

**PART 1 of 2**

The Minnesota  
**State Register**

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# State Register

## 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

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# 27	Tuesday 2 January	Monday 18 December	Friday 22 December
# 28	Monday 8 January	Friday 22 December	Friday 29 December
# 29	Tuesday 16 January	Friday 29 December	Monday 8 January 1996

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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 Proposed emergency rules and withdrawn proposed rules are also published in the *State Register*.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.

## Department of Administration

### Building Codes and Standards Division

### Proposed Permanent Rules Relating to Building Code Changes

#### Dual Notice:

#### 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 Department of Administration, Building Codes and Standards Division 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 26, 1996, a public hearing will be held on February 6, 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 26, 1996, and before February 6, 1996.

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

Peggi White  
Building Codes and Standards Division  
408 Metro square Building  
7th and Robert Streets  
St. Paul, Minnesota 55101  
612-296-4626 Voice  
TTY/TDD: Twin Cities 612-297-5353 or;  
Greater Minnesota 800-657-3529 and ask for voice number

**Subject of Rule and Statutory Authority.** The proposed rules are amendments to the Minnesota State Building Code. The proposed rules include adoption by reference of the *1996 National Electrical Code* as published by the National Fire Protection Association in Quincy, Massachusetts and a new Solar Energy Systems Standard. In addition, amendments relating to the Uniform Building Code as well as changes in state's chapter 1300 are part of the proposed rules. The statutory authority to adopt the rule is *Minnesota Statute* 16B.61 subdivision 1. A copy of the proposed rule is published in the *State Register* and attached to this notice as mailed.

**Comments.** You have until 4:00 p.m. on January 26, 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 rule addressed, the reason for the comment, and any change proposed. A free copy of the rules is available upon request from Peggi White.

**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

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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 the agency contact person by 4:00 p.m. on January 26, 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 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.

**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 rule as attached and as 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 rule 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 cancelled if the agency does not receive requests from 25 or more persons that a hearing be held on the rule. 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 Peggi White at 612-296-4626 Voice or TTY/TDD Twin Cities 612-297-5353 or Greater Minnesota 800-657-3529 and ask for voice number, after January 26, 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 rule, a hearing will be held following the procedures in *Minnesota Statutes*, sections 14.14 to 14.20. The hearing will be held on February 6, 1996 in the Building Codes and Standards Division Conference Room, 408 Metro Square Building, 171 E. 7th Place, St. Paul, Minnesota, beginning at 1:00 p.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 . Judge can be reached at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota 55401, 612-341-7608.

**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. 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 agency may respond in writing within five business days after the comment period ends to any new information submitted. 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. No additional evidence may be submitted during the five-day response period. This rule hearing procedure is governed by *Minnesota Rules*, parts 1400.0200 to 1400.1200 and *Minnesota Statutes*, sections 14.14 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 from the agency contact person. This statement describes the need for and reasonableness of each provision of the proposed rule. It also includes a summary of all the evidence and argument which the agency anticipates presenting at the hearing, if one is held. The statement may also be reviewed and copies obtained at the cost of reproduction from the Office of Administrative Hearings or the agency.

**Small Business Considerations.** In preparing these rules, the Building Codes and Standards Division has considered the requirements of *Minnesota Statutes*, section 14.115, in regard to the impact of the proposed rules on small businesses. The proposed rules favorably affect small businesses in that none of the reporting requirements, schedules, or deadlines identified in items (a), (b), or (c) of the statute are applicable. See comment regarding items (d) and (e) in the Statement of Need and Reasonableness.

**Expenditure of Public Money by Local Public Bodies.** Pursuant to *Minnesota Statutes* section 14.11 subd. 1, the expenditure of public money will not exceed \$100,000 in either of the two years following the adoption of these rules.

**Impact on Agriculture Lands.** Pursuant to *Minnesota Statutes*, section 14.11, subd. 2, the adoption of these rules will not have any impact on agricultural land.

**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 First Floor Centennial Office Building, 658 Cedar Street, St. Paul, Minnesota 55155, 612-296-5148.

**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 Chair of the House Ways and Means Committee and the Chair of the Senate Finance Committee prior to submitting this notice to the *State Register*.

**Adoption Procedure if No Hearing.** If no hearing is required, after the end of the comment period the agency 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 to be notified of the attorney general's decision on the rule. If you want to be so notified, or wish to receive a copy of the adopted rule, submit your request to Peggi White 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 rule. You 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 rule 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 rule is adopted and filed with the Secretary of State. The agency's notice of adoption must be mailed on the same day that the rule is 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 rule with the Secretary of State.

Dated: 20 November 1995

Elaine S. Hansen, Commissioner  
Department of Administration

### Rules as Proposed

#### 1300.2400 DEFINITIONS.

[For text of subs 1 to 5, see M.R.]

Subp. 6. **Code.** "Code" means the Minnesota State Building Code adopted under *Minnesota Statutes*, section 16B.61, subdivision 1, and includes the following chapters of *Minnesota Rules*:

- A. 1300, Minnesota Building Code;
- B. 1301, Building Official Certification;
- C. 1302, Construction Approvals;
- D. 1305, Adoption of the Uniform Building Code;
- E. 1306, Special Fire Protection Systems;
- F. 1307, Elevators and Related Devices;
- G. ~~1310, Building Security;~~
- H. 1315, Adoption of the National Electrical Code;
- I. H. 1325, Solar Energy Systems;
- J. I. 1330, Fallout Shelters;
- K. J. 1335, Floodproofing Regulations;
- L. K. 1340, Facilities for the Handicapped;
- M. L. 1346, Adoption of the Uniform Mechanical Code;
- N. M. 1350, Manufactured Homes;
- O. N. 1360, Prefabricated Buildings;
- Q. 1361, Industrialized/Modular Buildings;
- P. 1365, Snow Loads;
- Q. 1370, Storm Shelters (Manufactured Home Parks);
- R. 4715, Minnesota Plumbing Code; and
- S. 7670, Minnesota Energy Code.

See part 1300.2900 for those chapters that may be adopted at the option of a municipality which has adopted the code.

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## Proposed Rules

[For text of subs 7 to 15, see M.R.]

### 1300.2900 OPTIONAL ADMINISTRATION.

Subp. 2. **Administration optional.** The following chapters of the code are not mandatory but may be adopted without change by a municipality which has adopted the code:

- A. chapter 1306, special fire protection systems; and
- B. chapter 1310, building security; and
- C. chapter 1335, floodproofing regulations, parts 1335.0300 1335.0600 to 1335.3100, sections 200.2 to 4405.3 1335.1200.

### 1300.6300 EXTERIOR WOOD DECKS, PATIOS, AND BALCONIES.

The decking surface and upper portions of exterior wood decks, patios, and balconies may be constructed of any of the following materials:

- A. the heartwood from species of wood having natural resistance to decay or termites, including redwood and cedars;
- B. grades of lumber which contain sapwood from species of wood having natural resistance to decay or termites, including redwood and cedars; or
- C. treated wood.

The species and grades of wood products used to construct the decking surface and upper portions of exterior decks, patios, and balconies must be made available to the building official on request before final construction approval. See Uniform Building Code, chapter 23, for other weather exposure provisions.

### 1305.0305 SECTION 305.2.3, SPECIAL PROVISIONS - GROUP E OCCUPANCIES.

UBC Section 305.2.3 is amended in the exceptions as follows:

Exceptions: 1. (Unchanged).

2. Delete.

3. Revise the first sentence to read as follows:

For other than school buildings, Division 3 occupancies may be located above the first story in buildings of Type I construction and in Types II-F.R., II one-hour, and III one-hour construction, subject to the limitation of Section 506 when: (remaining unchanged).

Add an exception 4 to read as follows:

4. As permitted by part 1300.5100 of the Minnesota State Building Code.

### 1305.0308 SECTION 308, GROUP I OCCUPANCIES.

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

Subp. 3. **Section 308.2.2.2.** UBC Section 308.2.2.2, Group I, Division 3 occupancies, is amended by deleting the last sentence and replacing it with the following:

There are no restrictions on the total number of glazed openings in a smoke barrier provided vision panels are of glazing material as specified in Section 713.9.

### 1305.0310 SECTION 310.9.1 SMOKE DETECTORS.

UBC Section 310.9.1.2 is amended in the exception to read as follows:

Work on the exterior of a Group R occupancy which does not require entry into the Group R occupancy for inspection is exempt from the requirements of this section.

### 1305.0904 TABLE NO. 9-A SECTION 904.2.4 GROUP E OCCUPANCIES.

Subpart 1. Section 904.2.4.1. UBC Section 904.2.4.1 is amended as follows:

UBC Section 904.2.4.1 General. An automatic sprinkler system shall be installed in Group E, Division I occupancies.

Exceptions: 1. (Unchanged).

2. When area separation walls, or occupancy separations having a minimum fire-resistive rating of not less than the greater of two hours or that required in Table 3-B, separate the E-1 occupancy from other occupancies and subdivide the E-1 occupancy into compartments such that each compartment contains an aggregate floor area not greater than 20,000 square feet (1,858 m<sup>2</sup>), an automatic sprinkler system need not be provided.

Subp. 2. Table No. 9-A. UBC Table No. 9-A is amended as follows:

Item No. 2 under the occupancy column of Table No. 9-A is amended to read as follows:

Occupancies three stories or more but less than 150 feet in height, except Group R Division 3<sup>7</sup>. Class II standpipes are not required in Group E or Group R-1 occupancies.

UBC Table No. 9-A is amended by adding footnotes 8 and 9 to item No. 2 to read as follows:

\* In municipalities that have adopted the special fire protection system criteria specified in *Minnesota Rules*, chapter 1306, the number of stories must be four or more.

° If an approved automatic fire extinguishing system required by Section 904 is installed, the number of stories must be four or more.

### **1305.1202 SECTION 1202, VENTILATION.**

Subpart 1. Section 1202.2.1. UBC Section 1202.2.1, the first paragraph, is amended to read as follows:

1202.2.1 General. All enclosed portions of Groups A, B, E, F, H, I, M, and S occupancies customarily occupied by human beings must be provided with natural ventilation by means of openable exterior openings with an area not less than 1/20 of the total floor area or must be provided with a mechanically operated ventilation system. Except as provided in subpart 2, the mechanically operated ventilation system must be designed in accordance with either the Ventilation Rate Procedure or Indoor Air Quality Procedure of ASHRAE Standard 62-1989. When using the Ventilation Rate Procedure, the system must be designed to provide not less than 15 cubic feet per minute of outside air per occupant.

Subp. 2. Section 1202.2.4. UBC Section 1202.2.4, Group H, Division 4 occupancies, is amended by amending the ventilation rate of one cubic foot per minute per square foot of floor area to three-fourths cubic foot per minute per square foot of floor area.

UBC Section 1202.2.7, Group S parking garages, is amended by amending the ventilation rate of 1.5 cubic feet per minute per square foot of gross floor area to three-fourths cubic feet per minute per square foot of gross floor area.

### **1305.1704 SECTION 1704, PREFABRICATED CONSTRUCTION.**

UBC Section 1704 is deleted and replaced with the following:

1704.1 General. Prefabricated construction shall comply with *Minnesota Rules*, chapter 1360 or 1361, as applicable.

### **1315.0200 SCOPE.**

Subpart 1. **Electrical code.** All new electrical wiring, apparatus, and equipment for electric light, heat, power, and alarm and communication systems must comply with the regulations contained in the ~~1993~~ 1996 edition of the National Electrical Code (NEC) as approved by the American National Standards Institute (ANSI/NFPA ~~70-1993~~ 70-1996), *Minnesota Statutes*, section 326.243, and the Minnesota State Building Code as ~~promulgated~~ adopted by the commissioner of administration. This subpart is effective July 1, 1996.

### **1325.1100 PURPOSE OF SOLAR ENERGY RULES.**

Subpart 1. **Authority.** ~~These rules are~~ This part is authorized by *Minnesota Statutes* ~~1976, sections 116H.127 and 16.85~~ section 216C.25, and established through the rulemaking procedures ~~set forth at in~~ in *Minnesota Statutes*, chapter 14.

Subp. 2. **Scope.** ~~These rules shall apply~~ This part applies to solar energy systems which are used to satisfy space heating and/or space cooling and/or domestic or service hot water demands of buildings, and shall be used for all solar energy systems ~~and subsystems as those terms are defined at part 1325.1000 herein as defined in~~ Minnesota Statutes, section 216C.06, subdivision 8. ~~These rules are~~ This part is to be used in conjunction with existing building codes and standards and ~~do~~ does not replace existing building codes.

Subp. 3. **Purpose.** The purpose of ~~these rules~~ this part is twofold: first, to establish standards for the evaluation of the performance, durability, reliability, and maintainability of solar energy systems ~~and subsystems~~; and second, to require ~~disclosure by the seller~~ Solar Rating and Certification Corporation (SRCC) certification that discloses to each potential buyer to the extent to which the seller's solar energy system ~~or subsystem~~ meets or exceeds the ~~standards set forth at parts 1325.1500 to 1325.2800~~ SRCC Operating Guidelines and Standards in subpart 4a.

Subp. 4. [See repealer.]

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## Proposed Rules

**Subp. 4a. Incorporation of Operating Guidelines and Standards.** The publications in items A to C adopted by the Solar Rating and Certification Corporation (SRCC) are incorporated by reference and made part of the Minnesota State Building Code. They are not subject to frequent change and are available at the Minnesota state law library.

A. Document OG-100, Operating Guidelines for Certifying Solar Collectors, dated April 1994.

B. Standard OG-100-86 (RA92), Test Methods and Minimum Standards for Certifying Solar Collectors, dated April 1994.

C. Document OG-300-95, Operating Guidelines and Minimum Standards for Certifying Solar Water Heating Systems, dated August 1995.

Subp. 5. [See repealer.]

**Subp. 5a. Certification.** Solar collectors and solar water heating systems sold, offered for sale, or installed in the state must bear a Solar Rating and Certification Corporation (SRCC) certification label evidencing the manufacturer's compliance with the design, reliability, durability, safety, operation, servicing, installation, and manual criteria contained in the Operating Guidelines and Standards in subpart 4a. In addition, in accordance with the Operating Guidelines and Standards, every seller of solar collectors and solar water heating systems for installation in the state must provide every bona fide prospective buyer a copy of the certification award issued by the SRCC.

**Subp. 6. Enforcement.** The building official shall not issue any permits required for installation of the electrical, mechanical, or structural aspects of the solar energy system until the seller has furnished the building official a copy of the completed certification award required by this part. The building official need not determine the accuracy of the seller's certification award or otherwise determine the extent to which the seller's solar energy system meets or exceeds the Operating Guidelines and Standards in subpart 4a.

**REPEALER.** Minnesota Rules, parts 1310.0100; 1310.0200; 1310.0300; 1310.0400; 1310.0500; 1310.0600; 1310.0700; 1310.0800; 1310.0900; 1310.1000; 1310.1100; 1310.1200; 1310.1300; 1310.1400; 1310.1500; 1310.1600; 1310.1700; 1310.1800; 1310.1900; 1310.2000; 1310.2100; 1310.2200; 1310.2300; 1310.2400; 1310.2500; 1310.2600; 1310.2700; 1310.2800; 1310.2900; 1310.3000; 1310.3100; 1310.3200; 1310.3300; 1310.3400; 1310.3500; 1310.3600; 1310.3700; 1310.3800; 1310.3900; 1310.4000; 1310.9000; 1310.9100; 1310.9200; 1310.9300; 1325.1000; 1325.1100, subparts 4 and 5; 1325.1200; 1325.1300; 1325.1400; 1325.1500; 1325.1600; 1325.1700; 1325.1800; 1325.1900; 1325.2000; 1325.2100; 1325.2200; 1325.2300; 1325.2400; 1325.2500; 1325.2600; 1325.2700; 1325.2800; 1325.2900; 1325.3000; 1325.3100; 1325.3200; 1325.3300; 1325.3400; 1325.3500; 1325.3600; 1325.9000; 1325.9100; 1325.9200; 1325.9300; 1325.9400; and 1325.9500, are repealed.

## Department of Administration

### Building Codes and Standards Division

#### Dual Notice:

#### 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 Department of Administration, Building Codes and Standards Division intends to adopt a permanent rule 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 26, 1996, a public hearing will be held on February 6, 1996. To find out whether the rule will be adopted without a hearing or if the hearing will be held, you should contact the agency contact person after January 26, 1996 and before February 6, 1996.

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

Peggi White  
Building Codes and Standards Division  
408 Metro Square Building  
7th and Robert Streets  
St. Paul, Minnesota 55101  
612-296-4626 Voice  
TTY/TDD: Twin Cities 612-297-5353 or;  
Greater Minnesota 800-657-3529 and ask for voice number

**Subject of Rule and Statutory Authority.** The proposed rule is about Chapter 1360 Prefabricated Buildings and 1361

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## Proposed Rules

Industrialized/Modular Buildings. The statutory authority to adopt the rule is *Minnesota Statute* 16B.61 subdivision 1. A copy of the proposed rule is published in the *State Register* and attached to this notice as mailed.

**Comments.** You have until 4:00 p.m. on January 26, 1996 to submit written comment in support of or in opposition to the proposed rule or any part or subpart of the rule. 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 rule addressed, the reason for the comment, and any change proposed. A free copy of the rule is available upon request from Peggi White.

**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 agency contact person by 4:00 p.m. on January 26, 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 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.

**Modifications.** The proposed rule 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 rule as attached and as 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 rule 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 cancelled if the agency does not receive requests from 25 or more persons that a hearing be held on the rule. 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 Peggi White at 612-296-4626 Voice or TTY/TDD Twin Cities 612-297-5353 or Greater Minnesota 800-657-3529 and ask for voice number, after January 26, 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 rule, a hearing will be held following the procedures in *Minnesota Statutes*, sections 14.14 to 14.20. The hearing will be held on February 6, 1996 in the Building Codes and Standards Division Conference Room, 408 Metro Square Building, 171 E. 7th Place, St. Paul, Minnesota, 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. Judge can be reached at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota 55401, 612-341-7608.

**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. 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 agency may respond in writing within five business days after the comment period ends to any new information submitted. 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. No additional evidence may be submitted during the five-day response period. This rule hearing procedure is governed by *Minnesota Rules*, parts 1400.0200 to 1400.1200 and *Minnesota Statutes*, sections 14.14 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 from the agency contact person. This statement describes the need for and reasonableness of each provision of the proposed rule. It also includes a summary of all the evidence and argument which the agency anticipates presenting at the hearing, if one is held. 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 Building Codes and Standards Division has considered the requirements of *Minnesota Statutes*, section 14.115, in regard to the impact of the proposed rules on small businesses. The proposed rules favorably affect small businesses in that none of the reporting requirements, schedules, or deadlines identified in items (a), (b), or (c) are applicable to chapter 1360 while the rules in chapter 1361 may provide for cost savings depending on the volume of units shipped between participating states. The division's evaluation of the applicability of the methods contained in *Minnesota*

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## Proposed Rules

*statutes*, section 14.115, subdivision 2, for reducing the impact of the proposed rules is addressed further in the statement of need and reasonableness.

**Expenditure of Public Money by Local Public Bodies.** Pursuant to *Minnesota Statutes* section 14.11 subd. 1, the expenditure of public money will not exceed \$100,000 in either of the two years following the adoption of these rules.

**Impact on Agriculture Lands.** Pursuant to *Minnesota Statutes*, section 14.11, subd. 2, the adoption of these rules will not have any impact on agricultural land.

**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 First Floor Centennial Office Building, 658 Cedar Street, St. Paul, Minnesota 55155, 612-296-5148.

**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 Chair of the House Ways and Means Committee and the Chair of the Senate Finance Committee prior to submitting this notice to the *State Register*.

