

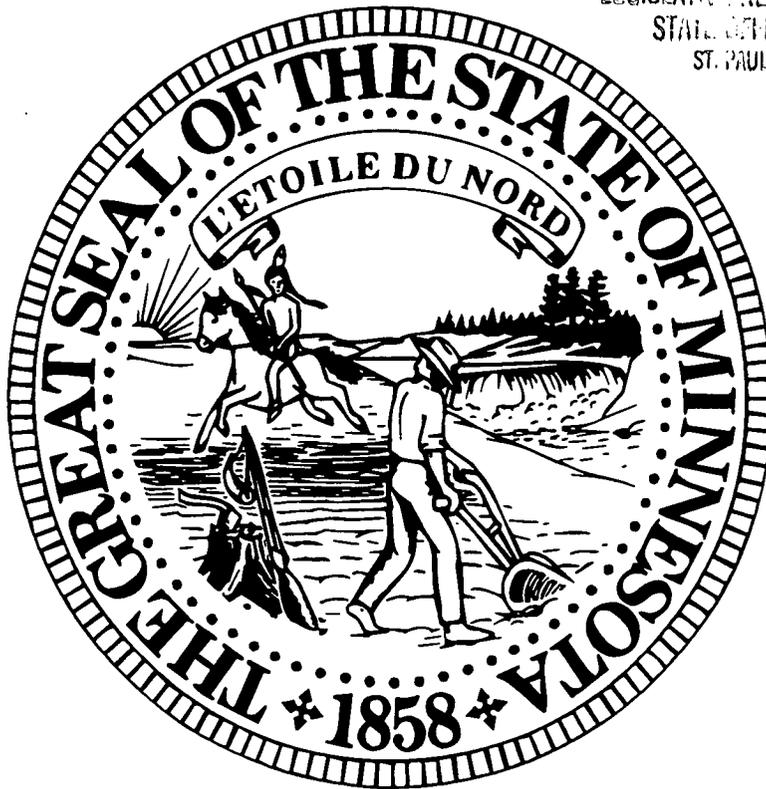
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The Minnesota
State Register

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Judicial Notice Shall Be Taken of Material Published in the *State Register*

The *State Register* is the official publication of the State of Minnesota, containing executive and commissioners' orders, proposed and adopted rules, official and revenue notices, professional-technical-consulting contracts, non-state bids and public contracts and grants.

A *Contracts Supplement* is published Tuesday, Wednesday and Friday and contains bids and proposals for commodities, including printing bids.

Printing Schedule and Submission Deadlines

Vol. 20 Issue Number	PUBLISH DATE	Deadline for both Adopted and Proposed RULES	Deadline for: Emergency Rules, Executive and Commissioner's Orders, Revenue and Official Notices, State Grants, Professional-Technical-Consulting Contracts, Non-State Bids and Public Contracts
# 24	Monday 11 December	Monday 27 November	Monday 4 December
# 25	Monday 18 December	Monday 4 December	Monday 11 December
# 26	Tuesday 26 December	Monday 11 December	Monday 18 December
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FOR LEGISLATIVE NEWS

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Briefly-Preview—Senate news and committee calendar; published weekly during legislative sessions.

Perspectives—Publication about the Senate.

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Contact: Senate Public Information Office (612) 296-0504
Room 231 State Capitol, St. Paul, MN 55155

HOUSE

Session Weekly—House committees, committee assignments of individual representatives; news on committee meetings and action. House action and bill introductions.

This Week—weekly interim bulletin of the House.

Session Summary—Summarizes all bills that both the Minnesota House of Representatives and Minnesota Senate passed during their regular and special sessions.

Contact: House Information Office (612) 296-2146
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Minnesota Rules: Amendments and Additions

NOTICE: How to Follow State Agency Rulemaking in the State Register

The *State Register* is the official source, and only complete listing, for all state agency rulemaking in its various stages. State agencies are required to publish notice of their rulemaking action in the *State Register*. Published every Monday, the *State Register* makes it easy to follow and participate in the important rulemaking process. Approximately 75 state agencies have the authority to issue rules. Each agency is assigned specific *Minnesota Rule* chapter numbers. Every odd-numbered year the *Minnesota Rules* are published. This is a ten-volume bound collection of all adopted rules in effect at the time. Supplements are published to update this set of rules. Proposed and adopted emergency rules do not appear in this set because of their short-term nature, but are published in the *State Register*.

If an agency seeks outside opinion before issuing new rules or rule amendments, it must publish a NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION in the *Official Notices* section of the *State Register*. When rules are first drafted, state agencies publish them as **Proposed Rules**, along with a notice of hearing, or notice of intent to adopt rules without a hearing in the case of noncontroversial rules. This notice asks for comment on the rules as proposed. Proposed emergency rules and withdrawn proposed rules are also published in the *State Register*. After proposed rules have gone through the comment period, and have been rewritten into their final form, they again appear in the *State Register* as **Adopted Rules**. These final adopted rules are not printed in their entirety in the *State Register*, only the changes made since their publication as Proposed Rules. To see the full rule, as adopted and in effect, a person simply needs two issues of the *State Register*, the issue the rule appeared in as proposed, and later as adopted. For a more detailed description of the rulemaking process, see the *Minnesota Guidebook to State Agency Services*.

The *State Register* features partial and cumulative listings of rules in this section on the following schedule: issues 1-13 inclusive; issues 14-25 inclusive; issue 26, cumulative for issues 1-26; issues 27-38 inclusive; issue 39, cumulative for 1-39; issues 40-51 inclusive; and issue 52, cumulative for 1-52. An annual subject matter index for rules appears in August. For copies of the *State Register*, a subscription, the annual index, the *Minnesota Rules* or the *Minnesota Guidebook to State Agency Services*, contact the Print Communications Division, 117 University Avenue, St. Paul, MN 55155 (612) 297-3000 or toll-free in Minnesota 1-800-657-3757.

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Proposed Rules

Pursuant to Minn. Stat. §14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Crime Victims Reparations Board

Proposed Permanent Rules Relating to Crime Victims Reparations Board

Notice of Intent to Adopt Rules Amendment Without a Public Hearing

NOTICE IS HEREBY GIVEN that The Minnesota Crime Victims Reparations Board intends to adopt an amendment to the above captioned permanent rules without a public hearing following the procedures set forth in the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28. You have 30 days to submit written comments on the proposed rules and may also submit a written request that a hearing be held on the rules.

Agency Contact Person. Comments or questions on the rules and written requests for a public hearing on the rules must be submitted to: Marie Bibus, Executive Director, Crime Victims Reparations Board, 444 Cedar Street, Town Square, Suite 100D, St. Paul, Minnesota 55101, 282-6267.

Subject Of Rules And Statutory Authority. The proposed rules amendment will clarify existing rules relating to claims procedures and eligibility for reparations. The statutory authority to adopt this rule amendment is *Minnesota Statutes*, section 611A.56, subdivision 1, paragraph (b). These amendments are based on the experiences of the Board in implementing *Minnesota Statutes*, sections 611A.51 to 611A.67. The proposed rules amendment amends *Minnesota Rules* chapter 7505. A copy of the proposed rules amendment is published in the *State Register*. A free copy of the rules is available upon request from Marie Bibus at the address and telephone number listed above.

Comments. You have until 4:30 p.m., Thursday, January 12, 1996, to submit written comment in support of or in opposition to the proposed rules or any part or subpart of the rules. Your comment must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

Request For A Hearing. In addition to submitting comments, you may also request that a hearing be held on the rules. Your request for a public hearing must be in writing and must be received by the agency contact person by 4:30 p.m. on January 12, 1996. Your written request for a public hearing must include your name and address. You are encouraged to identify the portion of the proposed rules which caused your request, the reason for the request, and any changes you want made to the proposed rules. If 25 or more persons submit a written request for a hearing, a public hearing will be held unless a sufficient number withdraw their requests in writing. If a public hearing is required, the Crime Victims Reparations Board will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20.

Modifications. The proposed rules may be modified as a result of public comment. The modifications must be supported by data and views submitted to the Crime Victims Reparations Board and may not result in a substantial change in the proposed rules as printed in the *State Register*. If the proposed rules affect you in any way, you are encouraged to participate in the rulemaking process.

Statement Of Need And Reasonableness. A Statement of Need and Reasonableness is now available. This Statement describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules. A free copy of the Statement may be obtained from Marie Bibus at the address and telephone number listed above.

Small Business Considerations. In preparing these rules, the Board has considered the requirements of *Minnesota Statutes*, section 14.115, in regard to the impact of the proposed rules on small businesses. The adoption of the rules will not directly affect small businesses.

Expenditure Of Public Money By Local Public Bodies. Pursuant to *Minnesota Statutes*, section 14.11, subdivision 1, the Board has determined that the proposed rules amendment will not result in additional spending by local public bodies in excess of \$100,000 per year for the first two years following adoption of the amendment.

Impact On Agriculture Lands. Pursuant to *Minnesota Statutes*, section 14.11, subdivision 2, the Board has determined that the proposed rule amendment will have no impact on agricultural land.

Adoption And Review Of Rules. If no hearing is required, after the end of the comment period the Crime Victims Reparations Board may adopt the rules. The rules and supporting documents will then be submitted to the Attorney General for review as to legality and form to the extent form relates to legality. You may request to be notified of the date the rules are submitted to the Attorney General or be notified of the Attorney General's decision on the rules. If you wish to be so notified, or wish to receive a copy of the adopted rules, submit your request to Marie Bibus at the address and telephone number listed above.

Dated: 28 November 1995

Marie Bibus, Executive Director
Minnesota Crime Victims Reparations Board

Rules as Proposed

7505.3100 LOSS OF SUPPORT.

[For text of subs 1 to 3, see M.R.]

Subp. 4. **Three-year review.** The board shall review a claim for loss of support every three years to determine whether the claimant is still eligible for benefits. The board shall evaluate the claim giving consideration to the claimant's financial need and to the availability of funds to the board. If the claimant's gross annual income reported on the claimant's tax return for the prior year is more than 185 percent of the federal poverty level for that year, the claimant is not considered to have a continuing financial need and benefits must be discontinued. After benefits are discontinued, they cannot be resumed at a later time.

7505.3200 LOSS OF INCOME.

[For text of subpart 1, see M.R.]

Subp. 2. **Computation of lost income: victim self-employed or unemployed.** If the victim was self-employed or unemployed at the time of the crime for which the claim has been filed, loss of income must be calculated at a rate which is based upon the victim's average net income in the 12 months before the crime for which the claim was filed as evidenced by tax returns, W-2 forms, check stubs, ~~signed contracts or receipts~~, or other government agency records.

~~If the victim has not filed tax returns for the year before the crime, the victim's net income is presumed to be no greater than the maximum yearly income for which no federal or state income tax filing is required. The board shall deny an award for lost wages when it is determined the victim failed to report those wages upon which the loss is based to state or federal revenue departments as required by law. No compensation may be provided for unreported wages.~~

No anticipated work may be considered for compensation, unless the victim had been hired by an employer and was unable to begin employment as a result of the crime-related injuries.

[For text of subs 2a to 4, see M.R.]

Subp. 5. **Maximum number of weeks.** Compensation for loss of income usually may not exceed 26 weeks. If the victim's disability continues past 26 weeks, the victim may request an extension for up to 13 additional weeks. This request must include an evaluation by a physician that states continuing disability and explains any extenuating circumstances.

Subp. 6. **Maximum number of hours.** The board may not compensate for hours missed in excess of 40 hours per week.

Subp. 7. **Parent and spouse of deceased.** Payment of wage loss compensation for a parent or spouse of a victim who died as the direct result of a crime usually may not exceed six weeks. If the emotional disability of the parent or spouse continues past six weeks, the parent or spouse may make a request for an extension of the lost wages. The request must include an evaluation by a

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Proposed Rules

physician or psychologist stating that there is a continuing emotional disability due to the crime and a date by which the claimant is expected to return to work. The extension may not exceed 20 weeks.

Subp. 8. Students. The board must not reimburse a claimant for loss of tuition, scholarship, or student loan funds or loss of income due to a delay in completion of schooling related to the crime.

7505.3500 PARENTS OF CHILD VICTIMS.

The board shall authorize payment for up to five counseling sessions for a parent who is a primary caretaker of a victim of domestic child abuse or child sexual assault, if the treatment plan filed under and complying with part 7505.2700 indicates that the sessions directly benefit the victim.

When ~~home health~~ care is needed by a victim ~~who is less than 21 years old~~ and when a determination is made by the board that a parent or any other guardian of the victim is an appropriate person to provide care to the victim, the board shall authorize payment ~~to the parent of \$10 an hour for up to eight hours per day to reimburse the parent for care which is provided lost wages.~~ Total payment to a parent under this provision must not exceed \$2,000. Computation of lost wages shall be the same as under part 7505.3200.

EFFECTIVE DATE. Minnesota Rules, parts 7505.0100, subpart 2a; 7505.3100, subparts 1 and 4; 7505.3200, subparts 2 and 5 to 8; and 7505.3500, are effective for claims submitted as a result of crimes committed on or after five working days after notice of adoption is published in the State Register.

Department of Health

Proposed Permanent Rules Governing the Registration of Occupational Therapists and Occupational Therapy Assistants

Dual Notice:

Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and

Notice of Hearing if 25 or More Requests for Hearing Are Received

Introduction. The Minnesota Department of Health intends to adopt permanent rules without a public hearing following the procedures set forth in the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28. If, however, 25 or more persons submit a written request for a hearing on the rules within 30 days or by 4:30 p.m. on January 10, 1996, a public hearing will be held on January 26, 1996. To find out whether the rules will be adopted without a hearing or if the hearing will be held, you should contact the agency contact person after January 10, 1996 and before January 26, 1996.

Agency Contact Person. Comments or questions on the rule and written requests for a public hearing on the rules must be submitted to:

Annette Spencer
Health Occupations Program
Minnesota Department of Health
121 East Seventh Place, Suite 450
P.O. Box 64975
St. Paul, MN 55164-0975
(612) 282-5624
fax (612) 282-3839

TDD users may call the Minnesota Department of Health at (612) 623-5522.

Accommodation. If you need reasonable accommodation for a disability in order to participate in the hearing process, such an accommodation can be made available upon advance request. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. To arrange an accommodation, you may contact Annette Spencer at the address or telephone number listed above. TDD users may call the Minnesota Department of Health at (612) 623-5522.

Subject of Rules and Statutory Authority. The proposed rules are about the registration of occupational therapists and occupational therapy assistants. The statutory authority to adopt the rules is *Minnesota Statutes*, section 214.13. A copy of the proposed rules is published in the *State Register* and attached to this Notice as mailed. The rules propose to establish a registration system for occupational therapists and occupational therapy assistants. The registration system includes requirements and procedures for registration and registration renewal, continuing education requirements, and grounds for discipline. The rules also address supervi-

sion of occupational therapy assistants and delegation of duties. Requirements for communication with licensed health care professionals and a required client notification are established. Standards for the use of physical agent modalities are also established. Finally, the rules establish a fee schedule for the registration system and an advisory council. A free copy of the rules is available upon request from Annette Spencer at the address or telephone number listed above.

Comments. You have until 4:30 p.m., January 10, 1996 to submit written comment in support of or in opposition to the proposed rules or any part or subpart of the rules. Your comment must be in writing and received by Annette Spencer at the address listed above by the due date. Comment is encouraged. Your comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

Request For A Hearing. In addition to submitting comments, you may also request that a hearing be held on the rules. Your request for a public hearing must be in writing and must be received by Annette Spencer at the address listed above by 4:30 p.m. on January 10, 1996. Your written request for a public hearing must include your name, address, and telephone number. You are encouraged to identify the portion of the proposed rules which caused your request, the reason for the request, and any changes you want made to the proposed rules. If 25 or more persons submit a written request for a hearing, a public hearing will be held unless a sufficient number withdraw their requests in writing.

Modifications. The proposed rules may be modified, either as a result of public comment or as a result of the rule hearing process. Modifications must not result in a substantial change in the proposed rules as attached and printed in the *State Register* and must be supported by data and views submitted to the Department or presented at the hearing. If the proposed rules affect you in any way, you are encouraged to participate in the rulemaking process.

Cancellation Of Hearing. The hearing scheduled for January 26, 1996 will be canceled if the Department does not receive requests from 25 or more persons that a hearing be held on the rules. If you request a public hearing, the Department will notify you before the scheduled hearing whether or not the hearing will be held. You may also call Annette Spencer at (612) 282-5624 after January 10, 1996 to find out whether the hearing will be held.

Notice Of Hearing. If 25 or more persons submit written requests for a public hearing on the rules, a hearing will be held following the procedures in *Minnesota Statutes*, sections 14.131 to 14.20. The hearing will be held on Friday, January 26, 1996 in Room D, 5th Floor, Veterans Service Building, 20 West 12th Street, St. Paul, Minnesota 55155 beginning at 9:00 a.m. and will continue until all interested persons have been heard. The hearing will continue, if necessary, at additional times and places as determined during the hearing by the Administrative Law Judge. The Administrative Law Judge assigned to conduct the hearing is Allan W. Klein. Judge Klein can be reached at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota 55401-2138, telephone (612) 341-7609. If you need an accommodation to make this hearing accessible, please contact Annette Spencer at the address or telephone number listed above.

Hearing Procedure. If a hearing is held, you and all interested or affected persons including representatives of associations or other interested groups, will have an opportunity to participate. You may present your views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should relate to the proposed rules. You may also mail written material to the Administrative Law Judge to be recorded in the hearing record for five working days after the public hearing ends. This five-day comment period may be extended for a longer period not to exceed 20 calendar days if ordered by the Administrative Law Judge at the hearing. Comments received during this period will be available for review at the Office of Administrative Hearings. You and the Department may respond in writing with rebuttal arguments or material within five business days after the submission period ends to any new information submitted after the hearing. All written materials and responses submitted to the Administrative Law Judge during the rebuttal period must be received at the Office Of Administrative Hearings no later than 4:30 p.m. on the due date. No additional evidence may be submitted during the five-day rebuttal period. This rule hearing procedure is governed by *Minnesota Rules*, parts 1400.0200 to 1400.1200, and *Minnesota Statutes*, sections 14.131 to 14.20. Questions about procedure may be directed to the Administrative Law Judge.

Statement Of Need And Reasonableness. A Statement of Need and Reasonableness is now available. This Statement describes the need for and reasonableness of each provision of the proposed rules. It also includes a summary of all the evidence and argument which the Department anticipates presenting at the hearing, if one is held. A free copy of the Statement may be obtained from Annette Spencer at the address or telephone number listed above. The Statement may also be reviewed and copies obtained at the cost of reproduction from the Office of Administrative Hearings.

Small Business Considerations. In preparing these rules, the Department has considered the requirements of *Minnesota Statutes*, section 14.115, in regard to the impact of the proposed rules on small businesses. The adoption of the rules will not

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directly affect small businesses. The Department's evaluation of the small business requirements and of legislation which reduces the impact of registration of occupational therapist and occupational therapy assistants on businesses is addressed further in the Statement of Need and Reasonableness.

Expenditure Of Public Money By Local Public Bodies. *Minnesota Statutes*, section 14.11, subdivision 1, does not apply because adoption of these rules will not result in additional spending by local public bodies in excess of \$100,000 per year for the first two years following adoption of the rules.

Impact On Agriculture Lands. *Minnesota Statutes*, section 14.11, subdivision 2, does not apply because adoption of these rules will not have an impact on agricultural land.

Notice To Department Of Finance. In accordance with *Minnesota Statutes*, section 16A.1285, subdivision 5, pertaining to departmental charges, the Department has notified the Commissioner of Finance of the Department's intent to adopt rules in the above-entitled matter. A copy of the Department's notice and the Commissioner of Finance's comments and recommendations are included in the Statement of Need and Reasonableness.

Notice To Chairs Of Certain Legislative Committees. In accordance with *Minnesota Statutes*, section 16A.1285, subdivision 4, the Department has sent a copy of this notice and a copy of the proposed rules to the Chairs of the House Ways And Means Committee and the Senate Finance Committee prior to submitting this notice to the *State Register*.

Lobbyist Registration. *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the Ethical Practices Board. Questions regarding this requirement should be directed to the Ethical Practices Board at First Floor South, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone (612) 296-5148 or 1-800-657-3889.

Adoption Procedure If No Hearing. If no hearing is required, after the end of the comment period the Department may adopt the rules. The rules and supporting documents will then be submitted to the Attorney General for review as to legality and form to the extent form relates to legality. You may request to be notified of the date the rules are submitted to the Attorney General or be notified of the Attorney General's decision on the rules. If you want to be so notified, or wish to receive a copy of the adopted rules, submit your request in writing to Annette Spencer at the address listed above.

Adoption Procedure After A Hearing. If a hearing is held, after the close of the hearing record, the Administrative Law Judge will issue a report on the proposed rules. You may request to be notified of the date on which the Administrative Law Judge's report will be available, after which date the Department may not take any final action on the rules for a period of five working days. If you want to be notified about the report, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. You may also request notification of the date on which the rules are adopted and filed with the Secretary of State. The Department's Notice Of Adoption must be mailed on the same day that the rules are filed. If you want to be notified of the adoption, you may so indicate at the hearing or send a request in writing to Annette Spencer at the address listed above at any time prior to the filing of the rules with the Secretary of State.

Dated: 9 November 1995

Anne M. Barry, Commissioner
Department of Health

Rules as Proposed (all new material)

4666.0010 SCOPE.

Parts 4666.0010 to 4666.1400 apply to persons who are applicants for registration, who are registered, who use protected titles, or who represent that they are registered as occupational therapists or occupational therapy assistants.

4666.0020 DEFINITIONS.

Subpart 1. **Scope.** For the purpose of parts 4666.0010 to 4666.1400, the following terms have the meaning given them.

Subp. 2. **Advisory council.** "Advisory council" means the occupational therapy practitioners advisory council authorized by *Minnesota Statutes*, section 214.13, subdivision 4.

Subp. 3. **Assign.** "Assign" means the process of instructing direct service staff how to perform a selected task which, under established practice standards, does not require the skills of an occupational therapist or occupational therapy assistant, with the expectation that the task will be performed in the absence of an occupational therapist.

Subp. 4. **Biennial registration period.** "Biennial registration period" means the two-year period for which registration is effective.

Subp. 5. **Commissioner.** "Commissioner" means the commissioner of the Minnesota Department of Health or a designee.

Subp. 6. **Contact hour.** "Contact hour" means an instructional session of 60 consecutive minutes, excluding coffee breaks, registration, meals without a speaker, and social activities.

Subp. 7. **Credential.** "Credential" means a license, permit, certification, registration, or other evidence of qualification or authorization to engage in the practice of occupational therapy issued by any authority.

Subp. 8. **Credentialing examination for occupational therapist.** "Credentialing examination for occupational therapist" means the examination sponsored by the American Occupational Therapy Certification Board for credentialing as an occupational therapist, registered, or another credentialing examination for occupational therapists approved by the commissioner.

Subp. 9. **Credentialing examination for occupational therapy assistant.** "Credentialing examination for occupational therapy assistant" means the examination sponsored by the American Occupational Therapy Certification Board for credentialing as a certified occupational therapy assistant, or another credentialing examination for occupational therapy assistants approved by the commissioner.

Subp. 10. **Delegate.** "Delegate" means to transfer to an occupational therapy assistant the authority to perform selected portions of an occupational therapy evaluation or treatment plan for a specific patient.

Subp. 11. **Direct supervision.** "Direct supervision" of a level one practitioner or an occupational therapy assistant using physical agent modalities means that the level two practitioner has evaluated the patient and determined a need for use of a particular physical agent modality in the occupational therapy treatment plan, has determined the appropriate physical agent modality application procedure, and is physically present in the department and available for in person intervention while treatment is provided.

Subp. 12. **Electrical stimulation device.** "Electrical stimulation device" is any device which generates pulsed, direct, or alternating electrical current for the purposes of rehabilitation of neuromusculoskeletal dysfunction.

Subp. 13. **Electrotherapy.** "Electrotherapy" is the use of electrical stimulation devices for a therapeutic purpose.

Subp. 14. **Level one practitioner.** "Level one practitioner" means an occupational therapist who is qualified to use superficial physical agent modalities, electrical stimulation devices, or ultrasound devices following completion of the theoretical training required in part 4666.1000, subpart 3, 4, or 5, and who uses the modality under the direct supervision of a level two practitioner.

Subp. 15. **Level two practitioner.** "Level two practitioner" means an occupational therapist who is qualified to use superficial physical agent modalities, electrical stimulation devices, or ultrasound without supervision following completion of the requirements in part 4666.1000, subpart 6, 7, or 8.

Subp. 16. **Licensed health care professional.** "Licensed health care professional" means a person licensed in good standing in Minnesota to practice medicine, osteopathy, chiropractic, podiatry, or dentistry.

Subp. 17. **Limited registration.** "Limited registration" means a method of registration described in part 4666.0400, subpart 3, item D, subitem (1), for persons who have allowed their registration to lapse four years or more and who choose a supervised practice as the method of qualifying for registration.

Subp. 18. **Occupational therapist.** Except as provided in part 4666.0060, subpart 3, item B, "occupational therapist" means an individual who meets the qualifications in parts 4666.0010 to 4666.1400 and registers with the commissioner. For purposes of part 4666.0060, subpart 3, item B, occupational therapist means the employment title of a natural person before the effective date of parts 4666.0010 to 4666.1400.

Subp. 19. **Occupational therapy.** "Occupational therapy" means the use of purposeful activity to maximize the independence and the maintenance of health of an individual who is limited by a physical injury or illness, a cognitive impairment, a psychosocial dysfunction, a mental illness, a developmental or learning disability, or an adverse environmental condition. The practice encompasses evaluation, assessment, treatment, and consultation. Occupational therapy services may be provided individually, in groups, or through social systems. Occupational therapy includes those services described in part 4666.0040.

Subp. 20. **Occupational therapy assistant.** Except as provided in part 4666.0070, subpart 3, item B, "occupational therapy assistant" means an individual who meets the qualifications for an occupational therapy assistant in parts 4666.0010 to 4666.1400, and registers with the commissioner. For purposes of part 4666.0070, subpart 3, item B, occupational therapy assistant means the employment title of a natural person before the effective date of parts 4666.0010 to 4666.1400.

Subp. 21. **Physical agent modalities.** "Physical agent modalities" means modalities that use the properties of light, water, temperature, sound, or electricity to produce a response in soft tissue. The physical agent modalities referred to in parts 4666.0040 and 4666.1000 are superficial physical agent modalities, electrical stimulation devices, and ultrasound.

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Subp. 22. **Provisional registration.** "Provisional registration" means a method of registration described in part 4666.0060, subpart 3, for occupational therapists and part 4666.0070, subpart 3, for occupational therapy assistants, in effect for a limited time, by which an individual who has not completed an accredited or approved education program but who meets the employment requirements specified in those subparts may qualify for registration pending successful completion of the credentialing examination.

Subp. 23. **Qualified supervisor.** "Qualified supervisor" means the supervisor of an applicant for provisional registration, under part 4666.0060, subpart 3, who:

A. supervises occupational therapists, or before the adoption of parts 4666.0010 to 4666.1400, supervised persons certified as occupational therapists by the American Occupational Therapy Certification Board; or

B. is licensed by the Board of Medical Practice, the Board of Nursing, or the Board of Teaching and is knowledgeable of occupational therapy evaluations, intervention planning, and therapeutic procedures; or

C. the commissioner determines has sufficient knowledge of occupational therapy evaluations, intervention planning, and therapeutic procedures to assess the extent to which the applicant has performed these tasks.

Subp. 24. **Register or registered.** "Register" or "registered" means the act or status of a natural person who meets the requirements of parts 4666.0010 to 4666.1400 and is authorized by the commissioner to use the titles in part 4666.0030.

Subp. 25. **Registrant.** "Registrant" means a person who meets the requirements of parts 4666.0010 to 4666.1400 and is authorized by the commissioner to use the titles in part 4666.0030.

Subp. 26. **Registration.** "Registration" means a system in which practitioners, who are the only individuals permitted to use the designated titles in part 4666.0030, are listed on an official roster after having met predetermined qualifications.

Subp. 27. **Registration by equivalency.** "Registration by equivalency" means a method of registration described in part 4666.0080 by which an individual who possesses a credential from the American Occupational Therapy Certification Board or another national credentialing organization approved by the commissioner may qualify for registration.

Subp. 28. **Registration by reciprocity.** "Registration by reciprocity" means a method of registration described in part 4666.0090 by which an individual who possesses a credential from another jurisdiction may qualify for Minnesota registration.

Subp. 29. **Service competency.** "Service competency" of an occupational therapy assistant in performing evaluation tasks means the ability of an occupational therapy assistant to obtain the same information as the supervising occupational therapist when evaluating a client's function.

Service competency of an occupational therapy assistant in performing treatment procedures means the ability of an occupational therapy assistant to perform treatment procedures in a manner such that the outcome, documentation, and follow-up are equivalent to that which would have been achieved had the supervising occupational therapist performed the treatment procedure.

Service competency of an occupational therapist means the ability of an occupational therapist to consistently perform an assessment task or intervention procedure with the level of skill recognized as satisfactory within the appropriate acceptable prevailing practice of occupational therapy.

Subp. 30. **Superficial physical agent modality.** "Superficial physical agent modality" means a therapeutic medium which produces temperature changes in skin and underlying subcutaneous tissues within a depth of zero to three centimeters for the purposes of rehabilitation of neuromusculoskeletal dysfunction. Superficial physical agent modalities may include, but are not limited to: paraffin baths, hot packs, cold packs, fluidotherapy, contrast baths, and whirlpool baths. Superficial physical agent modalities do not include the use of electrical stimulation devices, ultrasound, or quick icing.

Subp. 31. **Temporary registration.** "Temporary registration" means a method of registration described in part 4666.0100, by which an individual who (1) has completed an approved education program but has not met the examination requirement; or (2) possesses a credential from another jurisdiction or the American Occupational Therapy Certification Board but who has not submitted the documentation required by part 4666.0200, subparts 3 and 4, may qualify for Minnesota registration for a limited time period.

Subp. 32. **Ultrasound device.** "Ultrasound device" means a device intended to generate and emit high frequency acoustic vibrational energy for the purposes of rehabilitation of neuromusculoskeletal dysfunction.

4666.0030 PROTECTED TITLES AND RESTRICTIONS ON USE; EXEMPT PERSONS; SANCTIONS.

Subpart 1. **Protected titles and restrictions on use.** Use of the phrase "occupational therapy" or "occupational therapist," or the initials "O.T." alone or in combination with any other words or initials to form an occupational title, or to indicate or imply that the person is registered by the state as an occupational therapist or occupational therapy assistant, is prohibited unless that person is registered under parts 4666.0010 to 4666.1400.

Subp. 2. **Use of "Minnesota registered."** Use of the term "Minnesota registered" in conjunction with titles protected under this part by any person is prohibited unless that person is registered under parts 4666.0010 to 4666.1400.

Subp. 3. **Persons licensed or certified in other states.** Persons who are registered in Minnesota and licensed or certified in another state may use the designation "licensed" or "certified" with a protected title only if the state of licensure or certification is clearly indicated.

Subp. 4. **Exempt persons.** Subpart 1 does not apply to:

A. a person employed as an occupational therapist or occupational therapy assistant by the government of the United States or any agency of it. However, use of the protected titles under those circumstances is allowed only in connection with performance of official duties for the federal government;

B. a student participating in supervised fieldwork or supervised coursework that is necessary to meet the requirements of part 4666.0060, subpart 1, or 4666.0070, subpart 1, if the person is designated by a title which clearly indicates the person's status as a student trainee. Any use of the protected titles under these circumstances is allowed only while the person is performing the duties of the supervised fieldwork or supervised coursework; or

C. a person performing occupational therapy services in the state, if the services are performed no more than 30 days in a calendar year in association with an occupational therapist registered under parts 4666.0010 to 4666.1400, and:

(1) the person is credentialed under the law of another state which has credentialing requirements at least as stringent as the requirements of parts 4666.0010 to 4666.1400; or

(2) the person meets the requirements for certification as an occupational therapist registered (OTR) or a certified occupational therapy assistant (COTA), established by the American Occupational Therapy Certification Board or another national credentialing organization approved by the commissioner.

Subp. 5. **Sanctions.** Persons who hold themselves out as occupational therapists or occupational therapy assistants by or through the use of any title provided in subpart 1 without prior registration according to parts 4666.0010 to 4666.1400 are subject to sanctions or action against continuing the activity according to *Minnesota Statutes*, chapter 214, or other statutory authority.

4666.0040 SCOPE OF PRACTICE.

The practice of occupational therapy by an occupational therapist or occupational therapy assistant includes, but is not limited to, intervention directed toward:

A. assessment and evaluation, including the use of skilled observation or the administration and interpretation of standardized or nonstandardized tests and measurements, to identify areas for occupational therapy services;

B. providing for the development of sensory integrative, neuromuscular, or motor components of performance;

C. providing for the development of emotional, motivational, cognitive, or psychosocial components of performance;

D. developing daily living skills;

E. developing feeding and swallowing skills;

F. developing play skills and leisure capacities;

G. enhancing educational performance skills;

H. enhancing functional performance and work readiness through exercise, range of motion, and use of ergonomic principles;

I. designing, fabricating, or applying rehabilitative technology, such as selected orthotic and prosthetic devices, and providing training in the functional use of these devices;

J. designing, fabricating, or adapting assistive technology and providing training in the functional use of assistive devices;

K. adapting environments using assistive technology such as environmental controls, wheelchair modifications, and positioning;

L. employing physical agent modalities, in preparation for or as an adjunct to purposeful activity, within the same treatment session or to meet established functional occupational therapy goals, consistent with the requirements of part 4666.1000; and

M. promoting health and wellness.

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4666.0050 REGISTRATION REQUIREMENTS; PROCEDURES AND QUALIFICATIONS.

An applicant for registration must comply with the general registration procedures in part 4666.0200. To qualify for registration, an applicant must satisfy one of the requirements in items A to E and not be subject to denial of registration under part 4666.1300.

A. A person who applies for registration as an occupational therapist and who has not been credentialed by the American Occupational Therapy Certification Board or another jurisdiction must meet the requirements in part 4666.0060.

B. A person who applies for registration as an occupational therapy assistant and who has not been credentialed by the American Occupational Therapy Certification Board or another jurisdiction must meet the requirements in part 4666.0070.

C. A person who is certified by the American Occupational Therapy Certification Board may apply for registration by equivalency and must meet the requirements in part 4666.0080.

D. A person who is credentialed in another jurisdiction may apply for registration by reciprocity and must meet the requirements in part 4666.0090.

E. A person who applies for temporary registration must meet the requirements in part 4666.0100.

4666.0060 QUALIFICATIONS FOR OCCUPATIONAL THERAPIST.

Subpart 1. Education required.

A. An applicant who has received professional education in the United States or its possessions or territories must successfully complete all academic and fieldwork requirements of an educational program for occupational therapists accredited by the Accreditation Council for Occupational Therapy Education or another national accrediting organization approved by the commissioner.

B. An applicant who has received professional education outside the United States or its possessions or territories must successfully complete all academic and fieldwork requirements of an educational program for occupational therapists approved by a member association of the World Federation of Occupational Therapists or another organization approved by the commissioner.

Subp. 2. Qualifying examination score required.

A. An applicant must achieve a qualifying score on the credentialing examination for occupational therapist.

B. The commissioner shall determine the qualifying score for the credentialing examination for occupational therapist. In determining the qualifying score, the commissioner shall consider the cut score recommended by the American Occupational Therapy Certification Board, or other national credentialing organization approved by the commissioner, using the modified Angoff method for determining cut score or another method for determining cut score that is recognized as appropriate and acceptable by industry standards.

C. The applicant is responsible for:

- (1) making arrangements to take the credentialing examination for occupational therapist;
- (2) bearing all expenses associated with taking the examination; and
- (3) having the examination scores sent directly to the commissioner from the testing service that administers the examination.

Subp. 3. Waiver of education requirement.

A. This subpart is effective as long as the American Occupational Therapy Certification Board allows the commissioner to authorize persons to take the certification examination for state registration only or for three years after the effective dates of parts 4666.0010 to 4666.1400, whichever occurs first.

B. A person who has been employed as an occupational therapist for at least 4,000 hours during the six years immediately preceding the effective date of parts 4666.0010 to 4666.1400 may apply to the commissioner to take the credentialing examination for occupational therapist without meeting the education requirements of subpart 1. A person employed as an occupational therapy assistant does not qualify for registration under this subpart. The commissioner shall determine whether the applicant was employed as an occupational therapist based on the information provided under item C, subitems (1) and (2). A person granted permission to take the credentialing examination for occupational therapist will be issued a provisional registration. Provisional registration must be renewed annually. All provisional registrations will expire three years after the effective date of parts 4666.0010 to 4666.1400 or when the commissioner grants or denies registration, whichever occurs first. If the applicant passes the credentialing examination for occupational therapist within three years of the effective date of parts 4666.0010 to 4666.1400, the commissioner shall waive the education requirement of subpart 1.

C. To qualify to take the examination, a person must:

- (1) submit the application materials required by part 4666.0200 and the fees required by part 4666.1200; and

(2) obtain documentation from a qualified supervisor on forms provided by the commissioner that verifies that the applicant has been employed as an occupational therapist for at least 4,000 hours during the six years immediately preceding the effective date of parts 4666.0010 to 4666.1400. This documentation must include the applicant's job title, employment setting, diagnoses of persons seen for occupational therapy, and the type and frequency of evaluations, intervention planning, and therapeutic procedures.

D. When the commissioner has authorized an applicant under this subpart to take the credentialing examination, the applicant is responsible for:

- (1) making all arrangements to take the credentialing examination for occupational therapists;
- (2) bearing all expense associated with taking the examination; and
- (3) having the examination scores sent directly to the commissioner from the testing service that administers the examination.

