held in isolation on the farm of destination for a period of 30 days.

[LSB 42] **3 MCAR § 2.042** [Governing] State-Federal approved markets for swine.

A. [(a)] Definitions. The following words and terms shall be defined as follows where used in these rules [and regulations]:

1. [(1)] "Board" shall mean the Minnesota State Livestock Sanitary Board acting by and through the Secretary and Executive Officer.

2. [(2)] "Owner" shall mean the legal owner, of the swine referred to, or his agent.

3. [(3)] "State-Federal approved market" shall mean any point where swine have been assembled for sale that has been approved by State and Federal agencies under Part [76.16] **76.18**, Title 9 of Federal Regulations.

4. [(4)] "Sales management" shall mean the person or persons organizing and conducting such a market.

5. [(5)] "Sales premises" shall mean the premises where a market is conducted and shall include but not be limited to sales rings, pens, alleys, land or building contiguous to sales rings where swine may be brought to, unloaded, and confined, prior to and after sales, before delivery to the purchaser.

[(6) "Veterinarian" shall mean a graduate of a recognized veterinary college, licensed in Minnesota, who has been accredited by the United States Department of Agriculture.]

6. "PRV" shall mean pseudorabies virus.

7. [(7)] "Official veterinarian" shall mean [an individual] **a graduate veterinarian** licensed to practice veterinary medicine in Minnesota, accredited by the United States Department of Agriculture, [approved by the Board to conduct the brucellosis agglutination tests] and authorized by the Board to act as its representative at the [approved] market.

8. [(8)] "Health certificate" shall mean a document issued by an accredited veterinarian, on the official form of the State of origin, after a physical examination, certifying that the swine described show no visible symptoms of contagious, infectious, or communicable disease and shall include [a statement of the hog cholera status of the state of origin of the swine, and] the name and address of the consignee.

9. [(9)] "Recognized slaughtering establishment" shall mean any point where slaughtering facilities are provided and to which animals are regularly shipped and slaughtered.

B. [(b)] Hog cholera. In the event hog cholera is diagnosed or is suspected all swine shall be detained on the premises of the market pending instructions from the Board.

C. [(c)] Approval.

1. [(1)] No livestock market shall be approved without the joint endorsement of the Board and the Veterinarian-in-Charge [of the Animal Health Programs], **Veterinary Services,** APHIS, USDA in Minnesota.

2. [(2) The] Approval may be suspended by either the Secretary and Executive Officer of the Board or the Deputy Administrator Veterinary Services, APHIS, USDA for just cause pending a hearing to show cause why the approval should not be revoked.

3. [(3)] A market may be removed from the approved list by the Deputy Administrator Veterinary Services, APHIS, USDA when it is determined by the Secretary and Executive Officer of the Livestock Sanitary Board or the

Federal Veterinarian-in-Charge of the Animal Health Programs in Minnesota that the operators of the market fail to meet the standards mutually agreed upon by the cooperating state and federal officials; upon written request of the market management; or if no swine have been sold for three [(3)] consecutive months.

[(d) Types of Markets. Approval will be for one of the following purposes:

(1) To receive and consign interstate shipments restricted to slaughter swine only, under the applicable provisions of Part 76, Title 9, CFR and this regulation, and to receive and consign intrastate shipments restricted to slaughter swine only.

The management of livestock markets who apply for state-federal approval to handle slaughter swine only under this regulation shall:

(aa) Receive swine for slaughter only; permit no swine to be removed from the market unless they are consigned for immediate slaughter to a recognized slaughtering establishment.

(bb) Maintain records of origin and destination of swine handled at the market, and grant authorized state and federal inspectors access to such records. Records are to be maintained for a period of six months.

(cc) Isolate all swine suspected of being affected with or exposed to hog cholera; immediately notify the state or federal agency and hold all swine on the premises pending instructions on disposition.

(dd) Clean and disinfect swine handling facilities as deemed necessary by state and federal agencies to guard against spread of disease.

(ee) Cooperate in compliance with Part 76, Title 9, CFR and this regulation.

(2) To receive and consign interstate shipments of all classes of swine under the applicable provisions of Part 76, Title 9, CFR and this regulation, and to receive and consign intrastate shipments of all classes of swine.]

[(e) The management of markets who apply for state-federal approval to handle all classes of swine shall agree to cooperate in compliance with Part 76, Title 9, CFR and all sections of this regulation.]

D. [(f)] Permits.

1. [(1)] No person or persons shall purport to operate or conduct a state-federal approved market for swine in Minnesota, unless he has obtained a permit from the Board. State-federal approved markets shall be approved by state and federal agencies cooperatively. Application [and] **for** permit shall be made on forms furnished by the Board.

2. [(2)] Permits shall be valid until June 30 following the date of issue.

3. [(3)] The Board may refuse to grant or may revoke the permit when the applicant or permit holder has violated any of the provisions of Minn. Stat. ch. 35, or the rules [and regulations] promulgated thereunder by the Board.

E. [(g)] Premises.

1. [(1)] All markets shall comply with the following:

a. [(aa)] All pens, alleys, sales rings, loading and unloading chutes shall be well constructed and maintained in good repair.

b. [(bb)] All floors shall be surfaced with cement or other impervious material.

c. [(cc)] Facilities for inspection shall be well lighted.

d. [(dd)] Premises shall be maintained in a reasonably clean and sanitary condition at all times and shall be cleaned and disinfected, with a permitted disinfectant, as often as necessary to guard against the spread of disease.

e. [(ee)] Water supply shall be clean, adequate and operate under pressure.

[(2) Markets approved to handle all classes of swine shall also comply with the following:]

f. [(aa)] Facilities shall be provided and maintained in good operating condition at all times for the cleaning and disinfection of premises and vehicles.

g. [(bb)] Feed and water containers shall be metal, concrete, plastic or other impervious material that can be readily cleaned and disinfected.

h. [(cc)] Proper and adequate office space shall be provided for official veterinarian.

i. [(dd)] Isolation pen(s) shall be provided for the

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temporary holding of swine found by the official veterinarian to have any symptoms of a contagious, infectious, or communicable disease.

The isolation pen(s) shall be constructed and operated as follows:

(1) [(i)] Located so that diseased animals therein shall have no direct contact with non-diseased animals.

(2) [(ii)] Drainage shall not be into other pens.

(3) [(iii)] Proper equipment shall be available for cleaning and disinfecting. [Equipment used in cleaning isolation pen(s) shall be maintained separate from other equipment.]

(4) [(iv)] Feeding and watering facilities shall be separate from those used by healthy animals.

(5) [(v)] Conspicuously posted as "ISOLATION PEN(S)" on the entrance gate(s).

(6) [(vi)] Used for diseased or disease exposed swine only.

(7) [(vii)] The market operators shall use proper procedures in cleaning and disinfecting the isolation pen(s). The cleaning and disinfecting shall be done immediately after the removal of diseased or disease exposed animals. Refuse from this pen shall not be placed in any other holding pen in the market, but shall be removed directly to an area [non-accessible] **inaccessible** to livestock. Disinfectant used shall be only a permitted disinfectant.

F. [(h)] Official veterinarian.

1. [(1)] The management of each market [approved to handle all classes of swine] shall employ a veterinarian as defined in section [(a),] A., paragraph [(7)] 7. to inspect and examine all swine offered for sale. No permit will be issued until a veterinarian acceptable to the Board has been employed by said management and authorized by the Board to act as its representative.

2. [(2)] The veterinarian shall prohibit the sale of any swine that in his opinion, are affected with or show symptoms of contagious, infectious or communicable diseases. He shall order the movement of such swine to the isolation pen(s).

3. [(3)] The veterinarian shall, when required, conduct the brucellosis card test **and submit samples for the serum neutralization test for PRV** [of] **on** breeding swine **originating from out of state.**

4. [(4)] The veterinarian shall report to the Board any failure by the sale management to properly clean and disinfect the sale premises and isolation pen(s) as necessary to maintain them in a sanitary condition.

5. [(5)] The veterinarian shall furnish to the Board, within five days, duplicate copies of all quarantines and slaughter [affidavits] **statements** issued by him at the market, and such other reports as the Board may require.

6. [(6)] The veterinarian shall issue shipping permits for slaughter only on all swine sold from the isolation pen(s).

G. [(i)] Management. The management of [livestock] markets [who apply for State-Federal approval to handle all classes of swine] shall comply with the following:

1. [(1)] No swine shall be sold at the market until such swine have been examined and found free of symptoms of contagious, infectious or communicable diseases by the official veterinarian. The management shall refuse to accept swine for sale when so ordered by the official veterinarian. The management shall place in the isolation pen(s) such swine as the official veterinarian shall designate as infected with or exposed to a contagious, infectious or communicable disease. The management shall refuse to deliver swine sold until such swine have been released by the official veterinarian.

2. [(2)] The management shall maintain records of origin and destination of swine handled at the market. Such records shall be maintained for a period of one year and shall be accessible to authorized federal and state inspectors when reasonable demand is made therefor.

3. [(3)] The management shall within five days following the completion of each week's business, mail to the Board a report of all swine sold through the market, furnishing the name and address of the consignor and the name and address of the purchaser. Other reports are to be made as required by the Board.

H. [(j)] Consigments.

1. [(1)] Swine when consigned for sale must be accompanied by a statement signed by the owner or his agent that the swine are not under quarantine. The statement shall include the post office, township and county of the premises from which the swine were removed immediately prior to entry to the market. The owner resident address shall also be included if it differs from the above.

2. [(2)] Persons delivering swine to the market shall furnish statements signed by the owners or agents as stated above.

I. [(k)] Movements into Markets [approved to handle all classes of swine].

1. [(1)] Swine under quarantine shall not be allowed entry, except under permit from the Board.

[(2) Apparently healthy swine originating from a state-federal approved market in Minnesota may enter provided they are accompanied by a health certificate issued by the official veterinarian of the first market certifying that they have not moved through more than one market. Such health certificate shall be only valid for entry if issued within 48 hours of entry.]

[(3) Feeding and breeding swine may enter from other states provided:

(aa) A permit for such movement is secured from the office of the Board.

(bb) A valid health certificate issued within 48 hours is presented at the time of entry:

(i) Certifying that the swine do not originate from a quarantined farm or area.

(ii) Certifying that swine have not moved through more than one market and,

(iii) Listing the eartags or other suitable identification.

(cc) Swine imported for breeding purposes shall comply with provisions of section [(k)] I. above and in addition shall be accompanied by a health certificate including record of negative brucellosis card test conducted within 30 days prior to importation. Swine not so tested for brucellosis, shall be tested prior to leaving market premises to conform with regulations of destination.]

2. Swine from markets in Minnesota may enter provided they are accompanied by a health certificate issued by an accredited veterinarian.

3. Swine from markets in other states may enter provided they are accompanied by a health certificate issued by an accredited veterinarian.

4. All swine entering from markets in other states shall be identified by eartag number. All breeding swine six months of age and over from such markets shall have the results of the brucellosis card test and serum neutralization test for PRV listed on the health certificate.

5. Breeding swine six months of age and over originating from a farm of origin in another state shall enter only with a health certificate issued by an accredited veterinarian. The health certificate shall show:

a. The identity numbers.

b. The results of the brucellosis card test and the serum neutralization test for PRV.

6. [(4)] Slaughter swine may [be allowed entry] **enter** for sale for slaughter purposes only.

J. [(1)] Movements from markets [approved to handle all classes of swine].

1. [(1)] All swine on market premises shall be inspected by the official veterinarian prior to sale.

2. [(2)] Swine when found by the official veterinarian to be infected with or show symptoms of a contagious, infectious or communicable disease shall be placed in the isolation pen(s). All swine from isolation pen(s) shall be shipped for slaughter only to some point where the federal government maintains inspection. Shipment shall be made in accordance with federal regulations governing the interstate shipments of swine.

[(3) Apparently healthy swine may be sold for slaughter purposes only, provided the purchaser furnishes an affidavit, to the management or official veterinarian stating that all such swine will be consigned to a public stockyard or slaughtering establishment within five days following date of purchase.]

3. Swine may be sold for slaughter purposes provided the purchaser signs a statement of intent to slaughter and provided such swine are tattooed in accordance with Rule 3 MCAR § 2.066.

4. [(4)] All swine except swine sold for slaughter [under affidavit] must be individually identified by eartag or other [suitable] **acceptable** identification.

[(5) All swine must be removed from the market within 24 hours of entry.]

5. [(6)] All swine except those sold for slaughter or movement to another [state-federal] market [under permit]

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shall be quarantined for 30 days to the premises of the purchaser. Swine sold to persons in other states must leave the market with a health certificate **and meet the state of destination requirements.**

[(7) Swine other than for immediate slaughter, moving out of a state-federal approved market are to be transported in a cleaned and disinfected vehicle. If the vehicle is not regularly used to transport livestock, disinfection is not required.

No part of this regulation shall take precedence over any portion of Regulation LSB-5 entitled "Rules and Regulations for the Importation of Swine."]

6. All breeding swine six months of age and over that originate in other states, removed to destinations in Minnesota must be accompanied by a health certificate showing individual identification, date of tests, name of laboratory, and results of test for:

a. Brucellosis by the card test.

b. PRV by the serum neutralization test.

Department of Natural Resources

Standards and Criteria for Granting and Denying Permits to Change the Course, Current or Cross-Section of Public Waters

Notice of Hearing

Please take notice that a public hearing on the above-described rules will be held at the following places and dates:

September 7, 1977 — Saint Paul, Minnesota, State Office Building Auditorium, Room 83, at 9:30 a.m.

September 21, 1977 — Brainerd, Minnesota, Armory, Fifth and Laurel Streets, at 9:30 a.m.

All interested persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted to

Howard L. Kaibel, Jr.
Office of Hearing Examiners
1745 University Avenue
Saint Paul, Minnesota 55105

either before the hearing or within 5 days after the hearing. The hearing will be conducted as described in Minn. Stat. § 15.0412 and in Minnesota Regulations HE 101-109.

The proposed rules contain the decision criteria the Commissioner of Natural Resources proposes to follow in deciding whether or not to permit changes in public waters, including but not limited to the following kinds of activities:

beach sanding	harbors and slips
riprapping	marinas
retaining walls	breakwaters
filling	boathouse construction and repair
dredging	dams
excavating	lake level controls
channelizing	bridges and culverts
docks	watermain and sewer crossings
launch ramps	intakes and outfalls
wharves	

A free copy of the proposed rules may be obtained by writing to the Department of Natural Resources, Division of Waters, Third Floor, Space Center Building, 440 Lafayette Road, Saint Paul, Minnesota 55101. Additional copies will be available at the hearings. The agency's authority to adopt the proposed rules is found in Minn. Stat. § 105.42, subd. 1.a. (1976), and in Minn. Stat. § 105.415 (1976) as amended by Laws of 1977, ch. 446, § 5. A "statement of need" explaining why the agency feels the proposed rules are necessary, and a "statement of evidence" outlining the testimony they will be introducing will be filed with the Office of Hearing Examiners 25 days before the hearing and will be available there for public inspection.

Please be advised that Minn. Stat. ch. 10A, requires each lobbyist to register with the Ethical Practices Board within five days after he commences lobbying. Lobbying includes attempting to influence rulemaking by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than $250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, phone: (612) 296-5615.

William B. Nye
Commissioner

Contents

Rules as Proposed

NR 5020 General provisions.