**Adoption Procedure if No Hearing.** If no hearing is required, after the end of the comment period the agency 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 to be notified of the attorney general's decision on the rule. If you want to be so notified, or wish to receive a copy of the adopted rule, submit your request to Peggi White listed above.

**Adoption Procedure After the Hearing.** If a hearing is held, after the close of the hearing record, the administrative law judge will issue a report on the proposed rule. You 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 rule 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 rule is adopted and filed with the Secretary of State. The agency's notice of adoption must be mailed on the same day that the rule is 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 rule with the Secretary of State.

Dated: 20 November 1995

Elaine S. Hansen, Commissioner  
Department of Administration

## Proposed Permanent Rules Relating to Prefabricated Buildings

### Rules as Proposed

#### 1360.0100 TITLE AND SCOPE.

Subpart 1. [See repealer.]

Subp. 2. **Purpose.** The purpose of this chapter is to govern the construction of, and provide for the certification of, prefabricated buildings for those manufacturers who construct not more than three prefabricated buildings for permanent installation in Minnesota in a calendar year. Manufacturers of prefabricated buildings other than those regulated by this chapter or that produce more than three prefabricated buildings for permanent installation in Minnesota in a calendar year, must comply with the industrial/modular buildings rules, chapter 1361.

#### 1360.0200 DEFINITIONS.

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

Subp. 2. **Approved.** "Approved" as it applies to ~~factory or~~ off-site construction of prefabricated buildings means approved by the state building inspector.

Subp. 3. [See repealer.]

Subp. 4. [See repealer.]

[For text of subps 5 to 8, see M.R.]

Subp. 9. [See repealer.]

Subp. 10. [See repealer.]

Subp. 11. [See repealer.]

[For text of subps 12 and 14, see M.R.]

Subp. 14a. Manufacturer. "Manufacturer" means any person or firm engaged in the manufacturing of not more than three prefabricated buildings per single location for permanent installation in Minnesota in a calendar year.

Subp. 15. **Prefabricated building.** "Prefabricated building" means any building or building module intended for use as an R-3, one- or two-family dwelling, or a U-1, accessory building, which is of closed construction and which is ~~made,~~ constructed, ~~or assembled in manufacturing facilities,~~ on or off the building site, for installation, or assembly and installation, on the building site, but does not include relocatable contractors offices or storage buildings that are 1,500 square feet or less in floor area, that are designed for temporary use by a contractor at a construction site, that are not to be used by the general public or as a sales office, and that will be removed prior to or upon completion of the construction project.

[For text of subp 16, see M.R.]

Subp. 17. [See repealer.]

Subp. 18. [See repealer.]

[For text of subp. 19, see M.R.]

### **1360.0300 APPROVAL.**

Subpart 1. **Responsibility; plan review.** The state building inspector has the responsibility for approving prefabricated buildings ~~and building systems~~ for compliance with the code. This responsibility may be delegated to approved ~~evaluation~~ local enforcement agencies.

~~Manufacturers must submit plans biannually for reevaluation and approval.~~

Approvals expire when there are revisions to the code under which the approval was granted. At that time the manufacturer must submit entire new documentation for evaluation and approval, or submit evidence that the plans as approved are in compliance with the code as revised.

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

### **1360.0400 INSPECTION.**

The state building inspector reserves the responsibility for inspecting ~~manufactured prefabricated~~ buildings and building components for compliance with the code. The state building inspector may delegate such responsibility to ~~approved inspection agencies~~ ~~or approved local enforcement agencies.~~

### **1360.0800 TESTING.**

The state building inspector ~~or the evaluation agency~~ may require that specific components, systems, or processes be tested. Tests must be performed by a qualified testing agency. The tests and procedures must be reviewed by the ~~evaluation agency or the~~ state building inspector to assure compliance with the code.

### **1360.0900 INSPECTION.**

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

Subp. 2. [See repealer.]

Subp. 3. [See repealer.]

Subp. 4. **Damaged prefabricated buildings.** Prior to the installation of a damaged prefabricated building, the ~~dealer installer, transporter, building official,~~ owner, or manufacturer shall notify the state building inspector who shall inspect, or cause to be inspected, ~~certified prefabricated buildings which have been damaged after certification and take action with regard to those buildings which is authorized under part 1360.3100, subpart 3, or which is otherwise necessary to eliminate dangerous conditions.~~

The state building inspector shall require prefabricated buildings which are so damaged as to no longer comply with the code to be brought into compliance promptly. If those buildings are not brought into compliance with the code within a reasonable time, or if they are so damaged that they cannot be brought into compliance, the state building inspector shall order that the seals be removed from the buildings. Irreparably damaged buildings must be disposed of in accordance with applicable law.

Subp. 5. [See repealer.]

Subp. 6. [See repealer.]

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## Proposed Rules

### 1360.1300 BUILDING PERMITS.

Subpart 1. **Application for permit.** An application for a building permit to a local building official for the installation of prefabricated buildings pursuant to this code must in addition to any other requirements contain:

- A. a statement that application is made for permission to install prefabricated buildings in accordance with the provisions of the code, signed by the applicant or the applicant's agent with the appropriate address;
- B. a copy of the site and building plans and specifications and evidence of plan approval by the state building inspector or evaluation agency; and
- C. the information required on the data plate (part 1360.2400).

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

### 1360.1500 CHANGES TO APPROVED PLANS.

A manufacturer who proposes or is required to change approved plans or installation instructions shall request approval of the changes in writing and work may not commence until written approval is received. ~~The changes must be incorporated in the inspection procedures manual.~~

### 1360.1600 CHANGE OF OWNERSHIP, NAME, OR ADDRESS.

In the event of a change in the ownership, name, or office address of any manufacturer, the manufacturer shall notify the state building inspector; ~~the evaluation agency;~~ or the local enforcement agency in writing within ten days. ~~A manufacturer who changes or adds to the location of the manufacturing facility shall so notify the state building inspector, the evaluation agency, or the local enforcement agency at least 30 days prior to the start of manufacture at such new location.~~

### 1360.1800 NONCOMPLIANCE.

Noncompliance with the provisions of the code or unauthorized deviation from the approved plans or production procedures may be cause for revocation of the plan approval ~~and authorization to obtain seals.~~

### 1360.1900 SEALS.

Subpart 1. **R-3 and R-4 U-1 occupancies.** For R-3 and R-4 U-1 occupancies, each prefabricated building manufactured pursuant to the code must have permanently attached in a location shown on the approved plans a state seal evidencing certification of compliance with the code by the manufacturer.

Subp. 2. [See repealer.]

### 1360.2000 ISSUANCE.

A seal must be issued by the state building inspector to the manufacturer upon ~~application and after plan~~ final inspection approval has been issued; ~~and must be issued in accordance with the following:~~

~~A. If the state building inspector delegates the issuance of seals to an evaluation or inspection agency, the agency shall obtain approval from the state building inspector for the manner in which they are handled.~~

~~B. All seals must be serially numbered.~~

~~C. A manufacturer's compliance assurance program, submitted in accordance with part 1360.3100, item A must include requirements for issuance, possession of, attachment of, and accounting for all seals to assure that seals are attached only to buildings manufactured pursuant to an approved building system and inspected pursuant to an approved compliance assurance program.~~

~~D. If the state building inspector or an inspection agency determines that the manufacturer's record of compliance is such that the state building inspector or inspection agency need not maintain an inspector in a given plant at all times, the state building inspector or inspection agency may entrust seals to the custody of one or more employees of the manufacturer, who shall control the use of the seals. These employees must not be given custody of more seals than are necessary to accommodate the manufacturer's anticipated production for one month. If the conditions of custody are violated, the state building inspector or an inspection agency shall immediately regain possession of all seals that have not been applied to the prefabricated buildings and shall take further action with respect to buildings already sealed, and with respect to future seals, which it may deem necessary to assure compliance with the code.~~

### 1360.2500 PLAN APPROVAL PROCEDURES.

Plan approval must be obtained from the state building inspector ~~or the evaluation agency~~ for all prefabricated buildings and systems.

Applications, plans, specifications and other documentation must be submitted in sufficient copies as required. Applications

must be made in letter form. All documentations and plans must indicate the manufacturer's name, office address, and address of manufacturing facility.

~~A quality control manual prepared by the manufacturer must be submitted. If the manufacturer elects to have each building or system produced individually inspected, a quality control manual need not be submitted.~~

Manufacturers shall submit plans showing all elements relating to specific systems on properly identifiable sheets. Each plan must bear the signature and seal of an approved registered architect or professional engineer where required. The plan must indicate the method of evaluation and inspection for all required on-site testing of the systems. Plans must designate all work to be performed on site, including connections of all systems, equipment, and appliances and all work performed in the plant. A three-inch by four-inch clear rectangular space must be provided on all sheets of plans near the title box for the stamp of approval.

The design of plumbing, electrical, heating, and mechanical systems or any structural design or method of construction and data must be in accordance with the Minnesota State Building Code. Grade, quality, and identification of all materials must be specified. Design calculations and test reports must be submitted when required. Plans must be drawn to scale and indicate the location of the approved seal and data plate.

#### **1360.2600 PRODUCTS MANUFACTURED IN MORE THAN ONE LOCATION.**

If the manufacturer produces the same products at more than one ~~manufacturing~~ facility, the manufacturer shall provide such additional copies of documentation as may be required.

#### **1360.2700 NONCONFORMING APPLICATION AND PLANS.**

In the event that an application is determined to be unsuitable for processing prior to plan check, the applicant must be notified in writing of the unsuitability and the reason for the unsuitability within 30 days of the date the application is received by the state building inspector ~~or evaluation agency.~~

#### **1360.2800 EVIDENCE OF PLAN APPROVAL.**

Plan approvals must be evidenced by the stamp of approval of the state building inspector or ~~evaluation~~ the approved local enforcement agency if delegated as authorized by part 1360.0300, subpart 1. One copy of all approved documentation must be returned to the manufacturer.

#### **1360.3400 PROCEDURES FOR APPROVING EVALUATION AGENCIES.**

Subpart 1. **Qualifying for approval.** The state building inspector shall approve inspection or evaluation agencies which ~~meet the requirements of part 1360.3300 and which~~ the state building inspector finds ~~otherwise~~ qualified to perform the functions proposed to be delegated to them.

Subp. 2. **Determining completeness of application.** Prior to a full evaluation of an application for approval, the state building inspector shall determine whether the application is complete ~~and in accordance with part 1360.3300.~~ In the event the application is found to be unsuitable for processing, the applicant must be notified in writing of the unsuitability and the reason for the unsuitability within 30 days of the date the application is received by the state building inspector. In that event, all but \$25 of the fee must be returned. A finding of unsuitability is without prejudice. Any subsequent submission must be treated as a new application.

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

#### **1360.3500 SUSPENSION AND REVOCATION OF APPROVAL.**

Subpart 1. **Grounds.** The state building inspector may suspend or revoke the approval of any evaluation agency or inspection agency if the approval was issued in error, was issued on the basis of incorrect information, or was issued in violation of the act or the code, or if the agency violates the act or the code, ~~if examination pursuant to 1360.0900, subparts 5 and 6 discloses that the agency has failed to perform properly,~~ or for any other cause deemed sufficient by the state building inspector to warrant that action. Appeals from suspensions or revocations must receive timely review.

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

#### **1360.3600 FEES.**

Subpart 1. **Form and amount of payment.** All fees must be in the form of checks or money orders payable to "Minnesota State Treasurer," and addressed to: State of Minnesota Department of Administration, Building Codes and Standards Division, 408 Metro Square Building, Seventh and Robert Streets, Saint Paul, Minnesota 55101.

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## Proposed Rules

The seal fee is \$30 per seal. The replacement seal fee for damaged or lost seals is \$10 per seal. For all other work performed by the Minnesota Building Codes and Standards Division such as, but not limited to, the review of plans, specifications, ~~independent agency reports, and inspection, and quality control evaluation~~, fees must be charged based on the fee schedule in part 1302.0600. Travel expense must be charged at the rates established for state employees by the commissioner of administration.

Subp. 2. [See repealer.]

**REPEALER.** Minnesota Rules, parts 1360.0100, subpart 1; 1360.0200, subparts 3, 4, 9, 10, 11, 17, and 18; 1360.0600; 1360.0900, subparts 2, 3, 5, and 6; 1360.1700; 1360.1900, subpart 2; 1360.2100; 1360.2200; 1360.2300; 1360.2900; 1360.2910; 1360.3000; 1360.3100, subparts 1 and 2; 1360.3200; 1360.3300; 1360.3400; 1360.3500; and 1360.3600, subpart 2, are repealed.

## Proposed Permanent Rules Relating to Industrialized/Modular Buildings

### Rules as Proposed (all new material)

#### 1361.0100 PURPOSE.

The purpose of this chapter is to govern the construction of industrialized/modular buildings and building components and provide for their certification and labeling pursuant to *Minnesota Statutes*, section 16B.75.

#### 1361.0200 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part apply to this chapter.

Subp. 2. **Building component.** "Building component" means a subsystem, subassembly, or other system of closed construction designed for use in or as part of a structure, including structural, electrical, mechanical, plumbing, and fire protection systems and other systems affecting health and safety.

Subp. 3. **Industrialized Buildings Commission.** "Industrialized Buildings Commission" means the Interstate Industrialized/Modular Buildings Commission, the operating arm of the interstate compact on industrialized/modular buildings in *Minnesota Statutes*, section 16B.75.

Subp. 4. **Industrialized/modular building.** "Industrialized/modular building" means a building of closed construction, constructed so that concealed parts or processes of manufacture cannot be inspected at the site, without disassembly, damage, or destruction, and made or assembled in manufacturing facilities, off the building site, for installation, or assembly and installation, on the building site. "Industrialized/modular building" includes, but is not limited to, modular housing that is factory-built single-family and multifamily housing, including closed wall panelized housing, and other modular, nonresidential buildings. "Industrialized/modular building" does not include a structure subject to the requirements of the National Manufactured Home Construction and Safety Standards Act of 1974 or prefabricated buildings, as defined in part 1360.0200, subpart 15.

Subp. 5. **Minnesota state building code.** "Minnesota state building code" means the code adopted under *Minnesota Statutes*, section 16B.61, subdivision 1, as identified in part 1300.2400, subpart 6.

Subp. 6. **Model rules and regulations.** "Model rules and regulations" means the model rules and regulations incorporated by reference in part 1361.0300.

#### 1361.0300 INCORPORATION OF MODEL RULES AND REGULATIONS.

Parts I to VII of the July 9, 1993 edition of the Model Rules and Regulations for Industrialized/Modular Buildings as adopted by the Industrialized Buildings Commission and the December 3, 1993 amendments are incorporated by reference and made part of the Minnesota state building code. These parts and amendments are not subject to frequent change and are available at the Minnesota state law library.

#### 1361.0400 CERTIFICATION.

Industrialized/modular buildings and building components sold, offered for sale, or installed in the state must bear an Industrialized Buildings Commission (IBC) seal and data plate evidencing the manufacturer's certification of code compliance. That certification is conclusive on all agencies, instrumentalities, and municipalities of the state.

#### 1361.0500 INSTALLATION.

Industrialized/modular buildings or building components must be installed in compliance with the Minnesota state building code which incorporates by reference the Model Rules and Regulations for Industrialized/Modular Buildings.

## Department of Agriculture

### Proposed Permanent Rules Relating to Anhydrous Ammonia

#### Notice of Intent to Adopt a Rule Without a Public Hearing

The Minnesota Department of Agriculture intends to adopt rules without a public hearing following the procedures set forth in the Administrative Procedures Act sections 14.22-14.28. You have 30 days to submit written comment on the proposed rules and may also submit a written request that a hearing be held on the rules.

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

Carol Milligan, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107: Phone (612) 296-6906, Fax (612) 297-7678.

**Subject of Rules and Statutory Authority.** The proposed rules are about safety standards for storage, transportation and handling of anhydrous ammonia. The statutory authority to adopt these rules is *Minnesota Statutes*, section 18C.121. A copy of the proposed rules is published in the *State Register* and attached to this notice as mailed.

**Comments.** You have until 4:30 p.m. *January 25, 1996*, to submit written comment in support of or in opposition to the proposed rules or any subpart of the rules. Your comments 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 25, 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 request in writing. If a public hearing is required, the department will proceed according to *Minnesota Statutes*, sections 14.131-14.20.

**Modifications.** The proposed rules may be modified as a result of public comment. The modifications must be supported by the data and views submitted to the department and may not result in a substantial change in the proposed rules as attached and 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 from the department contact person. 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.

**Small Business Considerations.** Most of the businesses affected by this rule would be defined as a small business according to *Minnesota Statutes*, section 14.115. The safety standards set forth in the rule are necessary to insure proper handling of an extremely hazardous product. Modifying the reporting or compliance standards for small businesses would jeopardize the safety of those businesses and the public.

**Adoption and Review of the Rules.** 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 that 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 the department contact person listed above.

Dated: 9 December 1995

Gene Hugoson, Commissioner  
Department of Agriculture

Rules as Proposed (all new material)

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## Proposed Rules

### 1513.0010 INTRODUCTION.

Subpart 1. **Scope.** This chapter is adopted under *Minnesota Statutes*, section 18C.121, to regulate the design, construction, repair, alteration, location, installation, and operation of anhydrous ammonia systems including refrigerated ammonia systems with product used or intended for use as a fertilizer.

Subp. 2. **Exceptions.** This chapter does not apply to:

- A. ammonia manufacturing plants;
- B. refrigeration systems where ammonia is used solely as a refrigerant;
- C. ammonia transportation pipelines; and
- D. ammonia barges and tankers.

### 1513.0020 INCORPORATIONS BY REFERENCE.

The most current edition of the standards in items A to T are incorporated by reference. The standards are not subject to frequent change and are available as indicated or can be purchased from the institute or organization that published them.

A. ANSI Z87.1, Practice for Occupational and Educational Eye and Face Protection; American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018. It is available for reference at the Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, MN 55401.

B. ANSI Z358.1, Emergency Eyewash and Shower Equipment; American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018. It is available through the Minitex interlibrary loan system.

C. *Code of Federal Regulations*, title 29, parts 1900-1910 (Labor), chapter XVII—Occupational Safety and Health Administration, United States Department of Labor. Superintendent of Documents, United States Government Printing Office, Washington, DC 20402. It is available through the Minitex interlibrary loan system.

D. National Board Inspection Code, ANSI/NB-23 National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, OH 43229. It is available through the Minitex interlibrary loan system.

E. ANSI Z88.2, Practices for Respiratory Protection, American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018. It is available for reference at the Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, MN 55401.

F. ANSI/ASME B31.3, American National Standard for Chemical Plant and Petroleum Refinery Piping, American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017-2392. It is available for reference at the University of Minnesota, Walter Library, 117 Pleasant Street SE., Minneapolis, MN 55455.

G. ANSI/ASME B31.5, American National Standard for Refrigeration Piping, American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017-2392. It is available for reference at the University of Minnesota, Walter Library, 117 Pleasant Street SE., Minneapolis, MN 55455.

H. ASTM Specification A53, Annual Book of ASTM Standards; ASTM, 1916 Race Street, Philadelphia, PA 19103. It is available for reference at the University of Minnesota, Walter Library, 117 Pleasant Street SE., Minneapolis, MN 55455.

I. ASME Boiler and Pressure Vessel Code, Section IX, American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017-2392. It is available for reference at the University of Minnesota, Walter Library, 117 Pleasant Street SE., Minneapolis, MN 55455.

J. ANSI/SAE J513f, Refrigeration Tube Fittings, Society of Automotive Engineers, 400 Commonwealth Dr., Warrendale, PA 15096-0001. It is available for reference at the University of Minnesota, Walter Library, 117 Pleasant Street SE., Minneapolis, MN 55455.