E. The effective date of parts 4666.0010 to 4666.1400 is the first day of the three-year provisional registration period. Applications for registration under this subpart will not be accepted after the expiration of the three-year provisional registration period.

4666.0070 QUALIFICATIONS FOR OCCUPATIONAL THERAPY ASSISTANTS.

Subpart 1. **Education required.** An applicant must successfully complete all academic and fieldwork requirements of an occupational therapy assistant program approved or accredited by the Accreditation Council for Occupational Therapy Education or another national accrediting organization approved by the commissioner.

Subp. 2. Qualifying examination score required.

A. An applicant for registration must achieve a qualifying score on the credentialing examination for occupational therapy assistants.

B. The commissioner shall determine the qualifying score for the credentialing examination for occupational therapy assistants. In determining the qualifying score, the commissioner shall consider the cut score recommended by the American Occupational Therapy Certification Board, or other national credentialing organization approved by the commissioner, using the modified Angoff method for determining cut score or another method for determining cut score that is recognized as appropriate and acceptable by industry standards.

C. The applicant is responsible for:

- (1) making all arrangements to take the credentialing examination for occupational therapy assistants;
- (2) bearing all expense associated with taking the examination; and
- (3) having the examination scores sent directly to the commissioner from the testing service that administers the examination.

Subp. 3. Waiver of education requirement.

A. This subpart is effective as long as the American Occupational Therapy Certification Board allows the commissioner to authorize persons to take the certification examination for state registration only or for three years after the effective dates of parts 4666.0010 to 4666.1400, whichever occurs first.

B. A person who has been employed as an occupational therapy assistant for at least 4,000 hours during the six years immediately preceding the effective date of parts 4666.0010 to 4666.1400 may apply to the commissioner to take the credentialing examination for occupational therapy assistant without meeting the education requirements of subpart 1. The commissioner shall determine whether the applicant was employed as an occupational therapy assistant based on the information provided under item C, subitems (1) and (2). A person granted permission to take the credentialing examination for occupational therapy assistant will be issued a provisional registration. Provisional registration must be renewed annually. All provisional registrations will expire three years after the effective date of parts 4666.0010 to 4666.1400, or when the commissioner grants or denies registration, whichever occurs first. If the applicant passes the credentialing examination for occupational therapy assistant within three years of the effective date of parts 4666.0010 to 4666.1400, the commissioner shall waive the education requirement of subpart 1.

C. To qualify to take the examination, a person must:

- (1) submit the application materials required by part 4666.0200 and the fees required by part 4666.1200; and

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(2) obtain documentation from an occupational therapist on forms provided by the commissioner that verifies that the applicant has been employed as an occupational therapy assistant for at least 4,000 hours during the six years immediately preceding the effective date of parts 4666.0010 to 4666.1400. This documentation must include the applicant's job title, employment setting, diagnoses of persons seen for occupational therapy, and the type and frequency of occupational therapy services provided by the applicant.

D. When the commissioner has authorized an applicant under this part to take the credentialing examination, the applicant is responsible for:

- (1) making all arrangements to take the credentialing examination for occupational therapy assistants;
- (2) bearing all expense associated with taking the examination; and
- (3) having the examination scores sent directly to the commissioner from the testing service that administers the examination.

E. The effective date of parts 4666.0010 to 4666.1400 is the first day of the three-year provisional registration period. Applications for registration under this subpart will not be accepted after the expiration of the three-year provisional registration period.

4666.0080 REGISTRATION BY EQUIVALENCY.

Subpart 1. **Persons certified by American Occupational Therapy Certification Board before effective date of parts 4666.0010 to 4666.1400.** Persons certified by the American Occupational Therapy Certification Board as an occupational therapist before the effective date of parts 4666.0010 to 4666.1400 may apply for registration by equivalency for occupational therapist. Persons certified by the American Occupational Therapy Certification Board as an occupational therapy assistant before the effective date of parts 4666.0010 to 4666.1400 may apply for registration by equivalency for occupational therapy assistant.

Subp. 2. **Persons certified by American Occupational Therapy Certification Board after effective date of parts 4666.0010 to 4666.1400.** The commissioner may register any person certified by the American Occupational Therapy Certification Board as an occupational therapist after the effective dates of parts 4666.0010 to 4666.1400, if the commissioner determines the requirements for certification are equivalent to or exceed the requirements for registration as an occupational therapist under part 4666.0060. The commissioner may register any person certified by the American Occupational Therapy Certification Board as an occupational therapy assistant after the effective dates of parts 4666.0010 to 4666.1400, if the commissioner determines the requirements for certification are equivalent to or exceed the requirements for registration as an occupational therapy assistant under part 4666.0070. Nothing in this part limits the commissioner's authority to deny registration based upon the grounds for discipline in parts 4666.0010 to 4666.1400.

Subp. 3. **Application procedures.** Applicants for registration by equivalency must provide:

- A. the application materials as required by part 4666.0200, subparts 1, 3, and 4; and
- B. the fees required by part 4666.1200.

4666.0090 REGISTRATION BY RECIPROCIITY.

A person who holds a current credential as an occupational therapist in the District of Columbia or a state or territory of the United States whose standards for credentialing are determined by the commissioner to be equivalent to or exceed the requirements for registration under parts 4666.0060 may be eligible for registration by reciprocity as an occupational therapist. A person who holds a current credential as an occupational therapy assistant in the District of Columbia or a state or territory of the United States whose standards for credentialing are determined by the commissioner to be equivalent to or exceed the requirements for registration under part 4666.0070 may be eligible for registration by reciprocity as an occupational therapy assistant. Nothing in this part limits the commissioner's authority to deny registration based upon the grounds for discipline in parts 4666.0010 to 4666.1400. An applicant must provide:

- A. the application materials as required by part 4666.0200, subparts 1, 3, and 4;
- B. the fees required by part 4666.1200;
- C. a copy of a current and unrestricted credential for the practice of occupational therapy as either an occupational therapist or occupational therapy assistant;
- D. a letter from the jurisdiction that issued the credential describing the applicant's qualifications that entitled the applicant to receive the credential; and
- E. other information necessary to determine whether the credentialing standards of the jurisdiction that issued the credential are equivalent to or exceed the requirements for registration under parts 4666.0010 to 4666.1400.

4666.0100 TEMPORARY REGISTRATION.

Subpart 1. **Application.** The commissioner may issue temporary registration as an occupational therapist or occupational therapy assistant to applicants who have applied for registration under part 4666.0060, subparts 1 and 2, 4666.0070, subparts 1 and 2, 4666.0080, or 4666.0090 and who are not the subject of a pending investigation or disciplinary action or past disciplinary action, nor disqualified for any other reason.

Subp. 2. **Procedures.** To be eligible for temporary registration, an applicant must submit the application materials required by part 4666.0200, subpart 1, the fees required by part 4666.1200, and:

A. evidence of successful completion of the requirements in part 4666.0060, subpart 1, or 4666.0070, subpart 1;

B. a copy of a current and unrestricted credential for the practice of occupational therapy as either an occupational therapist or occupational therapy assistant in another jurisdiction; or

C. a copy of a current and unrestricted certificate from the American Occupational Therapy Certification Board stating that the applicant is certified as an occupational therapist or occupational therapy assistant.

Subp. 3. **Additional documentation.** Persons who are credentialed by the American Occupational Therapy Certification Board or another jurisdiction must provide an affidavit with the application for temporary registration stating that they are not the subject of a pending investigation or disciplinary action and have not been the subject of a disciplinary action in the past.

Subp. 4. **Supervision required.** An applicant who has graduated from an accredited occupational therapy program, as required by part 4666.0060, subpart 1, or 4666.0070, subpart 1, and who has not passed the examination required by part 4666.0060, subpart 2, or 4666.0070, subpart 2, must practice under the supervision of a registered occupational therapist. The supervising therapist must, at a minimum, supervise the person working under temporary registration in the performance of the initial evaluation, determination of the appropriate treatment plan, and periodic review and modification of the treatment plan. The supervising therapist must observe the person working under temporary registration in order to assure service competency in carrying out evaluation, treatment planning, and treatment implementation. The frequency of face-to-face collaboration between the person working under temporary registration and the supervising therapist must be based on the condition of each patient or client, the complexity of treatment and evaluation procedures, and the proficiencies of the person practicing under temporary registration. The occupational therapist or occupational therapy assistant working under temporary registration must provide verification of supervision on the application form provided by the commissioner.

Subp. 5. **Expiration of temporary registration.** A temporary registration issued to a person pursuant to subpart 2, item A, expires ten weeks after the next credentialing examination for occupational therapists and occupational therapy assistants or on the date the commissioner grants or denies registration, whichever occurs first. A temporary registration issued to a person pursuant to subpart 2, item B or C, expires 90 days after it is issued. A temporary registration may be renewed once to persons who have not met the examination requirement under part 4666.0060, subpart 2, or 4666.0070, subpart 2, within the initial temporary registration period. A temporary registration may be renewed once to persons who are able to demonstrate good cause for failure to meet the requirements for registration under part 4666.0080 or 4666.0090 within the initial temporary registration period.

4666.0200 GENERAL REGISTRATION PROCEDURES.

Subpart 1. **Applications for registration.** An applicant for registration must:

A. submit a completed application for registration on forms provided by the commissioner. The applicant must supply the information requested on the application, including:

- (1) the applicant's name, business address and business telephone number, business setting, and daytime telephone number;
- (2) the name and location of the occupational therapy program the applicant completed;
- (3) a description of the applicant's education and training, including a list of degrees received from educational institutions;
- (4) the applicant's work history for the six years preceding the application, including the number of hours worked;
- (5) a list of all credentials currently and previously held in Minnesota and other jurisdictions;
- (6) a description of any jurisdiction's refusal to credential the applicant;
- (7) a description of all professional disciplinary actions initiated against the applicant in any jurisdiction;

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(8) information on any physical or mental condition or chemical dependency that impairs the person's ability to engage in the practice of occupational therapy with reasonable judgment or safety;

(9) a description of any misdemeanor or felony conviction that relates to honesty or to the practice of occupational therapy;

(10) a description of any state or federal court order, including a conciliation court judgment or a disciplinary order, related to the individual's occupational therapy practice; and

(11) a statement indicating the physical agent modalities the applicant will use and whether the applicant will use the modalities as a level one practitioner, a level two practitioner, or an occupational therapy assistant;

B. submit with the application all fees required by part 4666.1200;

C. sign a statement that the information in the application is true and correct to the best of the applicant's knowledge and belief;

D. sign a waiver authorizing the commissioner to obtain access to the applicant's records in this or any other state in which the applicant holds or previously held a credential for the practice of an occupation, has completed an accredited occupational therapy education program, or engaged in the practice of occupational therapy;

E. submit additional information as requested by the commissioner; and

F. submit the additional information required for provisional registration, registration by equivalency, registration by reciprocity, and temporary registration as specified in parts 4666.0060 to 4666.0100.

Subp. 2. Persons applying for registration under part 4666.0060 or 4666.0070. Persons applying for registration under part 4666.0060, subparts 1 and 2, or 4666.0070, subparts 1 and 2, must submit:

A. a certificate of successful completion of the requirements in part 4666.0060, subpart 1, or 4666.0070, subpart 1; and

B. the applicant's test results from the examining agency, or another source approved by the commissioner, as evidence that the applicant received a qualifying score on a credentialing examination meeting the requirements of part 4666.0060, subpart 2, or 4666.0070, subpart 2.

Subp. 3. Applicants who are certified by American Occupational Therapy Certification Board. An applicant who is certified by the American Occupational Therapy Certification Board must provide:

A. Verified documentation from American Occupational Therapy Certification Board stating that the applicant is certified as an occupational therapist, registered or certified occupational therapy assistant, the date certification was granted, and the applicant's certification number. The document must also include a statement regarding disciplinary actions. The applicant is responsible for obtaining this documentation by sending a form provided by the commissioner to the American Occupational Therapy Certification Board.

B. A waiver authorizing the commissioner to obtain access to the applicant's records maintained by the American Occupational Therapy Certification Board.

Subp. 4. Applicants credentialed in another jurisdiction. An applicant credentialed in another jurisdiction must request that the appropriate government body in each jurisdiction in which the applicant holds or held an occupational therapy credential send a letter to the commissioner that verifies the applicant's credentials. Except as provided in part 4666.0100, registration will not be issued until the commissioner receives letters verifying each of the applicant's credentials. Each letter must include the applicant's name, date of birth, credential number, date of issuance, a statement regarding investigations pending and disciplinary actions taken or pending against the applicant, current status of the credential, and the terms under which the credential was issued.

Subp. 5. Action on applications for registration. The commissioner shall approve, approve with conditions, or deny registration. The commissioner shall act on an application for registration according to items A to C.

A. The commissioner shall determine if the applicant meets the requirements for registration. The commissioner, or the advisory council at the commissioner's request, may investigate information provided by an applicant to determine whether the information is accurate and complete.

B. The commissioner shall notify an applicant of action taken on the application and, if registration is denied or approved with conditions, the grounds for the commissioner's determination.

C. An applicant denied registration or granted registration with conditions may make a written request to the commissioner, within 30 days of the date of the commissioner's determination, for reconsideration of the commissioner's determination. Individuals requesting reconsideration may submit information which the applicant wants considered in the reconsideration. After reconsideration of the commissioner's determination to deny registration or grant registration with conditions, the commissioner shall determine whether the original determination should be affirmed or modified. An applicant is allowed no more than one request in any one biennial registration period for reconsideration of the commissioner's determination to deny registration or approve registration with conditions.

4666.0300 REGISTRATION RENEWAL.

Subpart 1. **Renewal requirements.** To be eligible for registration renewal, a registrant must:

- A. Submit a completed and signed application for registration renewal on forms provided by the commissioner.
- B. Submit the renewal fee required under part 4666.1200.
- C. Submit proof of having met the continuing education requirement of part 4666.1100 on forms provided by the commissioner.
- D. Submit additional information as requested by the commissioner to clarify information presented in the renewal application. The information must be submitted within 30 days after the commissioner's request.

Subp. 2. **Renewal deadline.** Except as provided in subpart 4, registration must be renewed every two years. Registrants must comply with the following procedures:

A. Each registration certificate must state an expiration date. An application for registration renewal must be received by the Department of Health or postmarked at least 30 calendar days before the expiration date. If the postmark is illegible, the application will be considered timely if received at least 21 calendar days before the expiration date.

If the commissioner changes the renewal schedule and the expiration date is less than two years, the fee shall be prorated.

B. An application for registration renewal not received within the time required under item A, but received on or before the expiration date, must be accompanied by a late fee in addition to the renewal fee specified by part 4666.1200.

C. Registration renewals received after the expiration date will not be accepted and persons seeking registered status must comply with the requirements of part 4666.0400.

Subp. 3. **Registration renewal notice.** At least 60 calendar days before the expiration date in subpart 2, the commissioner shall mail a renewal notice to the registrant's last known address on file with the commissioner. The notice must include an application for registration renewal and notice of fees required for renewal. The registrant's failure to receive notice does not relieve the registrant of the obligation to meet the renewal deadline and other requirements for registration renewal.

Subp. 4. **Renewal of provisional registration.** Provisional registration must be renewed annually. Provisional registrants must comply with all requirements of this part except subpart 1, items B and C. In addition, provisional registrants must submit the fee for renewal of provisional registration required by part 4666.1200. A provisional registration will not be renewed for any period of time beyond the expiration of the three-year provisional registration period.

4666.0400 RENEWAL OF REGISTRATION; AFTER EXPIRATION DATE.

Subpart 1. **Removal of name from list.** The names of registrants who do not comply with the registration renewal requirements of part 4666.0300 on or before the expiration date shall be removed from the list of individuals authorized to use the protected titles in part 4666.0030 and the registrants must comply with the requirements of this part in order to regain registered status.

Subp. 2. **Registration renewal after registration expiration date.** Except as provided in subpart 4, an individual whose application for registration renewal is received after the registration expiration date must submit the following:

- A. a completed and signed application for registration following lapse in registered status on forms provided by the commissioner;
- B. the renewal fee and the late fee required under part 4666.1200;
- C. proof of having met the continuing education requirements since the individual's initial registration or last registration renewal; and

D. additional information as requested by the commissioner to clarify information in the application, including information to determine whether the individual has engaged in conduct warranting disciplinary action as set forth in part 4666.1300. The information must be submitted within 30 days after the commissioner's request.

Subp. 3. **Registration renewal four years or more after registration expiration date.** Except as provided in subpart 4, an individual who submitted a registration renewal four years or more after the registration expiration date must submit the following:

- A. a completed and signed application for registration following lapse in registered status on forms provided by the commissioner;

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B. the renewal fee and the late fee required under part 4666.1200;

C. proof of having met the continuing education requirement for the most recently completed two-year continuing education cycle. In addition, at the time of the next registration renewal, the registrant must submit proof of having met the continuing education requirement, which shall be prorated based on the number of months registered during the biennial registration period;

D. proof of successful completion of one of the following:

(1) verified documentation of 160 hours of supervised practice approved by the commissioner. To participate in a supervised practice, the applicant shall obtain limited registration. To apply for limited registration, the applicant shall submit the completed limited registration application, fees, and agreement for supervision of an occupational therapist or occupational therapy assistant practicing under limited registration signed by the supervising therapist and the applicant. The supervising occupational therapist shall state the proposed level of supervision on the supervision agreement form provided by the commissioner. At a minimum, a supervising occupational therapist shall:

(a) be on the premises at all times that the person practicing under limited registration is working;

(b) be in the room ten percent of the hours worked each week by the person practicing under provisional registration; and

(c) provide daily face-to-face collaboration for the purpose of observing service competency of the occupational therapist or occupational therapy assistant, discussing treatment procedures and each client's response to treatment, and reviewing and modifying, as necessary, each treatment plan. The commissioner may require additional supervision than the supervision proposed in the supervision agreement. The supervising therapist shall document the supervision provided. The occupational therapist participating in a supervised practice is responsible for obtaining the supervision required under this subitem and must comply with the commissioner's requirements for supervision during the entire 160 hours of supervised practice. The supervised practice must be completed in two months and may be completed at the applicant's place of work;

(2) submit verified documentation of having achieved a qualifying score on the credentialing examination for occupational therapists or the credentialing examination for occupational therapy assistants administered within the past year; or

(3) submit documentation of having completed a combination of occupational therapy courses or an occupational therapy refresher program that contains both a theoretical and clinical component approved by the commissioner. Only courses completed within one year preceding the date of the application or one year after the date of the application will qualify for approval; and

E. additional information as requested by the commissioner to clarify information in the application, including information to determine whether the applicant has engaged in conduct warranting disciplinary action as set forth in part 4666.1300. The information must be submitted within 30 days after the commissioner's request.

Subp. 4. Registration after lapse of provisional registration. Permission to take the certification examination for an individual whose provisional registration has lapsed more than 30 days is revoked. In order to qualify to take the certification examination, an individual whose provisional registration has lapsed must comply with part 4666.0060, subpart 3, or 4666.0070, subpart 3.

4666.0500 CHANGE OF ADDRESS.

A registrant who changes addresses must inform the commissioner, in writing, of the change of address within 30 days. All notices or other correspondence mailed to or served on a registrant by the commissioner at the registrant's address on file with the commissioner shall be considered as having been received by the registrant.

4666.0600 DELEGATION OF DUTIES; ASSIGNMENT OF TASKS.

The occupational therapist is responsible for all duties delegated to the occupational therapy assistant or tasks assigned to direct service personnel. The occupational therapist may delegate to an occupational therapy assistant those portions of a client's evaluation, reevaluation, and treatment that, according to prevailing practice standards of the American Occupational Therapy Association, can be performed by an occupational therapy assistant. The occupational therapist may not delegate portions of an evaluation or reevaluation of a person whose condition is changing rapidly. Delegation of duties related to use of physical agent modalities to occupational therapy assistants is governed by part 4666.1000, subpart 9.

4666.0700 SUPERVISION OF OCCUPATIONAL THERAPY ASSISTANTS.

Subpart 1. Applicability. If the professional standards identified in part 4666.0600 permit an occupational therapist to delegate an evaluation, reevaluation, or treatment procedure, the occupational therapist must provide supervision consistent with this part. Supervision of occupational therapy assistants using physical agent modalities is governed by part 4666.1000, subpart 9.

Subp. 2. **Evaluations.** The occupational therapist shall determine the frequency of evaluations and reevaluations for each client. The occupational therapy assistant shall inform the occupational therapist of the need for more frequent reevaluation if indicated by the client's condition or response to treatment. Before delegating a portion of a client's evaluation pursuant to part 4666.0600, the occupational therapist shall assure the service competency of the occupational therapy assistant in performing the evaluation procedure and shall provide supervision consistent with the condition of the patient or client and the complexity of the evaluation procedure.

Subp. 3. **Treatment.**

A. General principles. The occupational therapist shall determine the frequency and manner of supervision of an occupational therapy assistant performing treatment procedures delegated pursuant to part 4666.0600, based on the condition of the patient or client, the complexity of the treatment procedure, and the proficiencies of the occupational therapy assistant.

B. Minimum requirements. Face-to-face collaboration between the occupational therapist and the occupational therapy assistant shall occur, at a minimum, every two weeks during which time the occupational therapist is responsible for:

(1) planning and documenting an initial treatment plan and discharge from treatment;

(2) reviewing treatment goals, therapy programs, and client progress;

(3) supervising changes in the treatment plan;

(4) conducting or observing treatment procedures for selected clients and documenting appropriateness of treatment procedures. Clients will be selected based on the occupational therapy services provided to the client and the role of the occupational therapist and the occupational therapy assistant in those services; and

(5) assuring the service competency of the occupational therapy assistant in performing delegated treatment procedures.

C. Additional supervision required. Face-to-face collaboration must occur more frequently than every two weeks if necessary to meet the requirements of item A or B.

D. Documentation required. The occupational therapist shall document compliance with this subpart in the client's file or chart.

Subp. 4. **Exception.** The supervision requirements of this part do not apply to an occupational therapy assistant who:

A. works in an activities program; and

B. does not perform occupational therapy services. The occupational therapy assistant must meet all other applicable requirements of parts 4666.0010 to 4666.1400.

4666.0800 COORDINATION OF SERVICES.

An occupational therapist shall:

A. collect information necessary to assure that the provision of occupational therapy services are consistent with the client's physical and mental health status. The information required to make this determination may include, but is not limited to, contacting the client's licensed health care professional for health history, current health status, current medications, and precautions;

B. modify or terminate occupational therapy treatment of a client that is not beneficial to the client, not tolerated by the client, or refused by the client, and if treatment was terminated for a medical reason, notify the client's licensed health care professional by correspondence postmarked or delivered to the licensed health care professional within seven calendar days of the termination of treatment;

C. refer a client to an appropriate health care, social service, or education practitioner if the client's condition requires services not within the occupational therapist's service competency or not within the practice of occupational therapy generally;

D. participate and cooperate in the coordination of occupational therapy services with other related services, as a member of the professional community serving the client; and

E. communicate, in writing, with the appropriate licensed health care professional an occupational therapy plan of care, postmarked or delivered to the licensed health care professional within 14 calendar days of the initiation of treatment. The occupational therapist must provide this written communication even if occupational therapy treatment is concluded in less than 14 consecutive

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days. The occupational therapist shall document modifications to the plan of care requested by the licensed health care professional following consultation with the licensed health care professional. Occupational therapists employed by a school system are exempt from the requirements of this item in the performance of their duties within the school system.

4666.0900 RECIPIENT NOTIFICATION.

Subpart 1. **Required notification.** In the absence of a physician referral or prior authorization, and before providing occupational therapy services for remuneration or expectation of payment from the client, an occupational therapist must provide the following written notification in all capital letters of 12-point or larger bold-face type, to the client, parent, or guardian:

“Your health care provider, insurer, or plan may require a physician referral or prior authorization and you may be obligated for partial or full payment for occupational therapy services rendered.”

Information other than this notification may be included as long as the notification remains conspicuous on the face of the document. A nonwritten disclosure format may be used to satisfy the recipient notification requirement when necessary to accommodate the physical condition of a client or client's guardian.

Subp. 2. **Evidence of recipient notification.** The occupational therapist is responsible for providing evidence of compliance with the recipient notification requirement of this part.

4666.1000 PHYSICAL AGENT MODALITIES.

Subpart 1. General considerations.

A. Occupational therapists who use superficial physical agent modalities must comply with the standards in subparts 3 and 6. Occupational therapists who use electrotherapy must comply with the standards in subparts 4 and 7. Occupational therapists who use ultrasound devices must comply with the standards in subparts 5 and 8. Occupational therapy assistants who use physical agent modalities must comply with subpart 9.

B. Use of superficial physical agent modalities, electrical stimulation devices, and ultrasound devices must be on the order of a physician.

C. The commissioner shall maintain a roster of persons registered under parts 4666.0010 to 4666.1400 who use physical agent modalities. Prior to using a physical agent modality, registrants must inform the commissioner of the physical agent modality they will use and whether they will use the modality as a level one practitioner, level two practitioner, or occupational therapy assistant. Persons who use physical agent modalities must indicate on their initial and renewal applications the physical agent modalities that they use and whether they use the modality as a level one practitioner, level two practitioner, or occupational therapy assistant.

D. Registrants are responsible for informing the commissioner of any changes in the information required in this subpart within 30 days of any change.

Subp. 2. Written documentation required.

A. Prior to use of physical agent modalities, an occupational therapist who will work as a level one practitioner and an occupational therapy assistant, must possess and maintain the following documentation:

(1) a signed, notarized statement from a level two practitioner stating that the level two practitioner will provide direct supervision of the level one practitioner or occupational therapy assistant and that the level one practitioner or occupational therapy assistant has completed the clinical training requirements in this part for each physical agent modality used by the level one practitioner or occupational therapy assistant; and

(2) a copy of the course, workshop, or seminar description with a transcript or certificate showing completion of the theoretical training required for each physical agent modality used, from one of the institutions or organizations identified in this part; or

(3) a copy of current certification as a certified hand therapist by the Hand Therapy Certification Commission.

B. Prior to practice as a level two practitioner using superficial physical agent modalities, an occupational therapist must possess and maintain the following documentation:

(1) a signed statement from the employer verifying completion of the required number of hours of direct service experience as an occupational therapist; and

(2) the documentation in item A and a signed, notarized statement from the level two practitioner that the level one practitioner has developed and implemented the treatment plans required in subpart 6, item B, subitem (1), and that the level two practitioner has observed the level one practitioner to be competent in the use of superficial physical agent modalities; or

(3) the documentation in item A, subitem (2), and a signed, notarized statement from the occupational therapist that the therapist has completed the required number of treatment plans required in subpart 6, item B, subitem (2); or

(4) a copy of certification as a certified hand therapist from the Hand Therapy Certification Commission that was current during the three-year period following the effective date of parts 4666.0010 to 4666.1400.

C. Prior to practice as a level two practitioner using electrotherapeutic devices, an occupational therapist must possess and maintain the following documentation:

(1) a signed statement from the employer verifying completion of the required number of hours of direct service experience as an occupational therapist; and

(2) the documentation in item A and a signed, notarized statement from the level two practitioner that the level one practitioner has developed and implemented the treatment plans required in subpart 7, item B, subitem (1), and that the level two practitioner has observed the level one practitioner to be competent in the use of electrotherapeutic devices; or

(3) a copy of certification as a certified hand therapist from the Hand Therapy Certification Commission that was current during the three-year period following the effective date of parts 4666.0010 to 4666.1400.

D. Prior to practice as a level two practitioner using ultrasound devices, an occupational therapist must possess and maintain the following documentation:

(1) a signed statement from the employer verifying completion of the required number of hours of direct service experience as an occupational therapist; and

(2) the documentation in item A and a signed, notarized statement from the level two practitioner that the level one practitioner has developed and implemented the treatment plans required in subpart 8, item B, subitem (1), and that the level two practitioner has observed the level one practitioner to be competent in the use of ultrasound devices; or

(3) a copy of certification as a certified hand therapist from the Hand Therapy Certification Commission that was current during the three-year period following the effective date of parts 4666.0010 to 4666.1400.

E. Upon request of the commissioner, persons registered under parts 4666.0010 to 4666.1400 who use physical agent modalities must provide the commissioner with the documentation described in this subpart.

F. Once in each biennial registration period, the commissioner may audit a percentage of persons who are using physical agent modalities, based on random selection. The commissioner shall require that audited persons provide the documentation required by this subpart.

Subp. 3. **Level one practitioner; standards for use of superficial physical agent modalities.** An occupational therapist may use superficial physical agent modalities as a level one practitioner if the occupational therapist:

A. is under the direct supervision of a level two practitioner for superficial physical agent modalities;

B. has received theoretical training in the use of the modality that enables the occupational therapist to:

(1) explain the rationale and clinical indications for use of superficial physical agent modalities;

(2) explain the physical properties and principles of the superficial physical agent modalities;

(3) describe the types of heat and cold transference;

(4) explain the factors affecting tissue response to superficial heat and cold;

(5) describe the biophysical effects of superficial physical agent modalities in normal and abnormal tissue;

(6) describe the thermal conductivity of tissue, matter, and air;

(7) explain the advantages and disadvantages of superficial physical agent modalities; and

(8) explain the precautions and contraindications of superficial physical agent modalities;

C. has received the theoretical training specified in item B by meeting the requirements of subitem (1) or (2):

(1) possess written evidence that the occupational therapist received the training required in item B at courses, workshops, or seminars offered through:

(a) a college or university accredited by the Accreditation Council for Occupational Therapy Education for training occupational therapists;

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- (b) an educational program sponsored or approved by the American Occupational Therapy Association;
- (c) an educational program sponsored or approved by the American Society of Hand Therapists;
- (d) a college or university accredited by the Commission on Accreditation in Physical Therapy Education for training physical therapists; or
- (e) an educational program sponsored or approved by the American Physical Therapy Association.

(2) possess current certification as a certified hand therapist by the Hand Therapy Certification Commission; and

D. has completed clinical training through on-site demonstration to the supervising level two practitioner of theoretical knowledge and technical applications of the modality. This clinical component must include the following clinical experiences for each superficial physical agent modality used by the level one practitioner:

- (1) observation of treatments performed by the level two practitioner;
- (2) application of the modality to normal physiological tissue to demonstrate appropriate techniques while the supervising level two practitioner is physically present and observing the level one practitioner apply the modality;
- (3) application of the modality to persons who would benefit from the treatment while the supervising level two practitioner is physically present and observing the level one practitioner apply the modality; and
- (4) demonstration of ability to work within competency in using the specific modality.

Subp. 4. Level one practitioner; standards for use of electrotherapy. An occupational therapist may use electrotherapy as a level one practitioner if the occupational therapist:

- A. is under the direct supervision of a level two practitioner for electrotherapy;
- B. has received theoretical training in the use of electrotherapy that enables the occupational therapist to:
 - (1) explain the rationale and clinical indications of electrotherapy, including pain control, muscle dysfunction, and tissue healing;
 - (2) demonstrate comprehension and understanding of electrotherapeutic terminology and biophysical principles, including current, voltage, amplitude, and resistance (Ohm's law);
 - (3) describe the types of current (direct, pulsed, and alternating) used for electrical stimulation, including the description, modulations, and clinical relevance;
 - (4) describe the time-dependent parameters of pulsed and alternating currents, including pulse and phase durations and intervals;
 - (5) describe the amplitude-dependent characteristics of pulsed and alternating currents;
 - (6) describe neurophysiology and the properties of excitable tissue (nerve and muscle);
 - (7) describe nerve and muscle response from externally applied electrical stimulation, including tissue healing;
 - (8) describe the electrotherapeutic effects and the response of nerve, denervated and innervated muscle, and other soft tissue; and
 - (9) explain the precautions and contraindications of electrotherapy, including considerations regarding pathology of nerve and muscle tissue;

C. has received the theoretical training specified in item B by meeting the requirements of subitem (1) or (2):

- (1) possess written evidence that the occupational therapist received the training required in item B at courses, workshops, or seminars offered through:
 - (a) a college or university accredited by the Accreditation Council for Occupational Therapy Education for training occupational therapists;
 - (b) an educational program sponsored or approved by the American Occupational Therapy Association;
 - (c) an educational program sponsored or approved by the American Society of Hand Therapists;
 - (d) a college or university accredited by the Commission on Accreditation in Physical Therapy Education for training physical therapists; or
 - (e) an educational program sponsored or approved by the American Physical Therapy Association; or

(2) possess current certification as a certified hand therapist by the Hand Therapy Certification Commission; and

D. has completed clinical training through on-site demonstration to the supervising level two practitioner of theoretical

knowledge and technical applications of electrical stimulation devices. This clinical component must include the following clinical experiences for each electrical stimulation device used by the level one practitioner:

- (1) observation of treatments performed by the level two practitioner;
- (2) application of the electrical stimulation device to normal physiological tissue to demonstrate appropriate techniques while the supervising level two practitioner is physically present and observing the level one practitioner apply the electrical stimulation device;
- (3) application of the electrical stimulation device to persons who would benefit from the treatment while the supervising level two practitioner is physically present and observing the level one practitioner apply the electrical stimulation device; and
- (4) demonstration of ability to work within competency in using the specific electrical stimulation device.

Subp. 5. Level one practitioner; standards for use of ultrasound. An occupational therapist may use an ultrasound device as a level one practitioner if the occupational therapist:

- A. is under the direct supervision of a level two practitioner for ultrasound devices;
- B. has received theoretical training in the use of ultrasound that enables the occupational therapist to:
 - (1) explain the rationale and clinical indications for the use of ultrasound, including anticipated physiological responses of the treated area;
 - (2) describe the biophysical thermal and nonthermal effects of ultrasound on normal and abnormal tissue;
 - (3) explain the physical principles of ultrasound, including wavelength, frequency, attenuation, velocity, and intensity;
 - (4) explain the mechanism and generation of ultrasound and energy transmission through physical matter; and
 - (5) explain the precautions and contraindications regarding use of ultrasound devices;
- C. has received the theoretical training specified in item B by meeting the requirements of subitem (1) or (2):
 - (1) possess written evidence that the occupational therapist received the training required in item A at courses, workshops, or seminars offered through:
 - (a) a college or university accredited by the Accreditation Council for Occupational Therapy Education for training occupational therapists;
 - (b) an educational program sponsored or approved by the American Occupational Therapy Association;
 - (c) an educational program sponsored or approved by the American Society of Hand Therapists;
 - (d) a college or university accredited by the Commission on Accreditation in Physical Therapy Education for training physical therapists; or
 - (e) an educational program sponsored or approved by the American Physical Therapy Association; or
 - (2) possess current certification as a certified hand therapist by the Hand Therapy Certification Commission; and
- D. has completed clinical training through on-site demonstration to the supervising level two practitioner of theoretical knowledge and technical applications of ultrasound devices. This clinical component must include the following clinical experiences in the use of ultrasound devices for the level one practitioner:
 - (1) observation of treatments performed by the level two practitioner;
 - (2) application of ultrasound to normal physiological tissue to demonstrate appropriate techniques while the supervising level two practitioner is physically present and observing the level one practitioner apply ultrasound;
 - (3) application of ultrasound to persons who would benefit from the treatment while the supervising level two practitioner is physically present and observing the level one practitioner apply the ultrasound; and
 - (4) demonstration of ability to work within competency in using ultrasound.

Subp. 6. Level two practitioner; standards for unsupervised use of superficial physical agent modalities. To obtain status as a level two practitioner, an occupational therapist must:

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A. complete 1800 hours in a two-year period of employment in a clinical setting providing direct service as an occupational therapist;

B. meet one of the following requirements:

(1) complete the training required in subpart 3, practice as a level one practitioner using superficial physical agent modalities under the direct supervision of a level two practitioner, and develop and implement a treatment plan for six patients in which ice or other cold medium is used and for 14 patients in which heat is used in an appropriate occupational therapy treatment plan;

(2) complete the training required in subpart 3, items B and C, and have used both ice or other cold medium and heat in a treatment plan for at least 20 patients in the one year preceding the effective date of parts 4666.0010 to 4666.1400; or

(3) possess certification as a certified hand therapist by the Hand Therapy Certification Commission on the effective date of parts 4666.0010 to 4666.1400 or, prior to practice as a level two practitioner, obtain certification as a certified hand therapist by the Hand Therapy Certification Commission within three years of the effective date of parts 4666.0010 to 4666.1400; and

C. demonstrate competency in:

(1) appropriate incorporation of superficial physical agent modalities into an occupational therapy treatment plan, as it relates to established goals and home program;

(2) preparing the patient, including positioning and educating the patient about the process and possible risks and benefits of treatment;

(3) safe administration of the superficial physical agent modalities as related to the clinical condition;

(4) safe and appropriate equipment operation and maintenance;

(5) identifying possible adverse reactions to treatment and appropriate adjustment or discontinuance, and aftercare; and

(6) utilizing appropriate methods of documentation.

Subp. 7. Level two practitioner; standards for unsupervised use of electrotherapy. To obtain status as a level two practitioner, an occupational therapist must:

A. complete 1800 hours in a two-year period of employment in a clinical setting providing direct service as an occupational therapist;

B. meet one of the following requirements:

(1) complete the training required in subpart 4, practice as a level one practitioner using electrical stimulation under the direct supervision of a level two practitioner, and develop and implement a treatment plan for 12 patients in which electrical stimulation is used in an appropriate occupational therapy treatment plan; or

(2) possess certification as a certified hand therapist by the Hand Therapy Certification Commission on the effective date of parts 4666.0010 to 4666.1400 or, prior to practice as a level two practitioner, obtain certification as a certified hand therapist by the Hand Therapy Certification Commission within three years of the effective date of parts 4666.0010 to 4666.1400; and

C. demonstrate competency in:

(1) appropriate incorporation of electrotherapy into an occupational therapy treatment plan as it relates to established treatment goals and home program;

(2) preparing the patient, including positioning, and educating the patient about the process and the possible risks and benefits of treatment;

(3) appropriate use of electrodes, including size, placement, and type, as well as resultant effects on current flow and density;

(4) appropriate selection and safe operation and maintenance of electrotherapeutic equipment, including controls, components, and parameters, as related to the clinical condition and therapeutic value;

(5) identifying possible adverse reactions to treatment and appropriate adjustment in or discontinuance of treatment and aftercare; and

(6) utilizing appropriate methods of documentation which communicate equipment type and parameters used.