A. General policy. The purpose of these rules and regulations is to provide for the orderly and consistent review of water resource permit applications in order to conserve and utilize the water resources of the state in the best interest of the people of the state. In accordance with the authority granted in the Laws of 1976, ch. 83, and in furtherance of the policies and requirements declared in Minn. Stat. §§ 105.38 and 105.42, the Commissioner of Natural Resources, hereinafter referred to as the Commissioner, hereby establishes standards and criteria governing the issuance, review, and denial of water resource permits for work in the beds of public waters. Pursuant to Minn. Stat. §§ 105.45 and 116D.04 (1976), the Commissioner shall be guided by the following general policies in deciding to issue or deny a water resource permit:

1. No water resource permit shall be issued where the proposed action is likely to cause pollution, impairment, or destruction of the air, water, land or other natural resources, provided that there is a feasible and prudent alternative.

2. No water resource permit shall be issued unless

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and until the Commissioner has considered all of the following points:

a. The environmental impact of the proposed project.

b. Direct or indirect adverse environmental effects of the proposed project.

c. The availability and feasibility of reasonable alternatives having a lesser degree of impact upon the water body.

d. The environmental impact of predictable increased future development of an area due to the existence of the proposed project, if approved.

3. The applicant must show that the proposed project is reasonable, practical and will adequately protect public safety and promote the public welfare.

4. The proposed development must be consistent with the goals and objectives of applicable federal, state, and local environmental quality programs and policies including but not limited to shoreland management, floodplain management, water surface use management, boat and water safety, wild and scenic rivers management, fish and wildlife management, water quality management, recreational or wilderness management, critical areas management, scientific and natural areas management, and protected vegetative species management.

5. No water resource permit shall be issued based on economic considerations alone.

6. The issuance or denial of a water resource permit shall be based upon findings of fact made on substantial evidence.

B. Scope. To achieve the policies declared in NR 5020 A. the Commissioner has set forth minimum standards and criteria for the review, issuance and denial of water resource permits in NR 5020 - 5029 which include:

1. Filling into public waters

a. Beach sand blankets

b. Riprap shore protection

c. Other filling

2. Excavation of public waters

a. Dredging of public waters

b. Inland excavations connected to public waters

c. Alterations of natural watercourses

3. Structures in public waters

a. Permanent docks

b. Wharves

c. Offshore breakwaters, harbors, and marinas

d. Retaining walls

e. Waterway obstructions

f. Boat launching ramps

4. Dam construction or reconstruction and water level controls

a. Water level controls

b. Dam construction or reconstruction

5. Bridges and culverts, watermain and sewer crossings, intakes and outfalls

a. Bridge and culvert installations

b. Watermain and sewer crossings

c. Intake and outfalls

6. Administration

a. Application for water resource permits

b. Permit review

C. Jurisdiction. These standards and criteria governing the review, issuance and denial of water resource permits, as hereby adopted and established, pertain to any and all work which will cause or result in the alteration of the course, current or cross-section of public waters. For the purpose of these standards and criteria, the beds of public waters shall include all portions of public waters located below the elevation of the ordinary high water mark.

D. Definitions. For the purposes of these regulations, certain terms or words used herein shall be interpreted as follows: The word "shall" is mandatory, not permissive. All distances unless otherwise specified shall be measured horizontally.

"Alteration" means any activity that will deepen,

widen, straighten, or realign the channel of a watercourse, or enclose it for a substantial distance within a structure other than for a roadway, walkway trail crossing, or the like.

"Altered natural watercourse" means a former natural watercourse which has been affected by man-made changes resulting in straightening, deepening, and widening of the original channel.

"Artificial watercourse" means a watercourse which has been artificially constructed by man where there was no previous watercourse.

"Breakwater" means an off-shore structure protecting a shore area, harbor, or marina from waves.

"Class I public watercourse" means a natural watercourse serving as the major drainage outlet or a major tributary of such an outlet, which is capable of serving a number of beneficial public purposes. Smaller natural watercourses serving specific values such as trout streams and scenic watercourses are also included.

"Class II public watercourse" means a natural watercourse serving as a tributary of a Class I watercourse. Class II public watercourses are often perennial streams serving more than one beneficial public purpose.

"Class III public watercourse" means a smaller natural watercourse or an altered natural watercourse not constructed under Minn. Stat. ch. 106, which may be an intermittent stream serving at least one beneficial public purpose.

"Class IV watercourse" means any artificial watercourse or altered natural watercourse constructed under the provisions of Minn. Stat. ch. 106 or 112 or prior laws, or as the result of private actions without any public drainage proceedings.

"Dam" means any artificial barrier or appurtenant works which does or may impound or divert water.

"Dredge" means the removal of the sediment or other materials from the beds of public waters by means of hydraulic suction or mechanical excavation.

"Emergency spillway" means a spillway designed to convey water in excess of that impounded for flood control or other beneficial purposes.

"Fill" means any material placed or intended to be placed on the bed or bank of any public water.

"Filter" means a transitional layer of gravel, small stone, or fabric between the fine material of an embankment and riprap shore protection materials. The purposes of the filter are to (1) prevent fine embankment material from being pulled through the riprap materials, (2) distribute the weight of the overlying riprap to prevent settlement, and (3) to provide relief of hydrostatic pressures inside the embankment.

"Harbor" means an area protected from waves which is intended for the mooring of watercraft. Inland harbors generally include an entrance channel and an enlarged landward extension serving as a protective launching and mooring area for watercraft. An off-shore harbor may be protected by breakwaters.

"Hydraulic height" means the effective height of the dam with respect to the maximum storage capacity which is measured from the natural downstream toe of the barrier to the highest water-constricting height of the dam.

"Inland boat slip" means an inland excavation generally having a uniform width which serves as a protective area for launching and mooring of a single watercraft.

"Inland excavation" means any excavation intended to extend the cross-section of public waters landward of the natural or pre-existing shoreline.

"Maintenance excavation or 'clean-out'" means any excavation and removal of sediment accumulations from a previously constructed channel/harbor so as to restore the facility as nearly as practical to the dimensions of length, width, and depth which characterized the facility when originally constructed.

"Marina" means an area for the concentrated mooring of 5 or more watercraft wherein facilities are provided for any or all of the following ancillary services: boat storage, fueling, launching, mechanical repairs, sanitary pumpout, restaurant services, etc. A marina may be constructed within an inland harbor. An off-shore marina would be located waterward of the ordinary high water mark.

"Maximum," with respect to storage capacity or discharge, refers to the most severe design condition, including surcharge (floodwater storage).

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"Mooring" means any containment of free-floating watercraft that provides a fixed fastening for the craft.

"Natural", with reference to watercourses, means in a state provided by nature without artificial straightening, deepening, or widening.

"Natural watercourse" means any natural channel having definable beds and banks capable of conducting generally confined runoff from adjacent lands. During floods, water may leave the confining beds and banks but under low and normal flows, water is confined within the channel. A watercourse may be intermittent or perennial.

"Off-shore" means the area waterward of the ordinary high water mark of a public water.

"Ordinary high water mark" for purposes of these regulations means a mark delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape. The ordinary high water mark is commonly that point where the vegetation changes from predominantly aquatic to predominantly terrestrial. For rivers and streams, the ordinary high water mark shall be considered to be the elevation of the top of the bank of the channel as defined in NR 85(c). For reservoirs and flowages the ordinary high water mark shall be the operating elevation of the normal summer pool.

"Permanent dock" means any dock not specifically designed so that it may be removed from the lake or stream bed for maintenance, ice damage prevention, or storage. Docks employing supports which are driven into the lake or stream bed, or are constructed of rock and/or concrete shall be considered permanent structures so long as they are incapable of removal from the lake or stream bed by non-mechanized tools and equipment. For purposes of these regulations, wharves in industrial riverfront areas are not considered to be permanent docks.

"Public waters" means those waters of the State which serve one or more beneficial public purpose for such things as navigation, recreation, fish and wildlife habitat, nutrient and sediment entrapment, water supply, groundwater recharge, floodwater retention, and scientific and natural areas. The public character is not determined exclusively by the ownership of the underlying or surrounding land.

"Principal spillway" means a spillway designed to convey water from an impoundment at release rates established for the structure.

"Probable maximum flood" means the most severe flood with respect to peak flow that may be expected from a combination of the most critical meteorological and hydrological conditions that are reasonably possible on the drainage basin. The basis for estimating the discharge of such a flood shall be Hydrometeorological Report No. 33 of the U.S. Weather Bureau.

"Reconstruction" means the rebuilding or renovation of an existing dam or other structure, where the cost of such work will exceed 50 percent of the structures assessed value.

"Regional flood" has the same meaning indicated in Minnesota Regulations NR 85(c), that is the flood which is representative of large floods known to have occurred generally in Minnesota and reasonably characteristic of what can be expected to occur on an average frequency in the magnitude of the 100-year recurrence interval.

"Retaining walls" means vertical or nearly-vertical alongshore structures constructed of mortar-rubble masonry, handlaid rock or stone, vertical timber pilings, horizontal timber planks with piling supports, sheet piling, poured concrete, concrete blocks, or other durable materials.

"Riprap shore protection" means coarse stones, boulders, cobbles, or artificially broken rock fragments or concrete or brick materials, laid loosely or within gabion baskets against the basal slope of the existing bank of a public water.

"Seasonal dock" means a dock so designed and constructed that it may be removed from the lake or stream bed on a seasonal basis. All components such as supports, decking, and footings must be capable of seasonal removal by non-mechanized tools and equipment.

"Spillway" means an open or closed channel, or both, available to discharge excess water from a reservoir.

"Standard project flood" has the same meaning indicated in Minnesota Regulations NR 85(c), that is the flood that may be expected from the most severe combination of meteorological and hydrological conditions that is considered reasonably characteristic of the geographical area in which the drainage basin is located, excluding extremely rare combinations. Such floods are intended as practicable expressions of the degree of protection that should be sought in the design of flood control works and other hydraulic structures, the failure of which might be disastrous.

"Structure" means any building, footing, foundation, slab, roof, boathouse, deck, wall, dam, or any other object attached to the bed or bank of a public water and continuously maintained or intended to be maintained in

a single location for a period of time greater than a single open-water season in a manner connoting permanency.

"Structural height" means the overall vertical distance from the lowest point of construction to the top of the dam including the foundation or cutoff but excluding driven sheet piling primarily intended for cutoff purposes.

"Watercourse" means any channel having definable beds and banks capable of conducting generally confined runoff from adjacent lands. During floods water may leave the confining beds and banks but under low and normal flows water is confined within the channel. A watercourse may be perennial or intermittent and may include former natural watercourses altered by private actions other than those conducted under Minn. Stat. ch. 106 or 112, or prior applicable laws.

"Watercraft" means any contrivance used or designed for navigation on water other than a duck boat during the duck hunting season, a rice boat during the harvest season, or a seaplane.

"Wharf" means a permanent structure constructed into navigable waters for the purpose of transferring cargo to and from watercraft in an industrial or commercial enterprise.

E. Severability. The provisions of these regulations shall be severable, and the invalidity of any paragraph, subparagraph, or subdivision thereof shall not make void any other paragraph, subparagraph, subdivision, or any other part.

NR 5021 Filling into public waters.

A. Policy. It is the policy of the Department of Natural Resources to discourage the placement of any fill material into public waters in order to preserve the natural character of public waters and their shorelands, and maintain suitable aquatic habitat for fish and wildlife.

1. The placement of fill materials into public waters may be permitted in the following cases:

a. Development of public and private beach areas along water bodies, wherever such development would be feasible and practical without contribution of excessive fill to the aquatic environment.

b. Protection of shoreline from continued erosion by placement of natural rock riprap materials along the shore.

c. Recovery of shoreland lost by erosion or other natural forces which has occurred within the last five (5) years.

d. Limited filling to allow raising of previous development constructed at too low an elevation.

e. Provide reasonable navigational access from riparian properties, where such access cannot be gained by alternative means not requiring filling into public waters.

2. The placement of fill materials into public waters shall not be permitted in the following cases:

a. To achieve vegetation control.

b. To create upland areas for development or subdivision.

c. To stabilize lake and stream beds which cannot support sand, gravel or other fill materials (e.g. excessive depths of muck, steep bank or bed slope, etc.) or where previous fill materials have failed.

d. To stabilize areas of flowing water, active springs, or subject to substantial wave action, drift, sedimentation, or other disruptive forces.

e. To gain access to navigable water depths where such access can be reasonably attained by alternative means.

f. Where the proposed fill will be detrimental to significant fish and wildlife habitat, or protected vegetation.

B. Beach sand blankets.

1. Permitted uses: A water resource permit shall not be required to install a beach sand blanket provided all of the following conditions are met:

a. The sand and/or gravel layer does not exceed six (6) inches in thickness.

b. The proposed blanket does not exceed fifty (50) feet in width along the shoreline or extend more

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than ten (10) feet beyond the ordinary high water mark, thereby exceeding 500 square feet in area.

c. The proposed sand blanket is not placed in a fish spawning area posted by the Department of Natural Resources, Division of Fish and Wildlife.

d. The sand blanket shall be installed in accordance with location, design and construction practices established by the Department of Natural Resources, Division of Waters.

2. Water resource permits. A water resource permit shall be required for any beach sand blanket not meeting the above requirements and may be granted provided the following conditions are met:

a. The sand and/or gravel blanket does not extend more than fifty (50) feet beyond the ordinary high water mark or into water more than four (4) feet deep, whichever is less.

b. The proposed area does not adversely affect fish and wildlife habitat, or rice or other protected vegetation.

C. Riprap shore protection.

1. General standards. The protection of shoreline from continued erosion by placement of natural rock riprap along the shore may be permitted provided the following general standards are met:

a. The riprap materials are of sufficient size, quality, and thickness to withstand ice and wave action.

b. The site soils are capable of supporting riprap and a filter consisting of well-graded gravel, crushed stone, or fabric is installed to prevent undercutting of the riprap.

c. The encroachment into the water is the minimum amount necessary to provide protection and does not unduly interfere with the flow of water.

2. Permitted uses. A water resources permit shall not be required for the installation of riprap shore protection materials provided the following conditions are met:

a. The riprap materials shall consist of natural rock.

b. The riprap shall be placed with a minimum amount of space between the larger materials and the space between them shall be filled with firmly seated smaller rocks or gabion baskets to procure a uniform surface.

c. The riprap shall be installed in accordance with location, design and construction practices established by the Department of Natural Resources, Division of Waters.

d. The riprap materials shall conform with the natural alignment of the shoreline, be placed with a minimum finished slope of 3:1, and no riprap or filter materials shall be placed more than five (5) feet beyond the ordinary high water mark.

3. Water resource permit.

a. A water resource permit shall be required for any riprap shore protection which does not satisfy the above requirements.

b. A water resource permit shall be required for any riprap shore protection placed along Lake Superior (16-1).

c. A water resource permit shall be required for any riprap shore protection placed along officially designated trout streams.

D. Other filling. A water resource permit shall be required for all other filling into public waters and may be granted provided the following conditions are met:

1. The project must not be unduly detrimental to public values including but not limited to fish and wildlife habitat, navigation, water supply, storm water retention, and the like.

2. The fill must consist of clean inorganic material that is free of inorganic and organic pollutants and nutrients.

3. The existence of a stable, supporting foundation for all proposed fills in public waters must be established by appropriate means, including soil boring data where deemed necessary.

4. Where erosion protection is deemed necessary, the site conditions and fill material must be capable of being stabilized by an approved erosion control method (riprap, retaining wall, etc.) which is consistent with existing land uses on the affected public water.

NR 5022 Excavation of public waters.

A. Policy. It is the policy of the Department of Natural Resources to discourage the excavation of materials from the beds of public waters in order to preserve

the natural character of public waters and their shorelands, and maintain suitable aquatic habitat for fish and wildlife.