K. ASTM Specification A47 and Specification A395, Annual Book of ASTM Standards; ASTM, 1916 Race Street, Philadelphia, PA 19103. It is available for reference at the University of Minnesota, Walter Library, 117 Pleasant Street SE., Minneapolis, MN 55455.

L. ANSI RMA IP-14, Specifications for Anhydrous Ammonia Hose; American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018. It is available through the Minitex interlibrary loan system.

M. CGA P-7, Standard for Requalification of Cargo Tank Hose Used in the Transfer of Compressed Gases; Compressed Gas Association, Inc., 1235 Jefferson Davis Highway, Arlington, VA 22202. It is available through the Minitex interlibrary loan system.

N. UL 132, Standard on Safety Relief Valves for Anhydrous Ammonia and LP-Gas; Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, IL 60062. It is available through the Minitex interlibrary loan system.

O. API Standard 620, Recommended Rules for Design and Construction of Large Welded Low-Pressure Storage Tanks; American Petroleum Institute, 1220 L Street, N.W., Washington, DC 20005. It is available for reference at the University of Minnesota, Walter Library, 117 Pleasant Street SE., Minneapolis, MN 55455.

P. ANSI/NFPA 70, National Electrical Code; National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. It is available through the Minitex interlibrary loan system.

Q. *Code of Federal Regulations*, title 49, parts 300-399 (Transportation) chapter III—Federal Highway Administration, United States Department of Transportation. Superintendent of Documents, United States Government Printing Office, Washington, DC 20402. It is available through the Minitex interlibrary loan system.

R. CGA C-4 American National Standard Method of Marking Portable Compressed Gas Containers to Identify the Material Contained (ANSI/CGA C-4); Compressed Gas Association, Inc., 1235 Jefferson Davis Highway, Arlington, VA 22202. It is available for reference at the Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, MN 55401.

S. CGA V-1, American National, Canadian, and Compressed Gas Association Standard for Compressed Gas Cylinder Valve Outlet and Inlet Connections (ANSI/CSA/CGA V-1); Compressed Gas Association, Inc., 1235 Jefferson Davis Highway, Arlington, VA 22202. It is available for reference at the Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, MN 55401.

T. ASAE S276.4, Slow-Moving Vehicle Identification Emblem; American Society of Agricultural Engineers, 2950 Niles Road, St. Joseph, MI 49085. It is available for reference at the University of Minnesota, St. Paul Central Library, 1984 Buford Avenue, St. Paul, MN 55108.

### 1513.0030 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part apply to this chapter.

Subp. 2. **Alteration.** "Alteration" means a change in an item described in the original manufacturer's data report which affects the pressure-containing capability of the container. Alteration includes rerating a container by increasing maximum allowable working pressure or by increasing or decreasing allowable working temperature.

Subp. 3. **Ammonia or anhydrous ammonia.** "Ammonia" and "anhydrous ammonia" are used interchangeably in this chapter and refer to the compound formed by the chemical combination of the elements nitrogen and hydrogen in the molar proportion of one part nitrogen to three parts hydrogen. This relationship is shown by the chemical formula,  $\text{NH}_3$ . On a weight basis, the ratio is 14 parts nitrogen to three parts hydrogen or approximately 82 percent nitrogen to 18 percent hydrogen. Ammonia may exist in either a gaseous or a liquid state. Ammonia does not include aqua ammonia or ammonium hydroxide which are solutions of ammonia in water and are sometimes called "ammonia."

Subp. 4. **Approved.** "Approved" means:

- A. listed by a recognized testing laboratory; or
- B. recommended by the manufacturer as suitable for use with anhydrous ammonia and so marked.

Subp. 5. **Appurtenance.** "Appurtenance" means a device such as a pressure relief device, liquid level gauging device, valve, pressure gauge, pressure regulator, piping, fitting, metering, or dispensing device designed to be attached to an ammonia container.

Subp. 6. **API-ASME code.** "API-ASME code" refers to the Code for Unfired Pressure Vessels for Petroleum Liquids and Gases of the American Petroleum Institute and the American Society of Mechanical Engineers (API-ASME). The API-ASME code, as a joint publications and interpretation service, was discontinued as of December 31, 1956, and construction of containers to the API-ASME code has not been authorized after July 1, 1961. The API-ASME code is incorporated by reference. It is not subject to frequent change and is available for reference at the University of Minnesota, Walter Library, 117 Pleasant Street SE., Minneapolis, MN 55455.

Subp. 7. **ASME code.** "ASME code" refers to:

- A. paragraphs U-68, U-69, U-200, or U-201 of Section VIII of the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers, 1949 Edition; or
- B. Section VIII Division I of the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers, 1950 Edition, through the current edition including addenda and applicable code case interpretations. The ASME code is incorporated by reference. It is not subject to frequent change and is available through the Minitex interlibrary loan system.

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## Proposed Rules

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Subp. 8. **Capacity.** "Capacity" means the total volume of a container measured in standard United States gallons, unless otherwise specified.

Subp. 9. **Cargo tank.** "Cargo tank" means a container designed to be permanently attached to or forming a part of a highway motor vehicle, or a container not permanently attached to a highway motor vehicle, which by reason of the container's size, construction, or attachment to a highway motor vehicle, must be loaded or unloaded without being removed from the highway motor vehicle. Cargo tank does not apply to cylinders, implements of husbandry, or containers normally used for storage.

Subp. 10. **Chemical splash goggles or goggles.** "Chemical splash goggles" or "goggles" mean flexible fitting protective eyewear designed to provide primary protection of the eyes and eye sockets from the splash of hazardous liquids and meeting the requirements of ANSI Z87.1, Practice for Occupational and Educational Eye and Face Protection. Chemical splash goggles or goggles does not include direct vented goggles.

Subp. 11. **Commissioner.** "Commissioner" means the commissioner of agriculture or an agent authorized by the commissioner.

Subp. 12. **Container.** "Container" means a tank, except for a cylinder, used for the transportation or storage of anhydrous ammonia.

Subp. 13. **Cylinder.** "Cylinder" means a pressure vessel of 1,000 pounds water capacity or less, constructed according to United States Department of Transportation specifications for cylinders and authorized for the transportation of ammonia. Cylinder does not include a storage tank, cargo tank, portable tank, nurse tank, or tank car.

Subp. 14. **Design pressure.** "Design pressure" has the meaning given to the term "maximum allowable working pressure" in the ASME code.

Subp. 15. **DOT regulations.** "DOT regulations" means the Hazardous Materials Regulations of the Department of Transportation (See the *Code of Federal Regulations*, title 49, parts 100 to 199, Transportation, including "Specifications for Shipping Containers.") The DOT regulations are incorporated by reference. They are not subject to frequent change and are available through the Minitex interlibrary loan system.

Subp. 16. **Emergency shower.** "Emergency shower" means a shower unit permanently connected to a source of clean water that enables the user to have water cascading over the entire body and that otherwise meets the requirements of ANSI Z358.1, Emergency Eyewash and Shower Equipment.

Subp. 17. **Eye wash unit.** "Eye wash unit" means a device used to irrigate and flush the eyes with clean water. Depending upon the requirements in this chapter, the device may be a plumbed unit, permanently connected to a source of clean water, or it may be a self-contained unit, not permanently installed which must be refilled or replaced after use. An eye wash unit must meet the requirements of ANSI Z358.1, Emergency Eyewash and Shower Equipment.

Subp. 18. **Filling density.** "Filling density" means the percent ratio of the weight of the ammonia permitted in a container to the weight of water at 60 degrees Fahrenheit that the container will hold when full. One pound of water equals 27.74 cubic inches at 60 degrees Fahrenheit. For determining the water capacity of the tank in pounds, the weight of one gallon of water at 60 degrees Fahrenheit (15.6 degrees centigrade) in air is 8.328 pounds.

Subp. 19. **Full face shield.** "Full face shield" means a device meeting the requirements of ANSI Z87.1, Practice for Occupational and Educational Eye and Face Protection, designed to provide protection to all of the face from hazard. A full face shield may only be worn as secondary eye protection, supplementing the primary eye protection afforded by chemical splash goggles.

Subp. 20. **Gas mask.** "Gas mask" means an air-purifying device with a full face piece approved by NIOSH/MSHA under *Code of Federal Regulations*, title 30, part II, subpart I, for use in an ammonia contaminated atmosphere in compliance with *Code of Federal Regulations*, title 29, part 1910.134.

Subp. 21. **Hydrostatic relief valve.** "Hydrostatic relief valve" means a pressure relief device for liquid service designed to prevent excessive pressure due to thermal expansion when a pipe or hose is filled with liquid such as between block valves or blinds.

Subp. 22. **IDLH.** An atmosphere is "IDLH" if it poses an immediate hazard to life or produces irreversible debilitating effects on health. The IDLH for ammonia is 300 ppm by volume.

Subp. 23. **Implement of husbandry.** "Implement of husbandry" means a system, including a nurse tank, with a capacity of 3,000 gallons (11.35m<sup>3</sup>) or less, or an applicator tank, used for transporting and applying anhydrous ammonia exclusively for agricultural purposes.

Subp. 24. **Loading.** "Loading" means the flow of ammonia from a container, such as a tank car or cargo tank, into a fixed storage tank.

Subp. 25. **National board inspection code.** "National board inspection code" refers to the manual published by the National

Board of Boiler and Pressure Vessel Inspectors which provides the rules and guidelines for inspection by a commissioned inspector of the repair, alteration, and rerating of ASME code containers after being placed into service.

Subp. 26. **Permanent storage installation.** "Permanent storage installation" means a system employing a stationary, fixed, container used exclusively for storage or supply.

Subp. 27. **Positive pressure self-contained breathing apparatus.** "Positive pressure self-contained breathing apparatus" means a full face piece respirator approved by NIOSH/MSHA for respiratory protection for both entry into or escape from oxygen-deficient atmospheres or concentration of gases, or vapors which are immediately dangerous to life or health where the supply of air is carried by the wearer. The air pressure inside the face piece is positive in relation to the air pressure of the outside atmosphere during exhalation and inhalation.

Subp. 28. **Pressure relief valve.** "Pressure relief valve" means a device designed to open to prevent an increase in internal fluid pressure in excess of a specified value due to an emergency or abnormal condition, and to close and prevent further flow after normal conditions have been restored.

Subp. 29. **Psig and psia.** "Psig" and "psia" refer to pounds per square inch gauge and pounds per square inch absolute, respectively.

Subp. 30. **Repair.** "Repair" means the work necessary to restore a container or system to a safe and satisfactory operating condition, provided that in all cases the container or system design must continue to comply with this chapter or the standard in effect at the time of installation. In addition, the original design of the container or system must not be altered by the repair. Repair includes the addition or replacement of pressure or nonpressure parts which do not change the design temperature or pressure of the container or system.

Subp. 31. **Short-term exposure limit or STEL.** "Short-term exposure limit" or "STEL" means a 15-minute time-weighted average exposure to an air contaminant which should not be exceeded at any time during a work day and which should not be repeated more than four times a day. Exposures at the short-term exposure limit should not occur at less than 60-minute intervals.

Subp. 32. **System.** "System" refers to an assembly of equipment consisting essentially of the container or containers, hoses, appurtenances, pumps, compressors, and interconnecting piping.

Subp. 33. **Transfer, fill, and charge.** "Transfer," "fill," and "charge" may be used interchangeably and mean movement of a quantity of ammonia from one container to another container or cylinder, as contrasted to feeding ammonia to a use or application device.

Subp. 34. **Unloading.** "Unloading" means the flow of ammonia from a fixed storage tank into another container, such as a cargo tank or a nurse tank.

#### **1513.0040 SAFETY.**

Subpart 1. **Training.** A person required to store, handle, transfer, transport, or otherwise work with ammonia must be trained, in accordance with *Code of Federal Regulations*, title 29, parts 1990-1910, to understand the properties of ammonia, to become competent in safe operating practices, and to take appropriate actions in the event of a leak or an emergency.

Subp. 2. **Protective gear.** A person making, breaking, or testing an ammonia connection, transferring ammonia, or performing maintenance or repair on an ammonia system under pressure, must wear protective gloves and chemical splash goggles. A full face shield may be worn over the goggles. However, a face shield may not be worn as a substitute for goggles.

Subp. 3. **Permanent storage installations.** Permanent storage installations must have on hand, as a minimum, the equipment listed in items A to F.

A. Two full face gas masks, each with one spare ammonia canister in a readily accessible location for use in ammonia concentrations less than those that pose an IDLH.

B. One pair of protective gauntlet-style gloves of sufficient length to allow for cuffing that are impervious to ammonia.

C. One pair of protective boots impervious to ammonia.

D. One protective slicker or protective pants and jacket, all impervious to ammonia.

E. An easily accessible emergency shower and a plumbed eye wash unit or in lieu of these, at least 150 gallons of clean water

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in an open top container. It is recommended that the distance from the point of greatest potential exposure to ammonia to the emergency water supply should not exceed ten seconds travel time or 100 feet.

F. Chemical splash goggles or chemical splash goggles with full face shield to be worn over the goggles.

Subp. 4. **Cargo tanks.** A cargo tank transporting ammonia, except an implement of husbandry, must carry the equipment listed in items A to D.

A. For first aid purposes, at least five gallons (20 liters) of clean water in a container designed to provide ready access to the water for flushing any area of the body contacted by ammonia.

B. One pair of protective gauntlet style gloves impervious to ammonia.

C. A full face piece gas mask with an ammonia canister and at least one space canister.

D. Chemical splash goggles, or chemical splash goggles with a full face shield to be worn over the goggles.

Subp. 5. **Cylinder and DOT portable tank installations.** At ammonia installations comprising cylinders and DOT portable tanks, the employer shall provide ready access to a supply of clean, running water for emergency use, including provision for flushing of the eyes by an employee in the event of contact with ammonia, or a self-contained eye wash unit with clean water.

### BASIC RULES

#### 1513.0100 APPLICABILITY.

Parts 1513.0100 to 1513.0230 apply to this chapter unless otherwise noted.

#### 1513.0110 EXISTING EQUIPMENT AND SYSTEMS.

Subpart 1. **Containers.** Part 1513.0120 does not prohibit the continued use or reinstallation of containers constructed and maintained in accordance with, or exceeding the requirements of, the 1949, 1950, 1952, 1956, 1959, 1965, 1968, 1971, 1974, 1977, 1980, 1983, 1986, 1989, 1992, and 1995 editions of the ASME code, or any revisions in effect at the time of fabrication.

Subp. 2. **Systems and components.** Systems and components that were fabricated, installed, and maintained in accordance with the American National Standard K61.1, Safety Requirements for the Storage and Handling of Anhydrous Ammonia and Ammonia Solutions—Part 1 Anhydrous Ammonia, or The Agricultural Nitrogen Institute, Standard M-1, Standard for Storage and Handling of Agricultural Ammonia, in effect at the time of installation, are acceptable for continued use.

#### 1513.0120 NEW CONSTRUCTION, REPAIRS, ALTERATIONS, AND ORIGINAL TEST OF CONTAINERS, OTHER THAN REFRIGERATED STORAGE TANKS.

Subpart 1. **Construction and testing.** Containers used with systems covered in parts 1513.0300 to 1513.0380, 1513.0700 to 1513.0830, and 1513.1000 to 1513.1070 must be made of steel or other material compatible with ammonia, and tested in accordance with the current ASME code. An exception to the ASME code requirements is that construction under Table UW 12 at a basic joint efficiency of under 80 percent is not authorized.

Subp. 2. **Additional requirements.** Containers designed and constructed in accordance with the ASME code, other than refrigerated storage containers, shall comply with the additional requirements in items A to C.

A. The entire container must be post weld heat treated after completion of all welds in or to the shells and heads. The method employed must be as prescribed in the ASME code, except that provisions for extended time at lower temperature for post weld heat treatment are not permitted. Implements of husbandry do not require post weld heat treatment if they are fabricated with hot formed heads or with cold formed heads that have been stress relieved.

B. Welded attachments to pads may be made after post weld heat treatment.

C. Steels used in fabricating pressure containing parts of a container must not exceed a specified tensile strength of 70,000 psi (does not apply to parts 1513.0600 to 1513.0640, 1513.0700 to 1513.0830 and 1513.0900 to 1513.0930), except implements of husbandry may be fabricated from steel having a specified tensile strength of 75,000 psi.

Subp. 3. **Inspectors.** All containers, except refrigerated storage tanks with a design pressure of 15 psig and less, and cylinders and containers covered in parts 1513.0600 to 1513.0710 must be inspected by a person who holds a valid National Board commission as a commissioned inspector or as an owner-user inspector as defined in the National Board Inspection Code.

Subp. 4. **Certified welder.** Welding for the repair or alteration of a pressure container must be performed in compliance with the applicable provisions of the current edition of the National Board Inspection Code. All repair or alteration must conform to the ASME code section and edition to which the container was constructed.

#### 1513.0130 LOCATION OF CONTAINERS.

Subpart 1. **Site selection considerations.** The location for a storage container must be selected considering the potential physio-

logical and environmental effects of ammonia on the surroundings adjacent to the proposed site. Containers must be located outside of buildings except in buildings or sections of buildings especially approved for the purpose.

Subp. 2. **Distance from potable water source.** Storage containers installed after the effective date of this chapter must be located at least 50 feet from a dug well or other source of potable water, unless the container is a part of a water treatment installation.

Subp. 3. **Distance from other property and dwellings.** Containers installed after the effective date of this chapter must be located in accordance with the following:

A. Containers with a nominal capacity of 100,000 gallons or less may not be located less than 50 feet from the line of adjoining property or from the near side of a public roadway or mainline of railroad; and 400 feet from the nearest occupied dwelling or dwelling intended to be occupied, place of public assembly, or confined resident institution.

B. Containers with a nominal capacity of greater than 100,000 gallons may not be located less than 50 feet from the line of adjoining property, from the near side of a public roadway or mainline of railroad; and 1,000 feet from the nearest occupied dwelling or dwelling intended to be occupied, place of public assembly, or confined resident institution.

Subp. 4. **Emergency accessibility.** Container storage areas must be accessible to emergency vehicles and personnel.

Subp. 5. **Clear areas.** Areas within ten feet of a storage container must be maintained clear of dry grass and weeds and other combustible materials and materials not required for the operation of the system.

#### **1513.0140 MARKINGS OF NONREFRIGERATED CONTAINERS AND SYSTEMS OTHER THAN DOT CONTAINERS.**

Subpart 1. **Nameplates.** Each system nameplate must be made of a noncorroding metal permanently attached to the system by continuous welding around its perimeter and located so as to be readily accessible for inspection. Nameplates must be maintained in legible condition and include markings as prescribed in subpart 2.

Subp. 2. **Information required.** Each container or system covered in parts 1513.0300 to 1513.0380 and 1513.0700 to 1513.0930, except "ton containers" and "cylinders," and parts 1513.1000 to 1513.1070 must be marked as specified by paragraphs UG-116 and UG-118(b) of the ASME code or as follows:

A. with an identification number issued by the commissioner;

B. with the certification date;

C. with the maximum allowable working pressure;

D. with the wall thickness of the container shell and heads in inches or millimeters; and

E. with the water capacity of the container in pounds or kilograms, or United States standard gallons or cubic meters (m<sup>3</sup>) at 60 degrees Fahrenheit (15.6 degrees centigrade).

Items A to E must be determined and documented, on forms provided by the commissioner, by a company that holds a valid R-stamp, in compliance with the current edition of the National Board Inspection Code. Storage containers installed prior to the effective date of parts 1513.0010 to 1513.1100 are not required to be renameplated. If needed, nurse tanks and applicators must be renameplated within two years of the effective date of this part.