Subp. 8. Level two practitioner; standards for unsupervised use of ultrasound devices. To obtain status as a level two practitioner, an occupational therapist must:

A. complete 1800 hours in a two-year period of employment in a clinical setting providing direct service as an occupational therapist;

B. meet one of the following requirements:

(1) complete the training required in subpart 5, practice as a level one practitioner using ultrasound under the direct supervision of a level two practitioner, and develop and implement a treatment plan for 12 patients in which ultrasound devices are used in an appropriate occupational therapy treatment plan; or

(2) possess certification as a certified hand therapist by the Hand Therapy Certification Commission on the effective date of parts 4666.0010 to 4666.1400 or, prior to practice as a level two practitioner, obtain certification as a certified hand therapist by the Hand Therapy Certification Commission within three years of the effective date of parts 4666.0010 to 4666.1400; and

C. demonstrate competency in:

(1) appropriate incorporation of ultrasound into an occupational therapy treatment plan as it relates to established treatment goals and home program, including anticipated physiological response of treated areas and appropriate clinical conditions;

(2) preparing the patient, including positioning, and educating the patient about the process and possible risks and benefits of treatment;

(3) safe clinical administration of ultrasound including use of appropriate frequency, intensity, duration, and delivery method, as related to the clinical condition;

(4) appropriate application techniques, including coupling methods and duty cycle, as they relate to tissue condition, area, and depth;

(5) selection and use of ultrasound equipment, including controls, soundhead size, effective radiating area, and beam nonuniformity ratio, and maintenance and calibration requirements;

(6) recognizing adverse reaction to ultrasound treatment and appropriate adjustment of treatment, discontinuance, and aftercare; and

(7) appropriate methods of documentation which communicate specifics of ultrasound application.

Subp. 9. Occupational therapy assistant use of physical agent modalities. An occupational therapy assistant may set up and implement treatment using physical agent modalities if the assistant meets the requirements of this part, has demonstrated service competency for the particular modality used, and works under the direct supervision of an occupational therapist who is a level two practitioner for the particular modality used. An occupational therapy assistant who uses superficial physical agent modalities must meet the requirements of subpart 3, items B and C. An occupational therapy assistant who uses electrotherapy must meet the requirements of subpart 4, items B and C. An occupational therapy assistant who uses ultrasound must meet the requirements of subpart 5, items B and C. A level two practitioner may not delegate evaluation, reevaluation, treatment planning, and treatment goals for physical agent modalities to an occupational therapy assistant.

4666.1100 CONTINUING EDUCATION REQUIREMENTS.

Subpart 1. General requirements. An occupational therapist applying for registration renewal must have completed a minimum of 24 contact hours of continuing education in the two years preceding registration renewal. An occupational therapy assistant applying for registration renewal must have completed a minimum of 18 contact hours of continuing education in the two years preceding registration renewal. Registrants who are issued registration for a period of less than two years shall prorate the number of contact hours required for registration renewal based on the number of months registered during the biennial registration period. Registrants shall receive contact hours for continuing education activities only for the biennial registration period in which the continuing education activity was performed.

To qualify as a continuing education activity, the activity must be a minimum of one contact hour. Contact hours must be earned and reported in increments of one contact hour or one-half contact hour for each continuing education activity. One-half contact hour means an instructional session of 30 consecutive minutes, excluding coffee breaks, registration, meals without a speaker, and social activities.

Each registrant is responsible for financing the cost of the registrant's continuing education activities.

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Subp. 2. **Standards for approval.** Except as provided in subpart 3, item E, in order to qualify as a continuing education activity, the activity must:

- A. constitute an organized program of learning;
- B. reasonably be expected to advance the knowledge and skills of the occupational therapy practitioner;
- C. pertain to subjects that directly relate to the practice of occupational therapy;
- D. be conducted by individuals who have education, training, and experience by reason of which said individuals should be considered experts concerning the subject matter of the activity; and
- E. be presented by a sponsor who has a mechanism to verify participation and maintains attendance records for three years.

Subp. 3. **Activities qualifying for continuing education contact hours.** The following activities qualify for continuing education contact hours if they meet all other requirements of this part.

A. A registrant may obtain an unlimited number of contact hours in any two-year continuing education period through participation in the following:

(1) attendance at educational programs of annual conferences, lectures, panel discussions, workshops, in-service training, seminars, and symposiums;

(2) successful completion of college or university courses. The registrant must obtain a grade of at least a "C" or a pass in a pass or fail course in order to receive the following continuing education credits:

- (a) one semester credit equals 14 contact hours;
- (b) one trimester credit equals 12 contact hours; and
- (c) one quarter credit equals ten contact hours; and

(3) successful completion of home study courses that require the participant to demonstrate the participant's knowledge following completion of the course.

B. A registrant may obtain a maximum of six contact hours in any two-year continuing education period for teaching continuing education courses that meet the requirements of this part. A registrant is entitled to earn a maximum of two contact hours as preparation time for each contact hour of presentation time. Contact hours may be claimed only once for teaching the same course in any two-year continuing education period. A course schedule or brochure must be maintained for audit.

C. A registrant may obtain a maximum of two contact hours in any two-year continuing education period for continuing education activities in the following areas:

(1) business-related topics: marketing, time management, administration, risk management, government regulations, techniques for training professionals, computer skills, and similar topics;

(2) personal skill topics: career burnout, communication skills, human relations, and similar topics; and

(3) training that is obtained in conjunction with a registrant's employment, occurs during a registrant's normal workday, and does not include subject matter specific to the fundamentals of occupational therapy.

D. An occupational therapy practitioner that utilizes leisure activities, recreational activities, or hobbies as part of occupational therapy services in the practitioner's current work setting may obtain a maximum of six contact hours in any two-year continuing education period for participation in courses teaching these activities.

E. A registrant may obtain a maximum of six contact hours in any two year continuing education period for supervision of occupational therapist or occupational therapy assistant students. A registrant may earn one contact hour for every eight hours of student supervision. Registrants must maintain a log indicating the name of each student supervised and the hours each student was supervised. Contact hours obtained by student supervision must be obtained by supervising students from an occupational therapy education program accredited by the Accreditation Council for Occupational Therapy Education.

Subp. 4. **Activities not qualifying for continuing education contact hours.** No credit shall be granted for the following activities: hospital rounds, entertainment or recreational activities, employment orientation sessions, holding an office or serving as an organizational delegate, meetings for the purpose of making policy, noneducational association meetings, training related to payment systems (including covered services, coding, and billing), training required by part 4666.1000, subparts 3, item B; 4, item B; and 5, item B, and any other activities the commissioner determines do not meet the requirements of this part.

Subp. 5. **Reporting continuing education contact hours.** At the time of registration renewal, each registrant shall submit verification that the registrant has met the continuing education requirements of this part on the continuing education report form provided by the commissioner. The continuing education report form may require the following information:

- A. title of continuing education activity;
- B. brief description of the continuing education activity;
- C. sponsor, presenter, or author;
- D. location and attendance dates;
- E. number of contact hours; and
- F. registrant's notarized affirmation that the information is true and correct.

Subp. 6. Auditing continuing education reports.

A. The commissioner may audit a percentage of the continuing education reports based on random selection. A registrant shall maintain all documentation required by this part for two years after the last day of the biennial registration period in which the contact hours were earned.

- B. All renewal applications that are received after the expiration date may be subject to a continuing education report audit.
- C. Any registrant against whom a complaint is filed may be subject to a continuing education report audit.
- D. The registrant shall make the following information available to the commissioner for auditing purposes:

(1) a copy of the completed continuing education report form for the continuing education reporting period that is the subject of the audit including all supporting documentation required by subpart 5;

(2) a description of the continuing education activity prepared by the presenter or sponsor that includes the course title or subject matter, date, place, number of program contact hours, presenters, and sponsors. Self-study programs must be documented by materials prepared by the presenter or sponsor that include the course title, course description, name of sponsor or author, and the number of hours required to complete the program. University, college, or vocational school courses must be documented by a course syllabus, listing in a course bulletin, or equivalent documentation that must include the course title, instructor's name, course dates, number of contact hours, and course content, objectives, or goals; and

(3) verification of attendance. Verification must consist of a signature of the presenter or a designee at the continuing education activity on the continuing education report form or a certificate of attendance with the course name, course date, and registrant's name. A registrant may summarize or outline the educational content of an audio or video educational activity to verify the registrant's participation in the activity if a designee is not available to sign the continuing education report form. Self-study programs must be verified by a certificate of completion or other documentation indicating that the individual has demonstrated knowledge and has successfully completed the program. Attendance at a university, college, or vocational course must be verified by an official transcript.

Subp. 7. Waiver of continuing education requirements. The commissioner may grant a waiver of the requirements of this part in cases where the requirements would impose an extreme hardship on the registrant. The request for a waiver must be in writing, state the circumstances that constitute extreme hardship, state the period of time the registrant wishes to have the continuing education requirement waived, and state the alternative measures that will be taken if a waiver is granted. The commissioner shall set forth, in writing, the reasons for granting or denying the waiver. Waivers granted by the commissioner shall specify, in writing, the time limitation and required alternative measures to be taken by the registrant. A request for waiver shall be denied if the commissioner finds that the circumstances stated by the registrant do not support a claim of extreme hardship, the requested time period for waiver is unreasonable, the alternative measures proposed by the registrant are not equivalent to the continuing education activity being waived, or the request for waiver is not submitted to the commissioner within 60 days after the expiration date.

Subp. 8. Penalties for noncompliance. The commissioner shall refuse to renew or grant, or shall suspend, condition, limit, or qualify the registration of any person who the commissioner determines has failed to comply with the continuing education requirements of this part. A registrant may request reconsideration of the commissioner's determination of noncompliance or the penalty imposed under this part by making a written request to the commissioner, within 30 days of the date of notification to the applicant. Individuals requesting reconsideration may submit information that the registrant wants considered in the reconsideration.

Subp. 9. Effective date. The reporting requirements of this part begin and continue to be in effect for registration renewals three years after the effective date of parts 4666.0010 to 4666.1400 and all subsequent registration renewals.

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4666.1200 FEES; SURCHARGE.

Subpart 1. **Initial registration fee.** The initial registration fee for occupational therapists is \$180. The initial registration fee for occupational therapy assistants is \$100. The commissioner may prorate fees based on the number of quarters remaining in the biennial registration period.

Subp. 2. **Registration renewal fee.** The biennial registration renewal fee for occupational therapists is \$180. The biennial registration renewal fee for occupational therapy assistants is \$100.

Subp. 3. **Late fee.** The fee for late submission of a renewal application is \$25.

Subp. 4. **Initial provisional registration fee.** The fee for initial provisional registration is \$647.

Subp. 5. **Provisional registration renewal fee.** The provisional registration renewal fee for occupational therapists is \$90. The provisional registration renewal fee for occupational therapy assistants is \$50. The commissioner may prorate fees based on the number of quarters remaining in the annual registration period.

Subp. 6. **Temporary registration fee.** The fee for temporary registration is \$50.

Subp. 7. **Limited registration fee.** The fee for limited registration is \$96.

Subp. 8. **Fee for course approval after lapse of registration.** The fee for course approval after lapse of registration is \$96.

Subp. 9. **Certification to other states.** The fee for certification of registration to other states is \$25.

Subp. 10. **Verification to institutions.** The fee for verification of registration to institutions is \$10.

Subp. 11. **Surcharge.** For five years following the effective date of parts 4666.0010 to 4666.1400 all registrants must pay a surcharge fee in addition to other applicable fees. Occupational therapists must pay a biennial surcharge fee of \$62 upon application for registration and registration renewal. Occupational therapy assistants must pay a biennial surcharge fee of \$36 upon application for registration and registration renewal.

Subp. 12. **Nonrefundable fees.** All fees are nonrefundable.

4666.1300 GROUNDS FOR DENIAL OF REGISTRATION OR DISCIPLINE; INVESTIGATION PROCEDURES; DISCIPLINARY ACTIONS.

Subpart 1. **Grounds for denial of registration or discipline.** The commissioner may deny an application for registration, may approve registration with conditions, or may discipline a registrant using any disciplinary actions listed in subpart 3 on proof that the individual has:

- A. intentionally submitted false or misleading information to the commissioner or the advisory council;
- B. failed, within 30 days, to provide information in response to a written request by the commissioner or advisory council;
- C. performed services of an occupational therapist or occupational therapy assistant in an incompetent manner or in a manner that falls below the community standard of care;
- D. failed to satisfactorily perform occupational therapy services during a period of provisional registration;
- E. violated parts 4666.0010 to 4666.1400;
- F. failed to perform services with reasonable judgment, skill, or safety due to the use of alcohol or drugs, or other physical or mental impairment;
- G. been convicted of violating any state or federal law, rule, or regulation which directly relates to the practice of occupational therapy;
- H. aided or abetted another person in violating any provision of parts 4666.0010 to 4666.1400;
- I. been disciplined for conduct in the practice of an occupation by the state of Minnesota, another jurisdiction, or a national professional association, if any of the grounds for discipline are the same or substantially equivalent to those in parts 4666.0010 to 4666.1400;
- J. not cooperated with the commissioner or advisory council in an investigation conducted according to subpart 2;
- K. advertised in a manner that is false or misleading;
- L. engaged in dishonest, unethical, or unprofessional conduct in connection with the practice of occupational therapy that is likely to deceive, defraud, or harm the public;
- M. demonstrated a willful or careless disregard for the health, welfare, or safety of a client;
- N. performed medical diagnosis or provided treatment, other than occupational therapy, without being licensed to do so under the laws of this state;

O. paid or promised to pay a commission or part of a fee to any person who contacts the occupational therapist for consultation or sends patients to the occupational therapist for treatment;

P. engaged in an incentive payment arrangement, other than that prohibited by item O, that promotes occupational therapy overutilization, whereby the referring person or person who controls the availability of occupational therapy services to a client profits unreasonably as a result of client treatment;

Q. engaged in abusive or fraudulent billing practices, including violations of federal Medicare and Medicaid laws, Food and Drug Administration regulations, or state medical assistance laws;

R. obtained money, property, or services from a consumer through the use of undue influence, high pressure sales tactics, harassment, duress, deception, or fraud;

S. performed services for a client who had no possibility of benefiting from the services;

T. failed to refer a client for medical evaluation when appropriate or when a client indicated symptoms associated with diseases that could be medically or surgically treated;

U. engaged in conduct with a client that is sexual or may reasonably be interpreted by the client as sexual, or in any verbal behavior that is seductive or sexually demeaning to a patient;

V. violated a federal or state court order, including a conciliation court judgment, or a disciplinary order issued by the commissioner, related to the individual's occupational therapy practice; or

W. any other just cause related to the practice of occupational therapy.

Subp. 2. Investigation of complaints. The commissioner, or the advisory council when authorized by the commissioner, may initiate an investigation upon receiving a complaint or other oral or written communication that alleges or implies that an individual has violated parts 4666.0010 to 4666.1400. In the receipt, investigation, and hearing of a complaint that alleges or implies an individual has violated parts 4666.0010 to 4666.1400, the commissioner shall follow the procedures in *Minnesota Statutes*, section 214.10.

Subp. 3. Disciplinary actions. If the commissioner finds that an occupational therapist or occupational therapy assistant should be disciplined according to subpart 1, the commissioner may take any one or more of the following actions:

A. refuse to grant or renew registration;

B. approve registration with conditions;

C. revoke registration;

D. suspend registration;

E. any reasonable lesser action including, but not limited to, reprimand or restriction on registration; or

F. any action authorized by statute.

Subp. 4. Effect of specific disciplinary action on use of title. Upon notice from the commissioner denying registration renewal or upon notice that disciplinary actions have been imposed and the individual is no longer entitled to use the registered titles, the individual shall cease to use titles protected by parts 4666.0010 to 4666.1400 and shall cease to represent to the public that the individual is registered by the commissioner.

Subp. 5. Reinstatement requirements after disciplinary action. An individual who has had registration suspended may request and provide justification for reinstatement following the period of suspension specified by the commissioner. The requirements of parts 4666.0300 and 4666.0400 for renewing registration and any other conditions imposed with the suspension must be met before registration may be reinstated.

4666.1400 OCCUPATIONAL THERAPY PRACTITIONERS ADVISORY COUNCIL.

Subpart 1. Membership. The commissioner shall appoint seven persons to an occupational therapy practitioners advisory council consisting of the following:

A. Two public members, as defined in *Minnesota Statutes*, section 214.02. The public members shall be either persons who have received occupational therapy services or family members of or caregivers to such persons.

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B. Two members who are occupational therapists and two occupational therapy assistants registered under parts 4666.0010 to 4666.1400 each of whom is employed in a different practice area including, but not limited to, long-term care, school therapy, early intervention, administration, gerontology, industrial rehabilitation, cardiac rehabilitation, physical disability, pediatrics, mental health, home health, and hand therapy. Three of the four occupational therapy practitioners who serve on the advisory council must be currently, and for the three years preceding the appointment, engaged in the practice of occupational therapy or employed as an administrator or an instructor of an occupational therapy program. At least one of the four occupational therapy practitioners who serve on the advisory council must be employed in a rural area.

C. One member who is a licensed or registered health care practitioner, or other credentialed practitioner, who works collaboratively with occupational therapy practitioners.

Subp. 2. **Duties.** At the commissioner's request, the advisory council shall:

- A. advise the commissioner regarding the occupational therapy practitioner registration standards;
- B. advise the commissioner on enforcement of parts 4666.0010 to 4666.1400;
- C. provide for distribution of information regarding occupational therapy practitioners registration standards;
- D. review applications and make recommendations to the commissioner on granting or denying registration or registration renewal;
- E. review reports of investigations relating to individuals and make recommendations to the commissioner as to whether registration should be denied or disciplinary action taken against the individual; and
- F. perform other duties authorized for advisory councils by *Minnesota Statutes*, chapter 214, as directed by the commissioner.

Higher Education Services Office

Proposed Permanent Rules Relating to Registration and Name Approval

Notice of Intent to Adopt a Rule Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received

Introduction. The Minnesota Higher Education Services Office intends to adopt permanent rules without a public hearing following the procedures set forth in the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28. If, however, 25 or more persons submit a written request for a hearing on the rules within 30 days or by January 12, 1996, a public hearing will be held on January 31, 1996. To find out whether the rules will be adopted without a hearing or if the hearing will be held, you should contact the agency contact person after January 12, 1996 and before January 31, 1996.

Agency Contact Person. Comments or questions on the rules and written requests for a public hearing on the rules must be submitted to:

Mary Lou Dresbach
Minnesota Higher Education Services Office
400 Capitol Square Building
550 Cedar Street
St. Paul, MN 55101
(612) 296-3974
FAX: (612) 297-8880

Subject of Rule and Statutory Authority. The proposed rules are about the registration of: 1) all private institutions operating in Minnesota which are non-profit, grant degrees, or use the terms "academy," "college," "institute," or "university" in their names; 2) out-of-state public postsecondary institutions operating in Minnesota; and 3) for-profit institutions that provide continuing education in Minnesota which is intended to allow individuals to maintain an occupational license. The proposed rules are amendments that change the registration fees and related costs charged to schools for institutional registration under this program; clarify that the institution's plan for preservation of student records must be submitted and implemented; specify that institutions must submit current materials and advertisements to the Higher Education Services Office; and explain the meaning of "registration" for purposes of this program. The statutory authority to adopt these rules is *Laws of Minnesota* 1995, Chapter 212, Article 3, Section 9, to be codified as *Minnesota Statutes* Section 136A.01, Subdivisions 1 and 2 (1995 Supp.); and the authority to establish fees related to registration is in *Laws of Minnesota* 1995, Chapter 212, Article 3, Section 41, to be codified as *Minnesota Statutes* Section 136A.69 (1995 Supp.). The proposed rule amendments are published below.

Comments. You have until 4:30 P.M. on January 12, 1996 to submit written comment in support of or in opposition to the proposed rules or any part or subpart of the rules. Your comment must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comments should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

Request for a Hearing. In addition to submitting comments, you may also request that a hearing be held on the rules. Your request for a public hearing must be in writing and must be received by the agency contact person by 4:30 P.M. on January 12, 1996. Your written request for a public hearing must include your name, address, and telephone number. You are encouraged to identify the portion of the proposed rules which caused your request, the reason for the written request, and any changes you want made to the proposed rules. If 25 or more persons submit a written request for a hearing, a public hearing will be held unless a sufficient number withdraw their requests in writing.

Modifications. The proposed rules may be modified, either as a result of public comment or as a result of the rule hearing process. Modifications must not result in a substantial change in the proposed rules as attached and printed in the *State Register* and must be supported by data and views submitted to the agency or presented at the hearing. If the proposed rules affect you in any way, you are encouraged to participate in the rulemaking process.

Cancellation of Hearing. The hearing scheduled for January 31, 1996 will be canceled if the agency does not receive requests from 25 or more persons that a hearing be held on the rules. If you requested a public hearing, the agency will notify you before the scheduled hearing whether or not the hearing will be held. You may also call the agency contact person at (612) 296-3974 after January 12, 1996 to find out whether the hearing will be held.

Notice of Hearing. If 25 or more persons submit written requests for a public hearing on the rules, a hearing will be held following the procedures in *Minnesota Statutes*, sections 14.14 to 14.20 and *Minnesota Rules*, Parts 1400.0200 to 1400.1200. The hearing will be held on January 31, 1996 at the Veterans Services Building, 20 West 12th Street, 5th Floor Conference Room, St. Paul, MN 55101 beginning at 9:00 A.M. and will continue until all interested persons have been heard. The hearing will continue, if necessary, at additional times and places as determined during the hearing by the administrative law judge. The administrative law judge assigned to conduct the hearing is Richard C. Luis. Judge Luis can be reached at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, MN 55401, (612) 349-2542.

Hearing Procedure. If a hearing is held, you and all interested or affected persons, including representatives of associations or other interested groups, will have an opportunity to participate. You may present your views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should relate to the proposed rule amendments. You may also mail written material to the administrative law judge to be recorded in the hearing record for five working days after the public hearing ends. This five-day comment period may be extended for a longer period, not to exceed 20 calendar days, if ordered by the administrative law judge at the hearing. Comments received during this period will be available for review at the Office of Administrative Hearings. All interested and affected persons and the agency may respond in writing within five business days after the submission period ends to any new information submitted. All written materials or responses submitted to the administrative law judge must be **RECEIVED** at the Office of Administrative Hearings no later than 4:30 P.M. on the respective final days of the written comment or response periods. No additional evidence may be submitted during the five-day response period. This rule hearing procedure is governed by *Minnesota Statutes*, sections 14.14 to 14.20 and *Minnesota Rules*, Parts 1400.0200 to 1400.1200. Questions about this procedure may be directed to the administrative law judge.

Statement of Need and Reasonableness. Notice is hereby given that a statement of need and reasonableness is now available for review at the agency, through the agency contact person, and at the Office of Administrative Hearings. This statement of need and reasonableness includes a summary of all the evidence and argument which the agency anticipates presenting at the hearing, if one is held, justifying both the need for and the reasonableness of the proposed rules. Copies of the statement of need and reasonableness may be reviewed at the agency, through the agency contact person, or at the Office of Administrative Hearings. Copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Lobbyist Registration. *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the Ethical Practices Board. Questions regarding this requirement may be directed to the Ethical Practices Board at the Centennial Office Building, 1st floor, 658 Cedar Street, St. Paul, Minnesota 55155, (612) 296-5148.

Adoption Procedure if No Hearing. If no hearing is required, after the end of the comment period the agency may adopt the rules. The rules and supporting documents will then be submitted to the attorney general for review as to the legality and form to the extent form relates to legality. You may request to be notified of the date the rules are submitted to the attorney general or be

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

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notified of the attorney general's decision on the rules. If you want to be so notified, or wish to receive a copy of the adopted rules, submit your request to the agency contact person listed above.

Adoption Procedure after the Hearing. Notice: If a hearing is held, after the close of the hearing record, the administrative law judge will issue a report on the proposed rules. Any person may request to be notified of the date on which the administrative law judge's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. If you want to be notified about the report, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the administrative law judge. Any person may also request notification of the date on which the rules were adopted and filed with the Secretary of State. The agency's notice of adoption must be mailed on the same day that the rules are filed. If you want to be notified of the adoption, you may so indicate at the hearing or send a request in writing to the agency contact person at any time prior to the filing of the rules with the Secretary of State.

Dated: 27 November 1995

Joseph P. Graba
Interim Director

Rules as Proposed

4840.0100 DEFINITIONS.

[For text of subps 1 and 2, see M.R.]

Subp. 3. **School.** "School" means:

A. an individual, partnership, company, firm, society, trust, association, corporation, or any combination thereof operating or doing business in Minnesota, unless otherwise exempt pursuant to Minnesota Statutes, sections 136A.653 and 136A.657, which:

[For text of subitems (1) to (4), see M.R.]

[For text of item B, see M.R.]

4840.0300 WHO MUST REGISTER.

All schools shall register annually with the Higher Education ~~Coordinating Board Services Office~~. ~~Annually the board~~ The office shall ~~adopt by resolution~~ maintain and publish a list of registered schools. ~~A school need not be approved to be registered.~~

4840.0400 REQUIREMENTS FOR REGISTRATION.

Subpart 1. Registration fees and related costs.

A. ~~The fees for initial registration and for annual renewal are as authorized by Minnesota Statutes, section 136A.69. The Fees are not refundable.~~

B. A \$550 fee shall accompany each initial registration application.

C. A \$400 fee shall accompany each annual renewal registration application.

D. Applications for renewal for any registration received after the deadline date specified in the renewal materials provided by the office are subject to a late fee equal to 20 percent of the annual registration renewal fee.

E. A school shall reimburse the ~~board office~~ board office for ~~reasonable~~ actual costs associated with a site evaluation visit outside Minnesota if the visit is necessary under subpart 3 and *Minnesota Statutes*, section 136A.64, subdivision 1.

Subp. 2. **Plan to preserve permanent records.** Each school shall maintain permanent records for all students enrolled at any time. Records include school transcripts, documents, and files containing student data relating to academic credits earned, courses completed, grades awarded, degrees awarded, and periods of attendance.

A. To preserve permanent records, a school shall submit and implement a plan which meets all of the following:

(1) at least one copy of the records held in a secure depository;

(2) an appropriate official designated to provide a student with official copies of records or official transcripts upon request;

(3) a method, acceptable to the ~~board office~~ board office, of complying with subitems (1) and (2) for at least 50 years from the day the school ceases to exist; and

(4) if the school has no binding agreement for preserving and providing official copies of student records under this item, a continuous surety bond in an amount not to exceed \$20,000.

B. When a school decides to cease postsecondary education operations, it must inform the board office of the following:

[For text of subitems (1) to (4), see M.R.]

Subp. 3. **Information.** Each school shall submit the following information accompanied by an affidavit attesting to its accuracy and truthfulness:

[For text of items A to D, see M.R.]

E. all current promotional and recruitment materials and advertisements;

F. the current school catalog and, if not contained in the catalog:

[For text of subitems (1) to (10), see M.R.]

(11) the school's ~~policy~~ policies about student admission, evaluation, suspension, and dismissal.

Subp. 4. **Additional information.** If the board office is unable to determine the nature and activities of a school on the basis of the information in subpart 3, the board office shall notify the school of additional information needed.

Subp. 5. **Verification of information.** The board office may verify the accuracy of submitted information by inspection, visitation, or any other means it considers necessary.

Subp. 6. **Public information.** All information submitted to the board office is public information except financial records and information. The board office may disclose financial records or information to defend its decision to approve or disapprove granting of degrees or the use of a name or its decisions to revoke such approval at a hearing under *Minnesota Statutes*, chapter 14, or other legal proceedings.

Subp. 7. **Unauthorized representations.** No school or any of its officials or employees shall advertise or represent in any manner that a school is approved or accredited by the board office or the state of Minnesota. A school may represent that it is registered with the board office by using the following language: "(Name of school) is registered with the Minnesota Higher Education ~~Coordinating Board Services Office.~~ Registration means that the school has filed information with the Higher Education Services Office, including a plan to protect student records. Registration is not an endorsement of the institution. ~~Registration does not mean that Credits earned at the institution can be transferred may not transfer to all other institutions or that the quality of.~~ The educational programs ~~would~~ may not meet the standards needs of every student; ~~educational institution;~~ or employer."

4840.0500 APPROVAL OF NAMES AND DEGREES.

Subpart 1. **In general.** A school must be registered if it uses the term "academy," "institute," "college," or "university" in its name or if it grants a degree to a student in Minnesota, where the student has not left Minnesota for the major portion of the program or course leading to the degree. It also must substantially meet the criteria in subpart 2. In addition, it must meet the requirements in subparts 4 and 5, as applicable. The board office shall maintain and publish a list of the schools approved to use regulated terms in their names and a list of schools approved to grant degrees with a list of the approved specified degrees.

[For text of subp 2, see M.R.]

Subp. 3. [See repealer.]

[For text of subps 4 to 6, see M.R.]

Subp. 7. **Conditional approval.** The board office may grant conditional approval for a degree or use of a term in its name for a period of less than one year if doing so would be in the best interests of currently enrolled students or prospective students.

Subp. 8. [See repealer.]

4840.0600 DISAPPROVAL AND APPEAL.

If a school's degree or use of a term in its name is disapproved by the board office, the school may request a hearing under *Minnesota Statutes*, chapter 14. The request must be in writing and made to the board office within 30 days of the date the school is notified of the disapproval.

4840.0700 WITHDRAWAL OF APPROVAL.

Subpart 1. **Notice and hearing.** The board office may refuse to renew, revoke, or suspend approval of a school's degree or use of a regulated term in its name by giving written notice and reasons to the school. The school may request a hearing under *Minnesota Statutes*, chapter 14. If a hearing is requested, no disapproval shall take effect until after the hearing.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Proposed Rules

Subp. 2. **Reasons for withdrawal.** Withdrawal of approval may be for one or more of the following reasons:

- A. violating the provisions of this chapter or *Minnesota Statutes*, sections 136A.61 to 136A.71 ~~or this chapter~~;
- B. providing false, misleading, or incomplete information to the board office;
- C. presenting to prospective students information about the school which is false, fraudulent, misleading, deceptive, or inaccurate in a material respect; or
- D. refusing to allow reasonable inspection or to supply reasonable information after a written request by the board office has been received.

4840.0900 SCHOOLS LICENSED BY ANOTHER AN AGENCY OR DEPARTMENT.

The board office shall accept as final and not inquire into the substantive basis for a license granted to a school by any agency or department of the state or any other state.

4840.1100 VOLUNTARY COMPLIANCE.

A school or educational program which is exempt under *Minnesota Statutes*, section 136A.653, is exempt from parts 4840.0100 to ~~4840.1000~~ 4840.0900 but may voluntarily waive its exemption by registering. Upon registration the school or educational program is subject to all applicable requirements of parts 4840.0100 to 4840.0900 and *Minnesota Statutes*, sections 136A.61 to 136A.71 and ~~parts 4840.0100 to 4840.1000~~.

REPEALER. *Minnesota Rules*, parts 4840.0500, subparts 3 and 8; 4840.0800; and 4840.1000, are repealed.

Pollution Control Agency

Proposed Permanent Rules Relating to Air Quality

DUAL NOTICE

Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and

Notice of Hearing if 25 or More Requests for Hearing are Received

Introduction: The Minnesota Pollution Control Agency (MPCA) intends to adopt a permanent rule without a public hearing following the procedures set forth in the Administrative Procedure Act, *Minnesota Statutes* §§ 14.22 to 14.28. If however, 25 or more persons submit a written request for a hearing on the proposed rule by January 11, 1996, a public hearing will be held at the date and location as follows:

DATE	PLACE	TIME
February 8, 1996	Minnesota Pollution Control Agency Board Room-Lower Level 520 Lafayette Road North St. Paul, Minnesota 55155	8:00 a.m. to 4:30 p.m.

To find out whether the rule will be adopted without a hearing or if the hearing will be held, you should contact Mike Mondloch at the address below after January 11, 1996, and before February 8, 1996.

Contact Person: Comments or questions on the proposed rule and written requests for a public hearing on the rule must be submitted to:

Mike Mondloch
Minnesota Pollution Control Agency
Air Quality Division
520 Lafayette Road North
St. Paul, Minnesota 55155
Telephone: (612) 297-5847
Fax: (612) 297-8701

Subject of Rule and Statutory Authority: The MPCA is proposing to adopt rule revisions governing Air Emission Permit Fees and Air Emission Fees for Sources with Registration Permits; Air Quality Division Definitions and Abbreviations; Air Emission Permits; Permit Contents; Shutdown and Breakdown Notification Requirements; and Emission Inventory Reporting Requirements.

The current Air Emission Fees and Emission Inventory rules became effective July 1, 1992. The rules were intended to fund the Air Quality Division in accordance with the Clean Air Act Amendments of 1990 and *Minnesota Statutes* § 116.07, subd. 4d. In the

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proposed Interim Approval of Minnesota's Operating Permit Program (*Federal Register*, September 13, 1994, pages 46948 to 46951), the U.S. Environmental Protection Agency (EPA) commented that Minnesota's rules do not collect the minimum \$25 per ton of "regulated pollutant (for presumptive fee collection)." The proposed revisions incorporated into this rulemaking are intended, in part, to address EPA's comments.

The Air Emission Permit Fees and Emission Inventory rules also need to be amended to accommodate the recently adopted (December 26, 1994) amendments to the permitting rules that created a new type of state permit. These permits, called registration permits, are intended to simplify permitting and compliance demonstration procedures for qualifying facilities. The target group for these permits is small businesses or businesses with low actual emissions. The preparation of an emission inventory can be difficult, particularly for a facility without an experienced environmental staff. The proposed revisions simplify the emission inventory reporting requirements for facilities that obtain a registration permit.

Additionally, several other minor amendments are needed to clarify and update the air emission permit fees, emission inventory, insignificant activities, and shutdown and breakdown notification rules. For a more detailed discussion of these topics, please see the Statement of Need and Reasonableness (SONAR).

Minnesota Statutes § 116.07, subd. 4 provides general authority to adopt, amend, and rescind rules for the prevention, abatement, or control of air pollutants. *Minnesota Statutes* § 116.07, subd. 4d(a)-(e) provides the authority to collect fees for permitting and air emissions fees. The MPCA has authority to require emission inventories under *Minnesota Statutes* § 116.07, subd. 9(b). The changes to the MPCA's permitting requirements fall within the MPCA's general permitting authority located under *Minnesota Statutes* § 116.07, subd. 4a. Under these statutes, the MPCA has the necessary authority to adopt the proposed rule amendments. A copy of the proposed rule is published immediately after this notice.

Comments: You have until 4:30 p.m. on January 11, 1996, to submit written comments in support of or in opposition to the proposed new rules or any part or subpart of the rules. Your comments must be in writing and received by Mike Mondloch by the due date. Comment is encouraged. Your comments should identify the portion of the proposed rules addressed, the reason for the comment, and any proposed change.

Request for a Hearing: In addition to submitting comments, you may also request that a hearing be held on the rules. Your request for a public hearing must be in writing and must be received by Mike Mondloch by 4:30 p.m. on January 11, 1996. Your written request for a public hearing must include your name, address, and telephone number. You are encouraged to identify the portion of the proposed rules which caused your request, the reason for the request, and any changes you want made to the proposed rules. If 25 or more persons submit a written request for a hearing, a public hearing will be held unless a sufficient number withdraw their requests in writing.

Modifications: The proposed rules may be modified, either as a result of public comment or as a result of the rule hearing process. Modifications must not result in a substantial change in the proposed rules as printed in the *State Register* and must be supported by data and views submitted to the MPCA or presented at the hearing. If the proposed rules affects you in any way, you are encouraged to participate in the rulemaking process.

Cancellation of Hearing: The hearing scheduled for February 8, 1996, will be canceled if the MPCA does not receive requests from 25 or more persons that a hearing be held on the rules. To find out whether the hearing will be held, you should contact Mike Mondloch after January 11, 1996, and before February 8, 1996.

Notice of Hearing: If 25 or more persons submit written requests for a public hearing on the rules, a hearing will be held following the procedures in *Minnesota Statutes* §§ 14.14 to 14.20. The hearing will be held on the following date in the following location:

DATE	PLACE	TIME
February 8, 1996	Minnesota Pollution Control Agency Board Room-Lower Level 520 Lafayette Road North St. Paul, Minnesota 55155	8:00 a.m. to 4:30 p.m.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

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The hearing will continue at the designated location until all interested persons have been heard. The hearing will continue, if necessary, at additional times and places as determined during the hearing by the administrative law judge. The administrative law judge assigned to conduct the hearing is Judge Steve Mihalchick. Judge Mihalchick can be reached at:

Minnesota Office of Administrative Hearings
Suite 1700
100 Washington Square Building
Minneapolis, Minnesota 55401-2138
Phone: (612) 349-2511

Hearing Procedure: If a hearing is held, you and all interested or affected persons including representatives of associations or other interested groups will have an opportunity to participate. You may present your views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should relate to the proposed rule. You may also mail written material to the administrative law judge to be recorded in the hearing record for five working days after the public hearing ends. The five-day comment period may be extended for a longer period not to exceed 20 calendar days if ordered by the administrative law judge at the hearing. Comments received during this period will be available for review at the Office of Administrative Hearings. You and the MPCA may respond in writing within five working days after the submission period ends to any new information submitted. No additional evidence may be submitted during the five-day period. All written materials and responses submitted to the administrative law judge must be received at the Office of Administrative Hearings no later than 4:30 p.m. on the due date. This rule hearing procedure is governed by *Minnesota Statutes* §§ 14.14 to 14.20 and *Minnesota Rules* 1400.0200 to 1400.1200. Questions about procedure may be directed to the administrative law judge.