1. The excavation of materials from the beds of public waters may be permitted in the following cases:

a. Development of public and private beach areas along water bodies, wherever such development would be feasible and practical without excessive disruption to the aquatic environment.

b. Excavation and maintenance of navigation channels within public waters extensively used for commercial or recreational navigation.

c. Excavation for lake improvement.

d. Excavation for inland marinas or harbors where such development is feasible, practical, and intended to promote balanced public health, safety, and welfare.

e. Alteration of natural watercourses where such work will have environmental, recreational and economic benefit.

2. The excavation of materials from the beds of public waters shall not be permitted in the following cases:

a. To gain access to navigable water depths where such access can be reasonably attained by utilizing a temporary or permanent dock.

b. Where excavation is proposed on a water body that is perched on an impervious stratum, unless soil borings show that the proposed excavation will not rupture the impervious stratum.

c. Where inland excavation of the beds of public waters is intended solely to extend riparian rights to nonriparian lands, or to promote the subdivision and development of nonriparian lands.

d. Where the proposed excavation will be detrimental to significant fish and wildlife habitat, or protected vegetation.

B. Dredging of public waters.

1. General standards. A water resource permit shall be required for all dredging of public waters. The following general standards shall apply to the review of all applications for permits to dredge public waters:

a. The proposed dredging project must take into consideration appropriate geologic and hydrologic factors including but not limited to:

(1) Quantity and quality of local drainage at the proposed project site;

(2) Type of sediment/soil strata and underground formations in the project vicinity;

(3) Life expectancy of the dredging with respect to bedload (rivers and streams) and long-shore drift and siltation (lakes and reservoirs) patterns in the project vicinity;

(4) Protection of the waterbody itself in terms of increased seepage, pollution, and other hydrologic impacts.

b. Adequate and stable on-land spoil disposal sites located above the ordinary high water mark and outside of floodway districts must be available for containment of dredged spoils, and project plans must include provision for sodding, seeding or otherwise properly protecting these spoils.

c. The proposed project must represent the "minimal impact" solution to a specific need with respect to all other reasonable alternatives such as weed removal without dredging, beach sanding where acceptable, excavation above the bed of public water, less extensive dredging in another area of the public water, or management of an alternate waterbody for the intended purpose.

d. The dredging must be limited to the minimum dimensions necessary for achieving the desired purpose.

2. Water resource permit. The following categories of dredging projects may be permitted, subject to the general standards of NR 5022 B. 1. above:

a. Dredging for beach development. Permits for dredging the beds of public waters for beach development may be issued provided all of the following conditions are met:

(1) A beach sand blanket alone would not be

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expected to provide a suitable beach based upon the existing site conditions.

(2) The area to be dredged is consistent with the general dimensions authorized for beach sanding.

(3) The depth of dredging needed to reach a suitable beach stratum is not excessive considering anticipated site maintenance, desired water depths, and disposal problems.

b. Dredging within public waters serving commercial or recreational navigation. This category includes those public waters which are used as highways of commerce for interstate or intrastate navigation, recreational navigation, or access to existing boat harbors. Usually, one or more navigational channels are maintained through periodic dredging. Permits for dredging within public waters may be issued provided all of the following conditions are met:

(1) The dredging is confined to the recognized navigational channel(s) in the area or the dimensions of the length, width, and depth, of the original boat harbor.

(2) The channel or harbor is not maintained to a depth or width greater than the minimum necessary to allow reasonable navigational use by the anticipated watercraft; and

(3) All dredged spoils are deposited above the ordinary high water mark and outside the natural or regulatory floodway of the public water.

c. Dredging for lake improvement. Permits for dredging the beds of public waters for lake improvement purposes may be issued provided all of the following conditions are met:

(1) The dredging is limited to the removal of accumulated sediment or rock debris where such materials constitute an impairment to the use of a common navigational corridor or impede reasonable access, and the removal of these materials by non-mechanized methods is not practicable.

(2) The dredging is intended to create open areas in aquatic vegetation which will improve fish or wildlife habitat; or

(3) Large-scale lake dredging is proposed with the intention of achieving one or more of the following purposes:

(a) Lake extension or deepening to improve navigation, swimming, and other recreational uses.

(b) Lake extension or deepening to reduce winter fish-kill potential.

(c) Sediment removal to eliminate a source of nutrients and/or contaminants by exposing nutrient-poor bottom sediments.

(4) Where large-scale lake dredging is proposed, a public need for the dredging must be established by local governmental resolution. Such resolution shall specify the public interests to be enhanced by the dredging proposal;

(5) The DNR substantially concurs with the anticipated benefits;

(6) The proposed dredging must be part of an overall lake restoration project based upon adequate background and field test data for which a comprehensive lake restoration plan is submitted at the time of application for dredging permit, such plan detailing all of the following:

(a) The objectives to be accomplished by the dredging;

(b) Sufficient soil boring and bottom sampling data to evaluate sediment quality and bottom "seal" conditions;

(c) The location of spoil disposal sites having total storage capabilities for 110 percent of the total spoil to be dredged over the life of the dredging project without unmitigated filling of wetlands or public waters. In some cases, limited filling of wetlands with dredged materials may be allowed provided that definite commitments are made by the responsible local governmental unit(s) for implementation of compensatory measures;

(d) Existing water quality data and provision for future water quality monitoring of both lake water and return water;

(e) A dredging time-table which indicates yearly dredging areas and volumes of materials to be removed, plus the selected spoil disposal site(s) for any given dredging period; and

(f) A detailed description of proposed dredging equipment and discharge facilities, including the length of discharge pipe purchased or available for the project and the pumping characteristics of the dredging equipment.

C. Inland excavations connected to public waters.

1. General standards. A water resource permit

shall be required for all excavations of the beds of public waters which extend the cross section of public waters landward of the ordinary high water mark. The following general standards shall apply to the review of all applications for permits to extend the cross section of public waters landward:

a. The applicant must establish either of the following:

(1) Where a private inland boat slip or harbor is proposed, the applicant's entire shoreline must be subject to wind and wave conditions of a magnitude occurring with an excepted average frequency of at least once each year, so as to make a temporary or permanent dock impracticable, or

(2) Where a commercial or public marine or harbor is proposed, there must be adequate demand in the area to support an inland marina or harbor without adverse impact on the water body or its use and enjoyment by the public;

b. The proposed facility must be adequate in relation to appropriate engineering factors including but not limited to:

(1) Adequate entrance openings;

(2) Ample turning radius;

(3) Adequate depth and size for the anticipated watercraft usage;

(4) Adequate reduction of wave heights in mooring areas;

(5) Proper harbor shape to reduce wave resonance;

(6) Need for and feasibility of maintenance dredging;

(7) Adequate height of perimeter wall;

(8) Need for wave absorbers within the harbor;

(9) Bank stabilization by an appropriate erosion control measure; and

(10) Location of the mooring area of the harbor at an adequate distance from the shoreline for wave protection and to prevent breakthrough.

c. The proposed development plan must adequately reflect appropriate geologic and hydrologic factors including but not limited to:

(1) Quantity and quality of stream flow and local drainage at the proposed project site;

(2) Water stagnancy problems including the capability of being flushed or drained;

(3) Interference with stream flow or longshore drift;

(4) Type of soil strata and underground formations in the project vicinity;

(5) Protection of the water body itself in terms of reduced water supply, increased seepage or drainage, pollution, increased flooding, and other adverse hydrological impacts.

e. The mooring area of the harbor shall be compactly shaped in order to minimize the surface area excavated in relation to the number of mooring spaces to be provided.

f. No branch or connecting channels will be permitted extending laterally outward from authorized inland excavations.

g. Appropriate vegetative screening should be provided adjacent to all authorized inland excavations to minimize visual impacts from the water surface.

h. Suitable onland disposal must be utilized for containment of excavated materials without erosion into public waters.

2. Water resource permit. The following types of inland excavations may be permitted, subject to the general standards of NR 5022 C. 1. above:

a. Private riparian boat slips for inland mooring purposes. Permits for the construction of private inland boat slips for boat mooring purposes may be issued provided all of the following conditions are met:

(1) Watercraft size is sufficiently great that a temporary dock or other seasonal mooring structure

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cannot reasonably be utilized along the subject shoreline for mooring of the riparian owner's watercraft;

(2) A temporary or permanent dock cannot reasonably be utilized due to adverse lakebed conditions;

(3) The top width of the slip does not exceed 150 percent of the width of the anticipated watercraft, and its length does not exceed 150 percent of the watercraft length.

(4) To the maximum possible extent, authorized boat slips should be oriented to minimize visual impact while maximizing the degree of wave protection.

b. Private inland harbors serving one or several residential riparian lots: Permits for private inland harbors serving one or more riparian properties may be issued provided all of the following conditions are met:

(1) The proposed harbor would not extend more than 75 feet inland from the public water;

(2) The harbor is appropriately sized to provide a single mooring space for each riparian lot served;

(3) If practical and reasonable, the facility shall be located along the mutual boundary of properties to be served; and

(4) If practical, a "dogleg" should be incorporated in the approach channel located between the mooring area and the shoreline to minimize visual impact from the water body and promote wave dissipation.

c. Private inland harbors for proposed multi-family or cluster developments, or for residential planned unit developments: Permits for private inland harbors for proposed multi-family or mulit-lot developments may be issued provided all of the following conditions are met:

(1) The proposed harbor would not extend more than 200 feet inland from the public water;

(2) The proposed harbor is appropriately sized to provide a single mooring space for each riparian lot to be served. The number of mooring spaces to be provided shall generally be the amount of natural shoreline to be served divided by the lot frontage requirements of the local land use control authority;

(3) The development plan is approved by the local governmental unit and provides for appropriate open space areas around the harbor periphery and along the shoreline in the harbor vicinity to control erosion, sedimentation and pollution and to minimize visual impacts from the water surface;

(4) The permit is of the title-registration type including a provision that the individual waterfront lots in the development have priority rights to the available mooring spaces thus obviating issuance of future permits for individual harbors for these lots.

(5) A "dogleg" will be provided in the approach channel between the mooring area and the shoreline to minimize visual impact and promote wave dissipation.

d. Inland harbors for private resorts, campgrounds, or similar enterprises. Permits for the construction of inland harbors to serve private resorts, campgrounds, and other recreational-use enterprises may be issued provided all of the following conditions are met:

(1) The proposed harbor would not extend more than 200 feet inland from the public water;

(2) The proposed harbor is sized to accommodate one mooring space for each rental cabin or campsite unit plus a reasonable number of mooring spaces for transient watercraft; and

(3) The permit is of the title-registration type to assure harbor maintenance and usage in the event of future property sale or subdivision.

(4) A dogleg will be provided in the approach channel to minimize visual impact from the water body and promote wave dissipation.

e. Public inland harbor projects. This category includes any inland harbor project proposed by a public authority, which project is intended to promote overall public welfare. Public inland harbor permits may be issued provided all of the following conditions are met:

(1) A public need for the proposed inland harbor must be established by local governmental resolution following a public hearing. Such resolution shall specify the public interests to be enhanced by the harbor construction proposal.

(2) The DNR substantially concurs with the anticipated benefits;

(3) The harbor is appropriately sized consistent with the demand for mooring facilities in the area and the number of watercraft to be served;

(4) Project plans provide for an appropriate

open space area around the harbor periphery and along the shoreline in the harbor vicinity to control erosion, sedimentation and other pollution, and to minimize visual impacts from the water surface;

(5) The harbor will be available for use by the general public;

(6) The plans minimize the total length by which the public water is proposed to be extended in keeping with the number of watercraft to be served and the topography;

(7) A "dogleg" will be provided in the approach channel to minimize visual impact from the waterbody and promote wave dissipation.

f. Inland marinas. Inland marina projects may be authorized provided all of the following conditions are met:

(1) The proposed marina would not extend more than 200 feet inland from the public water.

(2) The area is zoned specifically for commercial use or local government has granted a conditional use permit;

(3) The plans minimize the horizontal distance by which the public water is proposed to be extended consistent with the number of watercraft to be served and the site topography;

(4) The harbor is appropriately sized consistent with the demand for mooring facilities in the area and the number of watercraft to be served;

(5) The development plan approved by the local governmental unit provides for an appropriate open space area around the harbor periphery;

(6) The permit is of the title-registration type in the case of privately owned land to assure proper maintenance of the facility; and

(7) A "dogleg" will be provided in the approach channel to minimize visual impact from the waterbody and promote wave dissipation.

g. Private inland boat slips for access to on-land boathouses. Permits for the construction of inland boat slips to facilitate access to on-land boathouses on riparian property may be issued provided all of the following conditions are met:

(1) Mechanical systems such as rollers, winch and track systems, sliderails, etc., which are normally used to hoist watercraft out of the water are impractical under the circumstances of the specific site; and

(2) The proposed slip is no more than 25 feet long, contains a dogleg if feasible, and is not wider than 150 percent of the width of the anticipated watercraft.

3. Special considerations. Authorized harbors shall be sized in accordance with the number and size of watercraft to be served. A generalized list of space requirements for various sized watercraft follows:

Length of watercraft (ft.)	Mooring and maneuvering space required per watercraft excluding entrance channel (sq. ft.)
12′ or under	400
14′	600
16′	800
18′	1,000
20′	1,200
22′	1,400
24′	1,600
26′	1,800
28′	2,000
30′	2,200

D. Alterations of natural watercourses.

1. General standards. A water resource permit shall be required for any alteration of the course, current or cross-section of a natural watercourse, except as noted in NR 2022 D. 3. b. The following hydraulic/hydrologic standards shall apply to the review and approval of all applications for permits to alter a natural watercourse:

a. The altered watercourse capacity must be sufficient to adequately convey normal runoff;

b. The altered watercourse bottom gradients must be such that normal low flow velocities are nonerosive. It may be necessary to ascertain soil and sub-soil types and characteristics in certain instances;

c. The altered watercourse sideslopes must be graded such that bank slumping is not a hazard. Again it may be necessary to ascertain soil and sub-soil types and characteristics;

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d. The outlet must be adequate in that it:

(1) Sufficiently conveys the watercourse discharge waters from the area proposed for alterations;

(2) Does not produce substantial increases in downstream over-bank flooding; and

(3) Does not produce downstream erosion hazards as a result of the proposed watercourse alterations.

e. To protect the altered watercourse banks, all sideslopes which contribute direct surface runoff into the authorized altered watercourse, and a strip of land along both sides of the watercourse, one rod wide or to the top of the spoil bank, whichever is the greater, shall be seeded and maintained in permanent grasses. No mowing of this grassed strip shall be allowed until after July 31 of each year.

2. Water resource permit.

a. Class I and Class II public watercourses. Alterations of Class I and Class II public watercourses may be permitted, provided the proposed project will enhance at least one of the beneficial public purposes identified in Minn. Stat. § 105.37, subd. 6 (1976), without undue detriment to all other beneficial public purposes the watercourse presently serves. Mitigation measures shall be taken into consideration.

b. Class III public watercourses. Alterations of Class III public watercourses which have not previously been artificially altered may be permitted upon demonstration by the applicant that the proposed project accomplishes a reasonable objective and that no feasible and prudent alternatives requiring alteration of a natural watercourse are available.

3. Special considerations.

a. The following types of projects shall require a water resources permit for the alteration of a natural watercourse, and will be subject to special review and consideration by the Department of Natural Resources, Division of Waters:

(1) Project proposals which include the drainage of one or more bodies of public water, either wholly or partially;

(2) Projects proposed under the authority of Minn. Stat. ch. 106 or 112;

b. A water resource permit shall not be required for the alteration of Class IV watercourses and of Class III watercourses which have been previously altered, where the County Board of Commissioners has assumed administrative responsibility pursuant to Minn. Stat. § 105.42, subd. 1a (1976), except in the following cases:

(1) Any activity which would require widening, deepening, or straightening of a Class I or II public watercourse, or an unaltered Class III public watercourse, as a result of the change in the Class IV or altered Class III watercourse.