Subp. 3. **Liquid level gauge.** Each container or system covered in parts 1513.0300 to 1513.0380 and 1513.0700 to 1513.0930, except cylinders, and parts 1513.1000 to 1513.1070 must be fitted with a liquid level gauge indicating the maximum level to which the container may be filled with liquid anhydrous ammonia at temperatures between 20 degrees Fahrenheit and 100 degrees Fahrenheit, except on containers provided with fixed maximum level indicators, such as fixed length dip tubes or containers that are filled by weight. Marks must be in increments of not more than 20 degrees Fahrenheit. Part 1513.0190, subpart 3, contains requirements for thermometer wells and thermometers.

Subp. 4. **Container openings.** All nonrefrigerated system openings and appurtenances except for pressure relief valves, pressure indicating devices, thermometer wells, or liquid level indicators must be marked, stenciled, tagged, or decaled to indicate whether the opening is in contact with the liquid or vapor phase when the container is filled to the maximum allowable filling density. If paint is used to identify the phases, liquid must be orange and vapor yellow. The valves and lines must be painted to within three feet, except for hose, of the system openings.

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### 1513.0150 CONTAINER APPURTENANCES.

Subpart 1. **Approval.** All appurtenances of each system must be approved in accordance with part 1513.0030, subpart 4.

Subp. 2. **Materials and design.** All appurtenances must be designed for not less than the maximum working pressure of that portion of the system on which they are installed. All appurtenances must be fabricated from materials proved suitable for anhydrous ammonia service.

Subp. 3. **Shut-off valves.** All connections to containers except those for pressure relief devices, thermometer wells, liquid level gauging devices, or those fitted with a No. 54 (0.055 inch) drill size orifice, or those plugged, must have shut-off valves located as close to the container as practical, with the valve installed so that the product in the tank is under the disc holder when the valve is closed. The shut-off valves at the risers must also be installed so that the product in the piping is under the disc holder when the valve is closed. Any other shut-off valves in the piping may be installed either direction, unless the manufacturer specifies otherwise.

Subp. 4. **Excess flow valves.** Excess flow valves must close automatically at the rated flows of vapor or liquid as specified by the manufacturer. The connections and line, including valves and fittings being protected by an excess flow valve, must have a greater capacity than the rated flow of the excess flow valve.

Subp. 5. **Exceptions.**

A. Liquid level gauging devices that require bleeding of the product to the atmosphere, and which are so constructed that outward flow will not exceed that passed by a No. 54 (0.055 inch) drill size opening, need not be equipped with excess flow valves.

B. An opening in a container to which a pressure gauge connection is made need not be equipped with an excess flow valve, if such an opening is not larger than No. 54 (0.055 inch) drill size.

Subp. 6. **Installation.** If an excess flow or back pressure check valve is required by this part, it must be installed directly in the container opening or at a point outside as close as practicable to where the line enters the container. In the latter case the installation must be made in such a manner that any undue strain beyond the excess flow or back pressure check valve will not cause breakage between the container and the valve.

Subp. 7. **By-pass.** An excess flow valve must be designed with a by-pass, not to exceed a No. 60 (0.040 inch) drill size opening, to allow equalization of pressures.

Subp. 8. **Integral excess flow valve.** A shut-off valve with an integral excess flow valve must be designed for proper installation in a container opening so that the excess flow valve will close in the event that the valve body, extending above the coupling, is sheared or broken off.

Subp. 9. **Markings.** An excess flow valve must be plainly and permanently marked with the name or trademark of the manufacturer, the catalog number, and the rated capacity.

Subp. 10. **Positive shut-off valve.** Each liquid filling connection on nonrefrigerated containers must have a positive shut-off valve in conjunction with either a back-pressure check valve or an excess flow valve. Vapor connections on nonrefrigerated containers must have a positive shut-off valve together with an excess flow valve. The back-pressure check valves or excess flow valves must be installed in the facility prior to the positive shut-off valves.

Subp. 11. **Quick opening valves.** Quick opening (1/4 turn) valves must not be used on transfer lines.

### 1513.0160 PIPING, TUBING, AND FITTINGS.

Subpart 1. **Material and design.** Piping, tubing, and fittings must be made of steel or other material suitable for anhydrous ammonia service and must be designed for a pressure not less than the maximum pressure to which they may be subjected in service.

Subp. 2. **Standards.** Piping must be supported in accordance with good piping practices and provisions must be made as necessary for expansion, contraction, impact, vibration, and settling. Piping must conform to ANSI/ASME B31.3, American National Standard for Chemical Plant and Petroleum Refinery Piping, except ANSI/ASME B31.5, American National Standard for Refrigeration Piping, may be used for refrigeration piping systems within its scope.

Subp. 3. **Pipe connections.** Piping used on nonrefrigerated systems must be at least ASTM A-53 Grade B seamless or Electric Resistance Welded Pipe. Pipe joints must be threaded, welded, or flanged. Pipe must be at least Schedule 40 when joints are welded, or welded and flanged. Pipe must be at least schedule 80 when joints are threaded. Brass, copper, or galvanized steel pipe or tubing may not be used. Threaded nipples must be seamless. Welding must be done by a welder certified in accordance with the ASME code, Section IX, "Welding Qualifications." Tubing joints must be flared and made up with flared, flareless, or compression type fittings complying with ANSI/SAE J513f, ANSI/ASME B31.3, or ANSI/ASME 31.5.

Subp. 4. **Minimum working pressure.** All metal flexible connections for permanent nonrefrigerated installations shall have a minimum working pressure of 250 psig (safety factor of four).

Subp. 5. **Materials for fittings and valves.** Cast iron fittings may not be used. Those parts of valves which are subjected to gas pressure must be made of steel, ductile (nodular) iron, or malleable iron. Valves in this case include shut-off valves, excess flow valves, back check valves, emergency shut-off valves, and remotely controlled valves. Ductile iron must meet the requirements of ANSI/ASTM A395 and malleable iron the requirements of ANSI/ASTM A47.

Subp. 6. **Protection from damage.** Adequate provisions must be made to protect all exposed piping from physical damage that might result from impact by moving machinery, automobiles, trucks, or any other equipment at the facility.

Subp. 7. **Joint compounds.** Joint compounds must be resistant to ammonia at the maximum pressure and temperature to which they may be subjected in service.

Subp. 8. **Testing.** After assembly, all piping, hose, and tubing must be tested and proved to be free from leaks at a pressure not less than the normal operating pressure of the system.

#### **1513.0170 HOSE SPECIFICATIONS.**

Subpart 1. **Standards.** Hose used in ammonia service and subject to container pressure must conform to the American National Standard RMA IP-14, Specifications for Anhydrous Ammonia Hose.

Subp. 2. **Pressures.** Hose subject to container pressure must be designed for a minimum working pressure of 350 psig and a minimum burst pressure of 1,750 psig. Hose assemblies, when made up, must be capable of withstanding a test pressure of 500 psig.

Subp. 3. **Design of hoses and connections.** Hose and hose connections located on the low pressure side of flow control, or pressure reducing valves on devices discharging to atmospheric pressure, must be designed for the maximum low side working pressure. All connections must be designed, constructed, and installed so that there will be no leakage when connected. Shut-off valves on the end of liquid and vapor transfer hoses must be equipped with bleed valves to enable the operator to bleed off pressure before disconnecting the hoses.

Subp. 4. **Transfer hose.** If a transfer hose is not drained of ammonia upon completion of transfer operations, the hose must be equipped with an approved shut-off valve at the discharge end. Provision must be made to prevent excessive hydrostatic pressure in the hose under part 1513.0180, subpart 11.

Subp. 5. **Information on hose.** All hose that is one-half inch outside diameter or larger and that is used in ammonia service and subject to container pressure, must have etched, cast, or impressed at five foot intervals on the outer hose cover the following information:

- A. anhydrous ammonia;
- B. XXX psig (maximum working pressure);
- C. manufacturer's name or trademark; and
- D. year of manufacture or expiration.

Subp. 6. **Replacement or requalification.** Hose in service must be replaced in accordance with the manufacturer's recommendations or requalified periodically in accordance with requirements specified in CGA P-7, Standard for Requalification of Cargo Tank Hose Used in the Transfer of Compressed Gases.

#### **1513.0180 PRESSURE RELIEF DEVICES.**

Subpart 1. **Standards.** Every container used in systems covered by parts 1513.0300 to 1513.0380 and 1513.1000 to 1513.1070 must be provided with one or more pressure relief valves of the spring-loaded type conforming with the applicable requirements of UL 132, Standard on Safety Relief Valves for Anhydrous Ammonia and LP-Gas.

Subp. 2. **Direct contact with vapor space.** Pressure relief valves with a rating not greater than the designed working pressure of the container or appurtenances must be in direct contact with the vapor space of the container.

Subp. 3. **Discharge.** The discharge from pressure relief valves must be vented away from the container, upward and unobstructed to the atmosphere. Pressure relief valves shall not be painted or contain other foreign substances. All pressure relief valve

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discharge openings shall have rain caps that will allow free discharge of the vapor and prevent the entrance of water. Provision must be made for draining condensate which may accumulate. The rate of the discharge must be in accordance with part 1513.1100.

Subp. 4. **Start to discharge.** Container pressure relief valves with relation to the design pressure of the container must be set to start to discharge as follows:

Containers	Minimum Percent	Maximum Percent
ASME U-68,U-69	110	125
ASME U-200,U-201	95	100
ASME 1952, 1956, 1959, 1962, 1965, 1968, 1971, 1974, 1977, 1980, 1983, 1986, and 1989	95	100
API-ASME	95	100

U.S. Coast Guard (As required by USCG regulations)

DOT (As required by DOT regulations)

Subp. 5. **Discharge rates.** Pressure relief valves used on containers covered by parts 1513.0300 to 1513.0380 and 1513.1000 to 1513.1070 shall be constructed to discharge at not less than the rates required in subpart 3 before the pressure is in excess of 120 percent (not including the ten percent tolerance referred to in subpart 4) of the maximum permitted start to discharge pressure setting of the device.

Subp. 6. **Tampering.** Pressure relief valves must be so arranged that the possibility of tampering will be minimized. If the pressure setting adjustment is external, the relief valves must be provided with means for sealing the adjustment.

Subp. 7. **Shut-off valve locations.** Shut-off valves must not be installed between the pressure relief valves and the containers or systems covered by parts 1513.0300 to 1513.0380 and 1513.1000 to 1513.1070 except that a shut-off valve may be used where the arrangement of the shut-off valve is such as always to afford the full capacity flow specified in subpart 3 through a nonisolated pressure relief valve which must remain operative.

Subp. 8. **Marking.** Each pressure relief valve used with systems covered by parts 1513.0300 to 1513.0380 and 1513.1000 to 1513.1070 must be plainly and permanently marked as follows:

- A. with the letters "AA" or the symbol "NH<sub>3</sub>";
- B. the pressure in pounds per square inch gauge at which the valve is set to start to discharge;
- C. the rate of discharge of the valve in cubic feet per minute of air at 60 degrees Fahrenheit and atmospheric pressure; and
- D. the manufacturer's name and catalog number.

Subp. 9. **Restriction of flow capacity.** The flow capacity of the pressure relief valve must not be restricted by any connection to it on either the upstream or downstream side.

Subp. 10. **Data; testing.** The manufacturer or supplier of a pressure relief valve manifold must publish complete data showing the flow rating through the combined assembly of the manifold with pressure relief valves installed. The manifold flow rating must be determined by testing the manifold with all but one valve discharging. If one or more openings have restrictions not present in the remaining openings, the restricted opening or openings, or those having the lowest flow, must be used to establish the flow rate marked on the manifold nameplate. The marking must be in accordance with subpart 8 for individual valves.

Subp. 11. **Hydrostatic relief valve.** A hydrostatic relief valve or equivalent, with a rating of 350-400 psig, must be installed in each section of piping, including hose, in which liquid ammonia can be isolated between shut-off valves to relieve the pressure

which could develop from the trapped liquid. In no case may the hydrostatic relief valve or equivalent setting exceed system design pressure.

Subp. 12. **Discharge opening.** The discharge opening from any pressure relief valve may not terminate inside any building or below the highest roof line of a building.

Subp. 13. **Periodic inspection.** A pressure relief device must be subject to a periodic visual external inspection by the facility operator to determine that it:

- A. is free of evidence of tampering, damage, corrosion, or foreign matter that might prevent proper operation;
- B. is free of leakage when subject to pressures below the minimum allowable start to discharge setting;
- C. has a properly secured rain cap or other device to avoid entry of moisture or other matter into the relief valve outlet; and
- D. has an open weep hole to permit moisture to escape.

Subp. 14. **Replacement.** No container pressure relief valve may be used after the replacement date specified by the manufacturer of the device. If no date is specified, a pressure relief valve must be replaced no later than five years after the date of its manufacture or last repair unless it has first been disassembled, inspected, repaired, and tested in a manner such that the valve's condition and performance is verified as being equivalent to the standards for the original valve.

### 1513.0190 FILLING DENSITIES.

Subpart 1. **Nonrefrigerated containers.** The maximum filling densities for nonrefrigerated containers are:

		Aboveground	Underground
(1)	Uninsulated	56%*	58%
(2)	Insulated	57%	
(3)	DOT containers and cylinders shall be filled in accordance with DOT regulations.		

\* This corresponds to 82 percent by volume at minus 28 degrees Fahrenheit, 85 percent by volume at 5 degrees Fahrenheit, 87.5 percent by volume at 30 degrees Fahrenheit, and 90.6 percent by volume at 60 degrees Fahrenheit.

Subp. 2. **Refrigerated storage tanks.** The filling density for refrigerated storage tanks must be such that the tanks will not be liquid full at a liquid temperature corresponding to the vapor pressure at the start to discharge pressure setting of the pressure relief valve.

Subp. 3. **Required thermometers and wells.** If containers are to be filled according to liquid level by any gauging method other than a fixed length dip tube gauge, each container must have a thermometer well and thermometer so that the internal liquid temperature can be easily determined and the amount of liquid and vapor in the container corrected to a 60 degrees Fahrenheit basis.

### 1513.0200 TRANSFER OF LIQUIDS.

Subpart 1. **Construction materials.** Anhydrous ammonia must always be at a temperature suitable for the material of construction and design of the receiving containers. Construction materials must be in accordance with appendix R of API Standard 620, Recommended Rules for Design and Construction of Large Welded Low-Pressure Storage Tanks, for materials for low temperature service.

Subp. 2. **Operator.** At least one qualified operator experienced in transfer procedures and trained in accordance with *Code of Federal Regulations*, title 29, parts 1900-1910, shall monitor the transfer of ammonia from the time the transfer connections are first made until they are finally disconnected. The monitoring may be performed by a person on site, from a remote location, or by electronic means. Capability must be provided to halt the transfer in the event of an emergency.

Subp. 3. **Unloading cargo tanks and tank cars.** Cargo tanks and tank cars must not be unloaded with gas pressure other than

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from an ammonia source and must not be unloaded from any location other than a permanent storage location permitted according to *Minnesota Statutes*, section 18C.305.

Subp. 4. **Owner's authorization.** Containers and cylinders must be filled or used only upon the owner's authorization.

Subp. 5. **Gauging and charging.** Containers and cylinders must be gauged and charged only in the open atmosphere or in buildings provided for that purpose.

Subp. 6. **Pumps.** Pumps used for transferring ammonia must be recommended and labeled for ammonia service by the manufacturer.

A. Positive displacement pumps must be equipped with a pressure actuated by-pass valve on the discharge side of the pump. This valve must operate to limit the pressure developed by the pump to the maximum for which the pump is rated. Piping sized to carry the full capacity of the pump at the actuation pressure of this valve must connect the discharge of this valve with the container from which ammonia is being pumped. If this line is capable of being closed off by a valve, an additional by-pass device must be incorporated in the pump to by-pass back to the suction port. The pressure actuated by-pass valve and the return piping must be installed and operate according to the pump manufacturer's recommendations.

B. On the discharge side of the pump, before the by-pass valve line, a pressure gauge graduated from 0 to 400 psig must be installed.

C. Plant piping must contain shut-off valves located as close as practical to pump connections.

Subp. 7. **Compressors.** Compressors used for transferring or refrigerating ammonia must be suitable for ammonia service.

A. Compressors, except those used for refrigeration, must be designed for at least 250 psig working pressure. Crank cases of compressors not designed to withstand system pressure must be protected with a suitable pressure relief valve.

B. Plant piping must contain shut-off valves located as close as practical to compressor connections.

C. A pressure relief valve large enough to discharge the full capacity of the compressor must be connected to both sides before any shut-off valve.

D. Compressors must have pressure gauges at both the suction and discharge sides graduated from 0-400 psig.

E. Adequate means, such as a drainable liquid trap, must be provided on the compressor suction to minimize the entry of liquid into the compressor.

F. Where necessary to prevent contamination, an oil separator must be provided on the discharge side of the compressor.

Subp. 8. **Protection of lines.** Loading lines on nonrefrigerated containers must be protected by a backflow check valve or other suitable protection for liquid and an excess flow valve or other suitable protection for vapor. Unloading lines on nonrefrigerated containers must be protected by excess flow valves or other suitable protection. Piping must be sized so as not to restrict flow rates to the extent that protective devices will not function. The backflow check valves, excess flow valves, or equivalent protection must be installed in the facility piping so that any break will occur on the side of the hose or swivel connection.

Stationary storage installations must have approved automatically operated emergency shut-off valves, weakness or shear fittings, or other suitable protection installed in the fixed piping of the transfer system prior to where the hose or swivel piping is attached to the fixed piping. This requirement does not apply to the liquid barge, truck, and tank car loading lines, or a line feeding a fixed process system. Emergency shut-off valves must remain closed when the facility is not in use. The emergency shut-off valves, weakness or shear fittings, or equivalent protection must be installed in the facility piping so that any break will occur on the side of the hose or swivel connection. This must be completed within two years of the effective date of this chapter.

Subp. 9. **Meters.** Meters used for the measurement of liquid anhydrous ammonia for retail sale must be recommended and labeled for ammonia service by the manufacturer.

A. Liquid meters must be designed for minimum working pressure of 250 psig.

B. The metering system must incorporate devices that will prevent the inadvertent measurement of vapor.

### 1513.0210 LIQUID LEVEL GAUGING DEVICES.

Subpart 1. **Required.** A container must be equipped with a liquid level gauging device designed for use with ammonia.

Subp. 2. **Arrangement.** A gauging device must be arranged so that the maximum liquid level to which the container is filled is readily determined and be installed according to part 1513.0140, subpart 3.

Subp. 3. **Gauging devices requiring bleeding.** Except as provided in parts 1513.1000 to 1513.1070, gauging devices that require bleeding of the product to the atmosphere such as rotary tube, fixed tube, and slip tube devices, must be designed so that the maximum opening of the bleed valve is not larger than No. 54 (0.055 inch) drill size unless provided with an excess flow valve.

Subp. 4. **Design pressure.** Gauging devices must have a design pressure equal to or greater than the design pressure of the container on which they are installed.

Subp. 5. **Fixed maximum liquid level gauges.** Fixed maximum liquid level gauges must be designed and installed to indicate a volumetric level not to exceed 85 percent of the container's water capacity. This does not apply to refrigerated storage.

Subp. 6. **Columnar gauge glasses.** Gauge glasses of the columnar type are restricted to stationary nonrefrigerated storage installations. They must be equipped with shut-off valves having metallic hand wheels, with excess flow valves, and with extra heavy glass adequately protected with a metal housing applied by the gauge manufacturer. They must be shielded against the direct rays of the sun.

#### **1513.0220 PAINTING OF CONTAINERS.**

Aboveground uninsulated containers must have a reflective surface maintained in good condition. White is recommended for painted surfaces, but other colors having similar reflecting characteristics are acceptable.