Statement of Need and Reasonableness: Notice is hereby given that a SONAR is now available for review at the MPCA and at the Office of Administrative Hearings. This SONAR includes a summary of all evidence and arguments which the MPCA anticipates presenting at the hearing justifying both the need for and reasonableness of the proposed rules. Copies of the SONAR may be reviewed at the MPCA or at the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Small Business Considerations: *Minnesota Statutes* § 14.115, subd. 2, requires the MPCA when proposing rules which may affect small business to consider methods for reducing the impact on small business. The proposed rules may affect small businesses as defined in *Minnesota Statutes* § 14.115.

The proposed revisions to the emission inventory and fee rules are intended to simplify the process of submitting an emission inventory for these facilities and to reduce the cost of preparing the emission inventory. Without the proposed revisions, small businesses would be subject to the same emission inventory and fee requirements as larger businesses. The current emission inventory requirements can be difficult to comply with and do not take advantage of some of the record keeping requirements of the air emission permitting rules.

There are three areas in which the proposed rules reduce the burden on small businesses: (1) the proposed revisions reduce the emission inventory requirements for facilities that obtain an option B, C, or D registration permit; (2) facilities that obtain an option B registration permit have the option of paying an annual fee based on an emission inventory submitted by the facility or paying a stepped fee based on an estimated emissions from a typical facility VOC-containing materials; (3) newly permitted facilities will be based on the estimated actual emissions from a facility instead of a flat fee of \$770 which will result in the majority of newly permitted facilities paying much less than \$770.

Consideration of Economic Factors: In exercising its powers, the MPCA is required by *Minnesota Statutes* § 116.07, subd. 6, to give due consideration to economic factors.

The MPCA has identified two areas in which the proposed revisions will or could result in an increase in the air emission fee paid by facilities. These areas are: (1) an increase in the total quantity of pollutants included in the calculation of the target fee by eight to ten percent which will increase the dollar per ton figure by eight to ten percent; and (2) reducing the assumed capture efficiency of hoods from 100 to 80 or 60 percent for hood systems used to capture VOC emissions.

For fiscal year 1994 (the year on which the financial impact numbers are based) there were approximately 1,000 facilities in the emission inventory system. Of this, 100 facilities paid over 90 percent of the target fee. Under the proposed revisions, these facilities would see an average fee increase of approximately \$6,000. The remaining 900 facilities would see an average fee increase of approximately \$55.

Facilities that have claimed a capture efficiency of 100 percent for their hood system will see an increase in the amount of pollutant(s) reported in their emission inventory because of the reduced capture efficiency of the hood (the pollutants not captured are fugitive emissions and must be reported as such). This will increase the facilities' fees by approximately 25 to 67 percent. It is also unknown how many facilities have assumed that their hood systems have a capture efficiency of 100 percent.

Impact on Agricultural Land and Farming Operations: *Minnesota Statutes* § 14.11, subd. 2, requires that if an agency that proposes adoption of a rule determines that the rule may have a "direct and substantial adverse impact" on agricultural land in Minnesota, the agency shall comply with the requirements of section 17.83 and 17.84. *Minnesota Statutes* § 116.07, subd. 4, requires that if a proposed rule affects farming operations, the MPCA must provide a copy of the proposed rule and a statement of the effect of the proposed rule on farming operations to the Commissioner of Agriculture for review and comment. The MPCA does not believe that this rule will have an adverse impact on agricultural land or farming operations.

Expenditure of Public Money by Local Bodies: *Minnesota Statutes* § 14.11, subd. 1 requires the MPCA to consider the impacts of proposed rules on local public bodies if the estimated total cost exceeds \$100,000 in either of the two years immediately after adoption of the rule. The MPCA estimates that the proposed revisions would increase the annual fees paid by all public bodies (combined) by less than \$30,000 annually. Therefore, the provisions of *Minnesota Statutes* § 14.11, subd. 1 do not apply.

Review by Commissioner of Transportation: *Minnesota Statutes* § 174.05 requires the MPCA to inform the Commissioner of Transportation of all rulemakings that concern transportation, and requires the Commissioner of Transportation to prepare a written review of the rules. This requirement does not apply because this rulemaking does not affect transportation.

Lobbyist Registration: *Minnesota Statutes* chapter 10A (1994) requires each lobbyist to register with the Ethical Practices Board. Questions regarding this requirement may be directed to the Ethical Practices Board at the following address:

Ethical Practices Board
First Floor South
Centennial Office Building
658 Cedar Street
St. Paul, Minnesota 55155
Phone: (612) 296-5148

Adoption Procedure if No Hearing: If no hearing is required after the end of the comment period, the MPCA may adopt the rules. The rules and supporting documents will then be submitted to the attorney general for review as to legality and form to the extent form relates to legality. You may request to be notified of the date the rules are submitted to the attorney general or be notified of the attorney general's decision on the rules. If you want to be so notified, or want to receive a copy of the adopted rules, submit your request to Mike Mondloch at the address listed in this notice.

Adoption Procedure After the Hearing: If a hearing is held, the administrative law judge will issue a report on the proposed rules after the closing of the hearing record.

Notice: Any person may request notification of the date on which the administrative law judge's report will be available, after which date the MPCA may not take any final action on the rules for a period of five working days. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the administrative law Judge. You may request notification of the date on which the rules were adopted and filed with the Secretary of State. The notice must be mailed on the same day that the rules are filed. If you want to be so notified you may so indicate at the hearing or send a request in writing to Mike Mondloch at the address listed in this notice any time prior to the filing of the rule with the Secretary of State.

Charles W. Williams
Commissioner

Public Notice and Opportunity to Comment on Proposed Revisions to Minnesota's State Implementation Plan to Incorporate Rule Amendments Governing Air Quality Rules, *Minnesota Rules* Chapters 7002, 7005, 7007 and 7019

NOTICE IS HEREBY GIVEN, that the Minnesota Pollution Control Agency (MPCA) is proposing to adopt amendments governing air emission fees and emission inventories. The current rules became effective July 1, 1992. The rules were intended to fund the Air Quality Division in accordance with the Clean Air Act Amendments of 1990 and *Minnesota Statutes* § 116.07, subd. 4d. In the U.S. Environmental Protection Agency's (EPA) proposed Interim Approval of Minnesota's Operating Permit Program, published in the *Federal Register* on September 13, 1994, EPA commented that Minnesota's Rules do not collect the minimum \$25 per ton of "regulated pollutant (for presumptive fee collection)." The proposed revisions are intended, in part, to address EPA's comments. Minnesota also recently adopted new permitting rules intended to simplify the permitting process. That rulemaking introduced registration permits. The proposed revisions to the air emission fees and emission inventory rules accommodate registration permits. The proposed revisions also amend other parts of *Minnesota Rules* governing air quality.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

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A copy of the State Implementation Plan (SIP) revision will be available for inspection at the MPCA offices in St. Paul at 520 Lafayette Road North, 1st Floor, Air Quality Division, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. Written comments concerning the SIP will be accepted until 4:30 p.m. January 11, 1996 and should be sent to:

Susan Mitchell
Air Quality Division
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155
Telephone (612) 297-3082

The public is hereby notified that the proposed amendments will be brought before a public hearing if anyone requests a public hearing during the public comment period. Persons who wish to request a public hearing concerning the proposed amendments should contact Ms. Mitchell at (612) 297-3087 or submit a written request by 4:30 p.m. January 11, 1996. Your written request must include your name and address. If no one requests a public hearing, the MPCA Board will make the final decision on this SIP submittal.

Charles W. Williams
Commissioner

Rules as Proposed

7002.0015 DEFINITIONS.

[For text of subpart 1, see M.R.]

Subp. 2. [See repealer.]

Subp. 2a. Chargeable pollutant. "Chargeable pollutant" means the following:

A. nitrogen oxides (NO_x) or any volatile organic compound; and

B. PM-10, sulfur dioxide, lead, and any other pollutant for which a national ambient air quality standard has been promulgated, except carbon monoxide.

Subp. 2b. Dollar per ton figure or \$X. "Dollar per ton figure" or "\$X" means the dollar amount assessed for each ton of chargeable pollutant determined under part 7002.0045.

[For text of subp 3, see M.R.]

Subp. 3a. Emission reporting facility. "Emission reporting facility" means any facility for which the owner or operator of the facility must obtain an air emission permit under chapter 7007 except any facility permitted under part 7007.1120, registration permit option B.

Subp. 4. [See repealer.]

7002.0025 ANNUAL EMISSION FEE RATES.

Subpart 1. Calculation of fee.

A. Owners or operators of affected emission reporting facilities shall pay be assessed an annual emission fee for each ton of a regulated chargeable pollutant emitted to the air by the facility. The fee shall be based on the actual emission tonnages as established in the most recent available Emission inventory. The fees reporting facilities shall be assessed a fee of \$X for each ton of any regulated chargeable pollutant as established in the most recently available emission inventory. The value of "X" is as determined in part 7002.0045.

B. Notwithstanding item A, the owner or operator of any emission reporting facility or any facility issued an option B registration permit under part 7007.1120 that chooses to be assessed a fee under part 7002.0025, subpart 1, item C, subitem (1), with less than one ton of total actual emissions shall be assessed an annual fee of \$25.

C. As described in subitems (1) and (2), the owner or operator of a facility issued an option B registration permit under part 7007.1120 shall be assessed an annual emission fee based on either the reported quantity of VOC-containing materials purchased or used (whichever was stated in the facility's permit application) or the actual emissions from the use of VOC-containing materials.

(1) If the owner or operator chooses to be assessed the fee based on the actual emissions from the use of VOC-containing materials, the facility's actual emissions shall be determined in accordance with parts 7019.3000 to 7019.3090. The assessed fee shall be determined in accordance with item A.

(2) If the owner or operator chooses to be assessed the fee based on the quantity of VOC-containing materials purchased or used (whichever was stated in the facility's permit application), the fee shall be:

- (a) \$50 if the quantity of VOC-containing materials is less than or equal to 1,000 gallons; or
- (b) \$140 if the quantity of VOC-containing materials is more than 1,000 and less than 2,000 gallons.

Subp. 2. [See repealer.]

Subp. 2a. Newly permitted facilities.

A. Newly permitted emission reporting facilities that have not submitted one or more emission inventories under part 7019.3000, subpart 1, shall be assessed a fee of \$X times the estimated actual emissions as stated in the facility's permit application. The fee assessed under this item shall not exceed \$10,000. The most recently determined \$X shall be used in determining the fee.

B. Newly permitted facilities issued an option B registration permit under part 7007.1120 shall be assessed a fee under subpart 1, item C, subitem (2), based on the estimated normal annual quantity of VOC-containing materials to be purchased or used (whichever was stated in the facility's permit application).

C. A bill for the newly permitted facility fee under item A or B shall be sent upon issuance of the permit. Newly permitted facilities that are issued permits in 1995 shall be assessed a fee according to the method described in this subpart.

Subp. 3. **Estimated potential to emit Facilities failing to submit emissions inventories.** If an emission reporting facility fails to submit actual an emissions data inventory as required by part 7019.2000, subpart 4, or 7019.3000, whichever is in effect when the inventory is due, the it shall be assessed an annual emission fee for that facility shall be based on that is \$X times 1-1/2 times the estimated potential to emit of that facility, as defined in part 7005.0100, subpart 35a actual emissions as stated in the facility's permit application.

If the owner or operator of a facility that is required to obtain a permit under chapter 7007 has not submitted a permit application which includes an estimate of the actual emissions, it shall be assessed an annual fee that is \$X times 1-1/2 times the estimated potential to emit of that facility, as defined in part 7005.0100, subpart 35a.

If a facility issued an option B registration permit fails to submit an emission inventory, it shall be assessed an annual fee of \$210.
7002.0035 AIR QUALITY ANNUAL FEE TARGET.

The annual fee target shall be set as described in items A, B, and C B.

A. ~~For fiscal year 1993, the unadjusted fee target shall be \$5,093,000.~~

B. ~~For fiscal year 1994 and thereafter, The unadjusted fee target shall be the greater of the following:~~

[For text of subitem (1), see M.R.]

(2) the amount calculated by multiplying \$25 per ton, adjusted for inflation since 1989, times the number of tons of particulate matter and each regulated chargeable pollutant listed in the most ~~recent~~ recently available emission inventory. PM-10 shall not be double counted as a chargeable pollutant and as particulate matter. A maximum of 4,000 tons per pollutant per facility shall be used for this calculation. The adjustment for inflation shall be in accordance with the adjustment described by the United States Environmental Protection Agency in rules adopted under title V of the federal Clean Air Act Amendments of 1990, Public Law Number 101-549, Statutes at Large, volume 104, pages 2399, et seq in Minnesota Statutes, section 116.07, subdivision 4d, paragraph (d).

~~C. B.~~ The amounts described in items item A and B must be adjusted as follows:

[For text of subitems (1) and (2), see M.R.]

(3) for any year, the commissioner may increase the fee target by up to five percent to reflect the anticipated fee nonpayment rate. This increase must not be considered for purposes of calculating a deficit or surplus under subitems subitem (1) and (2).

7002.0045 COMPUTATION OF THE DOLLAR PER TON FIGURE.

The dollar per ton figure "~~X~~ \$X" used in part 7002.0025 shall be computed as follows:

$$\del X \$X = (F - I - P) / (F - [I + P + R + ($25 \times N)]) / (T - L)$$

where:

~~X~~ \$X = ~~Dollars~~ Dollar amount per ton figure.

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Proposed Rules

F = Total annual fee target, as determined in this part 7002.0035.

I = Total amount to be billed as indirect source permit fees for in the previous calendar year, under part 7002.0055.

P = Total amount to be billed as ~~new permit~~ newly permitted facility fees for in the previous calendar year, under part 7002.0025, subpart ~~2~~ 2a.

R = Total amount to be billed under part 7002.0025, subpart 1, item C, subitem (2), as option B registration permit annual emission fees based on the quantity of VOC-containing materials purchased or used.

N = Total number of emission reporting facilities and facilities issued option B registration permits that are assessed an annual emission fee based on actual emissions under part 7002.0025, subpart 1, item C, subitem (1), with less than one ton of total actual emissions of chargeable pollutants.

T = Total number of tons of all ~~regulated~~ chargeable pollutants and particulate matter, not including PM-10, listed in the most ~~recent~~ recently available annual emissions inventory emitted from emission reporting facilities and facilities issued option B registration permits that are assessed an annual emission fee based on actual emissions under part 7002.0025, subpart 1, item C, subitem (1).

L = Total number of tons of all chargeable pollutants and particulate matter, not including PM-10, listed in the most recently available annual emission inventory emitted from emission reporting facilities and facilities issued option B registration permits that are assessed an annual emission fee based on actual emissions under part 7002.0025, subpart 1, item C, subitem (1), that emit less than one ton of total actual emissions of chargeable pollutants and particulate matter, not including PM-10.

7002.0055 INDIRECT SOURCE PERMIT FEES.

[For text of subpart 1, see M.R.]

Subp. 2. **Fees nonrefundable.** The fees in subpart 1 shall be determined by the division manager upon application for an indirect source permit, or when it becomes apparent that a surcharge shall apply. A bill for the amount due shall be sent ~~after January 1 of the following calendar year upon withdrawal of the permit application or issuance or denial of the permit.~~ Fees paid under this part are nonrefundable, regardless of whether a permit is eventually issued.

Subp. 3. **Minor changes.** The amendment of a permit application during the application review process shall be considered minor for purposes of this part if it would have been considered a minor modification under part ~~7001.1350~~ 7023.9050 or if an agency approved trip analysis shows that the change would not increase vehicle trips in any intersection in any hour by 100 trips or more.

7002.0065 PAYMENT OF FEES.

~~A Fees assessed under parts 7002.0025 and 7002.0055 shall be paid within 60 days of receipt of an invoice from the division manager. The person submitting the fee shall make it payable to the Minnesota Pollution Control Agency, and shall submit it to the division manager. The fee shall be paid within 60 days of receipt of an invoice from the division manager.~~

7002.0075 NOTIFICATION OF ERROR.

~~A person An owner or operator who thinks that the assessed annual emission fee is in error shall provide a written explanation of the person's position to the commissioner along with within 60 days of receipt of the invoice or no later than June 30 of the year in which the fee was assessed, whichever is later. An owner or operator who thinks that an error exists in emissions inventory data shall submit an explanation by the February 1 following the year in which the inventory is due in accordance with part 7019.3000, subpart 2. The assessed fee shall be paid as required in part 7002.0065. The commissioner shall, within 60 days of the receipt of the person's written explanation, either provide a written explanation of why the fee was not in error and shall not be refunded, or, if the commissioner finds that the assessed fee was in error, the overpayment shall be refunded to the person or credited to the person's account.~~

7002.0085 LATE PAYMENT FEE.

~~An owner or operator of an affected a facility subject to one or more fees under parts 7002.0005 to 7002.0055 shall pay a late payment fee of 20 ten percent of the payment due for failure to make payment pay an assessed fee within 30 60 days of the payment due date, and shall pay receipt of an invoice from the division manager. At 30-day intervals thereafter, the owner or operator shall be assessed an additional ten percent of the original payment due for each additional for failure to pay the assessed fee within that 30-day period that the payment is late. All late fees are due upon receipt of an invoice from the division manager.~~

7005.0100 DEFINITIONS.

[For text of subps 1 to 9a, see M.R.]

Subp. 9b. Efficiency factor. "Efficiency factor" means:

A. the control efficiency listed in part 7011.0070, subpart 1, table A;

B. notwithstanding item A, where no control efficiency is listed for a control equipment type in part 7011.0070, subpart 1, table A, or where the commissioner has determined that a more representative control efficiency is available under this item, efficiency factor means a control efficiency developed or approved by the commissioner and derived from the following sources:

(1) EPA publications including, but not limited to, Locating and Estimating documents, Control Technology Center documents, the preamble and background information documents for New Source Performance Standards or National Emission Standards for Hazardous Air Pollutants and Compilation of Air Pollutant Emission Factors (AP-42), United State Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, July 1993, which is incorporated by reference and is available through the State Law Library. This publication is subject to frequent change;

(2) EPA databases and computer programs;

(3) engineering publications;

(4) performance test data from the same or a similar unit at the same or a similar facility; or

(5) manufacturer's performance tests.

C. The commissioner shall develop or approve an efficiency factor under item B using best engineering judgment and based on one or more of the following considerations:

(1) the precision and accuracy of the data;

(2) the similarity between the control equipment and emission units tested and the control equipment and emission units to which the efficiency factor is to be applied;

(3) the number of units tested in developing the efficiency factor under consideration;

(4) the availability of data of equal or greater quality;

(5) the control equipment and emission unit operating conditions under which the tests were conducted; and

(6) the data analysis procedures.

[For text of subps 10 and 10b, see M.R.]

Subp. 10c. [See repealer.]

Subp. 10d. [See repealer.]

[For text of subps 11 to 45, see M.R.]

7007.0150 PERMIT REQUIRED.

[For text of subps 1 to 3, see M.R.]

Subp. 4. Calculation of potential to emit.

A. For purposes of parts 7007.0200 and 7007.0250, the owner or operator of a stationary source shall calculate the stationary source's potential to emit using the definition in part 7005.0100, subpart 35a, except as provided in subitems (1) and (2).

(1) Emissions caused by activities described in subpart 2 of the insignificant activities list in part 7007.1300 shall not be considered in the calculation of potential emissions.

(2) Emissions caused by activities described in part 7007.1300, subpart 3 of the insignificant activities list in part 7007.1300 or 4, shall be considered in the calculation of potential emissions if required by the agency under part 7007.0500, subpart 2, item C, subitem (2) to determine if these emissions, in addition to all other emissions at the stationary source, could make the stationary source subject to different applicable requirements under parts 7007.0100 to 7007.1850.

Calculations of emissions under this subpart are only intended to determine if a permit is required.

B. To make the determination of whether a permit is required, the owner or operator of a stationary source shall use the potential to emit calculation method described in item A. To determine what type of permit is required, if a permit is required, the control equipment efficiency determined by part 7011.0070 for listed control equipment at a stationary source may be used in calculating ~~controlled~~ emissions if the owner or operator is in compliance with parts 7011.0060 to 7011.0080.

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Proposed Rules

C. When calculating emissions to determine if a permit amendment is required, the calculation method stated in part 7007.1200 shall be used.

[For text of subp 5, see M.R.]

7007.0300 SOURCES NOT REQUIRED TO OBTAIN A PERMIT.

Subpart 1. **No permit required.** The following stationary sources are not required to obtain a permit under parts 7007.0100 to 7007.1850:

[For text of items A and B, see M.R.]

C. notwithstanding parts 7007.0200 and 7007.0250, any stationary source that would be required to obtain a permit solely because it is subject to *Code of Federal Regulations*, title 40, part 61, subpart M, National Emission Standard for Hazardous Air Pollutants for Asbestos, section 61.145, Standard for Demolition and Renovation (incorporated by reference at part 7011.9920); ~~and~~

D. any stationary source with only emissions units listed as insignificant activities in part 7007.1300, subparts 2 and 3, if the following requirements are met by the owner or operator:

(1) the records are maintained that demonstrate that a permit is not required for emissions units described in part 7007.1300, subparts 2 and 3, except part 7007.1300, subpart 3, item H, subitem (1), records are maintained that demonstrate that a permit is not required. These records shall contain a list of all emissions units and the Minnesota Rules citation that defines those emissions units as an insignificant activity. The records shall be permanently kept at the stationary source and made available for examination and copying by the commissioner or a representative of the commissioner; and

(2) the records are kept at the stationary source and are made available for examination and copying by the commissioner or a representative of the commissioner. for emissions units described in part 7007.1300, subpart 3, item H, subitem (1), the owner or operator shall:

(a) record each month the quantity of VOC-containing materials used and the maximum VOC content;

(b) maintain a record of the material data safety sheet (MSDS), or a signed statement from the supplier stating the maximum VOC content, for each VOC-containing material used;

(c) recalculate and record each month the 12-month rolling sum of actual VOCs used, and the calculation itself and a list of the associated emissions units in which it was used;

(d) maintain at the stationary source the records as long as the emissions unit is located at the stationary source; and

(e) make the records available for examination and copying by the commissioner or a representative of the commissioner; and

E. notwithstanding parts 7007.0200 and 7007.0250, any stationary source that would be required to obtain a permit solely because it is subject to one or more new source performance standards under Code of Federal Regulations, title 40, part 60, that has the potential to emit zero tons per year from the affected units of each pollutant regulated by the standard.

Subp. 2. [See repealer.]

7007.0500 CONTENT OF PERMIT APPLICATION.

[For text of subpart 1, see M.R.]

Subp. 2. **Information included.** Applicants shall submit the following information as required by the standard application form:

[For text of items A and B, see M.R.]

C. The following emissions-related information:

[For text of subitem (1), see M.R.]

(2) The application need not include the information required by this part for any activity listed on the insignificant activities list in part 7007.1300, except as provided in this subitem. The application shall include a list identifying any activity of insignificant activities at the stationary source described in part 7007.1300, subpart 3 of the insignificant activities list or 4, if requested by the agency. The permittee shall provide a calculation of emissions from any activity described in part 7007.1300, subpart 3 of the insignificant activities list. The agency shall request such a calculation if it finds that the emissions from those activities, or 4, if these emissions, in addition to other emissions from the stationary source, could make the stationary source subject to different applicable requirements ~~or different requirements~~ under parts 7007.0100 to 7007.1850. The commissioner may request that the permittee calculate emissions of any activity described in part 7007.1300, subpart 3 or 4, to verify if the source is subject to any different applicable requirement.

[For text of subitems (3) to (10), see M.R.]

[For text of items D to N, see M.R.]

[For text of subps 3 to 5, see M.R.]

7007.1110 REGISTRATION PERMIT GENERAL REQUIREMENTS.

[For text of subps 1 to 7, see M.R.]

Subp. 8. **Emission inventory required for stationary sources issued registration permits.** The owner or operator of a stationary source issued a registration permit under parts 7007.1110 to 7007.1130 must submit an annual emission inventory to the commissioner under parts 7019.3000 to ~~7019.3010~~ 7019.3100.

[For text of subps 9 to 22, see M.R.]

7007.1115 REGISTRATION PERMIT OPTION A.

Subpart 1. **Eligibility.** The owner or operator of a stationary source may apply for a registration permit under this part if the stationary source is required to obtain a permit solely because it is subject to a new source performance standard listed in part 7007.1110, subpart 2, item B, and the owner or operator does not anticipate making changes in the next year which will cause the stationary source to require a permit for other reasons. Insignificant activities at the stationary source listed in part 7007.1300, subparts 2 and 3, are not considered in the eligibility determination under this subpart.

Subp. 2. **Application content.** An application for a registration permit under this part must contain the following:

[For text of items A and B, see M.R.]

C. a copy of the applicable new source performance standards (NSPS) listed in part 7007.1110, subpart 2, item B, with the applicable portions of the standards highlighted, including applicable parts of *Code of Federal Regulations*, title 40, part 60, subpart A, General Provisions, or an NSPS checklist form provided by the commissioner, for each affected facility as defined in *Code of Federal Regulations*, title 40, section 60.2.

Insignificant activities at the stationary source listed in part 7007.1300, subparts 2 and 3, are not required to be included in the application.

[For text of subp 3, see M.R.]

7007.1120 REGISTRATION PERMIT OPTION B.

Subpart 1. **Eligibility.** The owner or operator of a stationary source may apply for a registration permit under this part if:

A. the stationary source purchases or uses less than 2,000 gallons of VOC-containing materials on a 12-month rolling sum basis;

B. the only emissions from the stationary source are from VOC-containing materials, or are from insignificant activities under part 7007.1300, subparts 2 and 3; and

C. the owner or operator does not anticipate making changes in the next 12 months which will cause the stationary source to purchase or use 2,000 gallons or more of VOC-containing materials on a 12-month rolling sum basis.

Subp. 2. **Application content.** An application for a registration permit under this part must contain the following:

[For text of items A to D, see M.R.]

E. for stationary sources in operation on the effective date of this part, the gallons of VOC-containing materials purchased or used on a 12-month rolling sum basis. If the stationary source has not been operated, the owner or operator shall estimate the gallons of VOC-containing materials that will be purchased or used on a 12-month rolling sum basis during normal operation using a worksheet provided by the commissioner. If the stationary source has been operated less than 12 months on the date of application under this part, the owner or operator shall calculate gallons of VOC-containing materials purchased or used by multiplying 12 months by the larger of the two following monthly averages:

(1) the average monthly gallons purchased or used; or

(2) the estimated average monthly gallons purchased or used for normal operation.

Insignificant activities at the stationary source listed in part 7007.1300, subparts 2 and 3, are not required to be included in the application.

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Proposed Rules

Subp. 3. **Compliance requirements.** The owner or operator of a stationary source issued a registration permit under this part shall:

[For text of items A to C, see M.R.]

D. have emissions from the stationary source only from VOC-containing materials, ~~from fugitive emissions from roads or parking lots~~, or from insignificant activities under part 7007.1300, subparts 2 and 3;

E. comply with part 7011.1110; and

F. comply with all applicable requirements, including new source performance standards.

7007.1125 REGISTRATION PERMIT OPTION C.

Subpart 1. **Eligibility.** The owner or operator of a stationary source may apply for a registration permit under this part if the stationary source consists of only indirect heating units (boilers), reciprocating internal combustion engines, and/or ~~VOC~~ emissions from use of VOC-containing materials, and meets the following criteria:

A. all emissions units at the stationary source are included under calculations 1, 2A, 2B, and 3 in subpart 4, or are insignificant activities under part 7007.1300, subparts 2 and 3;

[For text of items B to E, see M.R.]

Subp. 2. **Application content.** An application for a registration permit under this part must contain the following:

[For text of items A to D, see M.R.]

E. the calculations required by subpart 4. If the stationary source has not been operated, the owner or operator shall estimate the gallons of VOC-containing materials, amount of fuels burned and hours of operation on a 12-month rolling sum basis during normal operation in performing the calculations required in subpart 4. If the stationary source has been operated less than 12 months on the date of application under this part, the owner or operator shall perform the calculation in subpart 4 by calculating gallons of VOC-containing materials purchased or used, amount of fuels purchased or used, or hours of operation by multiplying by 12 the larger of the following:

(1) the average monthly gallons of VOC-containing materials purchased or used, amount of fuel purchased or used, or hours of operation; or

(2) calculating an estimated monthly average for normal operations.

Insignificant activities at the stationary source listed in part 7007.1300, subparts 2 and 3, are not required to be included in the application.

Subp. 3. **Compliance requirements.** The owner or operator of a stationary source issued a registration permit under this part shall comply with all of the requirements in items A to J.

[For text of items A to F, see M.R.]

G. The owner or operator must have emissions from the stationary source only from indirect heating units (boilers), from reciprocating internal combustion engines, ~~from fugitive emissions from roads or parking lots~~, from insignificant activities under part 7007.1300, subparts 2 and 3, and/or from use of VOC-containing materials.

[For text of items H to J, see M.R.]

[For text of subp 4, see M.R.]

7007.1130 REGISTRATION PERMIT OPTION D.

Subpart 1. **Eligibility.** The owner or operator of a stationary source may apply for a registration permit under this part if the stationary source meets the following criteria:

A. all emissions units at the stationary source are either included in calculations in subpart 4, or are insignificant activities under part 7007.1300, subparts 2 and 3;

[For text of items B and C, see M.R.]

Subp. 2. **Application content.** An application for a registration permit under this part must contain all of the following requirements:

[For text of items A to E, see M.R.]

F. if the calculations required by subpart 4 used control equipment efficiencies for listed control equipment determined by part 7011.0070, a copy of the portion of the control equipment manufacturer's specifications with the operating parameters required to be monitored under part 7011.0080 highlighted, and if the efficiency is based on an alternative control efficiency under part 7011.0070, subpart 2, a copy of the performance test plan with the operating parameters highlighted.

Insignificant activities at the stationary source listed in part 7007.1300, subparts 2 and 3, are not required to be included in the application.

Subp. 3. **Compliance requirements.** The owner or operator of a stationary source issued a permit under this part shall comply with all of the requirements in items A to J.

[For text of items A to D, see M.R.]

E. The owner or operator must recalculate and record each month, pursuant to subpart 4, the 12-month rolling sum of actual emissions from the stationary source, the date the calculation was made, and the calculation itself. This calculation must include all emissions units at the stationary source, except for insignificant activities under part 7007.1300, subparts 2 and 3, and the information required by subpart 4, item B, subitem (2), if continuous emissions monitor (CEM) data is used in the calculation.

[For text of items F to J, see M.R.]

[For text of subp 4, see M.R.]

7007.1300 INSIGNIFICANT ACTIVITIES LIST.

[For text of subps 1 and 2, see M.R.]

Subp. 3. **Insignificant activities required to be listed.** The activities described in this subpart must be listed in a permit application, and calculation of emissions from these activities shall be provided if required by the agency, under part 7007.0500, subpart 2, item C, subitem (2). If emissions units listed in this subpart are subject to additional requirements under section 114(a)(3) of the act (Enhanced Monitoring) or section 112 of the act (Hazardous Air Pollutants), or if part of a title I modification, or if accounted for, make a stationary source subject to a part 70 permit, emissions from the emissions units must be calculated in the permit application.

[For text of items A to J, see M.R.]

K. Plant upkeep:

(1) spray paint equipment used for plant upkeep activities that uses less than 200 gallons of paint in any consecutive 12-month period; or

(2) spray paint equipment used for plant upkeep activities that uses 200 gallons of paint or more in any consecutive 12-month period.

Subp. 4. **Insignificant activities required to be listed in a part 70 application.** If a facility is applying for a part 70 permit, emissions units with ~~potential~~ emissions less than all the following limits but not included in subpart 2 must be listed in a part 70 permit application:

[For text of items A and B, see M.R.]

C. ~~25 percent of the hazardous air pollutant thresholds listed in part 7007.1251~~ combined HAP actual emissions of one ton per year unless the emissions unit emits one or more of the following HAPs: carbon tetrachloride; 1,2-dibromo-3-chloropropane; ethylene dibromide; hexachlorobenzene; polycyclic organic matter; antimony compounds; arsenic compounds, including inorganic arsine; cadmium compounds; chromium compounds; lead compounds; manganese compounds; mercury compounds; nickel compounds; selenium compounds; 2,3,7,8-tetrachlorodibenzo-p-dioxin; or dibenzofuran. If the emissions unit emits one or more of the HAPs listed in this item, the emissions unit is not an insignificant activity under this subpart.

Calculation of emissions from the emissions units listed in this subpart shall be ~~provided if required by the agency included in the permit application if emissions from the emissions units listed under this subpart, in addition to all other emissions from the stationary source, could make the stationary source a HAP major source~~ under part ~~7007.0500~~ 7007.0200, subpart 2, item C, ~~item (2) A~~. If emissions units listed under this subpart are subject to additional requirements under section 114(a)(3) of the act (Enhanced Monitoring) or section 112 of the act (Hazardous Air Pollutants), or are part of a title I modification, or if accounted for, make a stationary source subject to a part 70 permit emissions from the emissions units must be calculated in the permit application. If the applicant is applying for a state permit or an amendment to a state permit, this subpart does not apply.

RECORDKEEPING STANDARDS FOR LISTED EMISSIONS UNITS

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Proposed Rules

7019.1000 SHUTDOWNS AND BREAKDOWNS.

Subpart 1. **Shutdown.** The owner or operator of an emission facility shall notify the commissioner at least 24 hours in advance of a shutdown of any control equipment ~~and; if the shutdown would cause an increase in the emission of air contaminants; of a shutdown of any~~ or process equipment if the shutdown would cause an increase in the emissions of any regulated air pollutant. At the time of notification, the owner or operator shall also notify the commissioner of the cause of the shutdown and the estimated duration. The owner or operator shall notify the commissioner when the shutdown is over.

Subp. 2. **Breakdown.** The owner or operator of an emission facility shall notify the commissioner immediately of a breakdown of more than one hour duration of any control equipment ~~and; if the breakdown causes an increase in the emission of air contaminants; of a breakdown of any~~ or process equipment if the breakdown would cause an increase in the emissions of any regulated air pollutant. At the time of notification or as soon thereafter as possible, the owner or operator shall also notify the commissioner of the cause of the breakdown and the estimated duration. The owner or operator shall notify the commissioner when the breakdown is over.

[For text of subs 3 and 4, see M.R.]

7019.3000 EMISSION INVENTORY.

Subpart 1. ~~Owners or operators~~ Emission inventory required.

A. All owners or operators of ~~affected emission reporting~~ facilities, as defined in part 7002.0015, subpart 2 ~~3a~~, and all owners and operators of stationary sources with potential emissions of more than 25 tons per year of a regulated pollutant, as defined in part 7002.0015, subpart 4, shall submit an annual emission inventory report to the agency, in a format specified by the commissioner, relating to carbon monoxide, particulate matter, and all regulated chargeable pollutants as defined in part 7002.0015, subpart 4 ~~2a~~. The report shall be submitted on or before April 1 of the year following the year being reported. ~~A person who signs The responsible official, as defined in part 7007.0100, subpart 21, must sign the report and~~ shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision by qualified personnel. The information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I understand that the data provided in this document will be used by the MPCA to calculate a fee, which the facility will be required to pay under ~~Minnesota Rules, part 7002.0025~~ 7002.0065, based on the tons of pollution emitted by the facility."

B. (1) All owners or operators of facilities issued option B registration permits under part 7007.1120 shall submit either an emission inventory using methods described under subitem (3) and parts 7019.3020 to 7019.3100 or the certification and VOC-containing material report in subitem (2). The report shall be submitted on or before the April 1 following the year being reported.

(2) All owners or operators that choose to be assessed a fee under part 7002.0025, subpart 1, item C, subitem (2), shall submit a report and certification to the agency. The responsible official, as defined in part 7007.0100, subpart 2, must sign the report and shall make the following certification:

"I certify under penalty of law that the facility described in registration permit number is eligible for the option B registration permit that it was issued and holds and that the facility purchased or used (as stated in the permit application) gallons of VOC-containing materials in the 12-month reporting period. I further certify that the eligibility of the facility and the quantity of material reported herein were determined under my direction or supervision by qualified personnel. The information used to determine eligibility and the quantity of material reported herein for the registration permit is, to the best of my knowledge and belief, true and accurate. I understand that the information provided in this certification will be used by the MPCA to assess a fee under Minnesota Rules, part 7002.0025, subpart 1, item C, which the facility will be required to pay under Minnesota Rules, part 7002.0065."

(3) All owners and operators that choose to be assessed a fee under part 7002.0025, subpart 1, item C, subitem (1), shall submit an emission inventory report to the agency, in a format specified by the commissioner, relating to emissions from the use of VOC-containing materials using methods described in part 7019.3030, item B, and the certification in subitem (2). The certification and emission inventory shall be signed by the responsible official, as defined in part 7007.0100, subpart 2.