(2) Any diversion of water from a Class III or IV watercourse into a different watershed which is not a part of the same drainage basin.

(3) Any lowering of the streambed elevation which would result in an overfall of two feet or more in elevation of a channelization project when there is no provision for erosion control structures to prevent headward erosion.

(4) Construction of any dam 25 feet or more in structural height as measured vertically from the lowest point of the foundation surface to the top of the dam and/or impounding 50 acre-feet or more of water at maximum storage capacity.

NR 2023 Structures in public waters.

A. Policy. It is the policy of the Department of Natural Resources to discourage the waterward occupation of the bed and surface of public waters by off-shore navigational facilities, retaining walls and other structures in order to preserve the natural character of public waters and their shorelands, and provide a balance between the protection and utilization of public waters. Furthermore, it is the policy of the Department of Natural Resources to encourage the removal of existing waterway obstructions which do not serve the public interest from the beds of public waters at the earliest practicable date.

1. The placement of structures on the bed and surface of public waters may be permitted in the following cases:

a. Construction of a permanent dock where unusual physical conditions demonstrate that some form of seasonal dock cannot practically be used.

b. Construction and maintenance of wharves of the minimum practical size in commercial/industrial districts where the sole purpose of the facility is the transfer of cargo to and from watercraft.

c. Construction of breakwaters, harbors and marinas where such structures are necessary to promote

public health, safety and welfare, and encourage optimum navigational use of the water body.

d. Construction of retaining walls where the use of natural rock riprap for shoreland erosion protection is not feasible or practical.

e. Construction, repair and relocation of other waterway obstructions where such structures benefit public health, safety and welfare, and do not interfere with public usage of the water body.

2. The placement of structures on the bed and surface of public waters shall not be permitted in the following cases:

a. To gain access to navigable water depths where such access can be reasonably attained by alternative means.

b. Where such structures will obstruct navigation and/or create a water safety hazard.

c. Where such structures are not technically feasible due to existing physical conditions.

d. Where such structures will be detrimental to significant fish and wildlife habitat, or protected vegetation.

B. Permanent docks.

1. Permitted uses. A water resource permit shall not be required to construct a permanent dock provided all of the following conditions are met:

a. The site must be subject to unusual physical conditions which would preclude the use of a seasonal dock.

b. The dock shall not exceed 50 feet in length or extend to a depth greater than 4 feet, whichever is less.

c. The dock shall be constructed on wood pilings in accordance with location, design and construction practices established by the Department of Natural Resources, Division of Waters.

d. The dock shall not be placed in a fish spawning area posted by the Department of Natural Resources, Division of Fish and Wildlife.

2. Water resource permit. A water resource permit shall be required for the construction of any permanent dock not meeting the above requirements and may be granted provided the following conditions are met:

a. Permanent docks may be permitted under one or more of the following conditions:

(1) Where long fetches subject seasonal docks to damaging storm wave conditions;

(2) Where bottom conditions such as bedrock or an extremely gradual offshore slope preclude the use of seasonal dock stringers;

(3) Where similarly situated permanent docks in the vicinity have not experienced maintenance difficulty;

(4) Where the number of users (private and/or public) are so great that seasonal docking equipment would not provide adequate stability.

b. Where a permanent dock is permitted the following order of preference for construction types shall be utilized:

(1) Piling docks should be used in all cases unless the depth to bedrock is too shallow to allow the driving of piles.

(2) Where shallow bedrock is encountered, rock crib docks may be authorized.

c. Permanent docks, where permitted, shall extend lakeward to a navigable depth, generally considered to be no greater than 4 feet at summer pool elevation.

C. Wharves.

1. General standards. A water resource permit shall be required for the construction or reconstruction of all wharves placed on the bed and surface of public waters. Wharves of the minimum practical size may be permitted in commercial/industrial districts for the sole purpose of facilitating the transfer of cargo to and from watercraft. Where a wharf is permitted, the following order of preference for construction types shall be utilized:

a. Bulkheaded shoreline.

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b. Inland slip with bulkheaded sidewalls.

c. Wharf projecting into public waters.

2. Water resource permit. Wharves may be permitted provided all of the following conditions are met:

a. Where an alongshore retaining wall not encroaching into the water body or an inland excavated slip cannot practicably be utilized at the site for the transfer of cargo.

b. The applicant has shown that a wharf is the only reasonable and feasible alternative for loading or unloading a specific cargo.

c. The primary land uses in the project vicinity are water-oriented industrial and/or commercial uses consistent with local land use controls.

d. The proposed wharf does not extend further waterward than any existing wharves in the area or beyond any established harbor line. The existence of a harbor line SHALL NOT convey to the riparian owner the absolute right to fill out thereto.

e. The size of the proposed wharf is the minimum practicable for the sole purpose of loading or unloading cargo and the purpose of a wharf is not to increase the amount of land available for waterfront development.

f. No buildings or shelters such as storage facilities are proposed on the wharf deck; neither are other superstructures not needed for cargo handling proposed on the deck.

g. The proposed structure is not an obstruction to flood flows, longshore drift, or navigation utilizing the water body.

h. The structure is adequately designed to resist the natural forces of ice, wind, and wave.

i. Future maintenance or removal is assured by a title-registered permit running with the land, except in the case of a publicly owned wharf.

D. Off-shore breakwaters, harbors and marinas.

1. General standards. A water resource permit shall be required for the construction or reconstruction of all off-shore breakwaters, harbors and marinas placed on the bed or surface of public waters. Off-shore breakwaters, harbors, or marinas may be permitted provided the following general conditions are met:

a. The applicant must establish all of the following:

(1) Applicant's entire shoreline is subject to severe wind and wave conditions occurring with an average expected frequency of at least one each year;

(2) Alternative mooring and launching facilities such as a temporary or permanent dock, or an inland harbor are infeasible; and

(3) Geological site conditions such as steep banks or shallow bedrock preclude an inland excavation.

b. The proposed facility must be adequate in relation to appropriate engineering factors including but not limited to:

(1) Adequate entrance openings;

(2) Ample turning radius;

(3) Adequate depth and size for the anticipated watercraft usage;

(4) Adequate reduction of wave heights in mooring areas;

(5) Proper harbor shape to reduce wave resonance;

(6) Necessity for and feasibility of maintenance dredging;

(7) Adequate breakwater foundation conditions;

(8) Need for wave absorbers within the harbor;

(9) Adequate structural strength to withstand the pressures of wind, wave, and ice;

(10) Proper orientation of breakwaters to achieve maximum wave attenuation; and

(11) Proper materials selection and placement to preclude transmission of wave energy into mooring areas while adequately resisting erosive forces.

c. The proposed development plan must adequately reflect appropriate geologic and hydrologic factors including but not limited to:

(1) Quantity and quality of streamflow and local drainage at the proposed project site;

(2) Water stagnancy problems including the capability of being flushed or drained;

(3) Interference with streamflow or longshore drift;

(4) Type of soil strata and underground formations in the project vicinity;

(5) Protection of the water body itself in terms of reduced water supply, increased seepage or drainage, pollution, increased flooding, and other hydrologic impacts.

d. The size and shape of off-shore harbor/marina facilities will be designed in a compact fashion so as to blend in with the surrounding shoreline while minimizing the surface area of public water occupied in relation to the number of watercraft to be served.

e. The facility must be so located and designed as not to interfere with local navigation presently utilizing the area.

f. All breakwaters must be faced with an adequate thickness of natural rock riprap of appropriate size and gradation.

g. The thickness of the breakwaters shall not exceed the minimum necessary to withstand the anticipated forces consistent with maintenance requirements.

h. Permits for all such facilities authorized must be of the title-registration type to assure future maintenance and to provide for removal of the authorized facilities from the public waters upon their abandonment, deterioration, or if the facility ceases to be utilized as a harbor or marina.

2. Water resource permit. The following types of off-shore breakwaters, harbors and marinas may be permitted, subject to the general standards of NR 5023 D. 1. above:

a. Private off-shore harbors serving several contiguous riparian lots. The construction of private off-shore harbors serving several riparian lots may be permitted in connection with existing or proposed crib docks provided all of the following conditions are met:

(1) The site meets the standards of NR 5022 B. 2. for a rock crib type dock;

(2) The breakwater is located no further waterward than would be the permissible length of a permanent dock at the same location, in accordance with NR 5022 B. 2.; and

(3) The length of the breakwater parallel to shore is appropriately sized to provide a single mooring space for each riparian lot served, but in no case shall the breakwater length exceed 10 feet per riparian lot served.

(4) The permit is of the title-registration type to assure facility maintenance and usage in the event of future property sale or transfer.

b. Private off-shore harbors for proposed multi-family or cluster developments or for residential planned unit developments. The construction of private off-shore harbors for proposed multi-family or cluster developments may be permitted provided all of the following conditions are met:

(1) The proposed harbor is appropriately sized to provide a single mooring space for each riparian lot to be served. The number of mooring spaces to be provided shall generally be the amount of natural shoreline to be served divided by the lot frontage requirements of the local land use control authority;

(2) The development plans minimize the waterward encroachment of the facilities; and

(3) The development plan is approved by the local land use control authority and provides for an appropriate open space area with proper plantings immediately adjacent to the off-shore harbor.

(4) The permit is of the title-registration type to assure facility maintenance and usage in the event of future property sale or transfer.

c. Private off-shore harbors for resorts, campgrounds, or similar enterprises. The construction of off-shore harbors to serve private resorts, campgrounds, and other recreational use enterprises may be permitted provided all of the following conditions are met:

(1) The proposed harbor is appropriately sized to provide one mooring space for each rental cabin or campsite unit plus a reasonable number of mooring spaces for transient watercraft;

(2) The development plans minimize the waterward encroachment of the facilities; and

(3) The development plans approved by the local land use control authority provide for an appropriate open space area with proper plantings immediately adjacent to the off-shore harbor.

(4) The permit is of the title-registration type to assure facility maintenance and usage in the event of future sale or transfer.

d. Public off-shore harbor projects. This category includes any off-shore harbor project proposed by a public authority, which is intended to promote overall public welfare. Public off-shore harbors may be permitted provided all of the following conditions are met:

(1) The local unit of government, if not the applicant, passes a resolution which specifies the public interests to be benefited by the proposal;

(2) The DNR substantially concurs with the anticipated benefits set forth in the application by the applicant;

(3) The harbor is appropriately sized consistent with the demand for mooring facilities in the area and the number of watercraft to be served;

(4) The development plans provide for an appropriate open space area with proper plantings immediately adjacent to the off-shore harbor.

(5) The harbor will be available for use by the general public; and

(6) The development plans minimize the waterward encroachment of the facilities.

e. Off-shore marinas. Off-shore marina projects may be permitted provided all of the following conditions are met:

(1) Where unusual physical conditions preclude the use of temporary or permanent docking facilities, or an inland harbor.

(2) The area is zoned specifically for commercial use or local government has granted a conditional use permit;

(3) The development plans minimize the waterward encroachment of the facilities;

(4) The marina shall be sized in accordance with NR 5022 C. 3., consistent with the demand for mooring facilities in the area and the number of watercraft to be served; and

(5) The development plan is approved by the local governmental unit and provides for an appropriate open space area with proper plantings immediately adjacent to the off-shore marina.

(6) The permit is of the title-registration type to assure maintenance and usage in the event of future property sale or transfer.

E. Retaining walls.

1. General standards. A water resource permit shall be required for the construction or reconstruction of all along-shore retaining walls placed on the bed or bank of public waters. The construction of retaining walls for shore protection purposes shall generally be discouraged for the following reasons:

a. Their appearance is generally not consistent with the natural environment.

b. Retaining walls are not technically feasible in many situations.

c. Their cost and maintenance is generally greater than required for the preferred method of controlling shoreline erosion — natural rock riprap.

2. Water resource permit. The issuance of water resource permits for along-shore retaining walls may be considered provided all of the following conditions are met:

a. There are existing or expected erosion problems, or a demonstrated need for direct shoreland docking.

b. The drawbacks of retaining walls have been explained to the applicant and he is willing to assume the inherent responsibilities.

c. The design of the proposed facility is consistent with existing uses in the area. Examples are: riverfront commercial/industrial areas having existing structures of this nature, dense residential shoreland areas where similar retaining walls are common, resorts where floating docks may be attached to such a bulkhead, or where barges are utilized to transport equip ment and supplies.

d. Adequate engineering studies have been performed of foundation conditions, tiebacks, internal drainage, materials of construction, and protection against flanking.

e. The facility is not an aesthetic intrusion upon the area and is consistent with all applicable local, state, and federal management plans and programs for the water body.

f. Encroachment upon the water resource is held to the absolute minimum reasonably needed for construction.

g. A title-registered permit running with the land is utilized, insuring continuing maintenance responsibility.

F. Waterway obstructions.

1. General standards. A water resource permit shall be required for the construction, reconstruction, relocation, removal and abandonment of all waterway obstructions, including boathouses, placed on the bed and surface of public waters. The removal of existing waterway obstructions shall be encouraged where such structures do not serve the public interest at the earliest practicable date. The construction of new waterway obstructions shall generally be discouraged in order to preserve and maintain public waters in a condition that is free of unreasonable obstructions which detract from the natural setting, and interfere with public navigation and use of the water resources of the state.

2. Water resource permit. Permits for the construction, reconstruction, relocation, or removal of off-shore structures, cables other than utility crossings, pilings, permanent diving platforms, or other facilities not covered by specific regulations may be issued for the following categories:

a. Repair of existing off-shore structures. Permits for structural repair or modification (not including minor maintenance work such as re-roofing, painting, etc) of existing off-shore structures may be issued provided all of the following conditions are met:

(1) The applicant has demonstrated a reasonable need for structural repair.

(2) The structure is not to be repaired or reconstructed in excess of 50 percent of its assessed value.

(3) The proposed repair is not substantial in the sense that the degree of permanence of the structure is not being materially increased by virtue of constructing a new foundation, replacing the majority of the structure above the foundation, etc.

(4) The structure being repaired is not in violation of local land use or sanitary regulations. For example, the structure may not contain or utilize nonconforming sanitary facilities.

(5) The degree of obstruction or structure size is not being increased.

(6) The proposed construction is of sound design and is not unnecessarily obtrusive or visually incompatible with the natural surroundings.

b. New off-shore structures. Permits for new publicly sponsored off-shore structures may be issued under all of the following conditions:

(1) Public need for the facility is adequately documented and outweighs the environmental impact.

(2) The proposed structure does not create a water safety hazard or obstruct navigation.

(3) The proposed structure site is adequately protected from the forces of ice and wave pressures.

(4) The proposed construction is of sound design and is not unnecessarily obtrusive or visually incompatible with the natural surroundings.

(5) A governmental agency or local governmental unit accepts responsibility for future maintenance of the structure or its removal, if ordered by the Department of Natural Resources at a later date due to non-use, deterioration, navigational hazard, or other conditions detrimental to the public interest.

c. Removal or abandonment of existing waterway obstructions. A water resource permit is required under the law for removal or abandonment of existing waterway obstructions such as boathouses, bridges, culverts, dams, pilings, piers and docks. However, when such is to be accomplished by simple hand tool methods, the requirement for a permit may be waived. Permits for the removal or abandonment of waterway obstructions may be issued under all of the following conditions:

(1) The original cross-section and bed conditions of the public water will be restored insofar as practicable.