#### **1513.0230 ELECTRICAL EQUIPMENT AND WIRING.**

Subpart 1. **Ammonia installations.** Electrical equipment and wiring for use in ammonia installations must be general purpose or weather resistant as appropriate.

Subp. 2. **High concentrations of ammonia.** Where concentrations of ammonia in air in excess of 16 percent by volume are likely to be encountered, electrical equipment and wiring must be installed to comply with the requirements for use in hazardous locations, Class I, Group D, of NFPA 70, National Electrical Code, Articles 500 and 501.

### **SYSTEMS USING STATIONARY, PIER-MOUNTED OR SKID-MOUNTED ABOVEGROUND OR UNDERGROUND, NONREFRIGERATED STORAGE**

#### **1513.0300 APPLICABILITY.**

Parts 1513.0300 to 1513.0380 apply to stationary, pier-mounted, skid-mounted, aboveground or underground, nonrefrigerated storage installations using containers other than those constructed in accordance with United States Department of Transportation specifications. All basic rules of parts 1513.0100 to 1513.0230 apply to parts 1513.0300 to 1513.0380 unless otherwise noted.

#### **1513.0310 DESIGN PRESSURE AND CONSTRUCTION OF CONTAINERS.**

The minimum design pressure for nonrefrigerated containers is 250 psig or in accordance with part 1513.0110, subpart 2.

#### **1513.0320 CONTAINER VALVES, ACCESSORIES, AND DISCHARGE CONNECTIONS.**

Subpart 1. **Excess flow valves.** All vapor and liquid connections, except for pressure relief valves and those specifically exempted in part 1513.0150, subparts 5 and 6, must be equipped with approved excess flow valves. Back-pressure check valves are acceptable in container filling connections. Alternatively, vapor and liquid connections covered by this subpart may be fitted with quick-closing internal valves which, except during operating periods, shall remain closed. If internal valves are not practical, external quick-closing valves may be used according to part 1513.0150, subpart 6, and with appropriate protection as required in part 1513.0370.

Subp. 2. **Pressure gauge.** Each storage container must be provided with a pressure gauge graduated from 0 to 400 psig. Gauges must be designated for use in ammonia service.

Subp. 3. **Vapor equalizing connection.** All containers must be equipped with a vapor equalizing connection.

#### **1513.0330 PRESSURE RELIEF DEVICES.**

Subpart 1. **Required valves.** A container must be provided with one or more pressure relief valves of spring-loaded or equivalent type which comply with items A to C.

A. Relief valves must be installed in a manifold so that they can be replaced while the container remains pressurized.

B. The discharge from pressure relief valves must be vented away from the container, upward and unobstructed to the open air to an area such that persons, property, and the environment will not be harmed. Vent pipes must not be restrictive or smaller in size than the pressure relief valve outlet connection. All pressure relief valves must have rain caps that will allow free discharge of the vapor and prevent the entrance of water. Provision must be made for draining condensate which may accumulate.

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C. Noncorrosive vent pipes from two or more pressure relief devices located on the same unit, or similar lines from one or more different units, may be run into a common header, provided the cross-sectional area of the header is at least equal to the sum of the cross-sectional areas of the individual vent pipes.

Subp. 2. **Rate of discharge.** The rate of discharge of spring-loaded pressure relief valves installed on underground containers may be reduced by not more than 30 percent of the rate of discharge specified in part 1513.1100. Containers so protected must not be uncovered after installation until the liquid ammonia has been removed. Containers which may contain liquid ammonia before being installed underground, and before being completely covered with earth, are to be considered aboveground containers when determining the rate of discharge requirements of the pressure relief valves.

Subp. 3. **Discharge from underground installations.** On underground installations where there is a probability of the manhole or housing becoming flooded, the discharge from vent lines must be located above the high water level. Manholes or housings must be provided with ventilated louvers or their equivalent, the area of such openings equaling or exceeding the combined discharge areas of the pressure relief valves and vent lines which discharge their content into the manhole housing.

### 1513.0340 INSTALLATION OF STORAGE CONTAINERS.

Subpart 1. **Footings, foundations, and subparts.** Containers installed aboveground must be provided with reinforced concrete footings and foundations or structural steel supports mounted on reinforced concrete foundations. In either case, the reinforced concrete foundations or footing must extend below the established frost line and be of sufficient width and thickness to support the total weight of the containers and contents adequately. The foundation must maintain the lowest point of the tank not less than 18 inches above the ground. Floating type foundations must also be acceptable if the foundations are designed to adequately support the tank, contents, and piping according to part 1513.0160.

Subp. 2. **Horizontal aboveground containers.** Horizontal aboveground containers must be mounted on foundations so as to permit expansion and contractions. A container must be supported to prevent the concentration of excessive loads. The bearing afforded by the saddles must extend over at least one-third of the circumference of the shell. Suitable means for preventing corrosion must be provided on that portion of the container in contact with the foundations or saddles.

Subp. 3. **Buried containers.** Containers buried underground must be placed so that the top of the container is at least one foot below the surface. It is not necessary to cover the portion of the container to which a manhole and other connections are affixed. If necessary to prevent floating, containers must be securely anchored or weighted.

Subp. 4. **Corrosion resistance.** As a minimum, an underground container must be set on firm earth or another firm foundation, and must be surrounded by at least six inches of noncorrosive, inert materials, such as soft earth, sand, or gravel well compacted into place. As a further means of resisting corrosion, the container and its piping, prior to placement in the ground, must be provided with the following:

- A. a suitable protective coating applied after proper surface preparation according to the coating manufacturer's recommendations;
- B. cathodic protection; and
- C. electrical isolation of the container from ancillary equipment.

Corrosion-resistant materials of construction may be used as an option. A coated container must be lowered into place in a manner to prevent abrasion or damage to the coating.

Subp. 5. **Separation.** The horizontal distance between aboveground and underground containers of over 1,200 gallons capacity must be at least five feet.

Subp. 6. **Protection against flotation.** Secure anchorage or adequate pier height must be provided against container flotation wherever sufficiently high flood water might occur.

### 1513.0350 REINSTALLATION OF CONTAINERS.

Subpart 1. **Testing.** Containers, once installed underground shall not later be reinstalled aboveground or underground, unless they successfully withstand hydrostatic pressure retests at the pressure specified for the original hydrostatic test as required by the ASME code under which the tank was constructed, and show no evidence of serious corrosion.

Subp. 2. **Coating; valves.** If a container is reinstalled underground, the corrosion resistant coating, if used, must be put in good condition, according to part 1513.0340, subpart 4. If a container is reinstalled aboveground, pressure relief devices or gauging devices must comply with parts 1513.0180, 1513.0210, and 1513.0330 as applicable to aboveground containers.

### 1513.0360 MARKING CONTAINERS.

Each container or group of containers must be marked on at least two sides that are visible with the words, "ANHYDROUS AMMONIA," and "INHALATION HAZARD," in sharply contrasting colors with letters not less than four inches high, or in com-

pliance with DOT regulations. Each container or group of containers must also be marked with the UN identification number for ammonia, 1005, on each side.

Each container must be labeled in a conspicuous manner with the appropriate grade or guaranteed analysis of the contents of the storage container.

Each container or group of containers which is installed underground must have a sign bearing marks and labeling as required in this part located adjacent to the cover described in part 1513.0370.

#### **1513.0370 PROTECTION OF CONTAINER AND APPURTENANCES.**

Containers and appurtenances must be located or protected by suitable barriers so as to avoid damage by trucks or other vehicles. Main container shut-off valves and riser hose end valves must be kept closed and locked when the installation is unattended. If the facility is protected against tampering by fencing, valve locks are not required.

All connections to underground containers must be located within a dome, housing, or manhole fitted with a substantial removable cover.

Storage containers need not be electrically grounded.

#### **1513.0380 IDENTIFICATION.**

A legible sign must be displayed on the premises at which a storage system is located, so as to be readily visible to emergency response personnel, stating the name, address, and telephone number of the nearest representative, agent, or owner of the storage system.

#### **1513.0400 REFRIGERATED STORAGE.**

Parts 1513.0400 to 1513.0500 apply specifically to systems using tanks for the storage of anhydrous ammonia under refrigerated conditions. Parts 1513.0100 to 1513.0230 apply unless otherwise stated.

#### **1513.0410 DESIGN OF TANKS.**

Subpart 1. **Economical design.** Tanks may be designed for any storage pressure desired as determined by economical design of the refrigerated system.

Subp. 2. **Design temperature.** The design temperature must be the minimum temperature to which the container will be refrigerated and must be so designated.

Subp. 3. **Design pressure over 15 psig.** Containers with a design pressure exceeding 15 psig must be constructed according to part 1513.0120 and the material must be selected from those listed in API Standard 620, Recommended Rules for Design and Construction of Large, Welded, Low-Pressure Storage Tanks, Tables 2.02, R.2.2, R.2.3, or R.2.4.

Subp. 4. **Design pressure of 15 psig or less.** Tanks with a design pressure of 15 psig and less must be constructed according to the general requirements of API Standard 620, including Appendix R.

Subp. 5. **Certain metals.** When austenitic stainless steels or nonferrous metals are used, the ASME code must be used in selection of materials for use at the design temperature.

#### **1513.0420 INSTALLATION OF STORAGE TANKS ABOVEGROUND.**

Subpart 1. **Foundations.** Tanks must be supported on noncombustible foundations designed to accommodate the type of tank being used.

Subp. 2. **Water protection.** Adequate protection against flotation or other water damage must be provided wherever high flood water might occur.

Subp. 3. **Freezing protection.** Tanks storing product at less than 32 degrees Fahrenheit must be supported in such a way, or heat must be supplied, to prevent the effects of freezing and subsequent frost heaving of the soil.

Subp. 4. **Liquid containment system.** The area surrounding a refrigerated tank or group of tanks must be provided with drainage or must be diked or provided with other secondary containment systems to prevent accidental discharge of liquid from spreading to uncontrolled areas.

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Subp. 5. **Drainage.** If drainage is employed, a slope of not less than one percent must be provided. The drainage system must terminate in an impounding basin having a capacity as large as the largest tank served.

Subp. 6. **Rain water.** Provision must be made for the drainage of rain water from the dike or impounding area. Drainage must be provided with a positive means to stop the flow.

Subp. 7. **Dike capacity.** If a dike is employed, the capacity of the diked enclosure must be 110 percent of the capacity of the largest tank served. When computing the volume of the dike, allowance must be made for the volume displaced by all other containers in the diked area.

Subp. 8. **Walls.** The walls of a diked enclosure or the wall of an impounding basin used in a drainage system must be of earth, steel, concrete, or other suitable material designed to be liquid tight and to withstand the hydrostatic pressure and temperature. Earth walls must have a flat top at least two feet wide. The slope must be stable and consistent with the angle of repose of the earth used.

Subp. 9. **Grading.** The ground in an impounding basin or within a diked enclosure, should be graded so that small spills or the early part of a large spill will accumulate at one side or corner, thereby contacting only a relatively small area of ground and exposing a relatively small area of ground and exposing a relatively small surface area for heat gain. Shallow channels in the ground surface or low curbs of earth can help guide the liquid to these low areas without contacting a large ground area.

### 1513.0430 MARKING REFRIGERATED CONTAINERS.

Each refrigerated container must be marked with a nameplate on the outer covering in an accessible place as specified in the following:

- A. the name and address of the builder and the date of fabrication;
- B. the maximum volume or weight of the product whichever is most meaningful to the user;
- C. the design pressure;
- D. the minimum temperature in degrees Fahrenheit (°F) or degrees Celsius (°C) for which the container was designed;
- E. the maximum allowable water level to which the container may be filled for the test purposes;
- F. the density of the product in pounds per cubic foot or kilograms per cubic meter (kg/m<sup>3</sup>) for which the container was designed; and
- G. the maximum level to which the container may be filled with liquid anhydrous ammonia.

Each refrigerated container must also be marked on two directly opposite sides at near eye level with the words, "ANHYDROUS AMMONIA," and "INHALATION HAZARD" in sharply contrasting colors with letters not less than four inches high, and the UN identification number for ammonia, 1005, or in compliance with DOT regulations.

### 1513.0440 TANK VALVES, ACCESSORIES, FILL PIPES, AND DISCHARGE PIPES.

Subpart 1. **Shut-off valves.** Shut-off valves must be:

- A. provided for all connections except those with a No. 54 (0.055 inch) drill size restriction, plugs, pressure relief valves, and thermometer wells; and
- B. located as close to the tank as practical.

Subp. 2. **Check valve.** A check valve must be installed on the fill connection, if located below the maximum liquid level, and a remotely operated shut-off valve on other connections located below the maximum liquid level according to part 1513.0200, subpart 8.

Subp. 3. **Refrigerated containers.** A refrigerated container must be equipped with an approved liquid level gauging device and high liquid level alarm.

### 1513.0450 PRESSURE RELIEF VALVES.

Subpart 1. **Start to discharge pressure; relieving capacity.** The tank must be provided with a system of one or more pressure relief valves which can limit the tank pressure, below 115 percent (110 percent if only one pressure relief valve is used) of the design pressure during operational emergency conditions other than fire and below 121 percent of the design pressure during operational emergency conditions that include fire. One of the pressure relief valves must be set to start to discharge at a pressure not in excess of the design pressure of the tank and all other pressure relief valves needed to limit the tank pressure below 115 percent (110 percent if only one pressure relief valve is used) of the design pressure during operational emergency conditions other than fire must be set to discharge at a pressure not in excess of 105 percent of the design pressure. All additional pressure relief valves

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needed to limit the tank pressure below 121 percent of the design pressure during operational emergency conditions including fire must be set to start to discharge at a pressure not in excess of 110 percent of the design pressure.

Subp. 2. **Total relieving capacity.** The pressure relief valves set to discharge below 105 percent of the design pressure of the tank must have a total relieving capacity in excess of the relieving capacity required to handle operating emergency conditions listed in item A. The total relieving capacity of all the pressure relief valves in the system must be the larger requirement of item A or B.

A. Possible refrigeration system upset:

- (1) cooling water failure;
- (2) power failure;
- (3) instrument air or instrument failure;
- (4) mechanical failure of any equipment;
- (5) excessive pumping rates; and
- (6) changing atmospheric conditions.

B. Either one of the following formulas for fire exposure:

- (1) for valve manufacturers who classify valves on the basis of the weight of the vapors to be relieved:

$$W = \frac{34\,500\,F\,A^{0.82}}{L}$$

(2) For valve manufacturers who classify valves

on the basis of air flow:

$$Qa = \frac{633\,000\,F\,A^{0.82}}{L\,C} \sqrt{\frac{Z\,T}{M}}$$

Where:

W = weight of vapors to be relieved in pounds/hour at relieving conditions

Qa = air flow in cubic feet per minute at standard conditions (60 degrees Fahrenheit and 14.7 psi)

F = fireproofing credit. Use F = 1.0 except when an approved fireproofing material of recommended thickness is used, in which case use F = 0.2

A = total surface area in square feet up to 25 feet above grade or to the equator of a sphere, whichever is greater

Z = compressibility factor of ammonia at relieving condition (if not known, use Z = 1.0)

T = temperature in degrees R (460 + temperature in degrees Fahrenheit of gas at relieving conditions)

M = molecular weight = 17 for ammonia

L = latent heat of ammonia at relieving conditions in Btu per pound

C = constant based on relation of specific heats

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(C may be obtained from the following table)

(If K is not known, use C = 315)

K	C	K	C	K	C
1.00	315	1.26	343	1.52	366
1.02	318	1.28	345	1.54	368
1.04	320	1.30	347	1.56	369
1.06	322	1.32	349	1.58	371
1.08	324	1.34	351	1.60	372
1.10	327	1.36	352	1.62	374
K	C	K	C	K	C
1.12	329	1.38	354	1.64	376
1.14	331	1.40	356	1.66	377
1.16	333	1.42	358	1.68	379
1.18	335	1.44	359	1.70	380
1.20	337	1.46	361	2.00	400
1.22	339	1.48	363	2.20	412
1.24	341	1.50	364		

Where  $K = \frac{C_p}{C_v}$  at atmospheric conditions

and  $C_p$  = Specific heat of vapor at constant pressure

$C_v$  = Specific heat of vapor at constant volume

Subp. 3. **Shut-off valves.** Shut-off valves of adequate flow capacity may be provided and used to facilitate inspection and repair of pressure relief valves. If a shut-off valve is provided, it must be arranged so that it can be locked or sealed open and it may not be closed except by an authorized person who must remain there while the valve remains closed and who must again lock or seal the valve open when leaving the station.

Subp. 4. **Noncorrosive stacks; discharge lines.** Pressure relief valves must comply with items A and B.

A. If noncorrosive stacks are used, they must be suitably designed to prevent obstruction by rain, snow, ice, or condensate. The outlet size may not be smaller than the nominal size of the pressure relief valve outlet connection.

B. Discharge lines may be used if desired. Multiple pressure relief valves on the same storage unit may be run into a common discharge header. The discharge line and header must be designed to accommodate the maximum flow and back pressure not exceeding ten percent of the design pressure of the storage container. This back pressure must be included in the 120 percent total maximum pressure given in subpart 1. No other container or system may exhaust into this discharge line or header. The vent lines must be installed to prevent accumulation of liquid in the lines.

Subp. 5. **Atmospheric storage.** Atmospheric storage must be provided with vacuum breakers of adequate capacity to respond to anticipated rates of liquid withdrawal and to rapid atmospheric changes so as to avoid damage to the container. Ammonia gas may be used to provide a pad.

Subp. 6. **Discharge to open air.** Pressure relief valves used to protect other systems at refrigerated storage installations must discharge to the open air.

## 1513.0460 PROTECTION OF CONTAINERS AND APPURTENANCES.

Refrigerated storage containers and appurtenances must comply with part 1513.0370.

## 1513.0470 REINSTALLATION OF CONTAINERS.

Containers of a size to require a field fabrication must, when moved and reinstalled, be reconstructed and reinspected in complete accordance with the original requirements under which they were constructed. The containers must be subjected to a pressure retest, and if rerating is necessary, it must be done in accordance with the applicable pressure of the original requirements.

**1513.0480 REFRIGERATION LOAD AND EQUIPMENT.**

Subpart 1. **Computation.** The total refrigeration load must be computed as the sum of the following:

A. load imposed by heat flow into a container caused by the temperature differential between the ambient temperature and the storage temperature;

B. load imposed by heat flow into the tank caused by maximum sun radiation; and

C. maximum load imposed by filling the tank with ammonia warmer than the design storage temperature.

Subp. 2. **Multiple storage tanks.** More than one storage tank may be handled by the same refrigeration system.

Subp. 3. **Compressors.** Compressors must meet requirements of part 1513.0200, subpart 7.

A. A minimum of two compressors must be provided, either of which is of sufficient size to handle the loads listed in subpart 1, items A and B, except as provided in item C. If more than two compressors are provided, minimum standby equipment equal to the largest normally operating equipment must be installed. Compressors required for subpart 1, item C, may be used as standby equipment for compressors required in subpart 1, items A and B.

B. Compressors must be sized to operate with a suction pressure at least ten percent below the minimum setting of the pressure relief valves on the storage tank and must withstand a suction pressure at least equal to 121 percent of the design pressure of the tank. Discharge pressure is governed by condensing conditions.

C. If facilities are provided to safely dispose of vented vapor to an automatic flare or to a process unit, a single compressor of sufficient size to handle the load listed in subpart 1, items A and B, must be allowed.

Subp. 4. **Compressor drives.** Each compressor must have its own drive unit. Any standard drive consistent with good design may be used. An emergency source of power of sufficient capacity to handle the loads listed in subpart 1, items A and B must be provided, unless facilities are provided to safely dispose of vented vapors while the refrigeration system is not operating.

Subp. 5. **Automatic control equipment.** Automatic control equipment is governed by items A to D.