Subp. 2. **Owner or operator error in reporting data.** If an owner or operator discovers an error in the data after having submitted it to the agency, the owner or operator shall submit corrected data, with a written explanation of the mistake and why it occurred. If the commissioner agrees that the correction is appropriate, the commissioner shall correct the data in the inventory. However, for purposes of assessing the emission fee under part 7002.0025, the commissioner shall not recognize any correction submitted by an owner or operator which would result in a reduction of tons emitted if the correction is submitted after ~~November 30 of the February 1 following the year in which the inventory is due.~~

7019.3020 CALCULATION OF ACTUAL EMISSIONS FOR EMISSION INVENTORY.

A. Emissions from all emissions units shall be reported in the annual emissions inventory report in a format specified by the commissioner. Emissions from insignificant activities listed in part 7007.1300, subpart 2, shall not be reported. Emissions from

insignificant activities listed in part 7007.1300, subparts 3 and 4, shall be reported if the commissioner or owner or operator has determined that emissions from those activities are not insignificant for purposes of permitting under parts 7007.0100 to 7007.1850. The commissioner may request an inventory of fugitive emissions from roads and parking lots, defined as insignificant under part 7007.1300, subpart 3, item J, upon determining that emissions from these sources represent a substantial portion of the facility's total emissions.

B. All owners or operators of emission reporting facilities, as defined in part 7002.0015, subpart 3a, or facilities issued option B registration permits under part 7007.1120 that choose to be assessed a fee under part 7002.0025, subpart 1, item C, subitem (1), shall calculate emissions based on parts 7019.3030 to 7019.3100, except for any facility which has obtained an option C or D registration permit under part 7007.1125 or 7007.1130.

C. All owners or operators of emission reporting facilities which have obtained an air emission permit under part 7007.1125, registration permit option C, shall report the quantity of each fuel purchased or used (whichever was stated in the facility's registration permit application) in the year for which emissions are being calculated. The report shall apportion the quantity of fuel burned with the type of combustion unit (indirect heating units or internal combustion engines) in which it was burned. The owner or operator shall report the quantity of VOC-containing materials purchased or used (whichever is stated in the facility's registration permit application) in the year for which emissions are being calculated. The owners or operators reporting VOC-containing materials purchases or usage shall also report the weight factor (WF) of the VOC in the materials (weight of VOC per weight of VOC-containing materials) and the density of the materials. The actual emissions shall be calculated by the commissioner.

D. All owners or operators of emission reporting facilities which have obtained an air emission permit under part 7007.1130, registration permit option D, shall report the actual emissions calculated for purposes of compliance demonstration required in part 7007.1130, subpart 3, item E, for the calendar year for which emissions are being reported.

E. All owners or operators of an emission reporting facility submitting an emission inventory based in whole, or in part, on a material balance calculation shall submit a sample material balance calculation with the emission inventory. Such facilities shall also maintain a record of the material safety data sheets or vendor certification of the VOC or sulfur content of the material for each material or fuel used and the material balance calculations for a period of five years after the date of submittal of the emission inventory.

F. The use of control equipment must be required under conditions of a permit or applicable requirement as defined in part 7007.0100, subpart 7, if the owner or operator of an emission reporting facility submits an emission inventory based, in whole or in part, on the effects of the use of pollution control equipment.

7019.3030 METHOD OF CALCULATION.

A. The owner or operator of an emission reporting facility, except one issued an option C or D registration permit under part 7007.1125 or 7007.1130, shall calculate the facility's actual emissions using the highest available method on the following hierarchy of methods:

- (1) part 7019.3040;
- (2) part 7019.3050;
- (3) part 7019.3060, 7019.3070, 7019.3080, or 7019.3090, as applicable; or
- (4) part 7019.3100.

B. The owner or operator of a facility issued an option B registration permit under part 7007.1120 that chooses to be assessed a fee under part 7002.0025, subpart 1, item C, subitem (1), shall calculate the facility's actual emissions using the highest available method on the following hierarchy of methods:

- (1) part 7019.3040;
- (2) part 7019.3050; or
- (3) part 7019.3060, 7019.3080, or 7019.3090, as applicable.

The owner or operator of a facility issued an option B registration permit under part 7007.1120 that chooses to be assessed a fee under part 7002.0025, subpart 1, item C, subitem (1), shall not consider the effects of pollution control equipment on emissions from the use of VOC-containing materials when calculating actual emissions for an emissions inventory.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

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C. For purposes of selecting a calculation method, a method is considered available if the conditions associated with the method in parts 7019.3040 to 7019.3100 are met. The method described in part 7019.3100 may be used, provided that the proposal is submitted to the division manager by October 1 of the first year for which the emissions are being calculated. The commissioner shall reject data submitted using the methods described in parts 7019.3040 to 7019.3090 if the conditions for the method are not fully met.

7019.3040 CONTINUOUS EMISSION MONITOR (CEM) DATA.

A. If an emission reporting facility or a facility issued an option B registration permit under part 7007.1120 that chooses to be assessed a fee under part 7002.0025, subpart 1, item C, subitem (1), has collected emissions data through use of a CEM in compliance with the preconditions in subitems (1) and (2), the facility shall report that data to the agency in its emission inventory. The emission inventory submitted shall be based on all of the CEM data. The requirements in subitems (1) and (2) must be met:

(1) the CEM has been certified by the commissioner; and

(2) the CEM data have not been rejected by the commissioner due to failure by the owner or operator to comply with parts 7017.1000, 7019.1000, and 7019.2000; all applicable permit conditions; and any other applicable state or federal laws pertaining to CEM operation.

B. Facilities required to use this method shall include the following information in their emission inventory:

(1) the total operating time of the applicable emission unit and the total operating time of the CEM; and

(2) an explanation of how the emissions were calculated based on the CEM data. For periods when the CEM is down and the emissions unit is operating, missing emissions data shall be substituted with CEM data recorded during a representative period of operation of the emissions unit, and, if applicable, of the control equipment operation during the same calendar year for which the inventory is being submitted. The CEM must have recorded data for at least 90 percent of the hours the emission unit was operated for the calendar year for which the inventory is being submitted. If substitute CEM data meeting these conditions is not available, emissions during periods of CEM downtime shall be calculated using the next highest available method on the hierarchy of methods listed in part 7019.3030.

7019.3050 PERFORMANCE TEST DATA.

A. If an emission reporting facility or a facility issued an option B registration permit under part 7007.1120 that chooses to be assessed a fee under part 7002.0025, subpart 1, item C, subitem (1), has collected representative emission data through the use of performance tests in compliance with the preconditions in items B and C, and if CEM data under part 7019.3040 is not available, the facility shall calculate its emissions based on performance tests. If the emission data is unrepresentative because fuel or material feed used under the test conditions is substantially different than the conditions under which the emissions unit is normally operated or because the emissions unit has been modified, the facility shall calculate its emissions based on the next highest available method. Emissions unit operating load variation from test load does not make the data unrepresentative. In the event that the facility has collected emission data through the use of performance tests and determines that the data is unrepresentative for any reason, the facility shall submit an explanation of why the data is unrepresentative with the emissions calculated using the next highest available method. The commissioner shall determine if the conditions of the performance test were representative based upon the operating data supplied by the facility for the year of the inventory.

B. All the requirements of parts 7017.2001 to 7017.2060, including the requirement to notify the agency prior to conducting performance tests as required in part 7017.2030, subpart 1, all other applicable state and federal laws, and all applicable air emission permit conditions relating to performance testing have been complied with.

C. For facilities that are required to conduct annual performance testing, the test was performed during the calendar year for which the emissions are being calculated; or for facilities that are not required to conduct annual performance testing, the emission factors used are derived from the most recently conducted performance test. Performance test data may not be more than five years older than the last date of the emission inventory period and must be representative of operating conditions during the calendar year for which the emission inventory is being submitted.

7019.3060 VOLATILE ORGANIC COMPOUND (VOC) MATERIAL BALANCE.

If the methods in part 7019.3040 or 7019.3050 are unavailable to an emission reporting facility or a facility issued an option B registration permit under part 7007.1120 that chooses to be assessed a fee under part 7002.0025, subpart 1, item C, subitem (1), the facility may calculate VOC emissions using the material balance method described in this part. This method may be used in conjunction with or instead of emission factors and enforceable limitations methods described in parts 7019.3080 and 7019.3090, where applicable. A person using material balance to calculate VOC emissions shall determine the total VOC emissions (E) as follows:

$$E = (A - B - C) * (1 - CE)$$

where:

A = the amount of VOC entering the process. The amount of VOC used in this calculation shall be the amount certified by the supplier or the maximum amount stated on the material safety data.

B = the amount of VOC incorporated into the product. This includes VOCs chemically transformed in production. An explanation of this calculation must also be submitted.

C = the amount of VOC, if any, leaving the process as waste, or otherwise not incorporated into the product and not emitted to the air. If the actual VOC content of the waste is unknown, then C = 0.

CE = the overall efficiency, or the product of capture efficiency and control efficiency, of any device used to capture and/or control VOC emissions, expressed as a decimal fraction of 1.00. The overall efficiency shall be based on efficiency factors, as defined in part 7005.0100, subpart 9b, or shall be based on the overall efficiency verified by a performance test conducted according to parts 7017.2001 to 7017.2060 and 7019.3050. The overall efficiency of a pollution control system that uses a hood, as defined in part 7011.0060, subpart 2, as the emission capture device shall be based on a capture efficiency of 60 percent. If an alternative capture efficiency has been determined by a performance test conducted according to parts 7017.2001 to 7017.2060 and 7019.3050, that capture efficiency shall be used in the calculation of actual emissions.

7019.3070 SO₂ MATERIAL BALANCE.

If the methods in parts 7019.3040 and 7019.3050 are unavailable to an emission reporting facility, it may calculate sulfur dioxide emissions using the SO₂ material balance method described in this part. A person using this method shall measure the sulfur content of the fuel and assume that all of the sulfur in the fuel is oxidized to sulfur dioxide. This method may be used in conjunction with or instead of emission factors and enforceable limitations methods described in parts 7019.3080 and 7019.3090, where applicable. The sulfur content of each batch of fuel received must be certified by the supplier or an independent laboratory. The sulfur content shall be determined using American Society for Testing and Materials (ASTM) methods. The sulfur dioxide emissions shall be determined by using the following equation:

$$SO_2 = \%S/100 \times F/2000 \times 2$$

where:

SO₂ = Sulfur dioxide emissions from a batch of fuel.

%S = Weight percent sulfur in the fuel being burned.

F = Amount of fuel burned by weight in pounds.

2000 = Pounds per ton.

2 or 64/32 = Pounds of sulfur dioxide per pound of sulfur in one pound-mole.

The total sulfur dioxide emissions for the year shall be the sum total of the individual batch totals.

7019.3080 EMISSION FACTORS.

If the methods in parts 7019.3040 and 7019.3050 are unavailable to an emission reporting facility or a facility issued an option B registration permit under part 7007.1120 that chooses to be assessed a fee under part 7002.0025, subpart 1, item C, subitem (1), the facility may calculate its emissions using emission factors as defined in part 7005.0100, subpart 10a, and as described in this part. This method may be used in conjunction with or instead of material balance and enforceable limitations methods described in parts 7019.3060, 7019.3070, and 7019.3090, where applicable. Calculations of actual emissions shall be based on operating data multiplied by an emission factor. Operating data necessary to apply the emission factor used in the calculation of emissions in this method shall be included in the emission inventory. Operating data means the data necessary to apply the emission factor to calculate emissions. For example, tons of material handled is the necessary operating data for an emissions factor expressed as "tons of pollutant/ton of material handled."

Control equipment efficiency shall be based on efficiency factors as defined in part 7005.0100, subpart 9b, or shall be based on the efficiency verified by a performance test conducted according to parts 7017.2001 to 7017.2060 and 7019.3050. Calculations of actual emissions from an emission unit through a pollution control system that uses a hood, as defined in part 7011.0060, subpart 2, as the emission capture device shall be based on a capture efficiency of 80 percent, except those systems that control VOC emis-

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sions which shall be based on a capture efficiency of 60 percent. If an alternative capture efficiency has been determined by a performance test conducted according to parts 7017.2001 to 7017.2060 and 7019.3050, that capture efficiency shall be used in the calculation of actual emissions.

7019.3090 ENFORCEABLE LIMITATIONS.

If the methods in part 7019.3040 or 7019.3050 are unavailable to an emission reporting facility or a facility issued an option B registration permit under part 7007.1120 that chooses to be assessed a fee under part 7002.0025, subpart 1, item C, subitem (1), the facility may calculate actual emissions using any enforceable permit limitation or applicable requirement limitation. This method may be used in conjunction with or instead of material balance and emission factor methods described in parts 7019.3060 to 7019.3080, where applicable. Calculations of actual emissions shall be based on operating data multiplied by the limitation. Operating data and a sample calculation used in the calculation of emissions in this method shall be included in the emission inventory. Operating data means the data upon which the emission limitation is based. For example, dscf (dry standard cubic feet) for an emission limitation expressed as "gr/dscf" (grains per dry standard cubic feet).

7019.3100 FACILITY PROPOSAL.

A. The emission reporting facility may propose an alternative method for calculating actual emissions if the emission reporting facility can demonstrate to the satisfaction of the commissioner either:

(1) that the proposed method is more accurate than the methods in parts 7019.3040 to 7019.3090; or

(2) that none of the methods in parts 7019.3040 to 7019.3090 is technically or economically feasible and the proposed method is accurate.

B. The proposal shall include:

(1) a comparison of the accuracy of the proposed method with the alternatives in parts 7019.3040 to 7019.3090;

(2) a detailed description of the proposed method; and

(3) an explanation of why none of the alternatives in parts 7019.3040 to 7019.3090 are technically or economically feasible if the facility is making the proposal under item A, subitem (2).

C. The proposal shall be submitted to the commissioner by October 1 of the year for which the emissions are being calculated. The commissioner shall approve the emission reporting facility's proposal if the commissioner finds that the facility has made the demonstration required under item A. If the commissioner rejects the proposal, the commissioner shall do so by February 1 of the year the inventory is due. Approval of a method shall expire no more than five years after the year for which emissions were first calculated. The commissioner shall revoke approval of the method if, after the first year's emission inventory submittal, the owner or operator or the commissioner has determined that the method described under this part no longer accurately calculates each unit's actual emissions. If the commissioner revokes the approval, the commissioner shall do so by February 1 of the year in which the next inventory is due.

REPEALER. *Minnesota Rules*, parts 7002.0015, subparts 2 and 4; 7002.0025, subpart 2; 7002.0095; 7005.0100, subparts 10c and 10d; 7007.0300, subpart 2; and 7019.3010, are repealed.

Pollution Control Agency

Proposed Permanent Rules Relating to Hot Mix Asphalt Plants

Notice of Intent to Adopt Rule Amendments Without a Public Hearing

The Minnesota Pollution Control Agency (MPCA) intends to adopt permanent rules without a public hearing following the procedures set forth in the Administrative Procedure Act, *Minnesota Statutes* §§ 14.22 to 14.28. You have 30 days to submit written comments on the proposed rule and may also submit a written request for a public hearing to be held on the rule.

Agency Contact Person. Comments or questions on the rule and written requests for a public hearing on the rule must be submitted to:

Mary Jean Fenske
Air Quality Division
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155-4194
Telephone: (612) 296-8107

Subject of Rule and Statutory Authority. The MPCA is proposing to revise the hot mix asphalt plant performance standard to allow for more efficient and effective regulation of this industry and better protection of the environment. The MPCA is seeking to improve the performance standard for hot mix asphalt plants to ensure the MPCA's goal of environmental protection and at the same time streamline the methods asphalt plants use to show compliance with applicable rules, including streamlining the permit process. The statutory authority to adopt this rule is contained in *Minnesota Statutes* § 116.07, subd. 4 (1994). A copy of the proposed rule amendments is published immediately after this notice.

Comments. You have until 4:30 p.m., January 11, 1996, to submit written comment in support of or in opposition to the proposed rule and any part of subpart or the rule. Your comment must be in writing and received by the MPCA contact person by the due date. Comment is encouraged. Your comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Request for a Hearing. In addition to submitting comments, you may also request that a hearing be held on the rule. Your request for a public hearing must be in writing and must be received by the MPCA contact person by 4:30 p.m., on January 11, 1996. Your written request for a public hearing must include your name and address. You are encouraged to identify the portion of the proposed rule which caused your request, the reason for the request, and any changes you want made to the proposed rule. If 25 or more persons submit a written request for a hearing, a public hearing will be held unless a sufficient number withdraw their requests in writing. If a public hearing is required, the MPCA will follow the procedures in *Minnesota Statutes* §§ 14.131 to 14.20.

Request to Appear Before MPCA Citizens' Board. The MPCA Citizens' Board has delegated its authority to adopt the proposed amendments using the procedures for rules adopted without a public hearing, and to perform the necessary acts to provide that the rule shall have the force and effect of law, to the MPCA or his designee. You may request to appear before the MPCA Citizens' Board. Your request to appear before the MPCA Citizens' Board must be in writing and must be received by the MPCA contact person by January 11, 1996. Your written request must include your name and address. If no one requests an appearance before the MPCA Citizens' Board and a public hearing is not required, then the Commissioner of the MPCA will make the final decision on this rule as allowed by a delegation from the MPCA Citizens' Board.

Modifications. The proposed rule may be modified as a result of public comment. The modifications must be supported by data and views submitted to the MPCA and may not result in a substantial change in the proposed rule as printed immediately after this notice. If the proposed rule affects you in any way, you are encouraged to participate in the rulemaking process.

Statement of Need and Reasonableness. A statement of need and reasonableness is now available from the MPCA contact person. This statement describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule.

Small Business Considerations. *Minnesota Statutes* § 14.115, subd. 4 (1994) requires that the notice of rulemaking include a statement of the impact of this proposed rule on small business. The proposed rule amendments will affect small businesses as

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defined in *Minnesota Statutes* § 14.115 (1994). As a result, the MPCA has considered the methods for reducing the impact of the rule amendments on small business as defined in *Minnesota Statutes* § 14.115, subd. 2 (1994).

The objective of the rule amendments to the hot mix asphalt performance standard is to simplify compliance requirements for asphalt plants receiving the registration permit and to streamline compliance requirements for the asphalt industry in general. The majority of asphalt plant owners and operators are small businesses.

There are three areas in which the proposed rule amendments reduce the burden on small businesses. (1) Without the provision in the performance test frequency section of the proposed rule, owners and operators of asphalt plants that produce less than 35,000 tons per year (small businesses) and have a manufacturer's rated capacity for 100 ton/hr or less would be required to test at the same frequency as larger plants, as they have in the past. The proposed rule amendments will allow the smallest plants with wet systems to test only as requested by the MPCA. (2) Low actual emissions are typically found at the smaller sources. The proposed rule amendments will allow all asphalt plant operators regardless of new source performance standards applicability to receive a registration permit if they meet the eligibility requirement of low actual emissions, these small businesses will qualify for a permit type with a simplified application form and more flexibility in operational practices. (3) The proposed rule will consolidate and simplify compliance and recordkeeping requirements by creating an operation and maintenance requirements section tailored to asphalt plants rather than requiring compliance with the more generic requirements in the control equipment rule that other registration permit recipients with control equipment must follow (*Minnesota Rules* 7011.0075). Some of the requirements in *Minnesota Rules* 7011.0075 which are costly and meaningless when applied to the asphalt industry were eliminated.

Consideration of Economic Factors: In exercising its powers the MPCA is required by *Minnesota Statutes* § 116.07, subd. 6 (1994) to give due consideration to economic factors. In proposing these rule amendments, the MPCA has given due consideration to available information as to any economic impacts the proposed rule amendments would have. The streamlined requirements and eligibility for registration permits are expected to reduce the costs of compliance for the asphalt industry. The goal of this rulemaking is to streamline compliance requirements and to promote the use of the least polluting plants. The economic impact will depend on the type of control equipment the asphalt plant owner now employs and the practices it had been utilizing. For a more detailed discussion regarding the consideration of economic factors please read the statement of need and reasonableness.

Expenditure of Public Money by Local Public Bodies. *Minnesota Statutes* § 14.11, subd. 1, requires the MPCA to include a statement of the rule's estimated costs to local public bodies in this notice if the rule would have a total cost of over \$100,000 to all local public bodies in the state in either of the two years following adoption of the rule. Local public bodies own or partly own many facilities that are required to obtain an air emission permit. MPCA records show that only two hot mix asphalt plants in the state are owned by cities. Both of these hot mix asphalt plants utilize wet systems to control particulate emissions. The estimated cost of the proposed rule revisions on all public bodies is less than \$30,000 annually. Therefore, the provisions of *Minnesota Statutes* § 14.11, subd. 1 do not apply.

Impacts on Agricultural Land and Farming Operations. *Minnesota Statutes* § 14.11, subd. 2 (1994) requires that if the agency proposing the adoption of a rule determines that the rule may have a direct and substantial adverse impact on agricultural land in the state, the agency shall comply with specified additional requirements. Similarly, *Minnesota Statutes* § 116.07, subd. 4, requires that if a proposed rule affects farming operations, the MPCA must provide a copy of the proposed rule and a statement of the effect of the proposed rule to the Commissioner of Agriculture for review and comment. The MPCA believes that the proposed rule amendments will not have any impact on agricultural lands or farming operations.

Review by Commissioner of Transportation: *Minnesota Statutes* § 174.05 (1994) requires the MPCA to inform the Commissioner of Transportation of all rulemakings that concern transportation, and requires the Commissioner of Transportation to prepare a written review of the rules. This requirement does not apply because this rulemaking does not affect transportation.

Adoption and Review of the Rule. If no hearing is required, after the end of the comment period the MPCA may adopt the rule. The rule and supporting documents will then be submitted to the attorney general for review as to legality and form to the extent form relates to legality. You may request to be notified of the date the rule is submitted to the attorney general or be notified of the attorney general's decision on the rule. If you wish to be so notified, or wish to receive a copy of the adopted rule, submit your request to Mary Jean Fenske.

Public Notice and Opportunity to Comment on Proposed Revisions to Minnesota's State Implementation Plan to Incorporate Rules Governing Standards of Performance for Hot Mix Asphalt Plants

NOTICE IS HEREBY GIVEN, that the MPCA is proposing to adopt rule amendments governing standards of performance for hot mix asphalt plants. This proposed rulemaking will amend the hot mix asphalt plant performance standard to allow for more efficient and effective regulation of this industry and better protection of the environment. In the proposed rulemaking, the MPCA seeks to improve the performance standard for hot mix asphalt plants to ensure the MPCA's goal of environmental protection, and at the same time streamline the methods plants use to show compliance with applicable rules, including streamlining the permit process for hot mix asphalt plants.

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A copy of the State Implementation Plan (SIP) revision will be available for inspection at the MPCA offices in St. Paul at 520 Lafayette Road North, 1st Floor, Air Quality Division, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. Written comments concerning the SIP will be accepted until 4:30 p.m., January 11, 1996, and should be sent to:

Susan Mitchell
Air Quality Division
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155
Telephone: (612) 297-3082

The public is hereby notified that the proposed amendments will be brought before a public hearing if anyone requests a public hearing during the public comment period. Persons who wish to request a public hearing concerning the proposed amendments in the SIP should contact Ms. Mitchell at (612) 297-3082 or submit a written request by 4:30 p.m., January 11, 1996. Your written request must include your name and address. If no one requests a public hearing, the Commissioner of the MPCA will make the final decision on this SIP submittal as authorized by the MPCA Citizens' Board on July 24, 1995.

Charles W. Williams
Commissioner

Rules as Proposed

7007.1110 REGISTRATION PERMIT GENERAL REQUIREMENTS.

[For text of subpart 1, see M.R.]

Subp. 2. Stationary sources that may not obtain a registration permit.

[For text of item A, see M.R.]

B. A stationary source may not obtain a registration permit if it is subject to a new source performance standard other than the following:

[For text of subitems (1) to (8), see M.R.]

(9) *Code of Federal Regulations*, title 40, part 60, subpart OOO, Standards of Performance for Nonmetallic Mineral Processors (incorporated by reference in part 7011.3350); ~~and~~

(10) *Code of Federal Regulations*, title 40, part 60, subpart TTT, Standards of Performance for Industrial Surface Cleaning of Plastic Parts for Business Machines (incorporated by reference in part 7011.2580); ~~and~~

(11) *Code of Federal Regulations*, title 40, part 60, subpart I, Standards of Performance for Hot Mix Asphalt Facilities (incorporated by reference in part 7011.0909).

[For text of subps 3 to 22, see M.R.]

7007.1130 REGISTRATION PERMIT OPTION D.

[For text of subpart 1, see M.R.]

Subp. 2. **Application content.** An application for a registration permit under this part must contain all of the following requirements:

[For text of items A to E, see M.R.]

F. if the calculations required by subpart 4 used control equipment efficiencies for listed control equipment determined by part 7011.0070, a copy of the portion of the control equipment manufacturer's specifications with the operating parameters required to be monitored under part 7011.0080 highlighted, and if the efficiency is based on an alternative control efficiency under part 7011.0070, subpart 2, a copy of the performance test plan with the operating parameters highlighted. The owner or operator of a hot mix asphalt plant shall provide a copy of the portion of the control equipment manufacturer's specifications with the operating parameters required to be monitored under part 7011.0917, subpart 7, or the information to support an alternative operating range required by part 7011.0917, subpart 1.

Insignificant activities at the stationary source listed in part 7007.1300 are not required to be included in the application.

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Subp. 3. **Compliance requirements.** The owner or operator of a stationary source issued a permit under this part shall comply with all of the requirements in items A to J.

[For text of items A to E, see M.R.]

F. If the stationary source qualified in the permit application, in whole or in part, by using control equipment efficiencies for listed control equipment determined under part 7011.0070, the owner or operator shall comply with parts 7011.0060 to 7011.0080, except that the owner or operator of a hot mix asphalt plant shall comply instead with part 7011.0917. If the calculations required by subpart 4 used control equipment efficiencies based on an alternative control efficiency under part 7011.0070, subpart 2, the owner or operator shall also comply with the operating parameters of the performance test that established the alternative control efficiency.

[For text of items G to J, see M.R.]

[For text of subps 4 and 5, see M.R.]

HOT MIX ASPHALT CONCRETE PLANTS

7011.0900 DEFINITION DEFINITIONS.

Subpart 1. Scope. The definitions in this part apply to the terms used in parts 7011.0900 to 7011.0920. The definitions in parts 7005.0100, 7007.0100, and 7011.0060 apply to the terms used in parts 7011.0900 to 7011.0920, unless the terms are defined in this part.

Subp. 2. Asphalt plant control equipment. "Asphalt plant control equipment" means the control equipment at a hot mix asphalt plant listed in part 7011.0917, subpart 7.

Subp. 3. Existing hot mix asphalt plant. "Existing hot mix asphalt plant" means a hot mix asphalt plant that is not a new hot mix asphalt plant.

Subp. 4. Hot mix asphalt plant. "Hot mix asphalt concrete plant" means any a facility used to manufacture hot mix asphalt concrete paving materials by heating and drying aggregate and mixing with asphalt cements. "Hot mix asphalt concrete plant" includes dryers; systems for screening, handling, storing, and weighing hot aggregate; systems for loading, transferring, and storing mineral filler; systems for mixing hot mix asphalt concrete; and the loading, transfer, and storage systems associated with emission control systems.

Subp. 5. New hot mix asphalt plant. "New hot mix asphalt plant" means a hot mix asphalt plant that commences construction, modification, or reconstruction after June 11, 1973, and includes all hot mix asphalt plants subject to the new source performance standards incorporated by reference in part 7011.0909.

7011.0903 COMPLIANCE WITH AMBIENT AIR QUALITY STANDARDS.

Subpart 1. Fuel sulfur content limitation. Notwithstanding part 7011.0913, no owner or operator of a hot mix asphalt plant shall use in the dryer burner any fuel with a sulfur content greater than 0.70 percent, unless:

A. authorized by a part 70, state, or general permit; or

B. compliance with part 7009.0080 has been demonstrated under subpart 2 for each dryer fuel with a sulfur content greater than 0.70 percent.

Subp. 2. Modeling of emissions from high sulfur content fuels. Prior to the use of each dryer fuel with a sulfur content greater than 0.70 percent, the owner or operator of a hot mix asphalt plant shall perform air dispersion modeling to determine whether burning that fuel would comply with the ambient air quality standard for sulfur dioxides (maximum one hour concentration not to be exceeded more than once per year) in part 7009.0080. The owner or operator shall model sulfur dioxide emissions using the most recent version of EPA's screen model described in SCREEN3 Model User's Guide, EPA-454/B-95-004, United States Environmental Protection Agency, Office of Air Quality Planning and Standards, September 1995, which is incorporated by reference and is subject to frequent change. This publication and copies of the SCREEN3 model are available from the Pollution Control Agency library through the Minitex interlibrary loan system, through the National Technical Information Service (NTIS), Springfield, VA, (703) 487-4650, or may be downloaded from the Support Center for Regulatory Air Models (SCRAM) Bulletin Board System (BBS). The SCRAM BBS may be accessed at (919) 541-5742.

Subp. 3. Records required.

A. For any fuel used in the dryer burner, except natural gas, methane, butane, propane, gasoline, kerosene, diesel fuel, and No. 1 and No. 2 fuel oil, the owner or operator of a hot mix asphalt plant shall keep for each fuel delivery a record of a vendor certification or fuel analysis which shows the sulfur content of the fuel.

B. The owner or operator of a hot mix asphalt plant that has done modeling under subpart 2 shall keep a record of the modeling results. The record shall include:

- (1) the sulfur content of the fuel modeled;
- (2) the site modeled;
- (3) model output files; and
- (4) supporting calculations.

The owner or operator shall maintain the records required by this subpart for a minimum of five years from the date the record was made.

Subp. 4. Hot mix asphalt plants with registration permits. If the commissioner finds that a hot mix asphalt plant that has applied for or been issued a registration permit needs source-specific permit conditions to prevent violation of any ambient air quality standard, the commissioner shall require the owner or operator of the hot mix asphalt plant to apply for and obtain a part 70, state, or general permit. The owner or operator of a hot mix asphalt plant shall submit the required permit application within 120 days of the commissioner's written request under this subpart.

Subp. 5. Compliance with ambient air quality standards. Nothing in this part shall be construed to allow violation of any national or state ambient air quality standards. If the commissioner requests it, the owner or operator of a hot mix asphalt plant must demonstrate compliance with the national or state ambient air quality standards.

7011.0905 STANDARDS OF PERFORMANCE FOR EXISTING HOT MIX ASPHALT CONCRETE PLANTS.

No owner or operator of an existing hot mix asphalt concrete plant shall cause to be discharged into the atmosphere from the hot mix asphalt concrete plant any gases which:

- A. contain particulate matter in excess of the limits allowed by parts 7011.0700 to 7011.0735; or
- B. exhibit greater than 20 percent opacity; except that a maximum of 40 percent opacity shall be permissible for not more than four minutes in any 30-minute period and a maximum of 60 percent opacity shall be permissible for not more than four minutes in any 60-minute period.

7011.0925 INCORPORATION OF NEW SOURCE PERFORMANCE STANDARD BY REFERENCE 7011.0909 STANDARDS OF PERFORMANCE FOR NEW HOT MIX ASPHALT PLANTS.

Code of Federal Regulations, title 40, part 60, subpart I, as amended, entitled "Standards of Performance for Hot Mix Asphalt Facilities," is adopted and incorporated by reference.

7011.0911 MAINTENANCE OF DRYER BURNER.

Subpart 1. Annual tuning of dryer burner. The owner or operator of a hot mix asphalt plant must tune the dryer burner for maximum combustion efficiency once each calendar year according to the specifications provided by the manufacturer of the dryer burner.

Subp. 2. Daily check of dryer burner. The owner or operator of a hot mix asphalt plant must do the following each day:

- A. read the fuel pressure gauge on the dryer burner; and
- B. check for a draft at the dryer burner inlet.

Subp. 3. Records kept on dryer burner. The owner or operator of a hot mix asphalt plant must maintain a record of:

- A. the dates of the annual tuning of the dryer burner;
- B. the daily reading from the fuel pressure gauge on the dryer burner;
- C. whether there was a draft at the dryer burner inlet each day; and
- D. any corrective actions taken as a result of the daily checks required by subpart 2.

7011.0913 HOT MIX ASPHALT PLANT MATERIALS, FUELS, AND ADDITIVES OPERATING REQUIREMENTS.

Subpart 1. Materials, fuels, and additives allowed. Except as provided in subpart 3, the owner or operator of a hot mix asphalt plant is allowed to use only the materials, fuels, and additives designated in subpart 2.

Subp. 2. List of authorized materials, fuels, and additives.

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A. The designated materials are clay, silt, sand, gravel, and crushed stone produced from naturally occurring geologic formations, and without additives; recycled asphalt concrete; portland cement concrete; recycled sediments from asphalt plant scrubber operations; fines from fabric filter operations; asphalt cement; and hydrated lime.

B. The designated fuels for combustion are natural gas, methane, butane, and propane; gasoline, kerosene, diesel fuel, jet fuel, and fuel oils (No. 1, No. 2, No. 3, No. 4, No. 5, No. 6); petroleum derived waste oil as defined in part 7045.0020, subpart 102b; and on-specification used oil as defined in part 7045.0020, subpart 60a, except that total halogens shall not exceed 1,000 parts per million.

C. The designated additives are silicone, organic soaps, and other substances of a similar nature added to the asphalt cement.

Subp. 3. Procedure for approval of additional materials, fuels, and additives. The owner or operator may use materials, fuels, or additives not listed in subpart 2, if:

A. the use is specifically allowed by a part 70, state, or general permit; or

B. for hot mix asphalt plants with a registration permit, the commissioner has provided written approval of the use prior to its incorporation into asphalt or use as a fuel.

Requests under item B must be received by the commissioner at least 60 days before the materials, fuels, or additives are used. The requests must be on a form provided by the commissioner. The owner or operator shall conduct performance testing under parts 7017.2001 to 7017.2060 to determine actual emission rates from the use of the material, fuel, or additive. The actual emission rates shall be used to determine actual emissions under part 7007.1130, subpart 3, for hot mix asphalt plants that hold option D registration permits. The commissioner shall deny these requests if the commissioner determines that use of the material would endanger human health or the environment or would subject the hot mix asphalt plant to different applicable requirements or requirements under chapter 7007. The performance testing required by this subpart may be waived by the commissioner when the nonlisted material is substantially similar to a listed material, or when the material has already been the subject of performance tests at a similar hot mix asphalt plant.

Subp. 4. Compliance. The owner or operator must comply with the conditions on the use of the materials, fuels, and additives established in the part 70, state, or general permit if the use is authorized under subpart 3, item A. The owner or operator must comply with the conditions on the use of the materials, fuels, and additives set forth in the commissioner's written approval if the use is authorized under subpart 3, item B.

Subp. 5. Records required. The owner or operator shall keep records of the materials, fuels, and additives used and the amount used on a calendar year basis. The owner or operator shall maintain the records required under this subpart for a minimum of five years from the date the record was made.

7011.0917 ASPHALT PLANT CONTROL EQUIPMENT REQUIREMENTS.

Subpart 1. Operation of asphalt plant control equipment. The owner or operator of a hot mix asphalt plant shall operate in compliance with this part all asphalt plant control equipment located at the stationary source whenever operating the emission units controlled by the asphalt plant control equipment. Unless specifically allowed by a part 70, state, or general permit, each piece of asphalt plant control equipment shall at all times be operated in the range established by the control equipment manufacturer's specifications, or within the operating parameters set by the commissioner as the result of the most recent performance test conducted to determine control efficiency under parts 7017.2001 to 7017.2060, if those are more restrictive.

The owner or operator applying for a registration permit may request an alternative range to the control equipment manufacturer's specifications, if the proposed range is based on two previous years of compliant monitoring data supplied with the request. For hot mix asphalt plants in operation on the effective date of this part, this request shall be made by the application deadline listed in part 7007.0350, subpart 1, item A. The proposed operating range shall be deemed acceptable unless notified otherwise in writing within 30 days of receipt by the commissioner. The commissioner shall deny a request for an alternative monitoring parameter range if the commissioner finds that:

A. an owner or operator has failed to disclose fully all facts relevant to the proposed monitoring parameter range of the asphalt plant control device or the owner or operator has knowingly submitted false or misleading information to the agency;

B. operation of the control device in the monitoring parameter range proposed by the owner or operator would endanger human health or the environment, or subject the hot mix asphalt plant to different applicable requirements or requirements under chapter 7007; or

C. the proposed range is not supported by the data supplied with the request.

Subp. 2. Maintenance of asphalt plant control equipment. The owner or operator of a hot mix asphalt plant shall maintain each piece of asphalt plant control equipment as designed to ensure compliance with applicable requirements, comply with source-specific maintenance requirements specified in a part 70, state, or general permit, and shall perform the following on each piece of asphalt plant control equipment:

- A. thoroughly inspect all asphalt plant control equipment, including structural components, annually;
- B. inspect ducts, connections, and housings for leaks monthly;
- C. check monitoring equipment daily to ensure it is operating in the range required by subpart 1, for example: pressure gauges, temperature indicators, flow gauges, and recorders;
- D. calibrate all monitoring equipment annually;
- E. for fabric filter control devices: check outside cleaning system equipment and its operation daily; and check inside cleaning equipment and its operation, and the clean air side of bags for leaks at least monthly;
- F. for control devices using water such as spray towers, scrubbers, and wet cyclone separators: check sediment level in ponds daily so as not to exceed one-half the pond depth, check suspended sediment in the water entering the control device, and check the pH of the water leaving the control device weekly; and check accessible dampers, spray bars, nozzles, and demister monthly for wear; and
- G. check stack exhaust daily for visible emissions after condensing plume has dissipated.

The owner or operator shall maintain a record of activities conducted in items A to G, consisting of the activity completed, the date the activity was completed, and any corrective action taken; and the owner or operator shall maintain the records required by this subpart for a minimum of five years from the date the record was made.

Subp. 3. Installation of monitoring equipment. The owner or operator of a hot mix asphalt plant shall install monitoring equipment to measure operating hours as specified in part 7011.0922, subpart 3, and the monitoring parameters for all asphalt plant control equipment as specified by subpart 7. For hot mix asphalt plants not in operation on the effective date of this part, the monitoring equipment must be installed prior to operation of any hot mix asphalt plant equipment controlled by the control equipment. For hot mix asphalt plants in operation on the effective date of this part, the owner or operator must install monitoring equipment no later than 30 days after the effective date of this part.