(2) The structure will be completely removed

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from public waters, including any footings or pilings which may obstruct navigation.

(3) Adequate provisions are made to mitigate any side effects resulting from removal of the structure, such as restoration of wave or current forces previously negated by the long-standing existence of the structure now being served.

G. Boat launching ramps.

1. Permitted uses. A water resource permit shall not be required to construct a boat launching ramp on the bed of public waters provided all of the following conditions are met:

a. The lake or stream bed at the proposed ramp site is capable of supporting a boat launching ramp without the use of pilings, dredging or other special site preparation.

b. The proposed ramp does not exceed 12 feet in width, and extend more than 10 feet beyond the ordinary high water mark or into water more than 4 feet in depth, whichever is less.

c. The proposed ramp is constructed of gravel, natural rock, concrete, steel matting or other durable, non-organic material not exceeding 6 inches in thickness.

d. The proposed ramp is not placed in a fish spawning area posted by the Department of Natural Resources, Division of Fish and Wildlife.

e. The ramp shall be installed in accordance with location, design and construction practices established by the Department of Natural Resources, Division of Waters.

2. Water resource permit. A water resource permit shall be required for the construction or reconstruction of any boat launching ramp placed on the bed of public water not meeting the above requirements and may be granted provided all of the following conditions are met:

a. The applicant has demonstrated a need for such a facility;

b. The proposed ramp will be of the minimum dimensions necessary for reasonable launching of watercraft and will be aesthetically consistent with the surroundings;

c. The proposed location of the launching ramp does not support significant local habitat for fish or wildlife or protected vegetation;

d. The proposed ramp will not obstruct flowing water or present a hazard to navigation;

e. Construction of the proposed ramp will not necessitate significant alteration of a shoreland area which could result in substantial erosion and lake/stream sedimentation; and

f. The proposed construction will be consistent with public and private access plans for the water resource, including wild and scenic rivers, designated canoe trails, water surface use controls, shoreland management, etc.

NR 5024 Water level controls and dam construction or reconstruction.

A. Policy. It is the policy of the Department of Natural Resources to encourage the management of lake resources in order to maintain natural flow and water level conditions to the maximum feasible extent. Furthermore, it is the policy of the Department of Natural Resources to encourage the construction of smaller upstream retarding dams and reservoirs for the conservation of water in natural water basins and watercourses, and artificial impoundments consistent with any overall plans for the affected watershed area and/or river basin. The Department of Natural Resources shall oppose the artificial manipulation of water levels except where the balance of affected public interests clearly warrants the establishment of appropriate controls.

1. The construction or reconstruction of dams and other water level controls or changing the level of an existing structure may be permitted in the following cases:

a. To control flood waters.

b. To maintain low flows.

c. To manage water quality, including the prevention and/or control of erosion and sedimentation.

d. To improve water-based recreation.

e. To create, improve and maintain water supplies.

f. To maintain aquatic habitat for fish and wildlife species.

2. The construction or reconstruction of dams and other water level controls or changing the level of an existing structure shall not be permitted where it is proposed to raise or lower water levels solely to satisfy pri-

vate shoreline interests located near or below the elevation of the ordinary high water mark.

B. Water level controls.

1. General standards. A water resource permit shall be required for the construction, reconstruction, and abandonment of all water level control structures or changing the level of an existing structure on public waters. Water level control projects may be permitted subject to the following general standards:

a. Permanent lake level control facilities may be approved by permit provided all of the following conditions are met:

(1) The ordinary high water mark elevation and the runout elevation of the water body have been determined by detailed engineering survey, and, if appropriate, by Order of the Commissioner of Natural Resources following a public hearing;

(2) The proposed control facilities are reasonably consistent with natural conditions. The term "reasonably consistent with natural conditions" shall mean that where a functioning outlet existed in a state of natural or artificial outlet exists such that the lake is for tion or alteration of an outlet by the activities of man or animals, or by cataclysmic events, the proposed outlet is at essentially the same control elevation. Where no natural or artificial outlet exists such that the lake is for all practical purposes "landlocked," the term "reasonably consistent with natural conditions" shall mean that an artificial control elevation will not be more than 0.5-1.5 feet below the ordinary high water mark;

(3) The project is sponsored by a local governmental unit such as the town, city, county, lake improvement district, or watershed district consistent with an approved plan for management of excess waters within such jurisdiction;

(4) Substantial justification has been made of the need for the proposed permanent control facilities in terms of public and private interests and the available alternatives;

(5) The proposal is environmentally sound in terms of impacts on water quality, fish and game resources, and public use of the water body itself;

(6) The applicant has demonstrated project feasibility, including the impact on receiving waters and public uses thereof, through a detailed hydrologic study; and

(7) A detailed plan is developed for operation and control of the facilities including:

(a) Manner and time of operation;

(b) Frequency of maintenance; and

(c) Appropriate monitoring (water levels, water quality, etc.); and

(8) The local government unit sponsoring the project assumes responsibility for operation and future maintenance of project facilities.

b. Fish and Wildlife management proposals made pursuant to Minn. Stat. § 97.48, subd. 11 (1976) or other appropriate authority may be approved provided all of the following conditions are met:

(1) The lake has been designated for wildlife management purposes by Commissioner's Order, if appropriate;

(2) The appropriate management personnel have developed a specific water level management plan for the lake basin;

(3) Any drawdown of the lake is only temporary and the management plans include a dam or other adequate permanent facility for restoration of water levels to natural conditions following periodic temporary drawdowns;

(4) Any channelization of a natural watercourse included in the plan is minimal and follows the guidelines specified in NR 5022 D.;

(5) The appropriate easements or fee title have been obtained by the responsible management personnel for the construction area and the periphery of the lakeshore; and

(6) The appropriate management personnel are required to establish a lake level gauge and keep a record of water levels with a specified frequency during seasons of active water level manipulation and with a lesser frequency during all other open water seasons.

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c. For landlocked water basins less than 25 acres in surface area and contained completely within the municipal boundaries of a single city, the following procedures may be used to establish water level controls:

(1) A municipal drainage plan for the affected tributary watershed is prepared for the city by a qualified engineer or hydrologist;

(2) Said drainage plan is approved by the affected watershed district, if any, in addition to the city;

(3) The city has a field survey made of the water basin after consultation with the Department of Natural Resources, including but not limited to:

(a) The elevation of the aquatic fringe;

(b) The elevation of the tree line and a description of the location, type and size of representative trees;

(c) Groundwater elevations, if appropriate; and

(d) Other information as requested by the regional office;

(4) City officials review the proposed water level control elevations and associated physical parameters with representatives of the Department of Natural Resources and submit a permit application.

(5) The city holds a public hearing on the proposal and provides a transcript of the proceedings to the regional office, except that when a representative of the regional office attends the local hearing, the provision of a transcript may be waived by the regional office.

(6) Based upon the application, plans, surveys, and evidence adduced at the public hearing, the Department of Natural Resources will approve (with appropriate conditons), modify, or reject the proposal.

C. Dam construction or reconstruction.

1. General standards. A water resource permit shall be required for the construction, reconstruction and abandonment of all dams on public waters. The construction or reconstruction of dams may be permitted provided all of the following general conditions are met:

a. The need for the facility must be established in terms of quantifiable benefits to be provided;

b. Proposed new dams must be adequate in relation to the following hydrological factors:

(1) The hydraulic capacity of the spillway(s) of the dam must be established by a competent technical study performed by a registered professional engineer of the State of Minnesota or by a qualified engineer of the U.S. Soil Conservatin Service or the U.S. Corps of Engineers;

(2) Where dam failure may cause loss of human life, serious damage to homes, industrial and commercial buildings, important public utilities, main highways, or railroads, the spillway(s) will be hydraulically adequate for the probable maximum flood or such other flood as may be specified in the procedures of Federal agencies such as the Corps of Engineers or the Soil Conservation Service for design of a structure in this risk category;

(3) For dams located in predominantly rural or agricultural areas where failure may damage isolated homes, main highways or minor railroads, or cause interruption of use or service of relatively important public utilities, the spillway(s) will be hydraulically adequate for the standard project flood or such other flood as may be specified in the procedures of Federal agencies such as the Corps of Engineers or the Soil Conservation Service for analysis of a structure in this risk category;

(4) For dams located in rural or agricultural areas where failure may damage farm buildings, agricultural land, or township or county roads, the spillway(s) will be hydraulically adequate up to and including the regional flood or such other flood as may be specified in the procedures of Federal agencies such as the Corps of Engineers or the Soil Conservation Service for analysis of a structure in this risk category;

(5) In relation to the above points, the estimation of the magnitude of the design flood will include the anticipated effects of the development of the tributary watershed area expected over the project life; likewise, the selection of design flows will include an assessment of the risks involved based upon anticipated development in the floodplain below the proposed dam over the life of the proposed project.

(6) For dams having the following dimensions, the Department of Natural Resources may require preparation of an inundation map of the area below the dam which would be inundated in the event of dam failure:

(a) A hydraulic height of 25 or more feet; or

(b) A maximum storage capacity of more than 50 acre feet; provided

(c) That dams less than 6 feet in hydraulic height or having a maximum storage capacity of less than 15 acre-feet are excluded.

(7) Where inundation maps are prepared, such will be prepared by a registered professional engineer of the State of Minnesota in accordance with technical criteria acceptable to the Department of Natural Resources. The study report will indicate those areas where human life would be endangered as well as areas subject to serious damage to homes, commercial and industrial buildings, public utilities, and transportation facilities. Where failure may endanger human life, the study will include a feasibility report on floodplain evacuation, emergency warning systems, or other techniques to eliminate this risk factor.

(8) The dam will be provided with both principal and emergency spillways, unless in lieu of an emergency spillway the hydraulic capacity of the principal spillway is increased to the capacity that would be required for the combination of principal and emergency spillways.

(9) A mechanism will be provided for drawing down the water surface to facilitate dam repairs and maintenance work within the reservoir;

(10) The height of all portions of the dam and any associated dikes or other facilities not designed to withstand overtopping will be provided with appropriate freeboard above the maximum storage capacity in anticipation of wind and wave conditions and to provide a safety factor;

(11) Earthen emergency spillways and the upstream and downstream faces of earthen dams will be adequately riprapped, sodded, or seeded to prevent erosion;

(12) The storage pool of the impoundment will provide adequate space to store the sediment yield from the upstream watershed over the project life without detracting from the public purposes served;

(13) An adequate stilling basin or other means of controlling downstream erosion is provided;

(14) A stage-discharge curve is developed for the watercourse immediately below the dam to ascertain whether or not the dam capacity is reduced due to backward effects; and

(15) Information as to the extent, configuration, and capacity of the reservoir at various pool stages must be provided.

c. Structural stability. The structural design of dams must be done by a registered professional engineer of the State of Minnesota or by a qualified engineer of the Soil Conservation Service or the Corps of Engineers. The structural design of the dam must include the following considerations:

(1) Gravity forces;

(2) Hydrostatic pressure;

(3) Uplift forces;

(4) Overturning moment;

(5) Resistance to sliding;

(6) Ice Pressures;

(7) Earthquake forces;

(8) Slope stability including consolidation and pore pressures;

(9) Seepage collection or prevention;

(10) Foundation conditions including appropriate borings and determination of the strength of foundation materials;

(11) Specifications for materials of construction and their placement or installation;

(12) Adequate construction inspection to assure conformance with design assumptions; and

(13) Adequacy of the cofferdam, if any.

d. Maintenance. Adequate assurances must be made for future maintenance of new dams, as follows:

(1) For dams 25 or more feet in hydraulic height or having a maximum storage capacity of 50 or more acre-feet, permits will be issued only to governmental agencies, public utilities or corporations having authority to construct and maintain such projects. However, a title-registration type permit for a dam of such size may be issued to the owner or owners of the

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private property upon which the proposed dam will be located if an authorized governmental sponsor assumes maintenance responsibility for the structure. Ordinarily this is accomplished through a title-registered contractural agreement between the owner(s) and the governmental sponsor, such agreement running with the land.

(2) For dams less than 25 feet in hydraulic height and having a maximum storage capacity of less than 50 acre feet, title-registration permits may be issued to the owner or owners of the private property upon which the proposed dam will be located. Said permits shall run with the land and shall require breaching or removal of the authorized dam if it ever falls into a state of disrepair or becomes unsafe.

(3) To assure future maintenance, permits for dams controlling the water levels of public water basins may be issued only to local governmental units such as a township, city, county, lake improvement district, or watershed district, except when the entire shoreline of the water basin is owned by a single owner or a group of owners, all of whom unite to sign the permit application.

(4) Provision for periodic engineering inspections of authorized dams can be made by inclusion of a carefully considered permit condition, such as the following: "Permittee shall arrange for periodic safety inspections of the authorized dam after completion of construction by a professional engineer registered in Minnesota; said engineering inspections to be made with a frequence approved in writing by the Commissioner."

NR 5025 Bridges and culverts, watermain and sewer crossings, intakes and outfalls.

A. Policy. It is the policy of the Department of Natural Resources to allow crossings of public waters, including the construction of water intake and sewer outfall structures in public waters, only when less detrimental alternatives are unavailable or unreasonable, and where such facilities adequately protect public health, safety and welfare.

1. The crossing of public waters by roadways and other structures, and the construction of water intakes and sewer outfalls in public waters may be permitted in the following cases:

a. To construct, reconstruct or relocate public and private roadway crossings including bridges, culverts, footbridges and wallways, on public waters.

b. To place temporary bridges and other roadway crossings on public waters.

c. To construct, reconstruct or relocate watermain, storm sewer and sanitary sewer crossings on public waters.

d. To construct, reconstruct or relocate water intake, storm sewer outfall and sanitary sewer outfall structures in public waters.

2. The crossing of public waters by roadways and other structures, and the construction of water intakes and sewer outfalls in public waters shall not be permitted in the following cases:

a. Where such structures will obstruct navigation or create a water safety hazard.

b. Where such structures will cause or contribute to significant increases in flood elevations and flood damages either upstream or downstream.

c. Where the proposed project would involve extensive channelization above and beyond minor stream channel realignments to improve hydraulic entrance/exit conditions.

d. Where it is proposed to enclose natural watercourses within culverts or other confined structures.

e. Where such structures will be detrimental to water quality, and/or significant fish and wildlife habitat, or protected vegetation.

B. Bridge and culvert installations.

1. Permitted uses. A water resource permit shall not be required to construct a low water ford type crossing on a public watercourse provided all of the following conditions are met:

a. The stream bed at the proposed crossing site is capable of supporting a low-water ford type crossing without the use of pilings, culverts, dredging or other special site preparation.

b. The water depth at the proposed crossing site does not exceed 2 feet under normal low flow conditions.

c. The proposed crossing conforms to the natural cross section of the stream channel and does not reduce or restrict normal low-water flows.

d. The original stream bank at the proposed crossing site does not exceed 4 feet in height.

e. The proposed crossing is constructed of gravel, natural rock, concrete, steel matting or other

durable, inorganic material not exceeding 6 inches in thickness.

f. The approach to the proposed crossing shall be graded to a finished slope not exceeding 5:1, and all graded banks shall be seeded or mulched to prevent erosion and sedimentation.

g. The proposed crossing shall not be placed on an officially designated trout stream, or on a State or federal wild, scenic or recreational river.

h. The crossing shall be installed in accordance with location, design and construction practices established by the Department of Natural Resources, Division of Waters.