A. The refrigeration system must be arranged with controls to govern the compressor operation in accordance with the load as evidenced by the pressure in the containers.

B. An emergency alarm system must be installed to function in the event the pressure in the containers rises to the maximum or falls to the minimum allowable operating pressure.

C. An emergency alarm and shut-off must be located in the condenser system to respond to excess discharge pressure caused by failure of the cooling medium.

D. Automatic controls must be installed in a manner to preclude operation of alternate compressors unless the controls will function with the alternate compressors.

Subp. 6. **Separators.** An entrainment separator of suitable size and design pressure must be installed in the compressor suction line. The separator must be equipped with a drain and gauging device. A maximum liquid level control with alarm must be installed.

An oil separator of suitable size must be installed in the compressor discharge line. It must be designed for at least 250 psig and equipped with a gauging device and drain valve. A maximum oil level control with alarm must be installed.

A separator must be equipped with a pressure relief valve if the separator can be isolated with shut-off valves.

Subp. 7. **Condensers.** A condenser system may be cooled by air or water or both. The condenser must be designed for at least 250 psig. Provision must be made for purging noncondensibles either manually or automatically. The condenser must be equipped with a pressure relief valve if the condenser can be isolated with shut-off valves.

Subp. 8. **Receiver and liquid drain.** A condenser effluent receiver must be provided which is equipped with automatic level controls and valving designed to discharge the liquid ammonia to storage or with a high pressure liquid drain trap of suitable capacity. The receiver must be designed for at least 250 psig operating pressure and equipped with the necessary connections, pressure relief valves, and gauging device.

Subp. 9. **Insulation.** Refrigerated containers and pipelines that are insulated must be covered with a material of suitable quality

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and thickness for the temperatures encountered. Insulation must be supported and protected against the weather. Weatherproofing and insulation must be of a type that will not support flame propagation and will not cause corrosion when wet.

### 1513.0490 SAFETY EQUIPMENT.

Each refrigerated storage installation must have on hand the minimum safety equipment required in part 1513.0040, subpart 3; at least two independently supplied, positive-pressure, self-contained breathing apparatus; and at least two approved encapsulating corrosive chemical suits that are impervious to ammonia and designed to accommodate a self-contained breathing apparatus.

### 1513.0500 IDENTIFICATION.

A legible sign must be displayed on the premises at which a refrigerated storage system is located so as to be readily visible to emergency response personnel stating the name, address, and telephone number of the nearest representative, agent, or owner of the storage system.

## RAILROAD TANK CARS

### 1513.0600 APPLICABILITY.

Parts 1513.0600 to 1513.0640 apply specifically to systems using DOT single unit pressure tank car tanks mounted on railcar structures and used for the rail transportation of ammonia. All containers referred to in this part must be in accordance with DOT regulations.

### 1513.0610 DESIGN AND CONSTRUCTION.

Tank car tanks and tank cars must receive approval from the Association of American Railroads Committee on Tank Cars, before being placed into service.

### 1513.0620 PRESSURE RELIEF VALVES.

Tank cars must be provided with a pressure relief valve.

### 1513.0630 MARKING AND PLACARDING.

Subpart 1. **General requirement.** Each tank car, whether empty or loaded, must be marked with the proper shipping name, "ANHYDROUS AMMONIA," and "INHALATION HAZARD" in letters at least four inches in height with at least a 5/8-inch stroke. Separation between each letter must be at least 3/4-inch. The markings must be displayed on a background of sharply contrasting color on both sides of the tank car and near the stenciled DOT specification markings. Each tank car must also be marked with the UN identification number, 1005, on each side and each end in a manner prescribed by DOT regulations. Tank cars must be marked in compliance with DOT regulations.

Subp. 2. **Transportation of ammonia or residue.** Each tank car transporting ammonia must be provided with placarding in accordance with DOT requirements on each side and each end in accordance with DOT regulations. A tank car transporting a residue of ammonia must be provided with "RESIDUE" placards on each side and each end in accordance with DOT regulations.

### 1513.0640 TANK CAR LOADING AND UNLOADING LOCATIONS AND OPERATIONS.

Subpart 1. **Governing law.** Anhydrous ammonia tank cars must be loaded and unloaded only at locations that are permitted under *Minnesota Statutes*, section 18C.305, and meet the requirements of parts 1513.0040, subpart 3, and 1513.0200, subparts 1 to 9, item B.

Subp. 2. **Level rail track.** Rail track at tank car loading and unloading positions must be essentially level.

Subp. 3. **Brakes; blocks.** Brakes must be set and the wheels blocked in both directions on all tank cars being loaded or unloaded.

Subp. 4. **Caution signs.** Caution signs must be so placed on the track or car to give warning to persons approaching the car from the open end or ends of the siding. The signs must be of metal at least 12 inches high by 15 inches wide in size, and bear the words, "STOP — TANK CAR CONNECTED," OR "STOP — MEN AT WORK," the word, "STOP" being in letters at least four inches high. Other words must be in letters at least two inches high. The letters must be white on blue background. A car so protected must not be coupled or moved. The signs must remain in place until the tank car valves have been closed and the transfer lines have been disconnected.

Subp. 5. **Derail.** A standard derail must be properly set and secured in the derailing position between the car being loaded or unloaded and other cars being moved on the same track.

Subp. 6. **Purging of tank car.** A tank car used to transport a commodity other than ammonia must be purged completely of the previous commodity before being loaded with ammonia. Markings and placarding must be changed correspondingly.

Subp. 7. **Visual inspection.** Before connecting loading lines to a tank car and before releasing a tank car to the carrier, a visual inspection, by personnel trained in accordance with part 1513.0040, subpart 1, for obvious defects must be made to determine:

A. whether the tank car undercarriage, safety appliances (handrails, grab irons, etc.), walk surfaces, ladders, steps, air and hand brake systems, trucks, head shields, and couplers appear to be in a safe condition;

B. if the tank car tank and pressure relief valve periodic retest dates are current;

C. if the tank car tank, or jacket if the the tank is insulated, shows evidence of abrasion, dents, gouges, severe corrosion, or other damage; and

D. whether manway bolts and gaskets, external valves, pressure relief valves, gauges, and fittings appear to be in serviceable condition and free of leakage.

Subp. 8. **Leakage.** If leakage occurs at any manway, valve, gauge, gasket, or fitting during loading, the loading must stop and the cause of the leak corrected before loading can be resumed. If necessary to effect leak repairs, the tank car must be emptied and repairs made at the loading terminal or qualified repair facility.

Subp. 9. **Repairs.** A damaged or defective tank car must be forwarded to a carrier repair track or to a qualified repair shop before it is returned to service. Structural repairs to a tank car, including welding repairs on the tank car tank must be performed only at a repair facility authorized by the Association of American Railroads and by a qualified welder following authorized procedures.

Subp. 10. **Private track.** An ammonia tank car must be consigned for delivery and unloaded on a private track. If a private track is unavailable, an ammonia tank car equipped with excess flow valves may be consigned for delivery and unloaded on a carrier track, provided it is unloaded into permanent storage of sufficient capacity to receive the entire contents of the car.

Subp. 11. **Securing tank car.** After loading or unloading a tank car, all valves must be closed and transfer lines disconnected. Caps or plugs on tank car sample valves, liquid valves, vapor valves, and gauging device valves must be replaced and made wrench tight. Slip tube gauging devices must be secured and gauge housings screwed in place. Protective housing covers must be secured, pinned, and proper seals put in place when required. Leaks from any source on a tank car must be stopped before a car may be released to the carrier.

Subp. 12. **Emergency and rescue equipment.** Each tank car loading and unloading location must have on hand as a minimum, for emergency and rescue purposes, all of the equipment specified in part 1513.0040, subpart 3.

#### **SYSTEMS MOUNTED ON TRUCKS, SEMI-TRAILERS, AND TRAILERS FOR TRANSPORTATION OF AMMONIA**

##### **1513.0700 APPLICABILITY.**

Parts 1513.0700 to 1513.0830 apply specifically to systems mounted on trucks, semi-trailers, and trailers (other than those covered under parts 1513.1000 to 1513.1070) used for the transportation of ammonia. Parts 1513.0100 to 1513.0230 apply to trucks, semi-trailers, and trailers unless otherwise noted.

##### **1513.0710 DESIGN PRESSURE OF CONTAINERS.**

Subpart 1. **Design and construction.** Containers used in interstate commerce must be designed and constructed according to the ASME code, have a minimum design pressure of 265 psig, and meet other applicable requirements of DOT regulations. Containers designed and constructed in accordance with earlier ASME Code editions having a minimum design pressure of 250 psig and meeting conditions prescribed by DOT regulations are authorized for use in intrastate commerce.

Subp. 2. **Shell or head thickness.** The shell or head thickness of any container shall not be less than 3/16 inch.

Subp. 3. **Labels.** All container openings, except pressure relief valves, liquid level gauging devices, and pressure gauges, shall be labeled to designate whether they communicate with liquid or vapor space when the container is filled to the maximum permitted filling density. Labels must be on or adjacent to the valves closing the openings readily visible.

Subp. 4. **Baffles.** Baffles are not required for cargo tanks.

##### **1513.0720 CONTAINER MOUNTING.**

Subpart 1. **Attachment.** The means of attachment of a container to the cradle, frame, or chassis of a vehicle must be designed on a basis of two "g" loading in either direction, using a safety factor of not less than four, based on the ultimate strength of the material used. For the purpose of this requirement, two "g" of load support is equivalent to three times the static weight of the articles

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supported, and two "g" of loading and bending, acceleration, and torsion is equivalent to twice the static weight support applied horizontally at the road surface.

Subp. 2. **Hold-down devices.** Hold-down devices, when used, must anchor the container to the cradle, frame, or chassis in a safe manner that will not introduce undue concentration of stresses. These devices must incorporate positive means for drawing the container down tight, and stops or anchors must be provided to prevent relative movement between container and framing due to stopping, starting, or changes in direction.

Subp. 3. **External cradles.** Vehicles designed and constructed so that the cargo tanks constitute in whole or in part the stress member used in lieu of the frame, must be supported by external cradles subtending at least 120 degrees of the shell circumference. The design calculation must include beam stress, shear stress, torsion stress, bending moment, and acceleration stress, in addition to those covered by the code under which the cargo tank was designed.

Subp. 4. **Liquid withdrawal line.** If a liquid withdrawal line is installed in the bottom of a container, the connections to it, including the hose, must not be lower than the lowest horizontal edge of the motor vehicle axle.

Subp. 5. **Hose ends.** Both ends of a hose must be secured while in transit.

Subp. 6. **Friction.** If the cradle and the container are not welded together, material must be used between them to eliminate metal-to-metal friction.

### 1513.0730 CONTAINER APPURTENANCES.

Subpart 1. **Physical damage protection.** Nonrecessed container fittings and appurtenances must be protected against physical damage by either:

- A. a protected location;
- B. the vehicle frame or bumper; or
- C. a protective housing.

The protection housing, if used, must comply with the requirements under which the containers are fabricated with respect to design and construction, and must be designed to withstand static loadings in any direction equal to twice the weight of the container and attachments when filled with the lading, using a safety factor of not less than four, based on the ultimate strength of the material to be used. The protective housing, if used, must be protected with a weather cover to ensure proper operation of valves and pressure relief devices.

Subp. 2. **Container openings.** With the exception of pressure relief valves, liquid level gauges, pressure gauges, and thermometer wells, every opening in a container must be:

- A. closed with a plug, cap, bolted flange, or plate;
- B. provided with an excess flow valve and manual shut-off valve;
- C. provided with a back flow check valve and manual shut-off valve; or
- D. provided with a remotely controlled internal shut-off valve as described in subpart 3.

Subp. 3. **Discharge openings.** Every liquid or vapor discharge opening in a container must be provided with a remotely controlled internal shut-off valve. For every opening of less than 1-1/4 inches NPT, an excess flow valve with manual shut-off valve may be used instead. The internal shut-off valve may be operated by mechanical means, by hydraulic means, or by air or gas pressure.

A. On a container of 3,500 gallons water capacity or less, each internal shut-off must be provided with at least one remote control station and the actuating means may be mechanical. This station must be at one end of the tank, away from the discharge connection area.

B. On a container over 3,500 gallons water capacity, each internal shut-off valve must be provided with remote means of closure, both mechanical and thermal, that are installed at the ends of the tank in at least two, diagonally opposite locations. If the discharge connection at the tank is not in the general vicinity of one of the two locations specified above, one additional fusible element must be installed so that heat from a fire in that area will activate the emergency control system. Fusible elements may not have a melting point exceeding 250 degrees Fahrenheit.

Subp. 4. **Exception.** The requirements of subpart 3 do not apply to a 1-1/4 inch NPT liquid or vapor discharge opening equipped with an excess flow valve and manually operated shut-off valve installed before October 1, 1984.

Subp. 5. **Vapor equalizing valve.** A container must be equipped with an approved vapor equalizing valve of adequate capacity.

Subp. 6. **Liquid level gauge.** A container must be equipped with a fixed maximum liquid level gauge.

Subp. 7. **Pressure gauge.** A container must be equipped with a pressure gauge having a dial graduated from 0-400 psig.

#### **1513.0740 PIPING, TUBING, FITTINGS, AND HOSE.**

Subpart 1. **Mounting; protection.** All piping, tubing, and fittings shall be securely mounted and protected against physical damage.

Subp. 2. **Truck unloading line.** The truck unloading line must be provided with an excess flow valve at the hose connection unless an approved quick closing internal valve is provided in the container unloading connection according to part 1513.0730, subpart 2.

Subp. 3. **Liquid propane hose.** Liquid propane hose must not be used for ammonia service according to part 1513.0170.

#### **1513.0750 PRESSURE RELIEF VALVES.**

The discharge from container pressure relief valves must be vented away from the container upward and unobstructed to the open air in a manner to prevent any impingement of escaping gas upon the container. Loose fitting rain caps must be used to prevent moisture or foreign material from entering the relief valve outlet. The size of discharge lines from pressure relief valves may not be smaller than the nominal size of the pressure relief valve outlet connection. Provision must be made for draining condensate which may accumulate in the discharge pipe.

Pressure relief device equipment used on DOT containers must be inspected, repaired, or replaced according to applicable DOT regulations.

#### **1513.0760 PLACARDING AND MARKING OF CONTAINER.**

A container, whether loaded or empty, must be provided with placarding on each side and on each end according to DOT regulations and conspicuously and legibly marked on each side and each end, on a background of sharply contrasting color with the words, "ANHYDROUS AMMONIA" AND "INHALATION HAZARD" in letters at least two inches high. Each container must also be marked with the UN identification number for ammonia, 1005, on each side and each end in a manner prescribed by DOT regulations. Containers must be marked in compliance with DOT regulations.

#### **1513.0770 TRANSFER OF LIQUIDS.**

Subpart 1. **Weighing or gauging contents.** The content of a cargo tank container must be determined by weighing or by liquid level gauging device. If the volume content of a container is to be determined by liquid level measurement, the container must have a thermometer well and thermometer so that the internal liquid temperature can be easily determined.

Subp. 2. **Pumps; compressors.** Pumps or compressors must be designed and installed according to part 1513.0200, and protected against physical damage when mounted upon ammonia tank trucks and trailers.

Subp. 3. **Permanent storage locations.** A cargo tank container of greater than 3,500 gallons water capacity must be unloaded only at permanent storage locations permitted according to *Minnesota Statutes*, section 18C.305, and meeting the requirements of parts 1513.0040, subpart 3, and 1513.0200, subpart 8.

#### **1513.0780 TRAILERS AND SEMI-TRAILERS.**

Subpart 1. **Multiple vehicles.** If two or more vehicles are operated in combination, the vehicles must be designed and constructed, and the coupling devices connecting the vehicles must be designed, constructed, and installed, so that when the combination is operated in a straight line on a smooth, level, paved surface, the path of the towed vehicle does not vary more than three inches (80 mm) from the path of the towing vehicle.

Subp. 2. **Emergency braking.** A trailer or semi-trailer must be equipped with an emergency braking system to be activated in the event of separation from the towing vehicle.

Subp. 3. **Tow-bar; safety chain or cable.** A trailer must be equipped with a tow-bar and means of attaching the tow-bar to the towed and towing vehicles. The tow-bar and means of attachment must be structurally adequate, properly and securely mounted, provide for adequate articulation, and be provided with a locking device to prevent accidental separation of the towed and towing vehicles.

One or more safety devices such as safety chains or safety cables must also be properly installed to prevent the towed vehicle from breaking loose in the event of tow-bar failure or disconnection.

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Subp. 4. **Fifth-wheel assembly.** If a fifth-wheel assembly is employed for towing a semi-trailer, the lower half of the assembly must be properly and securely attached to the frame of the towing vehicle. The upper half of the assembly must be fastened to the towed vehicle in a manner providing at least the same security required for installation of the lower half. A fifth-wheel assembly must have a positive locking mechanism which applies automatically on coupling and which prevents separation of the upper and lower halves except by activation of a manual release.

### 1513.0790 ELECTRICAL EQUIPMENT AND LIGHTING.

Subpart 1. **Lighting; wiring.** Tank trucks, tank trailers, and tank semi-trailers may not be equipped with any artificial light other than electric light. Electric lighting circuits must have overcurrent protection (fuses or automatic circuit breakers). The wiring shall have sufficient carrying capacity and mechanical strength, and shall be suitably secured, insulated, and protected against physical damage.

Subp. 2. **Federal regulations.** Tank trucks, tank trailers, and tank semi-trailers must be provided with lighting devices and reflectors according to *Code of Federal Regulations*, title 49, part 393, subpart B.

### 1513.0800 PROTECTION AGAINST COLLISION.

A tank motor vehicle must be provided with properly attached bumpers or chassis extensions arranged to protect the tank, piping, valves, and fittings from physical damage in case of collision.

### 1513.0810 BRAKES.

No ammonia may be loaded into or unloaded from any tank truck, tank semi-trailer, or tank trailer unless the handbrake or other braker mechanism and wheel chocks on both sides of at least one drive wheel are securely set to prevent motion of the vehicle during the loading or unloading process.

### 1513.0820 PORTABLE TANKS.

If portable tanks are used in lieu of cargo tanks and are permanently mounted on highway motor vehicles for the transportation of ammonia, they must comply with parts 1513.0700 to 1513.0830. If portable tanks are used as shipping containers in interstate commerce they must comply with parts 1513.0900 to 1513.0930.

### 1513.0830 SAFETY EQUIPMENT.

Tank trucks, trailers, semi-trailers, and attached power units must be furnished with the equipment specified in part 1513.0040, subpart 4, for emergency purposes.

## SYSTEMS USING DOT PORTABLE TANKS AND CYLINDERS

### 1513.0900 APPLICABILITY.

Parts 1513.0900 to 1513.0930 apply specifically to systems using cylinders according to part 1513.0030, subpart 13, portable tanks (DOT-51), or ton containers (DOT-106A) constructed according to United States Department of Transportation specifications. Parts 1513.0100 to 1513.0230 also apply to those systems, unless otherwise noted.

### 1513.0910 CONTAINERS AND CYLINDERS.

Subpart 1. **Applicable standards.** Containers and cylinders must comply with current DOT specifications and must be maintained, filled, packaged, marked, labeled, and shipped to comply with current DOT regulations, OSHA regulations, and CGA C-4, American National Standard Method of Marking Portable Compressed Gas Containers to Identify the Material Contained (ANSI/CGA C-4).

Subp. 2. **Storage.** Containers and cylinders must be stored in an area free from ignitable debris and in a manner that prevents external corrosion. Storage may be indoors or outdoors. Cylinders stored outdoors must be protected against accumulation of ice and snow.

Subp. 3. **Burial.** Containers and cylinders must not be buried below ground.