Subp. 4. Operation of monitoring equipment. The owner or operator of a hot mix asphalt plant shall operate in compliance with this part the monitoring equipment for each piece of asphalt plant control equipment at all times the asphalt plant control equipment is required to operate.

Subp. 5. Shutdown and breakdown procedures. In the event of a shutdown or breakdown of asphalt plant control equipment, the owner or operator of a hot mix asphalt plant shall comply with part 7019.1000.

Subp. 6. Deviation of asphalt plant control equipment from operating specifications. Unless otherwise specified in a part 70, state, or general permit, the owner or operator of a stationary source shall report to the commissioner deviations from any monitored operating parameter required by subpart 7. "Deviation" means any recorded reading outside of the specification or range of specifications allowed by subpart 1. The report shall be on a form approved by the commissioner. The owner or operator shall report the deviation to the commissioner semiannually in a midyear report and an end-of-year report. The midyear report, covering deviations which occurred during the period from January 1 to June 30, is due by July 30 of each year. The end-of-year report, covering deviations which occurred during the period from July 1 to December 31, is due by January 30 each year.

Subp. 7. Monitoring and recordkeeping for asphalt plant control equipment. Unless otherwise specified in a part 70, state, or general permit, the owner or operator of a hot mix asphalt plant shall comply with the monitoring and recordkeeping required by the table in this subpart for asphalt plant control equipment. The owner or operator shall maintain the records required by this subpart for a minimum of five years from the date the record was made.

<u>EPA ID NO.</u>	<u>POLLUTION CONTROL EQUIPMENT TYPE</u>	<u>MONITORING PARAMETERS</u>	<u>RECORDKEEPING REQUIREMENT</u>
<u>001.</u>	<u>"Miscellaneous Wet</u>	<u>Pressure drop,</u>	<u>Record each</u>
<u>002.</u>	<u>Scrubber" means a</u>	<u>liquid flow</u>	<u>parameter every</u>
<u>003</u>	<u>control device in</u>	<u>rate, and</u>	<u>calendar day</u>
	<u>which the particulates</u>	<u>water pressure</u>	<u>of operation</u>

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in the incoming gas stream are entrained by a liquid and the control device is not a spray tower, venturi scrubber, impingement plate scrubber, or a wet cyclone separator.

016	<u>“Fabric Filter” (Bag House) means a control device in which the incoming gas stream passes through a porous fabric filter forming a dust cake.</u>	<u>Pressure drop</u>	<u>Record every calendar day of operation</u>
052	<u>“Spray Tower” means a control device in which the incoming gas stream passes through a chamber in which it contacts a liquid spray.</u>	<u>Liquid flow rate, pressure drop, and water pressure</u>	<u>Record each parameter every calendar day of operation</u>
053	<u>“Venturi Scrubber” means a control device in which the incoming gas stream passes through a venturi into which low pressure liquid is introduced.</u>	<u>Pressure drop, liquid flow rate, and water pressure</u>	<u>Record each parameter every calendar day of operation</u>
055	<u>“Impingement Plate Scrubber” means a control device in which the incoming gas stream passes a liquid spray and is then directed at high velocity into a plate.</u>	<u>Pressure drop, liquid flow rate, and water pressure</u>	<u>Record each parameter every calendar day of operation</u>
085	<u>“Wet Cyclone Separator” or “Cyclonic Scrubbers” means a cyclonic device that sprays water into a cyclone.</u>	<u>Pressure drop, water pressure, and water flow rate</u>	<u>Record each parameter every calendar day of operation</u>
019	<u>“Afterburners” (thermal or catalytic oxidation) means a device used to reduce VOCs to the products of combustion through thermal (high temperature) oxidation</u>	<u>Combustion temperature or inlet and outlet temperatures</u>	<u>Continuous hard copy readout of temperatures or manual readings every 15 minutes</u>

or catalytic (use of
a catalyst) oxidation
in a combustion chamber.

of operation

7011.0920 PERFORMANCE TEST PROCEDURES TESTS.

Subpart 1. **In general Methods and procedures.** Performance tests shall be conducted according to the requirements of this part and parts 7017.2001 to 7017.2060.

Subp. 2. **Special procedures Performance test frequency for hot mix asphalt plants using fabric filters.** For Method 5, the sampling time for each run shall be at least 60 minutes and the sampling rate shall be at least 0.9 dscm/hr (0.53 dscf/min) except that shorter sampling times, when necessitated by process variables or other factors, may be approved by the agency. If an owner or operator of a hot mix asphalt plant uses a fabric filter, including, but not limited to, EPA ID No. 016 listed in part 7011.0917, subpart 7, as the primary or secondary control equipment to remove particulate matter, then the owner or operator shall conduct performance testing for particulate matter and opacity as required by part 7017.2020, subpart 1.

Subp. 3. **Performance test frequency for hot mix asphalt plants with control equipment that uses liquid to remove pollutants.** If an owner or operator operates a hot mix asphalt plant that has only control equipment that uses liquid to remove pollutants or has a secondary control device that uses liquid to remove pollutants, including, but not limited to, EPA ID Nos. 052, 053, 055, and 085 listed in part 7011.0917, subpart 7, then the owner or operator shall conduct performance testing for particulate matter and opacity as described in items A to E.

A. If the hot mix asphalt plant produced no more than 35,000 tons in each of the three previous calendar years and has a manufacturer's rated capacity of 100 tons per hour or less at five percent moisture, then the owner or operator shall conduct performance testing as required by part 7017.2020, subpart 1.

B. Except as provided in item A, if the hot mix asphalt plant produced no more than 100,000 tons in any of the three previous calendar years, then the owner or operator shall conduct performance testing every three calendar years.

C. If the hot mix asphalt plant produced greater than 100,000 tons, but no more than 200,000 tons in any of the three previous calendar years, then the owner or operator shall conduct performance testing every two calendar years.

D. If the hot mix asphalt plant produced more than 200,000 tons in the previous calendar year, then the owner or operator shall conduct performance testing within 60 days of start-up in the following calendar year.

E. The owner or operator of a hot mix asphalt plant shall conduct additional performance testing as required by part 7017.2020, subpart 1.

Subp. 4. **Performance test required for all hot mix asphalt plants.** If the owner or operator of a hot mix asphalt plant has not conducted a performance test for particulate matter and opacity approved by the commissioner under parts 7017.2001 to 7017.2060 since January 1, 1991, the owner or operator must conduct such a performance test:

A. in 1996, for hot mix asphalt plants that are operated in the state in 1996; or

B. within 60 days after the hot mix asphalt plant begins operation in the state.

7011.0922 OPERATIONAL REQUIREMENTS AND LIMITATIONS FROM PERFORMANCE TESTS.

Subpart 1. **Throughput limit.** The owner or operator of a hot mix asphalt plant shall not exceed the production throughput at which compliance with part 7011.0905 or 7011.0909 was demonstrated during the plant's most recent performance test, unless authorized by subpart 2.

Subp. 2. **Certain exceptions to throughput limit.** Except as provided in items A and B, if a hot mix asphalt plant demonstrated compliance during its most recent performance test and its tested emission rate (gr/dscf or lb/hr) was less than 80 percent of the applicable rule or permit emission limit, then the owner or operator may increase production throughput ten percent over that allowed under subpart 1.

A. If a hot mix asphalt plant with a fabric filter control device has conducted a performance test since January 1, 1991, has demonstrated compliance for particulate matter and opacity, and its tested emission rate (gr/dscf or lb/hr) was less than 50 percent

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but greater than or equal to 25 percent of the applicable rule or permit emission limit, then the owner or operator may increase production throughput 15 percent over that allowed under subpart 1.

B. If a hot mix asphalt plant with a fabric filter control device has conducted a performance test since January 1, 1991, has demonstrated compliance for particulate matter and opacity, and its tested emission rate (gr/dscf or lb/hr) was less than 25 percent of the applicable rule or permit emission limit, then the owner or operator may increase production throughput 20 percent over that allowed by subpart 1.

Subp. 3. Monitoring and recordkeeping required. To determine compliance with subpart 1, the owner or operator of a hot mix asphalt plant must:

A. operate an accumulating hour meter on the high fire mode of the dryer burner at all times the dryer burner is in operation;

B. record each day the plant's hours of operation and production throughput; and

C. determine the average tons produced per hour for each calendar day of operation.

RENUMBERER. Minnesota Rules, part 7011.0925, is renumbered as part 7011.0909.

REPEALER. Minnesota Rules, part 7011.0915, is repealed.

Pollution Control Agency

Air Quality Division

Proposed Permanent Rules Relating to Removal of Lead Paint from Steel Structures

Dual Notice

Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing,
and

Notice of Hearing if 25 or More Requests for Hearing are Received

Introduction: The Minnesota Pollution Control Agency (MPCA) intends to adopt permanent rules without a public hearing following the procedures set forth in the Administrative Procedure Act, *Minnesota Statutes* §§ 14.22 to 14.28. If however, 25 or more persons submit a written request for a hearing on the proposed rule by January 11, 1996, a public hearing will be held at the date and location as follows:

DATE	PLACE	TIME
February 6, 1996	County Administration Center Conference Room 107 705 Courthouse Square St. Cloud, Minnesota 56301	9:00 A.M. - 4:30 P.M.

To find out whether the rules will be adopted without a hearing or if the hearing will be held, you should contact Norma Coleman at the address below after January 11, 1996, and before February 6, 1996.

Contact Person: Comments or questions on the proposed rules and written requests for a public hearing on the rules must be submitted to:

Norma Coleman
Minnesota Pollution Control Agency
Air Quality Division
520 Lafayette Road North
St. Paul, Minnesota 55155
Telephone: (612) 296-7712
Fax: (612) 297-8701

Subject of Rule and Statutory Authority: The MPCA is proposing to adopt new rules governing removal of lead paint from steel structures. Steel structures include a variety of industrial and commercial structures and equipment including bridges, storage structures, and other steel structures.

The proposed rules are directed at preventing contamination with lead paint particles as a result of lead paint removal from exterior surfaces of steel structures. Many of these surfaces have lead paint on them and large steel structures can carry hundreds or thousands of pounds of lead. Significant risk to public health and the environment can be caused when these coatings are removed if the paint is simply transferred from the surface of the steel structure to the soil and surrounding area. Abrasive blasting is the most common method of removing paint from large steel surface areas. However, lead contamination can occur with a number of methods of paint removal if containment and preventive measures are not used.

The rules require the use of minimum containment with abrasive blasting in all circumstances and the use of additional containment or of alternative methods of removal under circumstances where significant contamination is more likely or in proximity to sensitive properties. The rules address different methods of removal, and they provide generally less stringent requirements of containment for vacuum blasting, power and hand tools, chemical stripping, and wet abrasive blasting because these methods have less potential to cause environmental contamination. Some methods of removal on certain structures require only the use of ground cover, e.g. hand tool removal on ground storage tanks.

Parts of the rules address definitions, compliance, identification of lead in paint, notification, conditions for pollution control on individual structures, and general restrictions. Provisions of the regulation are apportioned to bridges, storage structures, and other steel structures. Storage structures include water tanks of all kinds, fuel storage tanks, grain storage bins, and other storage structures. The rules include a variety of engineering controls that combine different methods of paint removal with methods of containment. There are no monitoring requirements in the rules that require media sampling.

Simple performance standards address visible air emissions and visible deposits as well as cleanup. The combination of paint removal methods and containment with performance standards provides specific pollution control requirements. There are a number of different methods of removal prescribed for each class of structure, however the owner or contractor can also apply any other equivalent method subject to approval.

The proposed rules apportion steel structures to a number of classes of pollution control. The classes of pollution control require more or less containment or alternative methods of paint removal according to the location of the structure. Standards of proximity to affected properties are defined by distance. Residential, child care, playground, and school properties are considered to be the most sensitive to the effects of lead contamination. Public use property, commercial property, and protected natural areas have an intermediate distance standard. Industrial and agricultural properties have the least restrictive requirements for lead paint removal. Other variables that determine the necessary class of pollution control for storage tanks are the height of the structure, the total surface area, and the concentration of lead in the paint. There are four classes of pollution control for bridges and three classes for storage tanks. The requirements for pollution control for steel structures that are neither bridges nor storage tanks refer the owner or contractor to the provisions that address either of those two kinds of structures. Removal of lead paint from any steel structure requires the use of minimum pollution control. Generally, this consists of curtains to restrict the dispersal of lead paint particles and ground cover to collect the deposits of waste materials.

The rules also contain a notification provision to nearby childcare facilities, schools and residences to close doors, windows, and storm windows in order to prevent infiltration of lead particulate where either dry or wet abrasive blasting is done. Finally, the rules require cleanup of all visible deposits of waste material and proper removal, transport, and disposal to prevent further contamination.

The rules provide for the use of alternative methods of paint removal. In order not to discourage the implementation of improvements in current methods and technology, the rules provide that procedures of paint removal and containment that achieve equivalent measures of pollution control are acceptable if approved in advance by the MPCA Commissioner.

The statutory authority to adopt the rule is found in *Minnesota Statute* § 116.07, subd. 4 with respect to air pollution, solid waste and hazardous waste and *Minnesota Statute* § 115.03, subd. 1(e) with respect to water pollution. In addition, *Minnesota Statute* § 144.9508, subd. 2f (adopted during the 1995 Legislative Session) requires that the MPCA adopt rules to address abrasive blasting of steel structures. A copy of the proposed rules is published immediately after this notice.

Comments: You have until 4:30 p.m. on January 11, 1996, to submit written comments in support of or in opposition to the proposed new rules or any part or subpart of the rules. Your comments must be in writing and received by Norma Coleman by the due date. Comment is encouraged. Your comments should identify the portion of the proposed rules addressed, the reason for the comment, and any proposed change.

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Request for a Hearing: In addition to submitting comments, you may also request that a hearing be held on the rules. Your request for a public hearing must be in writing and must be received by Norma Coleman by 4:30 p.m. on January 11, 1996. Your written request for a public hearing must include your name, address and telephone number. You are encouraged to identify the portion of the proposed rules which caused your request, the reason for the request and any changes you want made to the proposed rules. If 25 or more persons submit a written request for a hearing, a public hearing will be held unless a sufficient number withdraw their requests in writing.

Modifications: The proposed rules may be modified, either as a result of public comment or as a result of the rule hearing process. Modifications must not result in a substantial change in the proposed rules as printed in the *State Register* and must be supported by data and views submitted to the MPCA or presented at the hearing. If the proposed rules affects you in any way, you are encouraged to participate in the rulemaking process.

Cancellation of Hearing: The hearing scheduled for February 6, 1996, will be canceled if the MPCA does not receive requests from 25 or more persons that a hearing be held on the rules. To find out whether the hearing will be held, you should contact Norma Coleman after January 11, 1996, and before February 6, 1996.

Notice of Hearing: If 25 or more persons submit written requests for a public hearing on the rules, a hearing will be held following the procedures in *Minnesota Statutes* §§ 14.14 to 14.20. The hearing will be held on the following date in the following location:

DATE	PLACE	TIME
February 6, 1996	County Administration Center Conference Room 107 705 Courthouse Square St. Cloud, Minnesota 56301	9:00 A.M. - 4:30 P.M.

The hearing will continue at the designated location until all interested persons have been heard. The hearing will continue, if necessary, at additional times and places as determined during the hearing by the administrative law judge. The administrative law judge assigned to conduct the hearing is Judge Phyllis Reha. Judge Reha can be reached at:

Minnesota Office of Administrative Hearings
Suite 1700
100 Washington Square Building
Minneapolis, Minnesota 55401-2138
Phone: (612) 341-7611

Hearing Procedure: If a hearing is held, you and all interested or affected persons including representatives of associations or other interested groups will have an opportunity to participate. You may present your views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should relate to the proposed rules. You may also mail written material to the administrative law judge to be recorded in the hearing record for five working days after the public hearing ends. The five-day comment period may be extended for a longer period not to exceed 20 calendar days if ordered by the administrative law judge at the hearing. Comments received during this period will be available for review at the Office of Administrative Hearings. You and the MPCA may respond in writing within five working days after the submission period ends to any new information submitted. No additional evidence may be submitted during the five-day period. All written materials and responses submitted to the administrative law judge must be received at the Office of Administrative Hearings no later than 4:30 p.m. on the due date. This rule hearing procedure is governed by *Minnesota Statutes* §§ 14.14 to 14.20 and *Minnesota Rules* 1400.0200 to 1400.1200. Questions about procedure may be directed to the administrative law judge.

Statement of Need and Reasonableness: Notice is hereby given that a Statement of Need and Reasonableness (SONAR) is now available for review at the MPCA and at the Office of Administrative Hearings. This SONAR includes a summary of evidence and arguments which the MPCA anticipates presenting at the hearing justifying both the need for and reasonableness of the proposed rules. Copies of the SONAR may be reviewed at the MPCA or at the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Small Business Considerations: *Minnesota Statute* § 14.115, subd. 2 requires the MPCA when proposing rules which may affect small business to consider methods for reducing the impact on small business. The proposed rules may affect small businesses as defined in *Minnesota Statute* § 14.115. Small businesses are among the regulated parties of the proposed rules because some of them own structures with exterior steel surfaces coated with lead paint.

In the context of the proposed rules, small businesses as regulated bodies include both owners of steel structures who remove lead paint and contractors who might remove lead paint from steel structures. As discussed in the SONAR, it is the owners who bear the additional costs of pollution control that would be imposed by the rules. Some of these owners will meet the definition of small businesses. Contractors will be required to comply with standards of procedure for removal of lead paint. The economic effect of

the proposed rules on small business contractors will in general be positive, while in general, the economic effect on small business owners will be negative.

In accordance with *Minnesota Statute* 14.115, subd. 2, the MPCA has considered methods of reducing the impacts of the proposed rules for small businesses. The MPCA has lessened the burden of complying with the proposed rules by establishing some exceptions. For a more detailed discussion regarding small business considerations please read the SONAR.

Consideration of Economic Factors: In exercising its powers, the MPCA is required by *Minnesota Statute* § 116.07, subd. 6, to give due consideration to economic factors. In proposing these rules, the MPCA has given due consideration to available information as to any economic impacts the proposed rules would have. These impacts can be treated generally as income and expenditures that are due to compliance with the provisions of the proposed rules. Lead paint removal is part of the process of repainting an exterior steel surface. As the steel surface begins to rust, the deteriorated paint must be removed and replaced with new barrier or corrosion-inhibiting coatings. Regular maintenance prevents more serious corrosion of the steel structure. The direct costs of lead paint removal are borne by the owners of the steel structures.

The cost of the proposed rules on any one owner will depend on the customary practices of that owner. For those owners who currently use or prescribe containment according to the 1990 MPCA staff recommendations, the additional cost of pollution control will be reduced compared to an owner who has not used pollution control. For a copy of the March 15, 1990, MPCA staff recommendations to cities for lead paint removal, please contact Norma Coleman.

The proposed rules allow latitude to the owner and contractor in the use of alternative methods of pollution control. In addition, containment procedures, removal methods, or a combination of these that achieve equivalent measures of pollution control can be approved by the Commissioner of the MPCA as stated in the rules. This flexibility may reduce the costs of compliance with these provisions. For a more detailed discussion regarding the consideration of economic factors, please read the SONAR which specifically addresses the costs of applying the rules to different kinds of steel structures.

Impact on Agricultural Land and Farming Operations: *Minnesota Statute* § 14.11, subd. 2, requires that if an agency that proposes adoption of a rule determines that the rule may have a "direct and substantial adverse impact" on agricultural land in Minnesota, the agency shall comply with the requirements of section 17.83 and 17.84. The MPCA does not believe that these rules will have an adverse impact on agricultural land. On the contrary, the proposed rules will benefit agricultural land by preventing contamination with a toxic substance, which cannot be degraded, and can only be cleaned up at considerable expense.

Minnesota Statute § 116.07, subd. 4, requires that if the proposed rules affects farming operations, the MPCA must provide a copy of the proposed rules and a statement of the effect of the proposed rules on farming operations to the Commissioner of Agriculture for review and comment. The MPCA has determined that these rules may affect farming operations and has provided some exemptions in the rules due to the relatively small amounts of paint that are removed. A copy of the draft rules was sent to the Commissioner of Agriculture on September 6, 1994. Additional information regarding the impact on farming operations is discussed in the SONAR.

Expenditure of Public Money by Local Bodies: The MPCA has determined that the proposed rules will result in the expenditure of public money. These impacts are discussed in the SONAR. A fiscal note is attached to this notice which contains the MPCA's estimate of the total costs to all local public bodies in the state to implement the rules.

Review by Commissioner of Transportation: *Minnesota Statute* § 174.05, requires the MPCA to inform the Commissioner of Transportation of all rulemakings that concern transportation, and requires the Commissioner of Transportation to prepare a written review of the rules. There has been both oral and written communication with the Department of Transportation staff of the Office of Bridges and Structures and the Office of Environmental Services during this rulemaking. A copy of the draft rules was sent to the Commissioner of Transportation on September 6, 1994, and written comments have been received from department staff. Copies of the Department of Transportation's written comments are available by contacting Norma Coleman.

Lobbyist Registration: *Minnesota Statutes* chapter 10A (1994) requires each lobbyist to register with the Ethical Practices Board. Questions regarding this requirement may be directed to the Ethical Practices Board at the following address;

Ethical Practices Board
First Floor South
Centennial Office Building
658 Cedar Street
St. Paul, Minnesota 55155
Phone: (612) 296-5148

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Adoption Procedure if No Hearing: If no hearing is required after the end of the comment period, the MPCA may adopt the rules. The rules and supporting documents will then be submitted to the attorney general for review as to legality and form to the extent form relates to legality. You may request to be notified of the date the rules are submitted to the attorney general or be notified of the attorney general's decision on the rules. If you want to be so notified, or want to receive a copy of the adopted rules, submit your request to Norma Coleman at the address listed in this notice.

Adoption Procedure After the Hearing: If a hearing is held, the administrative law judge will issue a report on the proposed rules after the closing of the hearing record.

Notice: Any person may request notification of the date on which the administrative law judge's report will be available, after which date the MPCA may not take any final action on the rules for a period of five working days. If you desire to be notified of when the report will be available, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the administrative law judge.

You may also request notification of the date on which the rules were adopted and filed with the Secretary of State. The notice must be mailed on the same day that the rules are filed. If you want to be so notified you may so indicate at the hearing or send a request in writing to Norma Coleman at the address listed in this notice any time prior to the filing of the rules with the Secretary of State.

Charles W. Williams
Commissioner

Estimate of Cost to Local Public Bodies to Implement Proposed Rules

I. Background

Minnesota Statutes § 14.11, subd. 1, requires that the Agency include a statement of the estimated costs of the rules to local public bodies in the notice of intent to adopt rules, if the rules would have a total cost of over \$100,000 to all local bodies in the state in either of the two years immediately following adoption of the rule. Costs incurred in using adequate and effective pollution control in maintenance repainting of steel structures will exceed \$100,000 for the state per year.

As noted in the SONAR (part III.A.1.&2) there are a number of state and federal regulations that bear on existing practices of removal of lead paint from steel structures. These include air emissions rules, soil lead standards, and hazardous waste and water quality regulations. The provisions of the proposed rules will be effective in preventing violations of existing regulations and in protecting the environment and the public health from the effects of lead contamination due to paint removal from steel structures.

There are several points that relate to the cost of pollution control for lead paint removal for steel structures in the state (including bridges, water tanks, and fuel tanks): 1) the proposed rules do not require the removal of lead paint, but establish minimum pollution control requirements when the paint is removed 2) the cost of pollution control to prevent lead contamination is a one-time cost per structure 3) pollution control costs have been paid by many owners in recent years in voluntary compliance with MPCA staff recommendations, existing Air Quality and Hazardous Waste rules, and the draft provisions of the proposed rules. This is evident by the use of real case histories in the 'Consideration of economic factors' of the SONAR (part VI).

II. Summary of Costs

Bridges

The costs of complying with the proposed rules when lead paint is removed from bridges are addressed in the SONAR (part VI.C) by application of different levels of pollution control in actual maintenance projects. The examples cited were three MnDOT bridges that conformed to pollution control requirements equivalent to Classes I, II, and IV in the proposed rules. The actual costs of pollution control on these bridges were \$1.58/ft² of steel surface, \$3.00/ft², and \$3.29/ft², respectively.

As stated in the SONAR (part III.B.2.c), there are 7,920 steel bridges in Minnesota. The total cost of complying with the pollution control requirements in the proposed rules for all bridges in Minnesota is estimated at \$110,000,000 for MnDOT bridges on state and federal highways and \$150,000,000 for city, county, and township bridges. These figures are based on estimated values of bridge surface area, number of existing bridges with lead paint, and a mean cost of pollution control of \$2.50/ft². The total state-wide cost is estimated at \$260,000,000. Nearly all bridges in the state that bear lead paint will be replaced or repainted in 15 or 20 years. The average annual cost for the state for 20 years would be \$13,000,000, although the actual cost will vary greatly from year to year. Federal money is also used in maintenance repainting of state and federal highway bridges.

Municipal water tanks

Among local units of government in Minnesota, water utilities will incur the largest costs due to the adoption of these rules. The costs of complying with the proposed rules when lead paint is removed from municipal water tanks are addressed in the SONAR (part VI.A) with actual water tower projects. The four examples applied pollution control equivalent to a Class II storage structure. The actual costs of pollution control on these tanks ranged from \$1.56/ft² of steel surface to \$2.80/ft². The total cost of containment per tank ranged from \$27,500 to \$34,900. These tanks (500,000 gals and 1,000,000 gals) had relatively large volume compared to

the average water tank in the state. According to the proposed rules, most municipal water tanks in Minnesota will require Class II pollution control.

As stated in the SONAR (part III.B2.a), there are approximately 1,000 steel municipal water storage tanks in Minnesota. In part VIII of the SONAR, a mean value of \$30,000 for pollution control for a water tank and about 50 tank painting projects a year are used to give an annual total cost estimate of \$1,500,000 for the state. A number of existing tanks are new construction and others have been repainted in recent years. Others will be replaced rather than be repainted. In addition, the average volume, surface area, and height of water tanks in smaller municipalities is less than that used in the cost analysis of part VI.A of the SONAR. These factors should reduce somewhat the state-wide cost and the actual total cost to the average city. There will be large variation in real costs from one city to another.

Charles W. Williams
Commissioner

Rules as Proposed (all new material)

REMOVAL OF LEAD PAINT FROM STEEL STRUCTURES

7025.0200 APPLICABILITY.

Parts 7025.0200 to 7025.0380 establish the procedures that an owner or a contractor shall follow to remove lead paint from the exterior surface of a steel structure that is permanently fixed in an outside location, from a mobile or portable steel structure that is located outside at the time that lead paint is removed from its surface, and from exterior metal components of buildings.

7025.0210 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 7025.0200 to 7025.0380, the terms in this part have the meanings given them.

Subp. 2. **Abrasive blasting.** "Abrasive blasting" means the use of air pressure and abrasive particles to remove surface coatings or to prepare a surface for paint application.

Subp. 3. **Acid digestion.** "Acid digestion" means laboratory analysis of lead concentration according to digestion method 3050 or 3051 and analytical method 6010 or 7420 as described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods SW-846," volume 1A, United States Environmental Protection Agency, Third Edition, November 1986; or laboratory analysis according to method 3335 of the American Society for Testing and Materials as described in "Annual Book of ASTM Standards," volume 06.01, June 1984. These documents are incorporated by reference and are available at the state law library through the Minitex interlibrary loan system. They are not subject to frequent change.

Subp. 4. **Bridge.** "Bridge" means a roadway, railway, or pedestrian bridge with steel trusses or girders that is part of a roadway or that traverses a roadway, railway, walkway, or waterway.

Subp. 5. **Child care property.** "Child care property" means property that incorporates a child care building where children are cared for or supervised at any time of the day or year.

Subp. 6. **Commissioner.** "Commissioner" means the commissioner of the Minnesota Pollution Control Agency.

Subp. 7. **Contractor.** "Contractor" means a person, an organization, or a corporation who, for financial gain, directly performs paint removal from the exterior of a steel structure or, through subcontracting or similar delegation, causes such paint removal to be performed.

Subp. 8. **Ground storage tank.** "Ground storage tank" means a water, fuel, chemical, fertilizer, or other storage tank that has a height above the ground less than 20 feet; a diameter greater than or equal to its height; or a length greater than its height; or a portable storage tank.

Subp. 9. **High-efficiency particulate air filter.** "High-efficiency particulate air (HEPA) filter" means a filter that removes from the air at least 99.97 percent of all particles greater than 0.3 microns in diameter.

Subp. 10. **Lead paint.** "Lead paint" means a coating that contains more than one-half of one percent (0.5 percent), or 5,000 parts per million (5,000 ppm), total lead by weight in the dried film as determined by acid digestion and analysis.

Subp. 11. **Low-dust nonsilica abrasive.** "Low-dust nonsilica abrasive" means an abrasive particle product that is rated by the manufacturer as a low-dust abrasive and that contains less than one percent (1.0 percent) free silica by weight.

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Subp. 12. **Playground.** "Playground" means an area designated for children's play including a school playground, a child care building playground, a play area of a public park, or an area that contains permanent play equipment.

Subp. 13. **Power tool.** "Power tool" means an electric or pneumatic rotary peening tool, needle gun, or other tool that breaks and removes a coating but does not abrade the coating, or an electric or pneumatic tool that does abrade the coating and is equipped with a high-efficiency particulate air (HEPA) filter vacuum.

Subp. 14. **Protected natural area.** "Protected natural area" means a designated national park, national wildlife refuge, nature center, or environmental learning center; an area designated by the Minnesota Department of Natural Resources as a wildlife management area, scientific and natural area, state park, research natural area, waterfowl production area, area of special interest; a site officially registered with any unit of government through the scientific and natural area program of the Minnesota Department of Natural Resources; or a site of occurrence of unique plant or animal life identified by the natural heritage program of the Minnesota Department of Natural Resources.

Subp. 15. **Public use property.** "Public use property" means property that includes a publicly owned building, a recreational area, or a parking lot, but does not mean property that includes only a playground or only a roadway.

Subp. 16. **Residential property.** "Residential property" means property that incorporates a single-family or multiunit building that is intended for use for human habitation.

Subp. 17. **School property.** "School property" means property that contains a public school building as defined in *Minnesota Statutes*, section 120.05, or a nonpublic school, church, or religious organization building in which a child is provided instruction in compliance with *Minnesota Statutes*, sections 120.101 and 120.102.

Subp. 18. **Steel structure.** "Steel structure" means a structure that has a steel surface from which lead paint might be removed in the ambient air and includes:

- A. steel girders or trusses of a bridge;
- B. water storage tanks;
- C. fuel and chemical storage tanks;
- D. fertilizer tanks;
- E. grain storage bins;
- F. railcars;
- G. buildings;
- H. pipelines;
- I. boats and barges;
- J. transmission towers;
- K. transformers;
- L. light poles;
- M. parking ramps;
- N. handrails;
- O. vehicles that are used for commerce, industry, or construction;
- P. steel structures of utilities, power plants, water and waste treatment facilities, pulp and paper mills, chemical and food processing plants, petroleum refining plants, and shipyards; and
- Q. other industrial and commercial equipment.

Subp. 19. **Vacuum blasting.** "Vacuum blasting" means dry abrasive blasting with a blast nozzle that is surrounded by a chamber under negative air pressure that is held against the coated surface.

Subp. 20. **Water tank.** "Water tank" means a ground storage tank, standpipe, or water tower that is used as a reservoir of water.

Subp. 21. **Water tower.** "Water tower" means an elevated multileg tank, a pedestal column spherical tank, or a fluted column tank or hydropillar used as a reservoir of water.

Subp. 22. **Wet abrasive blasting.** "Wet abrasive blasting" means abrasive blasting with the addition of water to the air abrasive stream.

7025.0220 COMPLIANCE.**Subpart 1. Lead paint removal requirements.**

A. An owner or contractor who removes lead paint from a steel bridge shall comply with parts 7025.0230 to 7025.0300 and 7025.0380.

B. An owner or contractor who removes lead paint from a steel water tank, ground storage tank, grain storage bin, or other storage structure shall comply with parts 7025.0230, 7025.0240, 7025.0310 to 7025.0350, and 7025.0380.

C. An owner or contractor who removes lead paint from a steel structure not cited in item A or B, shall comply with parts 7025.0230, 7025.0240, and 7025.0360 to 7025.0380.

Subp. 2. Use of alternative methods. The owner or contractor may use methods of paint analysis, paint removal, and containment other than those specified in this part if the commissioner approves the alternative method in writing prior to its use. The commissioner shall give conditional approval of the alternative method if the owner or contractor submits a request in writing that:

A. provides product specifications and either original documentation or manufacturer data that demonstrate that the method provides analysis of equivalent accuracy or pollution control of equivalent or greater efficiency than the methods specified in this part, and

B. identifies the specific provisions of the rule for substitution with the alternative method.

Subp. 3. Compliance with other regulations. Nothing in parts 7025.0200 to 7025.0380 shall be construed to allow testing, removal, containment, recovery, or disposal of lead paint or lead paint particles from steel structures in violation of local regulations or federal or state rules and statutes, including those relating to occupational safety and health, which include *Code of Federal Regulations*, title 29, section 1926.62, as adopted by reference in part 5205.0010.

7025.0230 IDENTIFICATION OF LEAD IN PAINT.

Subpart 1. Testing required. An owner shall test a coating for total lead concentration, using the methods required by this part, before the owner or contractor removes the coating from the exterior of a steel structure, except as provided in subpart 2, items A and C, unless removal is to be conducted inside a building.

Subp. 2. Sampling procedure and analysis. The samples collected as required by this subpart shall be representative of the coatings to be removed. Each sample shall include equal surface areas and the entire thickness of each coating. If parts of the steel structure have been painted at different times or with different paints, a sample of each coating from each of these parts must also be collected.

A. Bridges. Prior to paint removal, the owner of a bridge shall determine the concentration of lead in paint on the bridge either by review of painting records or by acid digestion analysis of a minimum of one paint sample from a girder bridge or one paint sample from the trusses and one from the girders of a truss bridge.

B. Storage structures. Prior to paint removal, the owner of a water tank, fuel tank, grain storage bin, or other storage structure shall determine the concentration of lead in paint on the structure by acid digestion analysis of each sample of paint.

(1) Multileg water tank. The owner shall collect, at a minimum, one paint sample from the legs, one sample from the center column, and one sample from the reservoir, for a total of three samples.

(2) Other water tower. The owner shall collect, at a minimum, one paint sample from the base of the column and one sample from the top of the column or the reservoir, for a total of two samples.

(3) Ground storage tank, standpipe, or grain storage bin. The owner shall collect, at a minimum, one paint sample from the wall and one sample from the roof of a ground storage tank where the same paint will be removed from one or more identical structures and, for standpipes and grain storage bins, one sample from the bottom half and one from the top half of the wall, for a total of two samples.

(4) Small storage tank. The owner shall collect, at a minimum, one paint sample from a fixed storage tank with less than 1,000 square feet surface area and one paint sample from a portable storage tank where the same paint will be removed from one or more identical tanks.

C. Other steel structures. Prior to paint removal, the owner of a steel structure, other than a bridge or a storage structure, shall

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determine the concentration of lead in paint on the structure either by review of painting records or by acid digestion analysis of a minimum of one sample of paint.

Subp. 3. **Calculation of lead concentration.** Where samples are analyzed from different parts of one structure, the calculation of lead concentration for the structure is the sum of the following product for each of the samples:

$$\begin{array}{r} \text{surface area of part represented} \\ \text{by sample as a percent of total} \\ \text{surface area of structure} \end{array} \quad \times \quad \begin{array}{r} \text{Pb concentration} \\ \text{of sample (\%)} \end{array}$$

such that:

$$\begin{aligned} &(\text{area}_A \times \text{Pb}_A) + (\text{area}_B \times \text{Pb}_B) + \dots + \\ &+ (\text{area}_N \times \text{Pb}_N) = \text{lead concentration (\%)} \end{aligned}$$

where "A," "B," "N" are sample areas; "area" is the surface area of the part of the structure expressed in whole percent of total surface area, so that the sum of all surface areas is equal to 100 percent; and "Pb" is the concentration of total lead expressed in percent as a decimal.

7025.0240 NOTIFICATION.

Subpart 1. **Notice required.** The owner shall provide notice as described in items A and B at least ten working days before the start of removal of lead paint from a total exterior surface area greater than 500 square feet on one steel structure or on more than one steel structure at one location during one year.

A. The owner must give written notice as required in subpart 2 to the adult residents of buildings, and to the owner or administrator of any child care or school buildings, within a distance to a single steel structure of 50 feet or twice the height of the structure, whichever is greater, but within 200 feet of a bridge portion. For multiple storage structures at one location, this distance is equal to the sum of the heights of individual structures from which lead paint is removed during one year, not to exceed 200 feet. The owner must mail or deliver the notice to the owner or administrator of a child care or school building. The owner must mail, deliver, or put on or under the door of each residence one notice for each single-family building and one notice for each unit of a multiunit building.

B. The owner must mail or deliver written notice to the commissioner as required in subpart 3.

If the owner or contractor postpones the beginning of paint removal more than five working days from the date stated in the written notices required by this subpart, the owner shall, within those five days, redistribute each of the notices with the revised schedule for paint removal. The commissioner must be renotified before the original starting date of paint removal.

Subp. 2. **Contents of notice to residents, administrator, and owner.** The notice required in subpart 1, item A, shall state that lead paint is present on the structure, shall specify the days and the hours during which paint removal is anticipated, and shall advise the owner or administrator and the adult residents of buildings to prevent children under the age of ten years from entering the outdoor area within 100 feet of the structure or structures or bridge portion from the start of paint removal each day until the completion of cleanup after paint removal.