2. Water resource permit. A water resource permit shall be required for the construction, reconstruction or relocation of all bridges, culverts, footbridges, walkways and other roadway crossings on public waters, except a low water ford type crossing as noted above. Public and private roadway related water crossings may be permitted provided all of the following criteria are met:

a. Hydraulic adequacy. The hydraulic capacity of the proposed structure must ordinarily be established by a competent technical study. The Drainage Manual of the Minnesota Highway Department outlines methodology which is frequently used in this state; engineering manuals of federal agencies such as the SCS, Corps of Engineers, Department of Transportation, etc., may provide other methodologies which could be applied to specific problems with reasonable accuracy. In any event, the sizing of proposed hydraulic structures based solely on the size of existing upstream and downstream structures is not acceptable, particularly in urban and urban fringe areas. If a state or federal floodplain information study exists for the area, or a U.S. Geological Survey stream gaging station is located nearby on the same stream, the hydraulics of the proposed bridge/culvert design must be consistent with this data. If the acquisition of a technical hydraulic study by the applicant would cause undue hardship and would be unreasonable under the circumstances, the Regional Hydrologist may waive the requirement for such a study based upon conformance with all of the following:

(1) He has performed a rough hydraulic study based upon available information and reasonable assumptions;

(2) He has made a field investigation of the project site; and

(3) The project is located in a rural area and will not cause flood-related damages or problems for upstream or downstream interests.

b. Flood plain management standards. New crossings and replacements of existing crossings must comply with local flood plain management ordinances and with provisions of NR 87(d)(1).

(1) No crossing can encroach upon a community designated floodway.

(2) Where a floodway has not been designated or where a flood plain management ordinance has not been adopted, increases in flood stage in the regional flood of up to .5 foot shall ordinarily be permitted. Additional increases may be permitted if:

(a) A field investigation and other available data indicate that no significant increased in flood damage potential would occur upstream from the crossing or that the proposed structure would reduce flood damage potential downstream.

(b) The local government unit is notified in writing of the effect of the proposed crossing and that any increases in flood stage must be reflected in the flood plain boundaries and flood protection elevation adopted in the local flood plain management ordinance.

(c) The applicant notifies effected landowners in writing of the increases in flood potential that would be caused by the proposed crossing.

(3) If increases in flood stages caused by waterway crossings will materially increase flood damage potential, increases in flood stage of less than 0.5 foot may be required.

(4) The decks and approaches to bridges or culverts on major transportation routes and on roads that provide access to development at urban densities shall ordinarily be no lower than two feet below the flood protection elevation as defined in NR 87(e) unless it can be shown that alternative routes or access can be provided during the regional flood.

c. Fish and wildlife habitat. The proposed bridge/culvert structure shall provide for gamefish

movement, unless the structure is intended to impede rough fish movement or the stream has negligible fisheries value.

d. Navigation. A proposed bridge/culvert structure will not obstruct public navigation if the water body involved is a wild, scenic, or recreational river or a designated canoe or boating route or is otherwise utilized by the public for navigation. Bridges having their soffits at least three feet above the calculated 50-year flood stage, in keeping with Federal Highway Administration standards, will ordinarily satisfy navigational clearance requirements. Navigational problems associated with bridge/culvert proposals should be resolved with Parks and Recreation personnel.

e. Recreational land trails system. Any roadway crossing project proposed near an existing or proposed segment of the state land trails system should be consistent therewith. Any conflicts should be resolved with Parks and Recreation personnel.

f. Footbridges and walkways.

(1) Footbridges over watercourses should be designed to cause negligible backwater effects during floods. They should be securely anchored or otherwise capable of withstanding the dynamic forces of flowing water, ice and debris. The approaches to footbridges should not be raised above the adjacent floodplain lands.

(2) Permits for construction of new walkways across a lakebed or portion thereof such as to provide access to an island will be prohibited.

(3) Permits for reconstruction of previously existing walkways across a lakebed or portion thereof to provide access to an island will be issued only if the walkway provides the only existing access to the island, there is existing development thereon, and the walkway design will provide for any public navigational needs and is consistent with the natural surroundings.

g. Temporary bridge crossings may be approved provided the bridges are securely anchored or otherwise capable of withstanding the dynamic forces of flowing water, ice and debris. Provisional dates for installation and removal of such crossings may be required.

C. Watermain and sewer crossings.

1. General standards. A water resource permit shall be required for the construction, reconstruction or relocation of all watermain, storm sewer and sanitary sewer crossings on public waters. Watermain, storm sewer and sanitary sewer crossings on public waters may be permitted provided all of the following criteria are met:

a. Watermain and storm sewer crossings. Watermain and storm sewer crossings of public waters may be permitted provided all of the following conditions are met.

(1) The project site must not be subject to conditions which are anticipated to cause unusual or severe maintenance problems requiring frequent future disruption of the beds of public waters.

(2) No other alignment alternative is possible which would eliminate the crossing. Route alignments must be selected with due regard for the preservation of lakes, streams, wetlands, recreation lands and other natural areas.

(3) The minimum depth of cover over pipe must be two feet.

(4) The bed and banks must be restored as nearly as practicable to the original cross-section, alignment and grade.

(5) The banks and surrounding shoreland (usually within 50 feet of the water) must be revegetated by seeding and/or sodding.

(6) The structure must be designed by a registered professional engineer licensed in the State of Minnesota.

b. Sanitary sewer and force main crossings. Permits for sanitary sewer and force main crossings may be issued provided all of the following conditions are met:

(1) All of the conditions in NR 5025 C.1.a. above, plus

(2) Pipe and pipe bedding/support specification (at the crossing site) must be submitted to the Department of Natural Resources for review and approval.

(3) Project design and construction plans and specifications must be prepared by a registered professional engineer licensed in the State of Minnesota.

D. Intakes and outfalls.

1. General standards. A water resource permit shall be required for the construction, reconstruction or relocation of all water intake, storm sewer and sanitary outfall structures placed in public waters. The following general standards shall apply to the review of all applications to construct water intake, storm sewer and sanitary sewer outfall structures in public waters:

a. Special attention must be given to methods of screening any authorized water intake or sewer outfall structure as much as possible from view from the surface of the public water through the use of existing vegetation and/or new plantings.

b. The project must not be unduly detrimental to public values including but not limited to fish and wildlife habitat, navigation, water supply, storm water retention, and the like.

c. The project site must not be subject to conditions which are anticipated to cause unusual or severe maintenance problems requiring frequent future disruption of the beds of public waters.

2. Water resource permit.

a. Water intake structures. Water intake structures may be permitted provided all of the following conditions are met:

(1) Adequate precautions must be planned for during and after construction to prevent silt, soil and other suspended particles from being discharged into public waters.

(2) Adjacent to the intake structure, the banks and bed of the public water must be protected from erosion and scour by placement of suitable riprap shore protection where appropriate or where recommended by DNR review authority.

(3) The banks and surrounding shoreland (usually within 50 feet of the water) must be revegetated by seeding and/or sodding.

(4) The structure must be designed by a registered professional engineer licensed in the State of Minnesota.

(5) All necessary intake channel dredging or excavation must be detailed in the structure application and on the design plans.

(6) A water appropriation permit must be obtained from DNR prior to operation of the intake structure.

b. Storm and sanitary sewer outfall structures. Storm and sanitary sewer outfall structures may be permitted provided all of the following conditions are met:

(1) Adequate precautions must be planned for during and after construction to prevent silt, soil and other suspended particles from being discharged into public waters.

(2) Structure design must incorporate a stilling-basin, surge-basin, energy dissipator or other device(s) to minimize disturbance and erosion of natural shoreline and bed resulting from peak flows.

(3) Sewer line and outfall structure design must, where feasible, utilize discharge to natural wetlands, natural or artificial stilling or sedimentation basins, or other devices for entrapment (and possible future removal) of sand, silt, debris and organic matter.

(4) Storm sewer system design must maximize use of natural and/or artificial ponding areas to provide water retention and storage for the reduction of peak flows into public waters.

(5) Adjacent to the outfall structure, the banks and bed of the public water must be protected from erosion, scour, undercutting, gullying and tree loss by placement of suitable riprap shore protection.

(6) The structure must be designed by a registered professional engineer licensed in the State of Minnesota.

(7) Where feasible, a storm or sanitary sewer outfall structure should outlet below the water level of the receiving water to aid concealment and reduce scour and erosion.

NR 5026 General administration.

A. Application for water resource permits. All applications for a water resource permit to alter the course, current or cross-section of public waters, or to construct, repair or abandon a dam on public waters shall be made on forms prepared by the Department of Natural Resources, Division of Waters. All such applications shall be submitted to the Department of Natural Resources regional office for the area in which the proposed project is located.

1. Who may apply. All applications for water resource permits shall be submitted by the riparian owner of the land(s) on which a project governed by these standards is proposed. Applications for water resource permits may be submitted by persons or parties other

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than the riparian owner only under the following conditions:

a. A governmental agency authorized by law to conduct the contemplated type of project may apply if the easements or other property rights acquired or to be acquired are fully described in the application.

b. A holder of appropriate property rights such as a lease or easement may apply provided that the application is countersigned by the property owner. In such case, the application must be accompanied by a copy of the lease or other agreement between the parties. A permit may be issued for the term of the lease only, subject to cancellation prior to the termination date of the lease or agreement should this agreement be cancelled.

c. In the case of state-owned lands, the prospective lessee may apply for a permit in his own name after he has requested a lease from the Departmental official responsible for the affected lands. Both the lease request and the permit application will be processed concurrently with appropriate coordination. If both are approved, they are to terminate on the same date.

d. Applications for dams will be accepted only from governmental agencies, public utilities or corporations having authority to sponsor such facilities if the structural height of the structure is more than 25 feet or the maximum storage capacity of the impoundment is more than 50 acre-feet or both. An application for such a structure may be accepted from the private landowner if an authorized governmental agency sponsors the project and assumes maintenance responsibility for the structure to the satisfaction of the Department of Natural Resources.

e. Applications for lake level control structures are ordinarily accepted only from governmental units authorized to construct and maintain these facilities by Minn. Stat. §§ 378.31 and 459.20 (1976).

2. Information required. Pursuant to Minn. Stat. § 105.44, subd. 4 (1976), an application for a water resource permit shall be considered complete when all of the following criteria have been met:

a. The application includes all of the information required for departmental review as specified in the appropriate section(s) of these standards.

b. The application is accompanied by appropriate photographs, maps, sketches, drawings or other plans which adequately describe the proposed project.

c. The application includes a brief statement regarding the following points:

(1) Anticipated changes in water and related land resources;

(2) Unavoidable but anticipated detrimental effects of the natural environment;

(3) Alternatives to the proposed action;

(4) All application and field inspection fees have been paid.

3. Fees. All applications for water resource permits shall be accompanied by an application fee as required by NR 5000 (e) (1). An additional fee may be charged for field inspections conducted by Department personnel in the course of reviewing a permit application. Fees charged for field inspections shall be subject to the provisions of NR 5000 (g) (1)-(5). An application for a water resource permit shall not be considered to be complete until all fees have been paid.

B. Permit review. All applications for a water resource permit to alter the course, current or cross-section of public waters, or to construct, repair or abandon a dam on public waters shall be reviewed and evaluated by the Department of Natural Resources in view of the standards and criteria set forth herein.

1. Field inspection. In order to fully evaluate a proposed project requiring a water resource permit the Department of Natural Resources may conduct field investigations to determine the nature and scope of the proposed project and the impact it will have on water and related land resources. The Regional Hydrologist shall determine which applications must be investigated in the field. Such field inspections shall be made in a timely fashion and shall be coordinated with personnel from the following Department programs: enforcement, fisheries, forestry, lands, parks & recreation, soil conservation, and wildlife.

2. Coordination with other agencies. Nothing in these standards is intended to supersede or rescind the laws, rules, regulations, standards and criteria of other federal, state, regional or local governmental subdivisions with the authority to regulate work in the beds or on the shorelands of public waters. The issuance of a water resource permit shall not confer upon an applicant the approval of any other unit of government for the proposed project. The Department of Natural Resources shall coordinate the review of applications for water resource permits with other units of government having jurisdiction in such matters. Such coordination shall include, but is not limited to, the following governmental units:

a. United States Army, Corps of Engineers

b. Minnesota Pollution Control Agency

c. Minnesota Department of Health

d. Minnesota Department of Transportation

e. Watershed Districts

f. County and Municipal Planning and Zoning Authorities

g. Soil and Water Conservation Districts

Minnesota Board of Nursing

Application, Renewal and Verification Fees, Licensure Examinations and Name Change for Professional Nurses and Practical Nurses

Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held pursuant to Minn. Stat. § 15.0412, subd. 4 (1976), in the Board Room, Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota, on Thursday, September 8, 1977, commencing at 9:30 a.m.

All interested or affected persons will have an opportunity to participate concerning the adoption of the proposed amendments to 7 MCAR §§ 5.002-03, 5.1012, 5.1032-1036, 5.1060-61, 5.1063, 5.1080, 5.1091, 5.2002-03, 5.2005, 5.2130, 5.2032-36, 5.2040, 5.2050-51, 5.2043, 5.2070, 5.2082 captioned above. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted by mail to Robert Herr, Hearing Examiner, at 308 Washington Square, White Bear Lake, Minnesota 55110, telephone (612) 426-1661, either before the hearing or within five days after the close of the hearing unless the hearing examiner orders an extension. All such statements will be entered into and become part of the record. Testimony or other evidence to be submitted for consideration should be pertinent to the matter at hand. For those wishing to submit written statements or exhibits, it is requested that at least three (3) copies be furnished. In addition, it is suggested, to save time and avoid duplication, that those persons, organizations, or associations having a common viewpoint or interest in these proceedings join together where possible and present a single statement in behalf of such interests. The conduct of the hearing shall be governed by the rules of the Office of Hearing Examiners.

A copy of the proposed amendments is attached hereto and made a part hereof.

Copies of the proposed amendments are now available and at least one free copy may be obtained by writing to the Minnesota Board of Nursing, 717 Delaware Street Southeast, Minneapolis, Minnesota 55414. Additional copies will be available at the door on the date of the hearing.

A Statement of Need explaining the Board of Nursing's position relative to the necessity for the proposed amendments and a Statement of Evidence outlining the testimony and evidence which will be introduced by the Board in support of the proposed amendments will be filed with the Hearing Examiner's Office at least twenty-five (25) days prior to the hearing and will be available there for public inspection. The statutory authority of the Board of Nursing to promulgate and adopt these rules is contained in Minn. Stat. §§ 148.191 subd. 1; 148.211; 148.231; 148.291; 148.294; and 214.06 (1976).

In addition, please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he commences lobbying. Lobbying includes attempting to influence rule making by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than $250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 a year or five (5) hours per month for lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, telephone (612) 296-5615.

Joyce M. Schowalter, R.N.
Executive Secretary

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Rules as Proposed

7 MCAR § 5.1002 Application. The application forms and instructions for filing are provided by the Board. The application shall be submitted to the Board in advance of the published deadline for the desired examination date.

A. An application for licensure by examination from a graduate of a Minnesota program shall consist of:

1. the notarized application form,

2. the recommendation from the nursing program director and

3. the fee of $[35] **60**.

Following graduation, whether this occurs before or after the examination, the applicant must also submit an affidavit of graduation (notarized) and an official school transcript.

B. A completed application from an out-of-state graduate shall consist of:

1. the notarized application,

2. the recommendation from the nursing program director,

3. the fee of $[35] **60**,

4. the affidavit of graduation and

5. the official school transcript.

§ 5.1003 Permit to practice professional nursing.