Subp. 4. **Surfaces; connections.** Containers and cylinders must be set upon firm, level surfaces or otherwise firmly secured. The possible effect of settling or frost have on the outlet piping must be guarded against by appropriate use of a flexible connection or special fitting.

Subp. 5. **Heat sources.** Containers and cylinders must be protected from heat sources such as radiant flame and steam pipes. Heat must not be applied directly to containers or cylinders to raise the pressure. A cylinder filled according to DOT regulations will become liquid full at 145 degrees Fahrenheit and will rupture upon further temperature rise.

Subp. 6. **External damage.** Containers and cylinders must be stored in a manner to protect them from moving vehicles or external damage.

Subp. 7. **Valve protection.** A container or cylinder designed to have a valve protection cap or device must have the cap or

device securely in place when the container or cylinder is not in service. This requirement does not apply at a facility specifically designated for filling containers or cylinders.

Subp. 8. **Trap; back pressure check valve.** Any process system connected to a container or cylinder must be equipped with a trap or back pressure check valve to prevent the entry of foreign matter into the container or cylinder.

#### **1513.0920 CONTAINER AND CYLINDER VALVES AND REGULATION EQUIPMENT.**

Subpart 1. **Tampering protection.** Container and cylinder valves and pressure regulation equipment must be protected against tampering when installed for use.

Subp. 2. **Protection during transit and storage.** Container and cylinder valves shall be protected while in transit, in storage, and while being moved prior to connection to the process line, as follows:

A. by setting them into a recess of the container; or

B. by ventilated metal cap or collar, fastened to the container, capable of withstanding a blow from any direction equivalent to that of a 30 pound weight dropped four feet. Construction must be such that a blow will not be transmitted to the valves or other connections.

A valve on a cylinder which is enclosed in a box or crate of sufficient strength to protect the valve from damage during transit or storage need not be provided with a protective cap or collar.

Subp. 3. **Not in service.** If containers or cylinders are not connected for service, the outlet valves must be kept tightly closed and protected even though containers are considered empty. This requirement does not apply at a facility specifically designed for filling containers or cylinders.

Subp. 4. **Cylinder valve connection standards.** Cylinder valves must be in accordance with the connection standard for ammonia as contained in CGA V-1, American National, Canadian, and Compressed Gas Association Standard for Compressed Gas Cylinder Valve Outlet and Inlet Connections (ANSI/CSA/CGA V-1).

#### **1513.0930 PRESSURE RELIEF DEVICES.**

A cylinder containing less than 165 pounds (75 kg) of ammonia is not required to have a pressure relief device.

Pressure relief device equipment used on DOT containers must be inspected, repaired, or replaced according to applicable DOT regulations.

### **SYSTEMS FOR TRANSPORTATION OF AMMONIA MOUNTED ON FARM WAGONS AND EQUIPMENT OR IMPLEMENTS OF HUSBANDRY**

#### **1513.1000 APPLICABILITY.**

Parts 1513.1000 to 1513.1070 apply to containers of 3,000 gallons water capacity or less and systems mounted on farm wagons, implements of husbandry, and equipment which is used for the transportation of ammonia. Parts 1513.0100 to 1513.0230 apply to those containers and systems unless otherwise noted.

#### **1513.1010 DESIGN OF CONTAINERS.**

The minimum design for containers must be in accordance with part 1513.0120.

#### **1513.1020 MOUNTING OF CONTAINERS.**

Subpart 1. **Secure mounting.** All containers must be securely mounted. A "stop" or "stops" must be mounted on the farm wagon or on the container in such a way that the container cannot be dislodged from its mounting due to the farm wagon coming to a sudden stop. Back slippage must also be prevented.

Subp. 2. **Hold-down device.** A hold-down device must be provided which will anchor the container to the farm wagon at one or more places on each side of the container.

Subp. 3. **Weight distribution.** If containers are mounted on four-wheel farm wagons, the weight must be distributed evenly over both axles.

Subp. 4. **Friction.** If the cradle and the container are not welded together, suitable material must be used between them to eliminate metal-to-metal friction. See part 1513.0120, subparts 2 and 4, with regard to welding on a container.

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### 1513.1030 CONTAINER APPURTENANCES.

Subpart 1. **Maximum liquid level gauge.** A container must be equipped with a fixed maximum liquid level gauge that is designed to indicate when the container has been filled to 85 percent of its water capacity. The dip tube of this gauge must be installed in such a manner that it cannot be readily removed.

Subp. 2. **Pressure gauge.** A container must be equipped with a pressure gauge having a dial graduated from 0-400 psig.

Subp. 3. **Filling connection.** The filling connection of each container must comply with the requirements of part 1513.0150, subpart 10.

Subp. 4. **Vapor equalization valve.** A containers must be equipped with a vapor equalizing valve unless equipped for spray loading.

Subp. 5. **Excess flow valves.** All vapor and liquid connections, except pressure relief valves and those specifically exempt in part 1513.0150, subpart 5, must be equipped with excess flow valves or may be fitted with quick-closing internal valves, which remain closed except during operating periods. An excess-flow valve is not required if the controlling orifice is not in excess of 7/16 inch in diameter and the valve is a hand-operated, attached hand wheel or equivalent, shut-off valve. To assist in filling applicator tanks, it is permissible to bleed vapors to the open air, if other requirements in this part are met.

Subp. 6. **Rigid guard.** Appurtenances on farm wagons must be protected from physical damage by a rigid guard designed to withstand static loading in any direction equal to twice the weight of the container and lading using a safety factor of four based upon the ultimate strength of the material used. If the guard encloses the pressure relief valve, the valve must be properly vented through the guard.

Subp. 7. **Coupling device.** If the applicator or nurse tank is trailed and the metering device is remotely mounted, such as on the tool bar, an automatic break-away, self-closing coupling device must be used. The coupling device must be made from or coated with a corrosion resistant material. The coupling device must be mounted in a manner that will permit the device to swivel freely in all directions. A coupling device must be maintained and replaced in accordance with the manufacturer's recommendations. An angle valve may not be used as a hose end valve connecting to the coupling device.

Subp. 8. **Control valve.** Any control valve installed between the regulator and the break-away coupling device must indicate whether the valve is open or closed.

Subp. 9. **Liquid withdrawal line.** If a liquid withdrawal line is installed in the bottom of the container, the connections to it, including hose, must not be lower than the lowest horizontal edge of the farm wagon axle. The hose must be drained and depressurized before the container is moved or towed on a public road.

Subp. 10. **Hose ends.** Provision shall be made to secure both ends of the hose in transit.

Subp. 11. **Containers.** Containers in this part must comply with all requirements as prescribed in *Code of Federal Regulations*, title 49, section 173.317(m).

### 1513.1040 PLACARDING AND MARKING OF CONTAINERS.

Subpart 1. **General.** There must appear on each side and on each end of the container in letters at least two inches high, the words, "ANHYDROUS AMMONIA" and the words "INHALATION HAZARD" on two sides. Each container must also be marked with the UN identification number, 1005, on each side and each end according to DOT requirements. Containers must be marked in compliance with DOT requirements.

Subp. 2. **Slow-moving vehicle.** Slow moving (25 mph or less) farm wagons and equipment operating on public roads must be provided with an emblem consisting of a fluorescent orange triangle with a red reflective border. For information regarding construction, location, and mounting of the emblem, refer to ASAE S276.4, Slow-Moving Vehicle Identification Emblem. See also *Code of Federal Regulations*, title 29, part 1910.145(d)(10).

### 1513.1050 FARM WAGONS AND EQUIPMENT.

All farm wagons and equipment must be securely attached to the vehicle drawing them by means of drawbars supplemented by hitch pins with a retainer and safety chains.

Farm wagons and equipment must be constructed and maintained so they will follow substantially in the path of the towing vehicle and will prevent the towed farm wagon from whipping or swerving dangerously from side to side.

Farm wagons and equipment may not be towed in public places such as school yards, malls, or hospital grounds.

**1513.1060 SAFETY EQUIPMENT.**

An ammonia tank must be equipped with at least five gallons of clean water in a container designed to provide ready access to the water for flushing any area of the body contacted by ammonia.

A. Applicators must have a legible decal depicting the instructions for step-by-step ammonia transfer.

B. Toolbars must have information for connecting and disconnecting the coupling device, displayed in a manner that is readily visible near the break-away coupling device.

**1513.1070 CHEMICAL ADDITIVE COMPATIBILITY.**

Prior to the addition of a chemical additive, its compatibility with system components must be verified by the manufacturer of the additive.

**MINIMUM REQUIRED FLOW RATE OF PRESSURE RELIEF DEVICES FOR PROTECTION**

**1513.1100 MINIMUM FLOW RATES.**

Pressure relief valves for excessive heat or fire protection used on containers covered by parts 1513.0300 to 1513.0380 and 1513.1000 to 1513.1070 must be constructed to discharge at not less than the rates required in this part before the pressure is in excess of 121 percent of the maximum allowable working pressure of the container. Relief protection for any other reason, except refrigerated storage, must use ASME UG-125 through UG-136.

Surface Area, Sq.Ft.	Flow Rate, CFM Air	Surface Area, Sq.Ft.	Flow Rate, CFM Air	Surface Area, Sq.Ft.	Flow Rate, CFM Air
20	258	185	1,600	900	5,850
25	310	190	1,640	950	6,120
30	360	195	1,670	1,000	6,380
35	408	200	1,710	1,050	6,640
40	455	210	1,780	1,100	6,900
45	501	220	1,850	1,150	7,160
50	547	230	1,920	1,200	7,410
55	591	240	1,980	1,250	7,660
60	635	250	2,050	1,300	7,910
65	678	260	2,120	1,350	8,160
70	720	270	2,180	1,400	8,410
75	762	280	2,250	1,450	8,650
80	804	290	2,320	1,500	8,900
85	845	300	2,380	1,550	9,140
90	885	310	2,450	1,600	9,380
95	925	320	2,510	1,650	9,620
100	965	330	2,570	1,700	9,860
105	1,010	340	2,640	1,750	10,090
110	1,050	350	2,700	1,800	10,330
115	1,090	360	2,760	1,850	10,560
120	1,120	370	2,830	1,900	10,800
125	1,160	380	2,890	1,950	11,030
130	1,200	390	2,950	2,000	11,260
135	1,240	400	3,010	2,050	11,490
140	1,280	450	3,320	2,100	11,720
145	1,310	500	3,620	2,150	11,950
150	1,350	550	3,910	2,200	12,180
155	1,390	600	4,200	2,250	12,400
160	1,420	650	4,480	2,300	12,630

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165	1,460	700	4,760	2,350	12,850
170	1,500	750	5,040	2,400	13,080
175	1,530	800	5,300	2,450	13,300
180	1,570	850	5,590	2,500	13,520

Surface Area = Total Outside Surface Area of Container in Square Feet. If the surface area is not stamped on the nameplate or when the marking is not legible, the area can be calculated by using one of the following formulas:

- (1) Cylindrical container with hemispherical heads  
Area = overall length in feet times outside diameter  
in feet times 3.1416.
- (2) Cylindrical container with other than  
hemispherical heads  
Area = (overall length in feet plus 0.3 outside diameter  
in feet) times outside diameter in feet  
times 3.1416.
- (3) Spherical container  
Area = outside diameter in feet squared times 3.1416.

Flow Rate—CFM Air = cubic feet per minute of air required at standard conditions, 60 degrees Fahrenheit and atmospheric pressure (14.7 psia).

The rate of discharge may be interpolated for intermediate values of surface area. For containers with total outside surface area greater than 2,500 square feet, the required flow rate can be calculated using the formula, Flow Rate CFM Air = 22.11 A<sup>0.82</sup> where A = outside surface of the container in square feet.

### CONVERSION FACTORS:

ft <sup>2</sup>	x 0.092 903 = m <sup>2</sup>
CFM	x 0.028 317 = m <sup>3</sup> /min
ft	x 0.304 8 = m

**REPEALER.** *Minnesota Rules*, parts 1510.0480; 1510.0490; 1510.0500; 1510.0510; 1510.0520; 1510.0530; 1510.0540; 1510.0550; 1510.0560; 1510.0570; 1510.0580; 1510.0590; 1510.0600; 1510.0610; 1510.0620; 1510.0630; 1510.0640; 1510.0650; 1510.0660; 1510.0670; 1510.0680; 1510.0685; 1510.0690; 1510.0700; 1510.0710; 1510.0720; 1510.0730; 1510.0740; 1510.0750; 1510.0760; 1510.0770; 1510.0780; 1510.0790; 1510.0800; 1510.0810; 1510.0820; 1510.0830; 1510.0840; 1510.0850; 1510.0860; 1510.0870; 1510.0880; 1510.1100; 1510.1110; 1510.1120; 1510.1130; 1510.1140; 1510.1150; 1510.1160; 1510.1170; 1510.1180; 1510.1190; 1510.1200; 1510.1210; 1510.1220; 1510.1230; 1510.1240; 1510.1250; 1510.1260; 1510.1270; 1510.1280; 1510.1290; 1510.1300; 1510.1310; 1510.1320; 1510.1330; 1510.1340; 1510.1350; 1510.1360; 1510.1370; 1510.1380; 1510.1390; 1510.1400; 1510.1410; 1510.1420; 1510.1430; 1510.1440; 1510.1450; 1510.1460; 1510.1470; 1510.1480; 1510.1490; 1510.1500; 1510.1510; 1510.1520; 1510.1530; 1510.1540; 1510.1550; 1510.1560; 1510.1570; 1510.1580; 1510.1590; 1510.1600; 1510.1610; 1510.1620; 1510.1630; 1510.1640; 1510.1650; 1510.1660; 1510.1670; 1510.1680; 1510.1690; 1510.1700; 1510.1710; 1510.1720; 1510.1730; 1510.1740; 1510.1750; 1510.1760; 1510.1770; 1510.1780; 1510.1790; 1510.1800; 1510.1810; 1510.1820; 1510.1830; 1510.1840; 1510.1850; 1510.1860; 1510.1870; 1510.1880; 1510.1890; 1510.1900; 1510.1910; and 1510.1920, are repealed.

## Department of Agriculture

### Proposed Permanent Rules Relating to RFA Beginning Farmer Loans

#### Notice of Intent to Adopt a Rule Without a Public Hearing

The Minnesota Rural Finance Authority (RFA) intends to adopt rules without a public hearing following the procedures set forth in the Administrative Procedures Act sections 14.22-14.28. You have 30 days to submit written comment on the proposed rules and may also submit a written request that a hearing be held on the rules.

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

Carol Milligan, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107: Phone (612) 296-6906, Fax (612) 297-7678.

**Subject of Rules and Statutory Authority.** The proposed rules are about criteria and procedures used by the RFA to administer the basic beginning farmer loan participation program. The statutory authority to adopt these rules is *Minnesota Statutes*, section 41B.07. A copy of the proposed rules is published in the *State Register* and attached to this notice as mailed.

**Comments.** You have until 4:30 p.m. *January 25, 1996*, to submit written comment in support of or in opposition to the proposed rules or any subpart of the rules. Your comments 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 25, 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 request in writing. If a public hearing is required, the department will proceed according to *Minnesota Statutes*, sections 14.131-14.20.

**Modifications.** The proposed rules may be modified as a result of public comment. The modifications must be supported by the data and views submitted to the department and may not result in a substantial change in the proposed rules as attached and 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 from the department contact person. 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.

**Small Business Considerations.** Most of the businesses affected by this rule would be defined as a small business according to *Minnesota Statutes*, section 14.115. Therefore, the rule has been designed to provide time schedules, compliance requirements and performance standards acceptable to small business within the constraints of the law.

**Adoption and Review of the Rules.** 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 that 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 the department contact person listed above.

Dated: 17 November 1995

Jim Boerboom  
Director

#### Rules as Proposed (all new material)

#### BASIC BEGINNING FARMER LOAN PARTICIPATION PROGRAM

**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

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### 1650.0011 APPLICABILITY AND PURPOSE.

Subpart 1. **Applicability.** Parts 1650.0011 to 1650.0071 establish the criteria and procedures to be used by the RFA in administering the basic beginning farmer loan participation program authorized by *Minnesota Statutes*, chapter 41B.

Subp. 2. **Purpose.** The purpose of the RFA basic beginning farmer loan participation program and for the issuance of bonds to finance or provide security for the program is to preserve and develop the state's agricultural resources. This is accomplished by extending credit on real estate security through the purchase of participation interests in first priority mortgage farm real estate loans. Loans to persons entering or currently farming and meeting the eligibility criteria in part 1650.0031 are eligible for participation.

### 1650.0021 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part apply to parts 1650.0011 to 1650.0071.

Subp. 2. **Agricultural purposes or farming.** "Agricultural purposes" or "farming" means the cultivation or use of land or land improvements and personal property for the production of agricultural crops, vegetables, fruit, or other horticultural crops, forest products, bees and apiary products, livestock, dairy animals, dairy products, poultry or poultry products, fur-bearing animals, aquaculture, hydroponics, exotic species of plants or animals, or other agriculturally related products. "Agricultural purposes" and "farming" include:

A. the use of wetlands, pasture, forest land, wildlife, and homestead and other real property associated with the agricultural use of land; and

B. the practices and facilities needed to conserve soil and water, protect human and animal health, have a safe and efficient operation, and meet local, state, and federal laws and regulations relating to the operation of a farm.

Subp. 3. **Applicant.** "Applicant" means a potential borrower who submits an application to the RFA through an eligible lender.

Subp. 4. **Application.** "Application" means the application for the basic beginning farmer loan participation in the form provided by the RFA.

Subp. 5. **Assets.** "Assets" means property, real or personal, tangible or intangible, and all contract rights of value that constitute assets, including cash crops or feed on hand, livestock held for sale, breeding stock, marketable bonds and securities, securities not readily marketable, accounts receivable, notes receivable, cash invested in growing crops, cash value of life insurance, machinery and equipment, cars and trucks, farm and other real estate including life estates and personal residence, and the value of a beneficial interest in trusts.

Subp. 6. **Beginning farmer loan.** "Beginning farmer loan" means a first mortgage loan made by an eligible lender to an eligible borrower, offered to the RFA for participation, and in which the RFA has purchased a participation.

Subp. 7. **Borrower.** "Borrower" means the person or persons liable on a first mortgage participation made under this program. A borrower may also be a domestic family farm corporation as defined in *Minnesota Statutes*, section 500.24, subdivision 2.

Subp. 8. **Debt to asset ratio.** "Debt to asset ratio" means the total outstanding liabilities of an applicant divided by the total outstanding assets of the applicant expressed as a percentage.

Subp. 9. **Executive director.** "Executive director" means the executive director of the RFA or any other officer authorized to act on behalf of the RFA board or its executive director.

Subp. 10. **Liabilities.** "Liabilities" means the debts or other obligations for which an applicant is responsible, including: accounts payable, notes or other indebtedness, taxes, rent, amount owed on real estate contracts or mortgages, judgments, and accrued interest payable.

Subp. 11. **Net worth.** "Net worth" means the total value of an applicant's assets and the assets of the applicant's spouse and dependents, less the liabilities of the same parties.

Subp. 12. **Note and loan agreement.** "Note and loan agreement" means the form provided by the RFA that is signed by a borrower evidencing the terms of the first mortgage loan and the borrower's obligation to repay the loan.

Subp. 13. **Participation agreement.** "Participation agreement" means the document entered into between the RFA and an approved lender that establishes the relationship between the parties and the terms and conditions of first mortgage loans to be offered to the RFA for participation under the basic beginning farmer participation program.

Subp. 14. **RFA.** "RFA" means the Rural Finance Authority established by *Minnesota Statutes*, section 41B.025.

Subp. 15. **RFA beginning farmer program.** "RFA beginning farmer program" means the RFA program for the purchase of participation interests in first mortgage real estate loans made to eligible borrowers so that the borrowers may use the real estate for agricultural purposes.