If dry abrasive blasting or wet abrasive blasting is the method of paint removal, the notice shall further advise the owner or administrator and the adult residents of buildings within 100 feet of the structure or structures or bridge portion, or within a distance equal to the height of the structure, whichever is greater, to take the following actions each day before paint removal begins:

A. close all doors, windows, and storm windows on the walls that face the structure to be abrasive blasted and their adjoining walls;

B. turn off all air conditioning units on the walls that face the structure and their adjoining walls, and tightly cover these units with impermeable material; and

C. take inside or remove from the exterior property all pets, pet houses, pet food and water bowls, and all children's toys and play equipment, or cover the equipment that cannot be moved.

Subp. 3. **Contents of notice to commissioner.** The notice required in subpart 1, item B, shall include:

A. the type of steel structure from which paint is to be removed and the address or location of the structure or structures;

B. the scheduled starting and completion days and times;

C. a copy of the painting records or paint test results required by part 7025.0230;

D. the name, business address, and telephone number of the contractor, the consultant, and the owner, and the name of one contact person for each company and owner;

E. if the structure from which lead paint is to be removed is either a bridge or a steel structure in part 7025.0370, item C, a description of the bridge or structure that includes:

- (1) the number of total square feet of surface area from which paint will be removed;
- (2) the distance to the property nearest the bridge or structure for each kind of property designated in part 7025.0250; and
- (3) the class of pollution control to be applied to each bridge portion or structure as required in parts 7025.0250 and 7025.0260 to 7025.0300; or

F. if the structure from which lead paint is to be removed is either a storage structure or a steel structure in part 7025.0370, item A, a description of the structure that includes:

- (1) the number of total square feet of surface area from which paint will be removed;
 - (2) the calculation of potential risk factor (RF) from part 7025.0310;
 - (3) the distance to the property nearest the structure for each kind of property designated in the table in part 7025.0310;
- and
- (4) the class of pollution control to be applied to the structure from the table in part 7025.0310;

G. a copy of the notice given to the adult residents and to the owner or administrator in subparts 1 and 2, with a list of addresses that received notification;

H. the paint removal methods and the containment methods the owner or contractor intends to use to comply with parts 7025.0260 to 7025.0300, 7025.0320 to 7025.0350, and 7025.0360 to 7025.0370;

I. the name and location of the waste disposal site where the waste collected as required by parts 7025.0260 to 7025.0300, 7025.0320 to 7025.0350, and 7025.0360 to 7025.0370, and disposed of as required by part 7025.0380 will be deposited, or a description of the proposed disposition of waste materials that are not put in a waste disposal site; and

J. any other information that the commissioner may request to determine compliance with parts 7025.0200 to 7025.0380.

Any corrections to the information provided in the notice shall be made in writing by a supplemental notice.

CONDITIONS FOR LEAD PAINT REMOVAL FROM BRIDGES

7025.0250 CLASSIFICATION OF BRIDGES.

Subpart 1. **Application.** The classifications in this part shall be used to determine the requirements in parts 7025.0260 to 7025.0300 that apply to a bridge or bridge portion from which lead paint will be removed. The owner or contractor shall determine the class of each bridge or bridge portion.

Subp. 2. **Class I.** A bridge or bridge portion is class I if it is not within 100 feet of, or is not above, a water body and is not within:

- A. 300 feet of residential, child care, or school property or a playground;
- B. 200 feet of public use, commercial, or protected natural area property; or
- C. 100 feet of industrial or agricultural property.

Subp. 3. **Class II.** A bridge or bridge portion is class II if it is within 100 feet of, or is above, a water body, but otherwise meets the qualifications in subpart 2, items A to C, for a class I bridge.

Subp. 4. **Class III.** A bridge or bridge portion is class III if it is not within 100 feet of, and is not above, a water body, but is within:

- A. 300 feet of residential, child care, or school property or a playground;
- B. 200 feet of public use, commercial, or protected natural area property; or
- C. 100 feet of industrial or agricultural property.

Subp. 5. **Class IV.** A bridge or bridge portion is class IV if it is within 100 feet of, or is above, a water body, but otherwise meets the qualifications in subpart 4, items A to C, for a class III bridge.

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Proposed Rules

7025.0260 POLLUTION CONTROL REQUIRED.

An owner or contractor who removes lead paint from a steel bridge shall use the paint removal and containment methods required in parts 7025.0260 to 7025.0300, except that paint removal conducted only for the purpose of coatings analysis is exempt. Pollution control must be used on a bridge that traverses a state boundary, as if the bridge were entirely in Minnesota, unless the owner or contractor complies with requirements of the neighboring state or province that are more restrictive in preventing lead contamination than those in parts 7025.0260 to 7025.0300.

The owner or contractor who uses dry abrasive blasting for surface preparation after removing all lead paint with any other method shall use the containment methods required in part 7025.0270, subparts 2 and 3, except that the use of curtains is not required if:

- A. a low-dust nonsilica abrasive is used;
- B. the total area of surface preparation is less than 1,000 square feet;
- C. the bridge or bridge portion is class I or class II, or it is class III or class IV due to proximity of industrial or agricultural property only; and
- D. particulate matter does not cross the owner's property line.

7025.0270 CLASS I BRIDGE.

Subpart 1. **Application.** An owner or contractor who removes lead paint from a class I bridge or bridge portion by dry abrasive blasting shall use the methods required in this part as minimum pollution control, or the owner or contractor shall use a method of removal from part 7025.0290. For those portions of the bridge where curtains and ground cover cannot be used, the owner or contractor shall use the containment methods of part 7025.0280, subpart 2, item A or B.

Subp. 2. **Ground cover.** The owner or contractor shall use 100 percent impermeable tarpaulins to prevent deposition on the soil and on vegetation. The owner or contractor shall overlap the tarpaulins at least 1-1/2 feet and weight them to prevent separation except on woody vegetation. The tarpaulins must cover the surface of all bare soil and vegetated areas inside the curtains required by subpart 3 and shall extend a minimum of 30 feet in all directions beyond the vertical extension of the curtains. Hard paved surfaces such as asphalt and concrete roadway, sidewalk, and slope paving may be left uncovered if they have an unbroken surface and if the owner or contractor thoroughly cleans these surfaces as described in subpart 5.

Subp. 3. **Curtains or barriers.** The owner or contractor shall use curtains rated by the manufacturer at not less than 100 percent impermeable to contain lead paint particles generated from both trusses and girders. The curtains must overlap at least three feet unless the edges are completely joined.

A. **Girders and undertrusses.** When lead paint is removed from girders and undertrusses, the owner or contractor shall suspend curtains from the bridge deck so that the work area is contained on four sides. The owner or contractor shall seal the spaces between the beams above the transverse curtain. The curtains must extend to the ground cover and they must be anchored.

B. **Overtrusses.** When lead paint is removed from overtrusses, whether the roadway is closed to traffic or not closed to traffic, the owner or contractor shall:

(1) suspend curtains both inside and outside of each truss from a height greater than the point of paint removal, with a width less than the length of ground cover, and with the bottom edges within curtains suspended from the bridge deck in the manner required for girders; or if the roadway is closed to traffic, the owner or contractor shall:

(2) suspend curtains outside of the opposite trusses from a height greater than the point of paint removal, with a width less than the length of ground cover, and with the bottom edges resting on the roadway or within curtains suspended from the bridge deck in the manner required for girders; or

(3) suspend a rigid barrier outside the truss with the bottom edge resting on or directly above the roadway and inclined at an angle of 45 to 55 degrees with the truss, with a width less than the length of ground cover, a length not less than the height of the truss, and with the space between the end of the barrier and the truss closed with impermeable material; and

(4) suspend curtains across the bridge deck between the opposite trusses at both ends of the area of paint removal from a height greater than the point of paint removal.

Subp. 4. **Windspeed limitation.** The owner or contractor shall not conduct paint removal whenever windspeeds render the curtains and ground cover ineffective in containing particulate matter from both trusses and girders. If visible emissions of particulate matter occur in the air, or visible deposits occur on the ground, at a distance from the bridge greater than the distance of the ground cover, then the owner or contractor shall:

A. add additional ground cover, in the manner required in subpart 2, to a distance greater than the distance of visible particle transport or deposition; or

- B. if paint is removed from overtrusses, enclose the top of the area of paint removal; or
- C. if dry abrasive blasting is being used, use another method of paint removal from part 7025.0290.

Subp. 5. **Cleanup of waste material.** The owner or contractor shall clean up all visible deposits of waste material containing paint or paint particles at the end of each workday from all areas on the ground and the ground covers outside the curtains and remove this material from the site or store it in containers or on top of ground cover and covered with impermeable tarpaulins. The owner or contractor shall recover this material by manual means or by vacuum with high-efficiency particulate air (HEPA) filtration, but may not use an air pressure or water stream which redistributes the waste material. Methods of handling and movement of waste material shall prevent fugitive dust and other loss of any material until final disposition of the material.

7025.0280 CLASS II BRIDGE.

Subpart 1. **Application.** An owner or contractor who removes lead paint from a class II bridge or bridge portion by dry abrasive blasting shall use the methods required in part 7025.0270 and in this part as minimum pollution control, or the owner or contractor shall use a method of removal from part 7025.0290. If the bridge traverses a narrow water body as stated in subpart 3, the owner or contractor shall comply with the standards specified under either subpart 2 or 3.

The owner or contractor shall use a boom on the downstream or the downwind side of the bridge with skimming or vacuuming of the water surface to remove paint particles before they sink, except on those parts of the water surface where frequent boat navigation or water turbulence prevents effective recovery.

Subp. 2. **Protection of any body of water.** To prevent lead paint particles from entering any water body, the owner or contractor shall:

- A. suspend impermeable tarpaulins horizontally beneath the bridge deck or suspend nets lined with impermeable tarpaulins horizontally beneath the bridge deck to contain waste materials;
- B. suspend scaffolding that supports a platform beneath the bridge deck lined with impervious materials to contain waste deposits;
- C. secure a barge or a raft covered with impervious materials beneath the bridge and use impervious materials to direct waste material to the raft or to within the barge; or
- D. collect and remove waste material from a frozen water surface with ground cover as required in part 7025.0270, except that the ground cover must extend in a downwind direction on the ice to a distance greater than the highest point of paint removal.

The curtains used to contain the girders and trusses in part 7025.0270 shall extend from outside the painted surfaces to inside the tarpaulins, or to the platform or the raft, or inside impervious material that extends to inside the barge, or to the ice.

Subp. 3. **Protection of narrow bodies of water.** The methods in this subpart may be applied as an alternative to subpart 2 by the owner or contractor who shall:

- A. suspend an impermeable tarpaulin across the underside of the bridge deck at a point more than halfway across the water body with the bottom edge anchored at the farther bank so that it overlaps the ground covers, seal the spaces between the beams above the tarpaulin, and then repeat the procedure in the opposite direction; or
- B. cover a platform above the water surface with impermeable tarpaulins that overlap the ground covers.

The curtains used to contain the girders and trusses in part 7025.0270 shall extend from outside the painted surfaces to inside the tarpaulin or inside impervious material that extends to the platform.

7025.0290 CLASS III BRIDGE.

Subpart 1. **Application.** An owner or contractor who removes lead paint from a class III bridge or bridge portion shall use the methods required in part 7025.0270 as minimum pollution control, except as provided in subparts 2, 3, and 5, and a method of paint removal from this part.

Subp. 2. **Wet abrasive blasting.** The owner or contractor who uses wet abrasive blasting shall use curtains rated by the manufacturer at not less than 85 percent impermeable and if dry abrasive blasting is used for surface preparation. The owner or contractor shall use an amount of water such that dispersal of particulate matter is suppressed without loss of waste material from the ground cover or impervious materials by runoff.

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Proposed Rules

Subp. 3. **Power tools and hand tools.** The owner or contractor who uses power tools or hand tools shall use ground cover and curtains unless the power tools are vacuum-equipped and all parts of the vacuum equipment are in a condition that prevents emissions of particulate matter, then the use of curtains is not required.

Subp. 4. **Dry abrasive blasting in total enclosure with negative pressure.** The owner or contractor who conducts dry abrasive blasting inside a totally enclosed work space shall:

A. maintain the enclosure at less-than-atmospheric air pressure during abrasive blasting by use of a dust collector with high-efficiency particulate air (HEPA) filtration of exhaust air to eliminate dust emissions; and

B. use either a recyclable or nonrecyclable abrasive, but a recyclable abrasive must be cleaned to remove nonabrasive material before it is reused.

The volume of air evacuated per minute must be greater than the volume of the enclosure and the combined volume of output per minute of all blast nozzles inside the enclosure.

Subp. 5. **Vacuum blasting.** The owner or contractor who uses vacuum blasting shall use ground cover and curtains unless the owner or contractor:

A. removes all paint by holding the workhead of the vacuum blasting unit at all times against the substrate; and

B. maintains all parts of the vacuum blasting equipment in a condition that prevents emissions of particulate matter, then the use of curtains is not required.

If the owner or contractor cannot maintain complete contact between the workhead and the coated surface at all times, then curtains shall be used with ground cover.

7025.0300 CLASS IV BRIDGE.

The owner or contractor who removes lead paint from a class IV bridge or bridge portion shall use the methods required in parts 7025.0270 and 7025.0280 as minimum pollution control, and a method of paint removal required in part 7025.0290.

CONDITIONS FOR LEAD PAINT REMOVAL FROM STORAGE STRUCTURES

7025.0310 CLASSIFICATION OF STORAGE STRUCTURES.

Subpart 1. **Application.** The classifications in this part shall be used to determine the requirements in parts 7025.0320 to 7025.0350 that apply to a storage structure from which lead paint will be removed. The owner or contractor shall determine the class of each storage structure or structures from which more than 200 square feet of lead paint will be removed at one location during one year.

Subp. 2. **Class of pollution control.** The class of pollution control necessary for lead paint removal from the storage structure is provided by the table in subpart 3. The class of pollution control is determined by the designated use of receptor properties, the distance to receptor properties, and a factor of potential risk for paint removal from the structure, where:

A. "Receptor properties" are properties designated by use and ranked by sensitivity to lead contamination in groups "A," "B," and "C." These groups include residential, child care, playground, and school property (A); protected natural area, public use area, and commercial property (B); and industrial and agricultural property (C). Receptor properties for structures on group A and B properties include the property on which the structure is located and also neighboring properties. Receptor properties for structures on group C property include only neighboring properties.

B. "Distance (ft)" is the measure of distance in feet from the base of the steel structure to the receptor property line. The values in the table in subpart 3 are the standards of distance for the designated properties. If the structure is located on a property listed in item A, that property is considered a receptor property and the distance for that property is zero feet, except for group C properties.

C. "Risk factor (RF)" is the calculation of potential risk for the steel structure and the values in the table in subpart 3 are the standards of risk factor for the designated properties.

Risk factor (RF) is the product of three variables:

(1) concentration of total lead in the exterior coatings of the steel structure, expressed in percent (%) as a decimal;

(2) height of steel structure divided by ten and raised to the 1.4 power, expressed in feet (ft);

(3) total exterior surface area from which paint will be removed, expressed in thousands of square feet (ft²) such that:

$$RF = \text{conc. Pb (\%)} \times (\text{height}/10)^{1.4} \text{ (ft)} \times \text{surface area}/1000 \text{ (ft}^2\text{)}$$

D. "Class" is the class of pollution control required for the steel structure as determined by the standards of risk factor and distance and by the property use designation.

Proposed Rules

Each structure will have one distance to each of the nearest receptor properties and one risk factor and one class of pollution control. The class of pollution control for the structure is the highest class determined by the risk factor and the distance to receptor property, with class III being the highest class.

Subp. 3. Table of required class of pollution control.

	Receptor Property		
	Residential, Child Care, Playground, or School Property (A)		
Risk Factor (RF)	< 100	> 100	> 100
	and	or	and
Distance (ft)	> 300	< 300	< 300
Class	I	II	III
	Protected Natural Area, or Public Use Area, or Commercial Property (B)		
Risk Factor (RF)	< 200	> 200	> 200
	and	or	and
Distance (ft)	> 200	< 200	< 200
Class	I	II	III
	Industrial or Agricultural Property (C)		
Risk Factor (RF)	< 300	> 300	> 300
	and	or	and
Distance (ft)	> 100	< 100	< 100
Class	I	II	III

7025.0320 POLLUTION CONTROL REQUIRED.

An owner or contractor who removes lead paint from the exterior surface of a steel water tank, fuel tank, grain storage bin, or other steel storage structure shall use the paint removal and containment methods required in parts 7025.0320 to 7025.0350, except

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Proposed Rules

that paint removal conducted only for the purpose of coatings analysis is exempt. If lead paint is removed from a total surface area less than 200 square feet on one or more structures at one location in one year, the owner or contractor may apply any method in parts 7025.0330 to 7025.0350.

The owner or contractor who uses dry abrasive blasting for surface preparation after removing all lead paint with any other method shall use the containment methods required in part 7025.0330, subparts 2 and 4, except that the use of curtains is not required if:

- A. a low-dust nonsilica abrasive is used;
- B. the structure is in proximity only to receptor properties B and C in the table in part 7025.0310, subpart 3, and

height of structure (ft)	x	area of surface preparation (ft ²)	< 10
5,000			

or the structure is in proximity only to receptor properties C; and

- C. particulate matter does not cross the owner's property line.

7025.0330 CLASS I STORAGE STRUCTURE.

Subpart 1. Application. An owner or contractor who removes lead paint from a storage structure that requires class I pollution control shall use the methods in this part as minimum pollution control for dry abrasive blasting, or the owner or contractor shall use a method of removal and containment in part 7025.0340 or 7025.0350.

Subp. 2. Curtains. The owner or contractor shall suspend a curtain throughout paint removal on the upwind side and the downwind side of the structure, except as provided in item B, in a manner that effectively prevents the dispersal of paint particles. The curtains shall be rated by the manufacturer at not less than 100 percent impermeable.

A. If the structure is a water tower, standpipe, or a grain storage bin, the length of each curtain must be greater than two-thirds the height of the structure and the width of each curtain must be greater than the largest diameter of the structure.

The curtains shall be moved so that the point of paint removal shall always be at least ten feet inside a vertical edge of a curtain and ten feet below the upper edge of a curtain, except where paint removal is conducted beneath curtains attached along their upper edge to the wall of the structure.

B. If the structure is a ground storage tank, the length of each curtain must be greater than the height of the tank and the width of each curtain must be greater than the diameter or the length of the tank. The owner or contractor may suspend a curtain only on the downwind side of the tank, but the width of this curtain must be greater than the length of the tank or than half the circumference of the tank.

Subp. 3. Removal above curtains. The owner or contractor shall remove all paint from any surface above the curtains with wet abrasive blasting, power tools or hand tools, vacuum blasting, or chemical stripping, except that dry abrasive blasting may be used if the surface is enclosed. If dry abrasive blasting is used for surface preparation following paint removal, the use of enclosure is not required with the conditions in part 7025.0320, items A to C.

Subp. 4. Ground cover. The owner or contractor shall completely cover the ground beneath the base of the structure and on the downwind side of the structure with 100 percent impermeable tarpaulins to prevent deposition on soil and vegetation. The owner or contractor shall overlap the tarpaulins at least 1-1/2 feet and weight them to prevent separation.

A. Ground cover for a water tower shall extend from the center column a minimum distance equal to two-thirds the height of the tower.

B. Ground cover for a standpipe or grain storage bin shall extend from the base a minimum distance equal to one-half the height of the structure.

C. Ground cover for a ground storage tank shall extend from the base a minimum distance equal to 20 feet, or to the height of the tank, whichever is greater.

The owner or contractor shall increase the width of the ground cover with distance from the base of the structure so that it is equal to an area within an angle of 120 degrees from the center of the structure, except that the width of the ground cover shall always be greater than the width of the downwind curtain.

Subp. 5. Windspeed limitation. The owner or contractor shall not conduct paint removal whenever windspeeds render the cur-

tains and ground cover ineffective in containing particulate matter. If visible emissions of particulate matter occur in the air, or visible deposits occur on the ground, at a distance from the structure greater than the distance of the ground cover, then the owner or contractor shall:

- A. add additional ground cover, in the manner required in subpart 4, to a distance greater than the distance of visible particle transport or deposition;
- B. use additional curtains to prevent the dispersal of visible particles to a distance beyond the ground cover; or
- C. use a method of removal from part 7025.0340 or 7025.0350, instead of dry abrasive blasting to remove the lead paint.

Subp. 6. **Cleanup of waste material.** The owner or contractor shall clean up all visible deposits of waste material containing paint or paint particles at the end of each workday and remove this material from the site or store it in containers or on top of ground cover and covered with impermeable tarpaulins. The owner or contractor shall recover this material by manual means or by vacuum, but may not use an air pressure or water stream which redistributes the waste material. Methods of handling and movement of waste material shall prevent fugitive dust and other loss of any material until final disposition of the material.

7025.0340 CLASS II STORAGE STRUCTURE.

Subpart 1. **Application.** An owner or contractor who removes lead paint from a storage structure that requires class II pollution control shall use a method of removal and containment in this part or in part 7025.0350 as minimum pollution control.

Subp. 2. **Wet abrasive blasting.** If wet abrasive blasting is used to remove lead paint, the owner or contractor shall use the methods required in part 7025.0330, subparts 2 to 6. The owner or contractor shall use an amount of water such that dispersal of particulate matter is suppressed without loss of waste material from the ground cover by runoff.

Subp. 3. **Power tools and hand tools.** If power tools or hand tools are used to remove lead paint, the owner or contractor shall:

- A. use the methods required in part 7025.0330, subparts 2 to 6, except that if hand tools are used on ground storage tanks only, then the use of curtains is not required; and
- B. remove all lead paint with power tools or hand tools.

Subp. 4. **Dry abrasive blasting within total enclosure.** If dry abrasive blasting within a total enclosure is used to remove lead paint, the owner or contractor shall use the methods required in part 7025.0330, subparts 2 to 6, except that the owner or contractor shall totally enclose the structure with material rated by the manufacturer at not less than 100 percent impermeable during lead paint removal from all parts of the steel structure, including the top surfaces.

7025.0350 CLASS III STORAGE STRUCTURE.

Subpart 1. **Application.** An owner or contractor who removes lead paint from a storage structure that requires class III pollution control shall use a method of removal and containment in this part as minimum pollution control.

Subp. 2. **Vacuum blasting.** If vacuum blasting is used to remove lead paint, the owner or contractor shall use the ground cover and cleanup methods required in part 7025.0330, subparts 4 and 6. The owner or contractor may use vacuum blasting without the use of curtains if:

- A. the owner or contractor holds the workhead of the vacuum blasting unit at all times against the substrate during paint removal; and
- B. all parts of the vacuum blasting equipment are in a condition that prevents emissions of particulate matter.

If the owner or contractor cannot maintain complete contact between the workhead and the coated surface at all times, then the curtains and the windspeed limitation required in part 7025.0330, subparts 2 and 5, shall be used.

Subp. 3. **Dry abrasive blasting within modular enclosure with negative air.** If dry abrasive blasting inside a modular enclosure is used to remove lead paint, the owner or contractor shall use the cleanup method required in part 7025.0330, subpart 6, and shall:

- A. construct an enclosure of impermeable material to totally contain the area of paint removal and to transport waste material to the ground;
- B. maintain the enclosure at less-than-atmospheric air pressure during abrasive blasting by use of a dust collector with high-efficiency particulate air (HEPA) filtration of exhaust air to eliminate dust emissions;

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C. use impermeable ground cover beneath the area of paint removal to a minimum distance from the base equal to one-half the height of the structure; and

D. use either a recyclable or nonrecyclable abrasive, but a recyclable abrasive must be cleaned to remove nonabrasive material before it is reused.

The volume of air evacuated per minute must be greater than the volume of the enclosure and the combined volume of output per minute of all blast nozzles inside the enclosure.

Subp. 4. Wet abrasive blasting in total enclosure. If wet abrasive blasting in total enclosure is used to remove lead paint, the owner or contractor shall use the ground cover, windspeed limitation, and cleanup methods required in part 7025.0330, subparts 4 to 6, and shall:

A. totally enclose the structure with material rated by the manufacturer at not less than 85 percent impermeable during paint removal from all parts of the structure, including the top surfaces and if dry abrasive blasting is used for surface preparation; and

B. use an amount of water such that dispersal of particulate matter is suppressed without loss of waste material from the ground cover by runoff.

Subp. 5. Chemical stripping. If chemical stripping is used to remove lead paint, the owner or contractor shall use the ground cover, windspeed limitation, and cleanup methods required in part 7025.0330, subparts 4 to 6, and shall:

A. extend the ground cover beneath the area of paint removal and raise the outside edges to prevent runoff;

B. use wide-blade scrapers and low-volume high-pressure water spray applied within a distance of one foot to remove all coatings; and

C. remove all lead paint with chemical stripping.

Subp. 6. Power tools with vacuum recovery. If power tools that are vacuum-equipped are used to remove lead paint, the owner or contractor shall:

A. use the methods required in part 7025.0330, subparts 2 and 4 to 6, except that if all parts of the vacuum equipment are in a condition that prevents emissions of particulate matter, then the use of curtains is not required; and

B. remove all lead paint with power tools with vacuum recovery.

CONDITIONS FOR LEAD PAINT REMOVAL FROM OTHER STEEL STRUCTURES

7025.0360 POLLUTION CONTROL REQUIRED.

An owner or contractor who removes lead paint from the exterior surface of a steel structure that is not included in parts 7025.0260 to 7025.0300 and 7025.0320 to 7025.0350 shall use the methods required in part 7025.0370, except that paint removal conducted only for the purpose of coatings analysis is exempt. These structures include, but are not limited to, railcars, pipelines, boats and barges, transmission towers, transformers, light poles, exterior metal components of buildings, parking ramps, handrails, and vehicles that are used for commerce, industry, or construction. Paint removal from any other vehicle by the vehicle owner who does not act as a contractor, and who is not a licensed vehicle dealer, is exempt.

7025.0370 LEAD PAINT REMOVAL REQUIREMENTS.

If lead paint is removed from a steel structure not included in parts 7025.0260 to 7025.0300 and 7025.0320 to 7025.0350, the owner or contractor shall:

A. apply a method of removal and containment according to parts 7025.0310 to 7025.0350, as if the structure were a storage structure;

B. if the steel structure is mobile, portable, or disassembled, conduct paint removal inside a building or an enclosed structure; or

C. if the steel structure traverses a water body or is in or above a water body, apply a method of removal and containment according to parts 7025.0250, 7025.0260, and either 7025.0280 or 7025.0300, as if the structure were a bridge or a bridge portion.

7025.0380 RESTRICTIONS.

Subpart 1. Testing and disposal of waste materials. The owner or contractor shall dispose of waste materials that contain lead paint or lead paint particles generated by the removal of lead paint from steel structures as required by either chapter 7035, solid waste rules, or 7045, hazardous waste rules, whichever applies.

Subp. 2. Use of lead paint. An owner or contractor shall not apply paint that contains more than one-half of one percent (0.5 percent) total lead by weight in the dried film to the exterior surface of any new steel structure or of any steel structure that is repainted.

Subp. 3. **Water blasting.** An owner or contractor shall not use high pressure water with or without abrasives to remove lead paint from a steel structure unless the water and paint particles are contained and recovered.

Subp. 4. **Identification of contractor.** The contractor shall post its name and telephone number in letters and numbers at least four inches high on a vehicle or on a sign at the property from the beginning of lead paint removal until completion of the contractor's work on the structure or structures.

ERRATA

Reprint of an Official Notice for

Board of Teaching

The official notice that appeared in Vol. 20 Number 23 of the *State Register* had a typographical error. The word *communities* was incorrectly used in place of *committees*. The entire notice is being reprinted here with the correction underlined>.

Board of Teaching

Request for Comments: Planned Rules Governing Teacher Licensure

Subject of Rules. The Board of Teaching (Board) requests comments on its planned rules governing teacher licensure. The Board is considering rules that place emphasis on teachers' knowledge and skills, rather than on courses and credits, as the criteria for granting initial teaching licenses. These planned rules will reduce the number of existing licensure fields and permit teachers holding these licenses to teach a greater age/grade level of students.

Persons Affected. The adoption of the rules would likely affect the following:

- (1) future applicants for teacher licensure, and
- (2) colleges and universities approved by the Board of Teaching to offer teacher licensure programs.

The Board does not contemplate appointing an advisory committee to comment on the planned rules. However, committees are providing input to the Board in formulation of these planned rules.

Statutory Authority. *Minnesota Statutes*, section 125.185 requires the Board to adopt rules to license public school teachers. *Laws of Minnesota* 1993, Chapter 224, Article 12, Section 34, as amended by *Laws of Minnesota* 1994, Chapter 647, Article 8, Section 39, repeals Board of Teaching licensure rules and requires that rules adopted by the Board of Teaching regarding licensure of teachers "shall, to the extent possible, be outcome-based and clearly related to the results-oriented graduation rule."

Public Comment. Interested persons or groups may submit comments or information on these planned rules in writing or orally until 4:30 p.m. on March 1, 1996. The Board has not yet prepared a draft of the planned rules. Written or oral comments, questions, requests to receive a draft of the proposal when it has been prepared, and requests for more information on these planned rules should be addressed to:

Judith A. Wain, Executive Secretary
Minnesota Board of Teaching
608 Capitol Square Building
550 Cedar Street
St. Paul, MN 55101
Office (612) 296-2415
FAX (612) 282-2403
TDD (612) 297-2094

Comments submitted in response to this notice will not be included in the formal rulemaking record when a proceeding to adopt a rule is started.

Dated: 22 November 1995

Judith A. Wain
Executive Secretary

Executive Orders

Executive Department

Executive Order 95-13: Providing for the Establishment of the Governor's Workforce Development Council; Rescinding Executive Order 92-3

I, ARNE H. CARLSON, GOVERNOR OF THE STATE OF MINNESOTA, by virtue of the authority vested in me by the Constitution and the applicable statutes, do hereby issue this Executive Order:

WHEREAS, workforce development services need to be integrated with all human services to assist the economically disadvantaged, unemployed, and underemployed; and

WHEREAS, it is vital that state and local units of government closely coordinate their efforts to develop plans that meet locally determined needs, recommend meaningful programs to alleviate employment problems, reduce duplication and gaps in employment and training services, and effectively and economically utilize state and federal employment and training funds; and

WHEREAS, it is required by *Laws of Minnesota* 1995, Chapter 131, to establish a Governor's Workforce Development Council composed of representatives of business and industry, the state legislature, state agencies and organizations, units of local government, organized labor, and community-based organizations to plan, coordinate, and monitor the integration of workforce development;

NOW, THEREFORE, I hereby order that:

1. The formation of the Governor's Workforce Development Council:
 - a. This council, in accordance with *Minnesota Statutes*, shall be composed of 32 representatives of business and industry, the state legislature, state agencies, local units of government, labor, and community-based organizations. Members may be reimbursed for expenses and paid per diems as provided in *Minnesota Statutes* 1994, Section 15.059.
 - b. The council shall be appointed by the governor, who shall designate one non-governmental member thereof to be its chair. In making appointments to the council, the governor shall ensure that council membership reasonably represents the population of the state.
 - c. The council shall not operate programs or provide services directly, but shall exist solely to plan, coordinate, and monitor the provision of employment and training services.
2. The council shall:
 - a. Review the provision of services and the use of funds and resources under applicable federal, state, and local workforce development programs and advise the governor on methods of coordinating the provision of services and the use of funds and resources;
 - b. Review the federal, state, and local education, post-secondary, job skills training, and youth employment programs, and make recommendations to the governor and the legislature for establishing an integrated, seamless system for providing education, service-learning, and work skills development services to learners and workers of all ages;
 - c. Advise the governor on the development and implementation of statewide and local performance standards and measures;
 - d. Administer grants to local education and employment transition partnerships;
 - e. Coordinate the development, implementation, and evaluation of the statewide education and employment transitions system;
 - f. Advise the governor on methods to evaluate applicable federal workforce development programs;
 - g. Sponsor appropriate studies to identify workforce development needs in Minnesota and recommend to the governor goals and methods for meeting those needs;
 - h. Recommend to the governor goals and methods for the development and coordination of a workforce development system in Minnesota;
 - i. Examine federal and state laws, rules, and regulations to assess whether they present barriers to achieving the development of a coordinated workforce development system;
 - j. Recommend to the governor and to the federal government changes in state or federal laws, rules, or regulations concerning workforce development programs that present barriers to achieving the development of an integrated system;
 - k. Recommend to the governor and to the federal government waivers of laws and regulations to promote coordinated service delivery; and

Commissioners' Orders

1. Sponsor appropriate studies and prepare and recommend to the governor a strategic plan that details methods for meeting Minnesota's workforce development needs.
3. The council shall meet at least four (4) times annually and shall operate in accordance with state and federal statutes, rules, regulations, and council bylaws.
4. For the purpose of this Executive Order and to define the scope of the Governor's Workforce Development Council, the term "workforce development" shall be interpreted broadly and is intended to include all federal, state, and local programs that provide employment, training and retraining services, and educational services relating to the knowledge, skills, and abilities required for meaningful employment.
5. All state departments and agencies shall cooperate with the council established in this Executive Order.

Executive Order 92-3 is rescinded.

Pursuant to *Minnesota Statutes* 1994, Section 4.035, subd. 2, this Order shall be effective fifteen (15) days after publication in the *State Register* and filing with the Secretary of State and shall remain in effect until rescinded by proper authority or it expires in accordance with *Minnesota Statutes* 1994, Section 4.035, subd. 3.

IN TESTIMONY WHEREOF, I have set my hand this fourth day of December, 1995.

Arne H. Carlson
Governor

Filed According to Law:
Joan Anderson Growe
Secretary of State

Commissioners' Orders

Department of Transportation

Order No. 81371: Amended Order and Notice of Street and Highway Routes Designated and Permitted to Carry the Gross Weights Allowed under *Minnesota Statute* § 169.825.

WHEREAS, the Commissioner of Transportation has made his order No. 80000, dated March 10, 1994, which order has been amended by Orders No's. 80212, 80246, 80580, 80861, 80881, 81000, and 81092 designating and permitting certain street and highway routes, or segments of those routes, to carry the gross weights allowed under *Minnesota Statutes* § 169.825, and

WHEREAS, the Commissioner has determined that the additional following routes, or segment of routes, should be designated to carry the gross weights allowed under *Minnesota Statutes* § 169.825,

IT IS HEREBY ORDERED that Commissioner of Transportation Order No. 80000 is further amended this date by adding the following designated streets and highway routes, or segments of routes, as follows:

County Roads

Norman County

- C.S.A.H. 19 from T.H. 75 to C.S.A.H. 10 (12 Month).
- C.S.A.H. 39 from T.H. 9 to T.H. 32 (12 Month).

Hubbard County

- C.S.A.H. 9 from T.H. 71 to C.S.A.H. 45 (12 Month).
- C.S.A.H. 45 from C.S.A.H. 9 to T.H. 2 (12 Month).

Dated: 4 December 1995

James N. Denn
Commissioner

Official Notices

Pursuant to the provisions of Minnesota Statutes §14.101, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Boards of Dentistry, Marriage and Family Therapy, Medical Practice, Nursing, Pharmacy, and Podiatric Medicine

Notice of Solicitation of Comments from the Public In the Matter of the Proposed Adoption of Rules Relating to the Health Professionals Services Program

NOTICE IS HEREBY GIVEN that the Boards of Dentistry, Marriage and Family Therapy, Medical Practice, Nursing, Pharmacy, and Podiatric Medicine, participants in the Health Professionals Services Program, established in 1994 in *Minnesota Statutes*, Sections 214.31-214.37, intend to adopt rules as required by Section 214.37, and are soliciting comments and opinions from the public regarding issues that should be address in rules.

The Health Professionals Services Program is designed to protect the public from persons regulated by the aforementioned boards who are unable to practice with reasonable skill and safety by reason of illness, use of alcohol, drugs, chemicals, or other materials, or as a result of any mental, physical, or psychological condition.

It is the intention of the participating boards to adopt joint rules by July 1, 1996, as required by Section 214.37, that provide clarification to Sections 214.31-214.36 as needed and related to: program management and services; participant eligibility, completion, voluntary termination, and discharge; and reporting.

The persons likely to be affected by the statute and any rules adopted pursuant to the statute are those who are regulated by the aforementioned participating boards, and any persons who may be clients of any persons regulated by the participating boards whose practice may be impaired for the reasons stated above.

A Rule Writing Task Force has been appointed by the Health Professionals Services Program Committee, comprised of representatives of the participating boards and Advisory Committee (appointed members of the professional associations of the individuals regulated by the participating boards). No draft rules are presently available.

Persons may request to be placed on a mailing list to receive notice of meetings of the Rules Task Force and/or the Health Professionals Services Program Committee, or obtain a copy of the statute cited above and any drafts of proposed rules as they are available, or submit written comments, by contacting

Frank Fly, Administrative Rulewriter
Health Licensing Boards, Suite 40
2700 University Avenue West, St. Paul, MN 55114
(612) 642-0402
Speech/Hearing Relay: (612) 297-3353 or 1-800-627-3529

Written comments will be accepted until February 9, 1996. Persons are requested when submitting comments, to cite the section or sections of the statute believed to be in need of clarification, or the rule part of any proposed draft, and to include to the extent possible, proposed language to accomplish this purpose.

Department of Health

Notice of Completed Application and Notice of and Order for Hearing In the Matter of the License Application of North Ambulance Aitkin, Aitkin, Minnesota

PLEASE TAKE NOTICE that the Commissioner of Health (hereinafter "Commissioner") has received a completed application from North Ambulance Aitkin, Aitkin, Minnesota for a change in type of services from Basic to Advanced Ambulance Services.