B. A holder of a permit shall not use the title "registered nurse", abbreviated R.N., in Minnesota until his license is issued, although he may be employed in professional nursing in Minnesota while the permit is valid. **The holder of a permit may use the title "graduate nurse" and may use the letters "GN".**

§ 5.1004 Examination and re-examination. The licensure examination may be prepared by the Minnesota Board of Nursing or by others delegated to do so by the Minnesota Board of Nursing.

A. The passing score [for each series of] **on** the Minnesota licensure examination, **the State Board Test Pool Examination,** shall be [determined by the Board] **a standard score of at least 350 in each section**.

B. An applicant whose score falls below a standard score of 350 in one or more sections of the State Board Test Pool Examination shall be deemed to have failed the examination.

C. An applicant who fails the examination shall re-write only the sections failed unless otherwise specified in these rules.

D. An applicant must pass all [five] sections of the examination in not more than three writings within [an 18] **a 24** month period. [The Board must receive evidence of remedial assistance from the applicant who fails more than three writings before such applicant will be admitted to subsequent examinations. The applicant who has not passed all five sections of the examination in 18 months must re-write the entire examination.] **Each 24 month period begins on the date of the first examination cycle.**

E. An applicant who does not pass all sections of the examination within a 24 month period must re-write all sections of the examination.

F. An applicant who does not pass the examination within the first 24 month period must present evidence of remedial assistance to the Board prior to admission to each subsequent examination. The remedial assistance must occur during the period following the applicant's last examination and prior to the applicant's next examination. The remedial assistance must relate to the subject matter of the section(s) to be re-written, test-taking skills or English proficiency.

[C.] **G.** The fee for re-examination shall be $20 and is required for each re-examination whether one or more sections of the examination are to be re-written at that time.

[B.] **H.** Prior to the examination date each accepted applicant will be sent an admission card which shall be presented by the applicant for admission to the examination center.

§ 5.1012 Permit to practice professional nursing. A permit for the practice of professional nursing in Minnesota for a period up to [90 days] **six months** shall be issued by the Minnesota Board of Nursing to an applicant who is a graduate of a U.S. school of nursing and is licensed in another U.S. jurisdiction upon submission of application, statutory fee and satisfactory evidence of current licensure in another U.S. jurisdiction.

§ 5.1030 Renewal of registration. Each licensee is responsible for applying for renewal registration if he/she wishes to be employed as a Registered Nurse in Minnesota [in the coming year]. [The Board issues renewal applications to all current licensees and will renew registration upon receipt of the application and the renewal fee. Beginning with the 1976 renewal period, the annual fee shall be $5.]

A. The application for registration renewal must be completed and signed before a renewal certificate is issued.

B. The renewal period shall be 24 months in length, beginning August 1 and ending July 31.

C. The December 31, 1977, expiration date of all renewal certificates is hereby extended to July 31, 1978. All renewal certificates issued between the effective date of this rule and July 31, 1978, which are intended to be valid during those dates shall contain an expiration date of July 31, 1978.

D. Beginning August 1, 1978, the fee for registration renewal shall be $15.00 per renewal period.

E. Individuals licensed for the first time within three calendar months prior to the first day of a renewal period shall not be required to meet requirements for that renewal period but shall be considered in good standing.

§ 5.1032 Delinquent status.

A. An applicant for renewal of registration, except if in nonpracticing status, who failed to re-register in the previous year or years shall pay a delinquent fee of $[2] **4** for each year for which he/she has been delinquent up to a maximum of $[10] **40** as well as the penalty fee of $[2] **4** and the renewal fee for the current period.

B. The registered nurse who has failed to re-register with the Board and whose license has been in delinquent status for five years or more must present evidence of competency in nursing before becoming actively re-registered. Such evidence, submitted on a notarized form, may include any of the following which occurred within the five year period prior to the application for a current renewal certificate:

1. employment as a registered nurse in another U.S. jurisdiction or foreign country,

2. completion of no less than one week of a refresher course,

3. attendance at no less than 15 clock hours of nursing-related educational offerings,

4. participation in an orientation program at least one week in length conducted by an employer or potential employer, or

5. such other similar evidence; and
such other evidence as the Board may reasonably require.

§ 5.1033 Nonpracticing status.

A. An applicant for nonpracticing status who failed to renew registration for the previous year or years shall pay a delinquent fee of $[2] **4** for each year which he/she has been delinquent up to a maximum of $[10] **40**.

B. The registered nurse who has been in the nonpracticing status for five years or more must present evidence of competency in nursing before becoming actively re-registered. Such evidence may include [completion of a refresher course, continuing education courses, an apprenticeship, orientation program or such other evidence as the Board may reasonably require] **any of the following which occurred within the five year period prior to the application for a current renewal certificate:**

1. employment as a registered nurse in another U.S. jurisdiction or foreign country,

2. completion of no less than one week of a refresher course,

3. attendance at no less than 15 clock hours of nursing-related educational offerings,

4. participation in an orientation program at least one week in length conducted by an employer or potential employer, or

5. such other similar evidence; and

such other evidence as the Board may reasonably require.

§ 5.1034 Change of name on records. [The licensee who is changing names must request the change in writing and must return the current renewal certificate with the request for name change. The Board may require substantiation of the change by requiring official documentation.]

A. Name change.

1. The licensee who has changed names shall notify the Board in writing as soon as possible and request a revised renewal certificate.

2. When requesting a revised renewal certificate, the licensee shall return the current certificate to the Board. If the current certificate has been lost, stolen, or destroyed, the licensee shall provide written evidence of the situation.

3. The Board may require substantiation of the name change by requiring official documentation.

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B. Address change.

1. The licensee who has changed addresses shall notify the Board in writing as soon as possible.

2. The Board shall notify the licensee of address changes made in the licensee's records; however, a revised renewal certificate will not be issued.

§ 5.1035 Duplicate [renewal certificate] **and replacement documents.** [Duplicate renewal certificates are issued only to persons who have had legal name changes. The individual who is changing names must return his/her current renewal certificate to the Board before a duplicate certificate is issued. A duplicate renewal certificate is not issued when a certificate is lost or stolen.]

A. License.

1. A duplicate license shall not be issued.

2. A replacement license may be issued when the licensee notifies the Board, by certified statement, that the original license was lost, stolen, or destroyed.

3. The replacement license shall be marked "Replacement" and the date of issuance indicated.

4. The fee for a replacement license is $5.00.

B. Renewal certificate.

1. A duplicate renewal certificate shall not be issued.

2. If a renewal certificate is lost, stolen or destroyed, the licensee shall submit written evidence of the situation.

3. Upon written request of the licensee, a Verification of Current Registration shall be issued for a fee of $3.00.

4. If a licensee does not receive a renewal certificate which has been issued and notifies the Board office within ninety (90) days of date of issuance, a Verification of Current Registration may be issued without a fee.

§ 5.1036 Verification of Minnesota license.

A. A registered nurse wishing to be licensed in another U.S. jurisdiction or foreign country may, upon written request, have a certified statement of Minnesota licensure issued to the board of nursing or other official agency empowered to issue nursing licenses in the other jurisdiction or country, if the license is current or in the non-practicing status.

B. Licenses which are in the delinquent status will not be verified until the requirements are met which place the license in a current or non-practicing status.

C. The fee for verification of a license shall be $5.00 for each verification.

D. If a transcript is provided from the Board files for a nursing program which is no longer currently in operation, an additional fee of $3.00 may be charged.

§ 5.1060 Controlling institution.

[B. A community/junior college, senior college, or university which operates a nursing program shall be accreditated by the North Central Association of Colleges and Secondary Schools. Such accreditation is also required for a college or university which provides some courses for students in the nursing programs of other institutions.

[C. The Board may grant interim approval to a new nursing program when there is evidence that the college has acquired eligibility status for accreditation by a national or regional accrediting body recognized by the Board.

[D. The controlling institution shall insure support including financial support which will provide a sound educational program.]

§ 5.1061 Organization.

[B. The faculty for this program shall be organized in order to effectively involve members in the formulation, implementation and evaluation of the curriculum.]

§ 5.1063 Publications.

[A. Current information shall be available that accurately describes the program's curriculum and student related policies.]

[B. The fees charged to students will be clearly communicated to students in writing.]

§ 5.1080 Admission.

[A. Admission practices shall be based on the program's stated criteria for selection.]

[B. The selection and advancement of students shall be in accord with state and federal laws on nondiscrimination.]

§ 5.1091 Curriculum development and objectives.

A. The curriculum includes all the content, instructional activities and learning experiences planned and guided by

the institution's faculty to achieve stated curriculum and course objectives. The selection of content and activities of the learning experiences is one of the central responsibilities of curriculum planning. The selection and organization of the learning experiences in the curriculum shall provide continuity, sequence and integration of learnings.

[A. Nursing course objectives shall be constructed within the framework of the philosophy and goals of the program and should be attainable to a significant degree.]

[1. Nursing course objectives shall be written by the nursing faculty and shall provide direction for the development and implementation of specific courses.]

[2. These statements shall realistically identify expected changes in behavior of the nursing students.]

§ 5.2002 Application. The application forms and instructions for filing are provided by the Board. The application shall be submitted to the Board in advance of the published deadline for the desired examination date.

A. An application for licensure by examination from a student or graduate of a Minnesota program shall consist of:

1. The notarized application form,

2. The recommendation from the nursing program director, and

3. The fee of $[25] **40**.

Following graduation, whether this occurs before or after the examination, the applicant must also submit an affidavit of graduation (notarized) and an official transcript.

B. A completed application from an out-state graduate shall consist of:

1. The notarized application,

2. The recommendation from the nursing program director,

3. The fee of $[25] **40**,

4. The affidavit of graduation, and

5. The official school transcript.

§ 5.2003 Examination and re-examination. The licensure examination may be prepared by the Minnesota Board of Nursing or by others delegated to do so by the Minnesota Board of Nursing.

A. The passing score [for each form of] **on** the Minnesota licensure examination, **the State Board Test Pool Examination,** shall be [determined by the Minnesota Board of Nursing] **a standard score of at least 400.**

B. An applicant whose score falls below a standard score of 400 on the State Board Test Pool Examination shall be deemed to have failed the examination.

[D.] **C.** An applicant must pass the examination in not more than three writings within [an 18] **a 24** month period. [The applicant who fails more than three writings must submit evidence to the Board of remedial assistance before being admitted to each subsequent examination. Such re-examination may be repeated at subsequent testing periods until the passing score is attained.] **Each 24 month period begins on the date of the first examination of the cycle.**

D. An applicant who does not pass the examination within the 24 month period must present evidence of remedial assistance to the Board prior to admission to each subsequent examination. The remedial assistance must occur during the period following the applicant's last examination and prior to the applicant's next examination. The remedial assistance must relate to the subject matter of the examination, test-taking skills or English proficiency.

[C.] **E.** The fee for re-examination shall be $15 and is required for each re-examination.

[B.] **F.** Prior to the examination date each accepted applicant will be sent an admission card which shall be presented by the applicant for admission to the examination center.

§ 5.2005 Permit to practice.

A. A permit to practice practical nursing may be issued to an applicant accepted to write the first licensure examination following graduation.

B. The permit shall remain valid until the applicant is notified of the results of the examination or recalled by the Board.

C. The holder of a permit may use the title "graduate practical nurse" and may use the letters "GPN".

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D. The holder of a permit who does not take the examination as scheduled must return the permit.

§ 5.2030 Renewal of registration.

A. Each licensee is responsible for applying for renewal of registration if he/she wishes to be employed as a licensed practical nurse in Minnesota in the coming year. The Board issues renewal application forms to all current licensees and will renew registration upon receipt of application and the renewal fee. Beginning with the [1976] **1978** renewal period, the annual fee shall be $[5] **7**.

B. Individuals licensed for the first time within three calendar months prior to the first day of a renewal period shall not be required to meet requirements for that renewal period but shall be considered in good standing.

§ 5.2031 Penalty. An applicant for renewal of registration, except if in non-practicing status, shall pay a late penalty fee of $[2] **4** as well as the renewal fee if the request for renewal is postmarked after the end of the renewal period.

§ 5.2032 Delinquent status.

A. An applicant for renewal of registration, except if in nonpracticing status, who failed to re-register for the previous year or years shall pay a delinquent fee of $[2] **4** for each year for which he/she has been delinquent up to a maximum of $[10] **40** as well as the penalty fee of $[2] **4** and the renewal fee for the current period.

B. The licensed practical nurse who has failed to re-register with the Board and whose license has been in delinquent status for five years or more must present evidence of competency in nursing before becoming actively re-registered. Such evidence, submitted on a notarized form, may include any of the following which occurred within the five year period prior to the application for a current renewal certificate:

1. employment as a licensed practical nurse in another U.S. jurisdiction or foreign country,

2. completion of no less than one week of a refresher course,

3. attendance at no less than 15 clock hours of nursing-related educational offerings,

4. participation in an orientation program at least one week in length conducted by an employer or potential employer, or

5. such other similar evidence; and

such other evidence as the Board may reasonably require.

§ 5.2033 Nonpracticing status.

A. An applicant for nonpracticing status who failed to renew registration for the previous year or years shall pay a delinquent fee of $[2] **4** for each year for which he/she has been delinquent up to a maximum of $[10] **40**.

B. The licensed practical nurse who has been in the nonpracticing status for five years or more must present evidence of competency in nursing before becoming actively re-registered. Such evidence, **submitted on a notarized form,** may include [completion of a refresher course, continuing education courses, an apprenticeship, an orientation program or such other evidence as the Board may reasonably require.] **any of the following which occurred within the five year period prior to the application for a current renewal certificate:**

1. employment as a licensed practical nurse in another U.S. jurisdiction or foreign country,

2. completion of no less than one week of a refresher course,

3. attendance at no less than 15 clock hours of nursing-related educational offerings,

4. participation in an orientation program at least one week in length conducted by an employer or potential employer, or

5. such other similar evidence; and

such other evidence as the Board may reasonably require.

§ 5.2034 Change of name on records. [The licensee who is changing names must request the change in writing and must return the current renewal certificate with the request for name change by requiring official documentation.]

A. Name change.

1. The licensee who has changed names shall notify the Board in writing as soon as possible and request a revised renewal certificate.

2. When requesting a revised renewal certificate, the licensee shall return the current certificate to the Board. If the current certificate has been lost, stolen, or destroyed, the licensee shall provide written evidence of the situation.

3. The Board may require substantiation of the name change by requiring official documentation.

B. Address change.

1. The licensee who has changed addresses shall notify the Board in writing as soon as possible.

2. The Board shall notify the licensee of address changes made in the licensee's records; however, a revised renewal certificate will not be issued.

§ 5.2035 Duplicate [of renewal certificates] **and replacement documents**. [Duplicate renewal certificates are issued only to persons who have had legal name changes. The individual who is changing names must return his/her current renewal certificate to the Board before a duplicate certificate is issued. A duplicate renewal certificate is not issued when a certificate is lost or stolen.]

A. License.

1. A duplicate license shall not be issued.

2. A replacement license may be issued when the licensee notifies the Board, by certified statement, that the original license was lost, stolen or destroyed.

3. The replacement license shall be marked "Replacement" and the date of issuance indicated.

4. The fee for a replacement license is $5.00.

B. Renewal certificate.

1. A duplicate renewal certificate shall not be issued.

2. If a renewal certificate is lost, stolen or destroyed, the licensee shall submit written evidence of the situation.

3. Upon written request of the licensee, a Verification of Current Registration shall be issued for a fee of $3.00.

4. If a licensee does not receive a renewal certificate which has been issued and notifies the Board office within ninety (90) days of date of issuance, a Verification of Current Registration may be issued without a fee.

§ 5.2036 Verification of Minnesota license.

A. A licensed practical nurse wishing to be licensed in another U.S. jurisdiction or foreign country may, upon written request, have a certified statement of Minnesota licensure issued to the board of nursing or another official agency empowered to issue nursing licenses in the other jurisdiction or country, if the license is current or in the non-practicing status.

B. Licenses which are in the delinquent status will not be verified until the requirements are met which place the license in a current or non-practicing status.

C. The fee for verification of a license shall be $5.00 for each verification.

D. If a transcript is provided from the Board files for a nursing program which is no longer currently in operation, an additional fee of $3.00 may be charged.

§ 5.2040 Definitions.

B. "Board" means the Minnesota Board of Nursing. [for the purpose of the practical nursing law.]

§ 5.2050 Controlling institution.

[B. The board of the controlling institution shall insure support including financial support which will provide a sound educational program.]

§ 5.2051 Organization.

[B. The faculty for this program shall be organized in order to effectively involve members in the formulation, implementation and evaluation of the curriculum.]

§ 5.2053 Publications.

[A. Current information shall be available that accurately describes the program and student related policies.]

[B. The fees charged to students will be clearly communicated to students in writing.]

§ 5.2070 Selection and admission.

[A. Admission practices shall be based on the program's stated criteria for selection.]

[B. The selection and advancement of students shall be in accord with state and federal laws on non-discrimination.]

[C. Educational preparation shall be verified before acceptance into the school. High school graduation equivalency may be determined through successful completion of standardized tests such as the General Education Development Tests.]

KEY: Existing rules are printed in standard type face. Proposed additions to existing rules are printed in **boldface**, while proposed deletions from existing rules are printed within [single brackets]. Additions to proposed rules are **underlined and boldfaced**, while deletions from proposed rules are printed within [[double brackets]].

§ 5.2082 Curriculum plan. The curriculum should be designed to prepare the student for licensure as a practical nurse. [The licensed practical nurse gives nursing care with the guidance and supervision of a registered nurse or physician.]

[A. The plan shall be designed to assist the student to progress in appropriate sequence from the simple to the complex and the known to the unknown.]

[B. The plan shall be based on broad areas of learning and demonstrate the relationship of each segment to the whole.]

[C. The plan shall also document the meaningful and concurrent application of theory to practice and the utilization of previous learnings.]

[D. The plan shall reflect the program objectives in a way that is meaningful to the teacher and the student.]

Department of Public Welfare

Proposed Temporary Rule Governing Regulations for Determining Welfare Per-Diem Rates for Nursing Home Providers under the Title XIX Medical Assistance Program

Request for Public Comment

Notice is hereby given that the following amendment to Rule DPW 49, Rule DPW 49A, governing administration of Regulations for Determining Welfare Per Diem Rates for Nursing Home Providers Under the Title XIX Medical Assistance Program, is proposed for adoption as a temporary rule as authorized by Minn. Stat. § 15.0412, subd. 5 (1977), pending completion of a full hearing and adoption of a permanent rule. Comments from interested and affected persons are requested. Comments must be received at the address given below within 20 days of the date of this publication to be considered. The temporary rule may be revised on the basis of comments received.

Comments on the proposed rule should be sent to:
Edward J. Dirkswager, Jr.
Acting Commissioner
Minnesota Department of Public Welfare
Fourth Floor
Centennial Office Buiding
St. Paul, Minnesota 55155

Temporary Rule as Proposed

DPW 49A Regulations for determining Welfare Per-Diem Rates for Nursing Home Providers Under the Title XIX Medical Assistance Program.

IV. Reasonable cost principles.

C. General and administrative expenses. Reasonable cost criteria for general and administrative expenses are as follows:

4. Other general and administrative costs.

[g. Advertising. Costs incurred in connection with maintaining or maximizing occupancy are allowable.]

(h.-p. Unchanged)

q. Political contributions. Political contributions made by a health care facility or institution shall not be recognized as allowable.

r. Salary of a lobbyist. The salary of an individual in the employ of a facility shall be allowed without regard to whether said individual is involved in lobbying activities as defined in sec. 10A.01, subd. 11 if such lobbying directly relates to the licensed functions of the facility.

s. Advertising. Reasonable Yellow Pages listings, brochures, flyers, newsletters and other similar items which are primarily designed to describe the services, licensure, accreditation, staffing, and other similar matters concerning the facility are allowable costs.

t. Association dues. Association dues are allowable only if they directly relate to patient care. For purposes of this section, directly related to patient care means activity which the nursing home clearly demonstrates is a necessary part of the licensed or certified function of the nursing home or directly leads to improved quality of care or improved administrative operations.

Each association for which dues are claimed as an

allowable cost must file annually with the department a statement summarizing its activities, its revenues generated by dues and its expenditure of funds received from dues payments. The percentage (up to 100%) of dues revenue which the association expends for direct care purposes as defined above will be allowed during the next year. The statement must be filed within 30 days of the end of the association's fiscal year except that in order for dues to be allowable effective September 1, 1977 each association must file such a statement by October 1, 1977 covering its most recently completed fiscal year. No expenditures by an association which would be unallowable for rate setting purposes will be considered directly related to patient care.

u. Legal fees. Fees incurred in unsuccessful legal challenges where a government agency is a party to the suit are not directly related to patient care and will not be allowed. A legal action is unsuccessful to the extent that the nursing home does not demonstrate it clearly prevailed on the issues litigated. Legal challenges include, but are not limited to, appeals regarding rates, licensure, and certification at all levels as well as direct court challenges.

v. Assessments levied by the Health Department for uncorrected violations. Assessments levied and collected by the Minnesota Health Department shall not be recognized as allowable costs.

KEY: Existing rules are printed in standard type face. Proposed additions to existing rules are printed in **boldface**, while proposed deletions from existing rules are printed within [single brackets]. Additions to proposed rules are **underlined and boldfaced**, while deletions from proposed rules are printed within [[double brackets]].

OFFICIAL NOTICES

Department of Human Rights

Announcement of Future Publication by the Department in the *State Register*

Official announcements and resolutions of charges of discrimination will appear in the *State Register*'s Official Notices section every week. Publication of the following types of materials will be included:

1. Notices
2. Settlement agreements
3. Pre-determination agreements
4. Hearing examiner's orders
5. Court orders.

Announcement of Intention to Promulgate Rules and Regulations

The Department has recently begun the process of developing substantive rules and regulations which, when adopted, will serve to detail and clarify the provisions of the Human Rights Act. Departmental rules and regulations, which are specifically authorized by statute, currently address procedures and the area of contract compliance. The rules and regulations now being developed will primarily relate to the Act's substantive provisions and will supersede guidelines previously issued.

In order to gain an understanding of the public's interests and concerns prior to drafting the regulations, the Department will hold a series of 32 public "mini-hearings" around the state during the fall. Testimony given at the mini-hearings will be taped, summarized, and submitted to a state hearing examiner with the proposed rules during the early summer of 1978. Public participation is invited.

Schedule of Mini-Hearings

All hearings will be held from 7 p.m. – 10 p.m.

Northwest Region City Auditorium Basement Meeting Room, 2nd and Main Sts., Thief River Falls.

Tues. Aug. 30 — Housing
Tues. Sept. 27 — Public Services, Education
Tues. Oct. 25 — Employment
Tues. Nov. 22 — Public Accommodations, Credit

Metropolitan Region Rm. 83 State Office Building, Capitol Complex, St. Paul.

Thurs. Sept. 1 — Housing
Thurs. Sept. 29 — Public Services, Education
Thurs. Oct. 27 — Employment
Wed. Nov. 23 — Public Accommodations, Credit

Southwest Region Room LC201, Southwest State University, Marshall.

Tues. Sept. 6 — Housing
Tues. Oct. 4 — Public Services, Education
Tues. Nov. 1 — Employment
Tues. Nov. 29 — Public Accommodations, Credit

Southeast Region Salvation Army Building, 20 N.E. 1st Ave., Rochester.

Thurs. Sept. 8 — Housing
Thurs. Oct. 6 — Public Services, Education
Thurs. Nov. 3 — Employment
Thurs. Dec. 1 — Public Accommodations, Credit

Northeast Region Council Chambers, City Hall, 4th Ave. West and 1st St., Duluth.

Tues. Sept. 13 — Housing
Tues. Oct. 11 — Public Services, Education
Tues. Nov. 8 — Employment
Tues. Dec. 6 — Public Accommodations, Credit

Central Region Crow Wing County Social Services Bldg., 4th and Laurel Sts., Brainerd.

Thurs. Sept. 15 — Housing
Thurs. Oct. 13 — Public Services, Education
Thurs. Nov. 10 — Employment
Thurs. Dec. 8 — Public Accommodations, Credit

North Central Region Room 250, Banksberg Bldg., Bemidji State University, 14th and Birchmont Drive, Bemidji.

Tues. Sept. 20 — Housing
Tues. Oct. 18 — Public Service, Education
Tues. Nov. 15 — Employment
Tues. Dec. 13 — Public Accommodations, Credit

West Central Region Lecture Hall, Fergus Falls, Senior High School, Northern Ave. N., Fergus Falls.

Thurs. Sept. 22 — Housing
Thurs. Oct. 20 — Public Service, Education
Thurs. Nov. 17 — Employment
Thurs. Dec. 15 — Public Accommodations, Credit

Notice of Settlement Agreements Made Between July 14, 1977 and July 28, 1977

In addition to specific remedies, standard agreements reached prior to a hearing contain the following two stipulations:

1. The agreement does not constitute an admission by the respondent of a violation of Minn. Stat., ch. 363.

2. The respondent agrees to abide by the provisions of Minn. Stat. ch. 363.

Department of Human Rights, Complainant, vs. Educational Management Services, Inc., Respondent, E1844.

Charge.

A person (hereinafter "charging party") filed a charge alleging that Educational Management Services, Inc., her employer, discriminated against her because of her sex by failing to provide the same conditions or privileges of employment for her as for male employees. The charging party alleged that the respondent provided maternity benefits for wives of male employees but not for female employees. Following an investigation, the Commissioner of Human Rights found that there was reason to credit the charging party's allegation.

Settlement.

The charging party and the respondent agreed to voluntarily settle the matter in the following manner:

1. The respondent agreed to pay the charging party the sum of $472 on the date of the execution of the agreement.

Department of Human Rights, Complainant, vs. West Central Daily Tribune, Respondent, E2474.

Charge.

A person (hereinafter "charging party") filed a charge alleging that she had been discriminated against because of her sex and marital status with respect to the terms, privileges, compensation, and upgrading she received as an employee of the West Central Daily Tribune (hereinafter "respondent"). The charging party alleged that although her responsibilities as women's page editor were comparable to those of men in her office, she was paid less, denied increases in pay, and refused promotions. Following an investigation, the Commissioner of Human Rights found that there was probable cause to credit the allegation that an unfair discriminatory practice was committed.

Settlement.

The charging party and the respondent agreed to voluntarily settle the matter in the following manner:

1. The respondent agreed to pay the sum of $1,040 to the charging party.

2. The respondent agreed to provide the charging party with the option of writing and submitting feature stories.

Department of Human Rights, Complainant, vs. City of St. Paul, Department of Personnel, Respondent, E3511.

Charge.

A person (hereinafter "charging party") filed a charge alleging that the St. Paul Department of Personnel (hereinafter "respondent") discriminated against her on the basis of sex by refusing to hire her as an auto washer. She further alleged that the test being used to determine eligibility for the position had a disparate effect upon females and was not job-related. Following an investigation, the Commissioner of Human Rights found that there was not probable cause to credit the charging party's allegation of refusal to hire because of sex. The Commissioner did, however, find that the test used had a disparate impact upon females and was not job-related.

Settlement.

The Commissioner of Human Rights and the respondent agreed to settle the matter in the following manner:

1. The respondent agreed to abolish the test used for the position of auto washer and not use the specific test in the future.

2. The respondent agreed to maintain an honest and earnest effort to validate the tests and testing mechanisms used to screen applicants for employment with the City of St. Paul.

3. The respondent agreed to submit at the end of each fiscal year a report listing the tests validated during the year.

Department of Human Rights vs. Office of the State Auditor, Respondent, E3589, RP64.

Charge.

A person (hereinafter "charging party") filed a charge alleging that he had been discriminated against while employed by the Office of the State Auditor (hereinafter "respondent"). He alleged that his supervisor harassed him, made derogatory remarks to him, and was overly critical of his work because of his religion. The charging party also alleged that he was denied a letter of recommendation as a reprisal against him because he had filed a charge of discrimination. Following an investigation, the Commissioner of Human Rights found that there was reason to credit the charging party's allegation.

Settlement.

The parties agreed to settle the matter as follows:

1. The respondent agreed to include in its management seminar a section on sensitivity training and on state personnel policies concerning job discrimination and human rights. The respondent agreed to make clear to all personnel that racial, ethnic, and religious jokes and remarks are contrary to departmental and state personnel policy, and are not permitted.

2. The respondent made all material in the charging party's personnel file regarding his work history available to him.

3. The respondent had not made and agreed not to make any reference in the charging party's personnel file to the charge or any other charge of discrimination that was filed by the charging party.

4. The respondent agreed to adhere to the State of Minnesota Affirmative Action Policy.

5. The respondent agreed to designate an employer to serve as an Equal Opportunity Officer and that the Officer would promulgate an internal grievance procedure by which prospective, current or former employees would be encouraged to present all allegations of unfair discriminatory acts.

Department of Human Rights, Complainant, vs. Alton J. and Theresa M. Carufel, Respondents, H838.

Charge.

A person (hereinafter "charging party") filed a charge alleging that Alton J. and Theresa M. Carufel (hereinafter "respondents") had violated the Human Rights Act by refusing to rent to her because she was a recipient of public assistance. Following an investigation, the Commissioner of Human Rights found that there was reason to believe the charge of discrimination.

Settlement.

The charging party and the respondent agreed to voluntarily settle the matter in the following manner:

1. The respondents agreed to post an Equal Housing Opportunity Poster in their rental office.

2. The respondents agreed to pay the charging party the sum of $50 in damages.

Notice of Pre-Determination Agreements

A pre-determination agreement is reached prior to the Commissioner's finding of probable or no probable cause. A pre-determination agreement may be reached through the 30-Day Waiver Process. Prior to a formal investigation by the Department, a charging party and a respondent may sign a Waiver Agreement which states that the Department waives investigation of the charge for 30 days while the parties attempt to resolve the matter.

Charging Party vs. Fritz Company Incorporated, Respondent, E3501.

Charge.

A person (hereinafter "charging party") filed a charge alleging that Fritz Company, Incorporated (hereinafter "respondent") discriminated against him because of his national origin and his sex by refusing to give him an application for employment. The charging party and the respondent signed a 30-day waiver agreement. The parties reached an agreement which the Department approved.

Pre-Determination Agreement.

The charging party and the respondent agreed as follows:

1. The charging party was offered a position by the respondent.

Charging Party v. Sheraton Inn - Northwest, Respondent, E4207.

Charge.

A person (hereinafter "charging party") filed a charge alleging that her employer, Sheraton Inn-Northwest (hereinafter "respondent") had discriminated against her because of her sex with respect to the conditions, compensation, and upgrading she received. She alleged that males who held the same job she did received a higher salary. Both the charging party and the respondent signed a 30-day waiver agreement. The parties were able to come to an agreement which the Department approved.

Pre-Determination Agreement.

The parties agreed to resolve the matter as follows:

1. The respondent agreed to increase the charging party's salary.

2. The respondent agreed to establish a five-day week for the charging party.

3. The respondent agreed to review the charging party's salary annually and to consider the charging party for promotions based upon her qualifications and expressed desire.

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