IT IS HEREBY ORDERED AND NOTICE IS HEREBY GIVEN that, pursuant to *Minnesota Statutes* §§ 14.57 - 14.69 and *Minnesota Statute* § 144.802 a public hearing will be held on January 16, 1996 at Aitkin City Hall, 109 First Avenue N.W., Aitkin, Minnesota, commencing at 7:00 p.m. If you have an interest in this matter you are hereby urged to attend the public hearing. Failure to do so may prejudice your rights in this and any subsequent proceedings in this matter.

1. The purpose of the hearing is to determine whether the application from this ambulance service should be granted based upon the criteria set forth in *Minnesota Statute* § 144.802, subd. 3(g).
2. This proceeding has been initiated pursuant to and will be controlled in all aspects by *Minnesota Statutes* §§ 144.801 - 144.8093, *Minnesota Statute* §§ 14.57 - 14.69, and Rules for Contested Cases of the Office of Administrative Hearings, *Minnesota Rules* 1400.5100-1400.8402. Copies of the rules and statutes may be obtained for a fee from the Department of Administration, Public Documents Division, 117 University Avenue, St. Paul, Minnesota 55155, telephone: (612) 297-3000.
3. Howard Kaibel, Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota 55401-2138, telephone: (612) 341-7608, will preside as Administrative Law Judge at the hearing, and will make a written recommendation on this application. After the hearing, the record and the Administrative Law Judge's recommendation will be forwarded to the Commissioner to make the final determination in the matter.
4. Any person wishing to intervene as a party must submit a petition to do so under *Minnesota Rules* 1400.6200 on or before January 2, 1996. This petition must be submitted to the Administrative Law Judge and shall be served upon all existing parties and the Commissioner. The petition must show how the contested case affects the petitioner's legal rights, duties or privileges and shall state the grounds and purposes for which intervention is sought and indicate petitioner's statutory right to intervene if one exists.
5. In addition to or in place of participating at the hearing, any person may also submit written recommendations for the disposition of the application. These recommendations must be received by the Administrative Law Judge on or before January 11, 1996.
6. Any subpoena needed to compel the attendance of witnesses or the production of documents may be obtained pursuant to *Minnesota Rules* 1400.7000.
7. At the hearing the applicant will present its evidence showing that a license should be granted and that all persons will be given an opportunity to cross-examine witnesses, to be heard orally, to present witnesses, and to submit written data or statements. All persons are encouraged to participate in the hearing and are requested to bring to the hearing all documents, records, and witnesses needed to support their position. It is not necessary to intervene as a party in order to participate in the hearing.
8. Please be advised that if nonpublic data is admitted into evidence, it may become public data unless an objection is made and relief is requested under *Minnesota Statute* § 14.60, subd. 2.
9. You are hereby informed that you may choose to be represented by an attorney in these proceedings, may represent yourself, or be represented by a person of your choice if not otherwise prohibited as the unauthorized practice of law.
10. A Notice of Appearance must be filed with the Administrative Law Judge identified above within 20 days following receipt of the Notice by any person intending to appear at the hearing as a party.
11. In accordance with the provisions of *Minnesota Statute* § 14.61, the final decision of the Commissioner in this proceeding will not be made until the Report of the Administrative Law Judge has been made available to the parties in this proceeding for at least 10 days. Any party adversely affected by the Report of the Administrative Law Judge has the right to file exceptions and present arguments to the Commissioner. Any exceptions or arguments must be submitted in writing and filed with the Commissioner of Health, 717 Delaware Street Southeast, Minneapolis, Minnesota 55440, within 10 days of the receipt of the Administrative Law Judge's Report.

Dated: 27 November 1995

Anne M. Barry
Commissioner of Health

Official Notices

Department of Health

Division of Environmental Health

Final Revised Plan for Use of Administrative Penalty and Cease and Desist Orders

Notice of Revised Plan Finalization

The Minnesota Department of Health, division of environmental health, on November 21, 1995, adopted a revised final plan for the use of administrative penalty orders and cease and desist orders. Authority to develop and finalize a plan for the use of these enforcement tools is contained in *Minnesota Statutes*, section 144.989 to 144.993.

The revised plan modifies the initial plan adopted on November 8, 1993 in accordance with *Minnesota Statutes*, section 144.99, subdivision 7.

Plan availability

A copy of the final revised plan is available from Jane A. Nelson, Environmental Health Division, Minnesota Department of Health, 121 E. 7th Place, P.O. Box 64975, St. Paul, Minnesota 55164-0975 FAX (612) 215-0735, Internet:jane.nelson@health.state.mn.us. Questions about the content of the plan may be addressed to Ms. Nelson.

Department of Human Services

Notice of Disproportionate Population Adjustment

The purpose of this notice is to provide information concerning the disproportionate population adjustment (DPA) that is paid for inpatient hospital services under the Medical Assistance (MA) General Assistance Medical Care (GAMC) and MinnesotaCare programs. The listed DPA factors are effective for admissions occurring from January 1, 1996 through December 31, 1996. The DPA is based on the MA inpatient days utilization rate of a hospital compared to the mean utilization rate of all Minnesota non-state owned hospitals and local trade area hospitals. The utilization rate of each hospital is calculated by dividing MA patient days by total patient days as derived from Medicare cost report data from the base year that is used for all rate setting.

Federal law requires hospitals to meet section 1923(d) of the Social Security Act at the time that an admission occurs in order to qualify for a DPA payment. Basically, section 1923(d) requires the hospital to meet criteria regarding the provision of obstetric services or specific exemptions. However, Minnesota statutes provide for a hospital payment adjustment that is equal to the DPA for hospitals that do not meet the federal criteria. Since a hospital may change eligibility status over time, both the DPA and hospital payment adjustment are listed. The federal requirements do not affect DPA payments under GAMC.

The MA and MinnesotaCare DPA is calculated as the difference between a hospital's utilization rate and the mean utilization rate. The DPA for a hospital with a utilization rate that is above the mean plus one standard deviation is increased by 10 percent. The MA and MinnesotaCare inpatient total rate of each hospital is increased by the indicated percentage.

The GAMC DPA is calculated as the difference between the hospital's utilization rate and the mean plus one standard deviation utilization rate. The inpatient operating rate of each hospital is increased by the indicated percentage.

In addition to the listed DPA percentage, and intergovernmental transfer of \$1,515,000 that is considered to be a DPA is paid each month to a hospital that received more than 13 percent of total 1991 MA inpatient payments (Hennepin County Medical Center) and \$505,000 is paid to a hospital that received more than 8 percent of total 1991 MA inpatient payments and is affiliated with the University of Minnesota (University Hospital and Clinic).

Questions or comments may be directed to:

Richard Tester
Primary Care Payment Policy Division
Department of Human Services
444 Lafayette Road
St. Paul, Minnesota 55155-3853
(612) 296-5596

DISPROPORTIONATE POPULATION ADJUSTMENT

January 1, 1996

Minnesota + Minnesota Local Trade Area Hospitals

Mean 0.0858
 Std Dev 0.0646
 Mean + Std Dev 0.1504

		MA MINNESOTA CARE DPA PERCENT	GAMC DPA PERCENT
010478X	Apple River Valley, Amery, WI	0.09	
0100093	St. Joseph's, Mankato	0.15	
0101202	United Hospital, St. Paul	0.35	
0101155	First Care Med Serv, Fosston	0.36*	
0107204	Kossuth County, Algona IA	0.42	
0100275	Cuyuna Range, Crosby	0.52	
0126974	Heartland Med Cnt, Fargo ND	0.55	
0101009	St. Peter Community	0.69	
0101144	Pipestone	0.78	
0100548	North Mem Med Center, Mpls.	0.80	
010064X	Itsaca, Grand Rapids	0.81	
0109609	Vernon Mem, Wiroqua, WI	0.89	
0100810	Divine Providence, Ivanhoe	0.89	
0100978	St. Gabriel's, Little Falls	1.08	
0101020	Worthington Regional	1.09	
0101701	Memorial, Forest Lake	1.31*	
0101905	St. Luke's, Fargo ND	1.37	
0101279	St. Joseph's, St. Paul	1.38	
0100071	Ortonville Municipal	1.57	
010216X	Ladd Mem, Osceola WI	1.73	
0101836	Superior Mem, Superior WI	1.79*	
0102057	Burnett, Grantsburg	1.81	
0100730	International Falls Memorial	1.82	
0100934	Fairview, Princeton	1.89	
0101552	St. Cloud	2.00	
010144X	St. Luke's, Duluth	2.20	
0100708	Rice Memorial, Willmar	2.24	
0101086	Memorial, Perham	2.43	
0101687	Tri-County, Wadena	2.49	
0101177	Glacial Ridge, Glenwood	2.50	
0102705	Holy Family, Estherville	2.54	
0101122	Northwestern, TRF	2.55	
0100162	Mercy, Moose Lake	2.99	
0101406	Ely Bloomenson, Ely	3.01	

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		MA MINNESOTA CARE DPA PERCENT	GAMC DPA PERCENT
0101450	St. Mary's, Duluth	3.70	
0100650	Northern Itasca, Bigfork	3.71	
0100151	Cloquet Community	3.74	
0101778	Monticello/Big Lake	3.87	
0105320	St. Bernard's, Milbank SD	4.02	
0101166	Riverview, Crookston	4.89	
0100672	Jackson Municipal	4.99	
0100694	Kanabec County, Mora	5.01	
0100468	Riverside Med Center, Mpls	5.38	
0101698	Waseca Memorial	5.52	
0101643	Greater Staples Hospital	5.53	
0100570	University of Minnesota, Mpls.	5.64	
0100526	Metro/Mt Sinai, MPLS	5.64*	
0100297	St. Joseph's, Brainerd	5.71	
0101869	St. Francis, LaCrosse	5.97	
0100785	Trinity, Baudette	6.08	
0102192	St. Croix Valley, St. Croix Falls	6.09	
0100220	Clearwater Memorial, Bagley	6.43	
0100887	Mahnomen County & Village	7.13*	0.02
0100832	Weiner Mem, Marshall	7.57	0.42
0100049	St. Mary's, Detroit Lakes	7.79	0.62
0101439	Miller/Dwan, Duluth	8.25	1.04
0100989	St. Olaf, Austin	8.80	1.54
0100639	Community, Deer River	8.87	1.60
0100264	Windom Area	8.91	1.64
0101042	Olmsted Community, Rochester	9.17	1.88
0108274	Forest City, IA	11.91	4.37
0100027	Mercy Hospital, Coon Rapids	12.47	4.88
0103119	Coteau Des Prairies, Sisseton	12.52	4.92
010005X	Bemidji Hospital	12.56	4.96
0100628	Cambridge Memorial Hospital	13.48	5.79
0101916	United, Grand Forks ND	14.67	6.88
0100945	Mille Lacs Hospital, Onamia	14.87	7.06
0100424	Zumbrota Community	14.88	7.07
0101428	Central Mesabi, Hibbing	18.54	10.39
0101290	St. Paul Ramsey	18.88	10.70
0101213	Children's Health Care, St. Paul	20.67	12.33
0107135	St. Gerard, Hankinson ND	23.00	14.45
0100490	Henn Co Medical Center, Mpls.	24.26	15.59

		MA MINNESOTA CARE DPA PERCENT	GAMC DPA PERCENT
0101825	Children's Health Care, Mpls.	26.22	17.38
0102002	Gillette Children's, St. Paul	32.08	22.70

*Hospital Payment Adjustment

Department of Labor and Industry

Labor Standards Division

Notice of Prevailing Wage Certifications for Commercial Construction Projects

Effective December 11, 1995 prevailing wage rates were determined and certified for commercial construction projects in the following counties:

Anoka: Lino Lakes MCF-Condensate Line Replacement-Lino Lakes.

Chisago: DNR Division of Parks & Recreation Interstate and Wm O'Brien State Parks Accessibility Improvements.

Hennepin: A&C Tower Restrooms Hennepin Co Government Center-Minneapolis; County Home School Cottage & Misc Buildings-Minnetonka; Alternative Bond Program Holland School-Minneapolis; Physics Upgrade Temperature Control-Minneapolis; Wilson Library U of M-Fire & Life Safety Renovation-Minneapolis.

Lyon: Bellows (BA) Cooling Tower Replacement-Marshall; Southwest University Student Center West-Marshall.

Pope: Glenwood Library Addition-Glenwood.

Ramsey: Underground Bookstore Waterproofing Replacement-U of M-St Paul; Replace and Install New Stainless Steel Counter System and Dishwasher-Roseville.

St Louis: Ely School Industrial Building-Fire Protection and Alarm Systems-Ely.

Stearns: MCF St Cloud-Scullery/Steam Kettle Area/A House and Showers in Gym, E-House/C House-St Cloud.

Washington: DNR Division of Parks & Recreation Interstate and Wm O'Brien State Parks Accessibility Improvements.

Winona: Central Chilled Water Plant Winona State University-Winona.

Yellow Medicine: Fagen Inc Office Building-Granite Falls.

Copies of the certified wage rate for these projects may be obtained by writing the Minnesota Department of Labor and Industry, Prevailing Wage Section, 443 Lafayette Road, St. Paul, Minnesota 55155-4306. The charge for the cost of copying and mailing are \$1.36 per project. Make check or money order payable to the State of Minnesota.

Gary W. Bastian, Commissioner

Metropolitan Council

Public Hearing on Draft 1996 Americans with Disabilities Act (ADA) Paratransit Plan

The Metropolitan Council's Transportation Committee will hold a public hearing on its updated draft of the "Americans with Disabilities Act (ADA) Paratransit Plan." This hearing will be held at 5 p.m., January 8, 1995, in the Metropolitan Council Chambers, Mears Park Centre, 230 East 5th St., downtown St. Paul.

Interested persons are encouraged to attend the hearing and offer public comment. A sign language interpreter will be provided at the hearing. People may register in advance to speak at the hearing by calling 229-2758 (291-0904 TTY). People may also sign up at the hearing. Written comments, which must be submitted by 5 p.m., Thursday, January 18, 1996, should be sent to: Barb Quade, Metropolitan Council, Mears Park Centre, 230 East 5th St., St. Paul, MN 55101.

Copies of the plan will be available for review in the Metropolitan Council's Data Center, Third Floor, Mears Park Centre. The

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Plan will also be available to review on a check-out basis in large print, audiocassette and Braille formats. To schedule a time to review a copy of the plan, call 229-2758 (291-0904 TTY).

For more information on the "ADA Paratransit Plan," contact the Metropolitan Council at 229-2758 or 291-0904 (TTY).

Minnesota State Retirement System, Teachers Retirement Association, and Public Employees Retirement Association

Joint Board Meeting, Notice of Meeting

A Joint Meeting of the Boards of the Minnesota State Retirement System, Teachers Retirement Association, and Public Employees Retirement Association is scheduled to be held on Thursday, December 14, 1995 at 9:00 a.m. in room 123 of the State Capitol, Saint Paul, Minnesota.

Public Employees Retirement Association

Board of Trustees, Notice of Meetings

Immediately following the Joint Board Meeting, a meeting of the Board of Trustees of the Public Employees Retirement Association (PERA) will be held on Thursday, December 14, 1995 at 10:30 a.m. in the offices of the association, 514 St. Peter Street, Suite 200, Saint Paul, Minnesota.

Immediately following the Board Meeting, a Legislative Committee of the Board of Trustees will be held on December 14, 1995 in the offices of the association.

A meeting of the Disability Task Force of the Board of Trustees will be held on Wednesday, December 13, 1995, at 1:00 p.m. in the offices of the association.

Department of Transportation

Goal for Disadvantaged Business Enterprises for Federal Fiscal Year 1996

The Minnesota Department of Transportation (Mn/DOT) has established a goal of 11% for Disadvantage Business Enterprises (DBEs) for all modes of transportation for federal fiscal year 1996 (October 1, 1995 through September 30, 1996).

The Intermodal Surface Transportation and Efficiency Act (ISTEA) continues to require that women business owners be presumed to be socially and economically disadvantaged and are included in the DBE goal.

The department's DBE plan is available for public inspection during normal business hours (8:00 a.m. to 4:00 p.m.) at Mn/DOT Central Office, Room 207 Transportation Building, 395 John Ireland Blvd., St. Paul, Minnesota 55155, for 30 days following the date of this notice. The comments are for information purposes only.

Please respond to: The Minnesota Department of Transportation

EEO Contract Management Office
395 John Ireland Blvd
Mail Stop 170 Transportation Building
St. Paul, Minnesota 55155

Department of Transportation

Petition of the Division of State Aid For Local Transportation for a Variance from State Aid Requirements for DESIGN STANDARDS USING ENGLISH UNITS

NOTICE IS HEREBY GIVEN that the Division of State Aid For Local Transportation has made written request to the Commissioner of Transportation pursuant to *Minnesota Rules* 8820.3300 for a variance from rules as they apply to all State-Aid and Federal-Aid plans let prior to October 1, 1996.

The request is for a variance from *Minnesota Rules* for State Aid Operations 8820.2500 adopted pursuant to *Minnesota Statutes* Chapter 161 and 162, so as to permit plans which are designed and constructed according to the English unit standards contained in the *Minnesota Rules* Chapter 8820, adopted in 1991 and amended in 1993; in lieu of the *Minnesota Rules* Chapter 8820, adopted November 11, 1995.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

Dated: 1 December 1995

Patrick B. Murphy
Division Director
State Aid for Local Transportation

Department of Transportation

Petitions for Variances from State Aid Requirements for: Bridge No. 50573 in Windom Township, Mower County Trunk Highway No. 19 in the City of Marshall

NOTICE IS HEREBY GIVEN that the Commissioner of Transportation has appointed a State Aid Variance Committee who will conduct a meeting on Wednesday, December 13, 1995 at 9:30 a.m. in Conference Room 194 Water's Edge Building, 1500 West County Road B-2, Roseville Minnesota 55113.

This notice is given pursuant to *Minnesota Statute* 47k.705.

The purpose of this open meeting is to investigate and determine recommendations for variances from minimum State Aid roadway standards and administrative procedures as governed by *Minnesota Rules* for State Aid Operations 8820.3300 adopted pursuant to *Minnesota Statutes* 161 and 162.

The agenda will be limited to these questions:

1. Petition of Mower County for a variance from *Minnesota Rules* as they apply to a bridge replacement and approach project for Bridge No. 50573 in Windom Township, Mower County, Minnesota to allow the eligibility of State Aid funds for a construction plan awarded prior to the required approval by the State Aid Engineer.
2. Petition of the City of Marshall for a variance from *Minnesota Rules* as they apply to a construction project on Trunk Highway No. 19 (East College Drive) from a point approximately 600 feet east of Bruce Street to Trunk Highway No. 23 in the City of Marshall, to allow the eligibility of State Aid funds for a construction plan awarded prior to the required approval by the State Aid Engineer.

The cities and counties previously listed are requested to follow the following time schedule when appearing before the Variance Committee:

9:30 a.m. Mower County
9:45 a.m. City of Marshall

Dated: 1 December 1995

Patrick B. Murphy
Division Director
State Aid For Local Transportation

Official Notices

Department of Transportation

Petition of Mower County for a Variance from State Aid Requirements for CONSTRUCTION REQUIREMENTS

NOTICE IS HEREBY GIVEN that the Mower County Board has made written request to the Commissioner of Transportation pursuant to *Minnesota Rules* 8820.3300 for a variance from Rules as they apply to the construction of Bridge No. 50573 and approaches in Windom Township, Mower County, Minnesota.

The request is for a variance from *Minnesota Rules* for State Aid Operations 8820.2800, adopted pursuant to *Minnesota Statutes* Chapter 161 and 162, so as to permit the eligibility of State Aid funds for the construction of Bridge No. 50573 and approaches on Windom Township Road in Mower County, Minnesota, for which a contract was awarded prior to the required approval of plan by the State Aid Engineer.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

Dated: 1December 1995

Patrick B. Murphy
Division Director
State Aid for Local Transportation

Department of Transportation

Petition of the City of Marshall for a Variance from State Aid Requirements for AFTER-THE-FACT PLAN APPROVAL

NOTICE IS HEREBY GIVEN that the City Council of the City of Marshall has made written request to the Commissioner of Transportation pursuant to *Minnesota Rules* 8820.3300 for a variance from rules as they apply to a construction project on Trunk Highway No. 19 (East College Drive) from a point approximately 600 feet east of Bruce Street to Trunk Highway No. 23 in the City of Marshall.

The request is for a variance from *Minnesota Rules* for State Aid Operations 8820.2800, adopted pursuant to *Minnesota Statutes* Chapter 161 and 162; so as to permit plan approval after award of contract, in lieu of the required State Aid plan approval prior to award of contract on the T.H. No. 19 (East College Drive) construction project from a point approximately 600 feet east of Bruce Street to Trunk Highway No. 23 in the City of Marshall.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

Dated: 1 December 1995

Patrick B. Murphy
Division Director
State Aid for Local Transportation

In addition to requests by state agencies for technical/professional services (published in the State Contracts section), the *State Register* also publishes notices about grant funds available through any agency or branch of state government. Although some grant programs specifically require printing in a statewide publication such as the *State Register*, there is no requirement for publication in the *State Register* itself.

Agencies are encouraged to publish grant notices, and to provide financial estimates as well as sufficient time for interested parties to respond.

Department of Human Services

Chemical Dependency Program Division

Request for Proposals on Prevention/Education, Information and Referral, Short-Term Counseling and Training Programs that Provide Services to American Indian Citizens of Minnesota. Proposals are also Being Requested to Host the Fifteenth Annual Minnesota Indian Institute on Alcohol and Drug Studies and the Minnesota Inter-Tribal Youth Prevention Camp

The Chemical Dependency Program Division (CDPD) of the Minnesota Department of Human Services is soliciting proposals from American Indian human services providers, non-profit organizations, private organizations, and units of government to provide chemical dependency services for American Indian citizens of Minnesota. Proposals must address at least one of the following services: chemical dependency prevention/education; information and referral, short-term counseling services; and professional training. Proposals are due January 31, 1996.

The funded programs should begin on or about May 1, 1996 and on July 1, 1996. One year grants will be awarded to qualified applicants. Approximately \$130,000 is available to fund grantees for this one-year grant period. Grant funds under this RFP cannot be used to pay for chemical dependency treatment services.

The goal of this RFP is to reduce the effects of alcohol/drug abuse on American Indian youth and adults.

Telephone requests for programmatic information concerning this RFP should be directed to Donna Isham, Minnesota Department of Human Services, at (612) 296-4043. Budget/fund use questions should be directed to Mike Zeman, Minnesota Department of Human Services, at (612) 297-1863.

Minnesota Historical Society

Official Notice of Federal Certified Local Government Matching Grants Program

The application deadline for the Minnesota Historical Society's F. Y. 1996 federal Certified Local Government matching grants program is 4:30 p.m., Wednesday, January 31, 1996. Cities with local historic preservation ordinances, commissions, and programs certified by the State Historic Preservation Office are eligible applicants. It is anticipated that at least \$60,000 will be awarded.

Projects that will receive special priority are those that: promote surveys in areas of known development activity in order to reduce project delays; promote continuing development of data for planning use; result in local designations; and involve properties associated with the history of heretofore under-documented groups or communities (ethnic or racial minorities for example, but also other groups defining themselves as communities). Instructions regarding the full range of eligible activities and information on the project selection process and selection criteria are found in the F.Y. 1996 CLG Grants Manual. To request a complete application package or for further information contact Beverly Gorgos at (612) 296-5451.

This program receives Federal funds from the National Park Service. Regulations of the U.S. Department of the Interior strictly prohibit unlawful discrimination in departmental Federally assisted Programs on the basis of race, color, national origin, age or disability. Any person who believes he or she has been discriminated against in any program, activity, or facility operated by a recipient of Federal assistance should write to: Director, Equal Opportunity Program, U.S. Department of the Interior, National Park Service, P.O. Box 37127, Washington, D.C. 20013-7127.

Professional, Technical & Consulting Contracts

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over \$10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal. Certain quasi-state agencies are exempted from some of the provisions of this statute.

In accordance with *Minnesota Rules Part 1230.1910*, certified Targeted Group Businesses and individuals submitting proposals as prime contractors shall receive the equivalent of a 6% preference in the evaluation of their proposal. For information regarding certification, call the Materials Management Helpline (612)296-2600 or [TDD (612)297-5353 and ask for 296-2600].

Department of Administration

Building Codes and Standards Division

Request for Proposals to Contract for a Series of State Building Code Seminars

NOTICE IS HEREBY GIVEN that proposals are being solicited to provide program coordination and management services for a series of state building code seminars, during a three (3) year period, 11 seminar each series, for a total of 66 seminars, spring 1996, fall 1996, spring 1997, fall 1997, spring 1998, and fall 1998. The seminars will be presented in the following Minnesota locations in September through December, and March through June, one (1) eight (8) hour day per week: New Ulm, Rochester, Duluth, St. Cloud, Detroit Lakes, Maplewood (two (2)), Minnetonka, Burnsville, Brooklyn Park, South St. Paul. This request for proposal does not obligate the state to complete the proposed project, and the state reserves the right to cancel the solicitation if it is considered to be in its best interest.

For complete details and application information contact this division at the address listed below.

Margaret White
Building Codes and Standards Division
408 Metro Square Building
7th and Robert Streets
St. Paul, MN 55101
(612) 296-4626 or 297-5353 (TDD-Minnesota Relay Service)
(800) 657-3529 (TDD-Greater Minnesota Relay Service)

PLEASE NOTE ONLY MS. WHITE IS AUTHORIZED TO ANSWER QUESTIONS.

Responses to this request are due in the Building Codes and Standards Division offices by 4:00 p.m. on January 8, 1996.

Department of Employee Relations

Employee Insurance Division/Workers' Compensation Program

Notice of Request for Proposals for Investigative and/or Surveillance Services

The Minnesota Department of Employee Relations (DOER) is soliciting bids from qualified vendors for investigative and/or surveillance services on claims filed by state employees for workers' compensation benefits. Complete statements of the state's requirements and other terms and conditions governing these RFP's may be obtained by contacting:

Gary Westman
Claims Supervisor
Minnesota Department of Employee Relations
Employee Insurance Division/Workers' Compensation Program
P.O. Box 64081
St. Paul, Mn 55164-0081
(612) 296-8190

or leave a message with Jeanne Hosch Jones at 297-3522.

All proposals must be received by DOER by 4:00 p.m. on March 1, 1996.

A vendor conference for interested vendors is scheduled for 9:00 a.m. on Tuesday, January 23, 1996, in the Ladyslipper Training Room, Centennial Office Building, 200 Cedar Street, St. Paul, Minnesota. Interested parties must call Jeanne Hosch Jones for reservations.

Department of Employee Relations

Employee Insurance Division/Worker's Compensation Program

Notice of Request for Proposals for Independent Medical Examination Services

The Minnesota Department of Employee Relations (DOER) is soliciting bids from qualified firms and health care providers to provide independent medical examination services on claims filed by state employees for workers' compensation benefits. Complete statements of the state's requirements and other terms and conditions governing these RFP's may be obtained by contacting:

Gary Westman
Claims Supervisor
Minnesota Department of Employee Relations
Employee Insurance Division/Workers' Compensation Program
P.O. Box 64081
St. Paul, Mn 55164-0081
(612) 296-8190

or leave a message with Jeanne Hosch Jones at 297-3522.

All proposals must be received by DOER by 4:00 p.m. on March 1, 1996.

A vendor conference for interested vendors is scheduled for 9:00 a.m. on Thursday, January 25, 1996, in the Ladyslipper Training Room, Centennial Office Building, 200 Cedar Street, St. Paul, Minnesota. Interested parties must call Jeanne Hosch Jones for reservations.

Iron Range Resources and Rehabilitation Board

Notice of Request for Proposals for Real Estate Development Manager

The Iron Range Resources and Rehabilitation Board (IRRRB) is seeking proposals from qualified consultants and companies to manage and coordinate the real estate development of the Giants Ridge Recreation area and the surrounding residential real estate.

The IRRRB owns approximately 550 acres of land near Biwabik, Minnesota, which is now used principally for downhill and cross country skiing. The IRRRB is now in the process of developing this property into a four season destination recreation and resort community. The centerpiece of this project will be a "championship" quality golf course surrounded by approximately 1,000 residential home sites.

Goal

It is the goal of this project that the Giants Ridge Recreation Area be developed into a primary resort area which will create jobs, enhance land values, and expand the tax base in the area.

Project Scope and Work Program

The IRRRB requests that respondents address sample tasks, explaining in detail their proposed plans to accomplish stated objectives for each task. It is anticipated that this contract will begin on approximately January 15, 1996 and remain in effect until January 14, 1997, with options to renew for three additional one year periods.

This request for proposal does not obligate the state to complete the project, and the state reserves the right to cancel the solicitation if it is considered to be in its best interest.

Prospective responders who have any questions or would like to request a complete request for proposal may call or write:

Shirley Robinson, Contract Coordinator
IRRRB
P.O. Box 441
Eveleth, MN 55734
(218) 749-7721

by December 18, 1995.

Professional, Technical & Consulting Contracts

All proposals must be received not later than 3:30 P.M. January 6, 1996, as indicated by a notation made by the receptionist at the front desk of the IRRRB administration building located on highway 53 South, Eveleth, MN. **Late proposals will not be accepted.**

In Compliance with *Minnesota Statutes* 16b.167, the availability of this contracting opportunity is being offered to state employees. We will evaluate the responses of any state employee along with other responses to this Request for Proposal.

Department of Revenue

Collection Division

Proposals Sought for Processing and Collection of Delinquent Taxes Through Financial Transaction Cards (Credit/Debit Cards) to Implement the State of Minnesota Department of Revenue's Credit/Debit Card Services Pilot Program

The Minnesota Department of Revenue is requesting proposals for the purpose of conducting a pilot program on the feasibility of the use of credit cards to pay tax debts. The objective of this program is to provide delinquent taxpayers with the option of remitting payment through use of a credit card transaction. The pilot program shall be conducted for a period of six months beginning in April, 1996 and continuing until September.

The pilot program will determine:

1. If collection of delinquent taxes by accepting taxpayer's credit/debit card is economically feasible to the State.
2. If credit card operating procedures need adjustment for better efficiency and/or productivity prior to expanding the credit/debit card system to payment of current taxes.
3. Accumulate sufficient information so potential vendors to the State's permanent credit card system can provide a reasonable and competitive proposal for such services.

A list of required services are included in the complete "Request for Proposal."

It is anticipated that the proposal will be accepted in January 96 and remain in force for the period April 96 through September 96. The terms of the contract may then be re-negotiated for extension.

To obtain a copy of the complete "Request for Proposal," contact:

Bruce D. Showel
Minnesota Department of Revenue
Collection Division
10 River Park Plaza
Mail Station 6550
St. Paul, MN 55146-6550
(612) 296-0545

Proposals must be received at the above address no later than 4:00 PM, central standard time, December 29, 1995.

This request does not obligate the State of Minnesota, Department of Revenue to complete the pilot contemplated in this notice and the department reserves the right to cancel this solicitation. All expenses incurred responding to this notice shall be borne by the responder.

Non-State Public Bids, Contracts & Grants

The *State Register* also serves as a central marketplace for contracts let out on bid by the public sector. The *Register* meets state and federal guidelines for statewide circulation of public notices. Any tax-supported institution or government jurisdiction may advertise contracts and requests for proposals from the private sector.

It is recommended that contracts and RFPs include the following: 1) name of contact person; 2) institution name, address, and telephone number; 3) brief description of project and tasks; 4) cost estimate; and 5) final submission date of completed contract proposal. Allow at least three weeks from publication date (four weeks from date article is submitted for publication). Surveys show that subscribers are interested in hearing about contracts for estimates as low as \$1,000. Contact the editor for further details.

Metropolitan Council

Environmental Services

Public Notice for Letters of Interest for Professional Services

NOTICE IS HEREBY GIVEN that the Metropolitan Council Environmental Services is soliciting qualifications for professional services for the Blue Lake/Seneca Solids Handling Project. Services of a Consultant/Facilitator are required to assist MCES staff in the preparation of a proposal for operation and maintenance (O&M) of the Solids Handling Facility. This is viewed as an 8-month project to be completed by August 1996. The estimated cost for services is in the range of \$25,000 to \$100,000.

The scope of the professional services includes the following:

- Facilitation of an O&M proposal team, comprised of members from 8 union/collective bargaining employee groups.
- Preparation of a proposal for the operation and maintenance of the Solids Handling Facility. This proposal will be evaluated against similar proposals received from private firms.

The project requires significant coordination efforts between MCES staff, the O&M proposal team, the project's procurement consultant and others to ensure that the O&M proposal meets the need of the project and is competitive.

The tentative schedule for selecting a consulting firm for the Blue Lake/Seneca Solids Handling Project is as follows:

Receive Letters of Interest	December 1995
Issue Request For Proposals (RFP)	December 1995
Receive proposals	December 22, 1995
Evaluate and rank proposals	December 29, 1995
Metropolitan Council authorization	January 1996
Contract negotiated and NTP issued	January 1996

All firms interested in being considered for this project are invited to send a Letter of Interest asking for the Request For Proposal (RFP) package.

All inquiries and submittals are to be addressed to:

Jan Bevens, Contracts and Documents
Metropolitan Council Environmental Services
Mear Park Centre
230 East Fifth Street
St. Paul, MN 55101
(612) 229-2132

Minnesota Historical Society

Proposals Sought for a Strategic Planning Archives Consultant/Facilitator

The Minnesota Historical Society is seeking a Consultant/Facilitator (Contractor) to assist in the development of a strategic plan for the State archives program. The successful Contractor shall guide the staff and the project's advisory committee through the process of developing a plan that will refocus the operations and strategies of the State archives program. Earlier phases of the planning have been conducted concentrating on; information gathering, identification of issues, a self-study, and staff discussions on changing Government records from paper to electronic formats. The focus of this contract will be to:

1. Provide technical advice on how the strategic planning might best be accomplished;

Non-State Public Bids, Contracts & Grants

2. Identify key areas for restructuring of the program based upon prior work of the planning committee, and information gathered;
3. Facilitate meeting of staff and the advisory committee that will address those issues; and
4. Write the strategic planning document.

The successful Contractor shall review reports of previous focus groups, town and planning committee meetings; regularly communicate with the committee members and chair throughout the process: attend four meetings of the planning committee; facilitate at least three meetings of the advisory committee, one of which shall be a review of the draft report to be prepared as a part of this contract; draft a report, based upon an outline of issues developed by the staff and results of meetings with the committee, advisory committee and consultant; and finalize and produce the planning report.

Contract Dates: from the Date of Award through April 30, 1996. Contract Amount: Not To Exceed \$6,000 (excluding printing and publication costs).

The successful Contractor must have prior experience with program planning, facilitating small group planning efforts, re-engineering business processes, and work in an electronic records environment. Additional preferred experience includes working with State or local government agencies, records management experience, and experience with historical research projects.

Send letter of interest which includes; resume, list of recent clients, business references, and a sample of a report from a related project, to; Lila J. Goff, Assistant Director for Library and Archives, Minnesota Historical Society, 345 Kellogg Boulevard West, Saint Paul, Minnesota 55102.

Letters of interest must be submitted, to the above office, no later than December 21, 1995.

Wild About Birds

The DNR Bird Feeding Guide

ISBN 0-9647451-0-0

Carrol L. Henderson, Supervisor of the Non-Game Wildlife Program at Minnesota's Department of Natural Resources, shares his knowledge and appreciation for the natural habitats and traits of the wild birds who, with a little help from us, can thrive in spite of a rapidly changing landscape. Written in the same instructive manner as his popular books "Woodworking for Wildlife" and "Landscaping for Wildlife," **"Wild About Birds: The DNR Bird Feeding Guide"** provides techniques used by the author to double the number of species using his feeders. Includes woodshop basics for construction of 26 different feeders and tips on 44 types of food, plus detailed descriptions and photos of almost all the feeder-using species east of the Rocky Mountains - 69 in all. There's even a section on some of the unusual and unexpected wild visitors that may show up for a free meal. Over 425 color photographs, illustrations and diagrams make **"Wild About Birds"** a great reference manual, display book or gift. Ideal for the ornithologist, woodworker, or backyard birdwatcher. Spiral bound, 288 pages. **Stock Number 9-24 \$19.95**

Also by Henderson...

Landscaping for Wildlife

Revised, spiral-bound edition of our best-selling guide to landscaping your property to attract wildlife is now available! This book offers easy-to-follow, affordable landscape plans specifically geared for the Midwest climate. Attract everything from butterflies to hummingbirds, cardinals to wood ducks and deer. Features 185 color photos and numerous diagrams and charts. 138pp. plus index. (MN Dept. of Natural Resources, 1994) **Stock No. 9-15 \$10.95**

Woodworking for Wildlife

Revised and expanded in 1992, *Woodworking for Wildlife* is now full-color and spiral bound. Features numerous diagrams for building shelters for birds and mammals. Includes plans for the Peterson bluebird house, bat houses, platforms for the great horned owl, wood duck nest boxes, and more. Offers information on 50 species of birds and mammals. 111 pp. (MN Dept. of Natural Resources, 1994) **Stock No. 9-14 \$9.95**



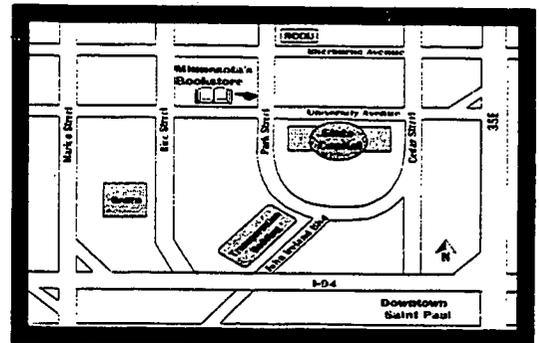
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