Subp. 16. **RFA participation.** "RFA participation" means the RFA's undivided interest in the principal of a first mortgage loan,

all rights and interests in the loan documents, all payments arising under the loan, the first security real estate mortgage securing the loan, and any other collateral pledged to secure the loan.

#### **1650.0031 BORROWER ELIGIBILITY.**

Subpart 1. **Criteria.** To be eligible for assistance under the basic beginning farmer program, an applicant must meet the criteria in subparts 2 and 3.

Subp. 2. **General eligibility criteria.** Each applicant must:

- A. be a resident of Minnesota;
- B. certify that the applicant or one of the applicants will be the principal operator of the farm and will make farming that applicant's principal occupation, and that the farm being purchased will be used for agricultural purposes only;
- C. certify that the applicant is eligible for the program;
- D. submit the correct fees as established in *Minnesota Statutes*, section 41B.03, subdivision 6; and
- E. not be a current or previous participant in the RFA Restructure II Program.

Subp. 3. **Beginning farmer criteria.** In addition to the requirements of subpart 2, a beginning farmer applicant must:

- A. have sufficient education, training, or experience to succeed in the type of farming to be undertaken;
- B. have a financial need for the loan and the ability to repay the first mortgage loan;
- C. agree to enroll and continue in a farm business management program approved by the commissioner of agriculture in accordance with *Minnesota Statutes*, section 41B.03, subdivision 3, paragraph (a), clause (7), for the first five years of the loan, if an approved program is available within 45 miles from the borrower's residence;
- D. agree to file a soil and water conservation plan approved by the soil conservation service in the county where the land is located; and
- E. have a total net worth not to exceed the amount established pursuant to *Minnesota Statutes*, section 41B.03, subdivision 3, the current amount of which is available from the RFA office.

#### **1650.0041 LENDER ELIGIBILITY.**

Subpart 1. **Statutory eligibility.** A bank, credit union, or savings association chartered by the state or federal government, a subdivision of the farm credit system (Agri Bank), the Federal Deposit Insurance Corporation, or an insurance company, fund, or other financial institution doing business as an agricultural lender within the state may apply to the RFA for certification as an approved lender.

Subp. 2. **Approval.** Upon a lender's demonstration of its ability to originate and service agricultural real estate loans, the RFA shall designate it as an approved lender for purposes of RFA programs.

Subp. 3. **Participation agreement.** Before offering first mortgage loans to the RFA for participation, each approved lender must enter into an RFA master participation agreement. The agreement must specify the contractual relationship between the parties and the terms and conditions of first mortgage loans to be made by the lender under the basic beginning farmer program and offered to the RFA for participation.

#### **1650.0046 APPLICATION PROCESS AND OFFER OF PARTICIPATION.**

Subpart 1. **Request for a first mortgage loan.** A lender and an applicant must jointly complete and sign an application and prepare all supporting documents identified in the application.

Subp. 2. **Lender determination.** The lender shall review the proposal and determine the creditworthiness of the applicant and the value of the collateral to be used to secure the loan. If the lender agrees to make a first mortgage loan to the applicant, the lender and the applicant shall jointly prepare the application and required loan documents.

Subp. 3. **Offer.** The lender, as the originator of the first mortgage loan, shall present the application and loan documents to the RFA. Presentation of the documents constitutes an offer to sell a participation interest in the loan.

**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

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### 1650.0056 RFA REVIEW, NOTICE, APPEAL.

Subpart 1. **RFA review.** The RFA shall accept or reject a lender's offer to participate in the loan within 30 business days after receipt of the lender's offer. If the documentation is not sufficient to make a determination, the RFA may request additional information to establish creditworthiness and eligibility of the applicant.

Subp. 2. **RFA acceptance.** The RFA shall accept an offer if:

- A. the applicant is eligible;
- B. the applicant demonstrates an ability to repay the first mortgage loan and other obligations based on the financial information submitted under part 1650.0046;
- C. the sale price of the property is not substantially in excess of its fair market value; and
- D. the RFA has sufficient funds available to purchase a participation in the loan.

Subp. 3. **RFA notice.** The RFA shall promptly notify the lender in writing whether or not the offer is accepted. If the offer is not accepted, the notice must state the reasons.

Subp. 4. **Administrative appeal.** If an offer is rejected, either the lender or the applicant may petition for RFA reconsideration. The petition must be in writing and must be sent within 30 working days of the date of the RFA notice. The petition must state the grounds for the appeal, and may include additional relevant information. Within 15 working days of receiving the petition, the executive director shall send a written response to the petitioner upholding or reversing the original decision and giving the reasons for the decision.

Subp. 5. **Formal appeal.** After administrative appeal, a petitioner may appeal the executive director's decision directly to the RFA board by written notice to the executive director within 15 days of receiving the executive director's reconsideration decision. The decision of the board is final.

### 1650.0066 LOAN CLOSING, PURCHASE OF PARTICIPATION, AND LOAN MANAGEMENT.

Subpart 1. **Closing.** Upon receiving notification of RFA acceptance, the lender shall close the first mortgage loan. The lender must record and cross-reference all documents relating to the loan including the RFA note and loan agreement. The lender must notify the RFA that the loan is closed and recorded by certifying and submitting the original RFA application, and submit a copy of the note and loan agreement, copies of the recorded documents, and the final title opinion to the RFA.

Subp. 2. **Payment.** Within ten business days of receipt of written notice under subpart 1 that the first mortgage loan is closed and recorded, the RFA shall initiate payment to the lender for the RFA's participation interest in the loan.

Subp. 3. **Participation certificate.** Within five working days after receipt of payment under subpart 2, the lender shall complete and return a participation certificate, as provided by the RFA, witnessing the RFA's undivided pro rata interest in the basic beginning farmer first mortgage loan.

Subp. 4. **Loan management.** The lender shall manage the first mortgage loan, including the RFA participation interest, with the degree of care and diligence usually maintained by agricultural real estate lenders. The lender shall have custody and control of all loan documents except the original application, which must be kept by the RFA.

The lender shall manage, administer, and enforce the loan documents in its own name and also on behalf of itself and the RFA, including, without limitation, the right to accelerate a basic beginning farmer first mortgage loan on default and to foreclose or otherwise enforce remedies against the borrower.

Subp. 5. **Lender notification.** The lender shall promptly notify the RFA of occurrences that substantially affect the security, collection, or enforcement of any first mortgage loan.

Subp. 6. **Prior written consent.** The lender shall obtain the prior written consent of the borrower and the RFA before:

- A. making or consenting to a release, substitution, or exchange of collateral that reduces the aggregate value of the collateral;
- B. waiving a claim against the borrower or a guarantor, surety, or obligor in connection with the indebtedness; or
- C. modifying or waiving a term of the notes or related instruments evidencing or securing the first mortgage loan.

### 1650.0068 PARTICIPATION REPURCHASE.

A. An originating lender is under no obligation to repurchase any RFA participation interest in a basic beginning farmer first mortgage loan, except as provided in this part.

B. A lender may, at its option and upon written approval by the RFA, repurchase an RFA participation interest at any time.

C. A lender must repurchase the RFA participation interest whenever the first mortgage loan is paid in full or refinanced.

D. A lender must repurchase the RFA participation interest if the lender has made misrepresentations or fails to perform its

obligations under the participation agreement, has received written notice from the RFA, and has not corrected the representation or performance under the notice.

E. Any repurchase must be for the principal balance of the RFA participation plus accrued interest and any penalties or costs incurred by the RFA to secure repurchase.

#### **1650.0071 REVIEW OF LOAN AND COLLATERAL.**

Subpart 1. **Inspection.** At any time during the term of a basic beginning farmer first mortgage loan, the RFA or the state legislative auditor may inspect the books, records, documents, and accounting practices of the lender relative to the loan to determine compliance with the terms and conditions of the loan and the participation agreement. Inspections must be during the lender's normal business hours. The lender must allow the RFA to copy any documents relating to the first mortgage loan and the RFA participation.

Subp. 2. **Collateral.** The lender and the RFA may physically inspect the collateral securing the first mortgage loan upon notice to the borrower. An inspection must be conducted at a reasonable time.

**REPEALER.** *Minnesota Rules*, parts 1650.0010; 1650.0020; 1650.0030; 1650.0040; 1650.0045; 1650.0055; 1650.0065; 1650.0067; and 1650.0070, are repealed.

## **Department of Agriculture**

### **Proposed Permanent Rules Relating to Rural Finance Agency Programs**

#### **Notice of Intent to Adopt a Rule Without a Public Hearing**

The Minnesota Rural Finance Authority (RFA) intends to adopt rules without a public hearing following the procedures set forth in the Administrative Procedures Act sections 14.22-14.28. You have 30 days to submit written comment on the proposed rules and may also submit a written request that a hearing be held on the rules.

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

Carol Milligan, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107: Phone (612) 296-6906, Fax (612) 297-7678.

**Subject of Rules and Statutory Authority.** The proposed rules are about criteria and procedures used by the RFA to administer the agricultural development bond beginning farmer loan program. The statutory authority to adopt these rules is *Minnesota Statutes*, section 41C.13. A copy of the proposed rules is published in the *State Register* and attached to this notice as mailed.

**Comments.** You have until 4:30 p.m. *January 25, 1996*, to submit written comment in support of or in opposition to the proposed rules or any subpart of the rules. Your comments 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 25, 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 request in writing. If a public hearing is required, the department will proceed according to *Minnesota Statutes*, sections 14.131-14.20.

**Modifications.** The proposed rules may be modified as a result of public comment. The modifications must be supported by the data and views submitted to the department and may not result in a substantial change in the proposed rules as attached and 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 from the department

**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

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contact person. 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.

**Small Business Considerations.** Most of the businesses affected by this rule would be defined as a small business according to *Minnesota Statutes*, section 14.115. Therefore, the rule has been designed to provide time schedules, compliance requirements and performance standards acceptable to small business within the constraints of the law.

**Adoption and Review of the Rules.** 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 that 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 the department contact person listed above.

Dated: 17 November 1995

Jim Boerboom  
Director

### Rules as Proposed (all new material)

#### AGRICULTURAL DEVELOPMENT BOND BEGINNING FARMER LOAN PROGRAM

##### 1650.0501 APPLICABILITY AND PURPOSE.

Subpart 1. **Applicability.** Parts 1650.0501 to 1650.0571 establish the criteria and procedures to be used by the RFA in administering the agricultural development bond beginning farmer loan program authorized by *Minnesota Statutes*, chapter 41C.

Subp. 2. **Purpose.** The purpose of the agricultural development bond or "aggie bond" beginning farmer loan program is to facilitate the acquisition of agricultural land and improvements and depreciable agricultural property by beginning farmers. This is accomplished through the issuance of tax exempt bonds, which provides eligible farmers with borrowed capital at below market interest rates.

##### 1650.0511 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part apply to parts 1650.0501 to 1650.0571.

Subp. 2. **Act.** "Act" means the Minnesota Agricultural Development Act in *Minnesota Statutes*, chapter 41C.

Subp. 3. **Agricultural farmland.** "Agricultural farmland" means productive, tillable land or land used for pasture.

Subp. 4. **Applicant.** "Applicant" means an individual or partnership who submits a completed application for a loan under the program to the authority through an eligible lender.

Subp. 5. **Application.** "Application" means an application for a loan under the program in the form prescribed by the authority.

Subp. 6. **Authority or RFA.** "Authority" or "RFA" means the Minnesota Rural Finance Authority established by *Minnesota Statutes*, section 41B.025, acting through its board or its duly authorized officers.

Subp. 7. **Bond.** "Bond" means a special, limited obligation revenue bond issued by the authority to an eligible lender to finance a loan to an eligible borrower for an eligible purpose pursuant to a loan agreement between the eligible lender and the authority.

Subp. 8. **Borrower.** "Borrower" means an eligible borrower who has received a loan under the program.

Subp. 9. **Code.** "Code" means the *Internal Revenue Code* of 1986, as amended, and all rules, regulations, and revenue procedures issued under it.

Subp. 10. **Depreciable agricultural property.** "Depreciable agricultural property" has the meaning given in *Minnesota Statutes*, section 41C.02, subdivision 9.

Subp. 11. **Eligible borrower.** "Eligible borrower" means a Minnesota resident or a Minnesota partnership consisting only of individuals who are Minnesota residents, who:

A. has a low or moderate net worth as established by *Minnesota Statutes*, section 41C.02, subdivision 12;

B. will engage in farming as a principal occupation;

C. has sufficient education, training, or experience in the type of farming for which the loan is desired;

D. will agree to participate in a farm business management program approved by the commissioner of agriculture in accordance with *Minnesota Statutes*, section 41C.05, subdivision 2, clause (6), for the first five years of the loan if an approved program is available within 45 miles of the residence of the borrower or one of the borrower's partners;

E. will agree to file a soil and water conservation plan approved by the county soil conservation service; and

F. is a first time farmer, as defined in subpart 16, who will be the principal user of the property financed under the code, and will materially and substantially participate in the operation of the farm of which the property is a part or on which the property will be used.

Subp. 12. **Eligible lender.** "Eligible lender" means a bank, credit union, savings association, insurance company, or other legal entity that is authorized to do business in Minnesota, an individual, or a group of individuals.

Subp. 13. **Eligible purpose.** "Eligible purpose" means:

A. the purchase of Minnesota land and improvements on the land, other than a residence, by an eligible borrower for farming purposes;

B. the construction of new improvements, or of additions to or renovations of existing improvements, other than a residence, for farming purposes; or

C. the purchase of depreciable agricultural property by an eligible borrower for farming purposes.

Subp. 14. **Executive director.** "Executive director" means the authority's executive director or any other person authorized to act on behalf of the authority's board or its executive director.

Subp. 15. **Farming.** "Farming" has the meaning given in *Minnesota Statutes*, section 41C.02, subdivision 10.

Subp. 16. **First time farmer.** "First time farmer" means an individual who, together with the individual's spouse and minor children:

A. has not at any time had any direct or indirect ownership interest in agricultural farmland that is 15 percent or more of the median size farm in the county where located or that had a market value at any time in excess of \$125,000 unless the farm was disposed of while the individual was insolvent and code section 108 applied to indebtedness with respect to the farm; and

B. has not received other similar tax-exempt financing in any state in an amount that, together with the current loan, exceeds \$250,000.

Subp. 17. **Improvements.** "Improvements" to farm land means items that, when complete, become part of the farm land or fixtures, including but not limited to confinement systems, barns and other out buildings, silos and other crop storage facilities, and improvements to land such as tiling, terraces, ponds, erosion control structures, and waterways.

Subp. 18. **Lender.** "Lender" means an eligible lender who has purchased a bond under the program.

Subp. 19. **Loan.** "Loan" means the loan of the proceeds of a bond to an eligible borrower for an eligible purpose pursuant to a loan agreement between the authority and the eligible borrower.

Subp. 20. **Net worth.** "Net worth" means the total value of an applicant's assets and the assets of the applicant's spouse and dependents, less the liabilities of those parties. For purposes of calculating net worth, "assets" means property, real or personal, tangible or intangible, and all contract rights of value that constitute assets, including cash crops or feed on hand, livestock held for sale, breeding stock, marketable bonds and securities, securities not readily marketable, accounts receivable, notes receivable, cash invested in growing crops, cash value of life insurance, machinery and equipment, cars and trucks, farm and other real estate including life estates and personal residence, and the value of a beneficial interest in any trust. For purposes of calculating net worth, "liabilities" means the debts or other obligations for which an applicant is responsible including accounts payable, notes or other indebtedness owed to any source, taxes and rent due or past due, amounts owed on real estate contracts or mortgages, judgments, and accrued interest payable.

Subp. 21. **Principal user.** "Principal user" means a person who is a principal owner, a principal lessee, a principal output purchaser, or an "other" principal user as defined in the code.

Subp. 22. **Program.** "Program" means the agricultural development bond beginning farmer loan program established by the authority.

#### **1650.0521 BORROWER ELIGIBILITY.**

Subpart 1. **Eligibility.** To be eligible for a loan under the program an applicant must be an eligible borrower.

Subp. 2. **Certification.** An applicant must certify to the authority in each loan application that the applicant understands and meets the definition of eligible borrower for the program.

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## Proposed Rules

Subp. 3. **Net worth.** A financial statement showing an applicant's net worth must be submitted with the application and may not include the value of the property or improvements to be acquired with the proceeds of the loan or the liability of the loan. At the loan closing the eligible lender must recertify that the applicant's net worth does not exceed program limits.

### 1650.0531 OPERATION OF PROGRAM.

#### Subpart 1. Loan transactions and security.

A. The authority shall make unsecured loans to eligible borrowers for eligible purposes under a loan agreement between the authority as lender and the eligible borrower as borrower. The loans must be evidenced by promissory notes payable to the authority or its assigns.

B. A loan may not be made that violates any of the restrictions in subitems (1) to (6).

(1) A loan may not exceed \$250,000 and may not finance more than \$62,500 of used depreciable agricultural property.

(2) Ninety-five percent of the loan proceeds in excess of loan transaction costs must be expended for an eligible purpose, and not more than two percent of the loan proceeds may be used to pay loan transaction costs.

(3) The maturity of a loan or portion of a loan made to finance improvements or depreciable agricultural property may not exceed 120 percent of the useful life of the improvements or depreciable agricultural property under the code.

(4) Not more than five percent of the loan proceeds in excess of loan transaction costs may be used to refinance existing indebtedness, or to finance the purchase or improvement of a residence or working capital or inventory such as seed, fertilizer, or feeder livestock. Use of loan proceeds for reimbursement of costs incurred prior to the adoption by the authority of a preliminary resolution approving a loan and the issuance of a bond to fund it as described in part 1650.0551 or money borrowed to pay such costs constitutes use of loan proceeds for working capital or refinancing.

(5) All loan proceeds must be expended within six months of the loan closing.

(6) Loan proceeds may not be used to finance the purchase of land, improvements, or depreciable agricultural property from a related person. For the purpose of this subitem, "related person" means a spouse, lineal descendant, or sibling, or a partnership or corporation owned, directly or indirectly, more than 50 percent by the borrower and one or more of the borrower's spouse, lineal descendant, or sibling.

C. The authority shall issue a bond to provide money to fund each loan. The authority has no other money available for this purpose. The bond must be issued to the eligible lender who has agreed with the eligible borrower to finance the eligible borrower's loan by jointly submitting a loan application according to part 1650.0541. The bond must be issued in fully registered form under a loan agreement between the lender and the authority.

D. The bond must be a special, limited obligation of the authority payable solely from loan payments payable by the eligible borrower under the borrower's loan agreement and the promissory note evidencing the loan, that must be assigned to the lender and pledged to the payment of the principal of and interest on the bond, without recourse to the authority. The bond must not be a general obligation of the authority, the state of Minnesota, or any department, agency, or political subdivision of the state. The full faith and credit of the authority or the state or any department, agency, or political subdivision of the state must not be pledged for the bond's payment.

E. A bond may be additionally secured by a mortgage on or security interest in the property financed or other property provided by the borrower, or by personal guaranties made by the borrower or another individual. All agreements and documents providing or evidencing additional security must be entered into between the borrower or another individual and the lender. The authority may not be a party to the agreement or document and is not responsible in any way with respect to the authorization, execution, effectiveness, or adequacy of the additional security.

Subp. 2. **Loan evaluation.** The lender must determine and evaluate the eligible borrower's financial condition, net worth, and ability to repay the loan of the bond proceeds to be made by the authority, and the lender is solely responsible for that determination. The authority shall not make any independent evaluation of any of these matters, but shall rely upon certifications provided to it by the applicant and the lender as part of an application.

Subp. 3. **Loan terms.** The payment terms of each loan and the bond that will be issued to fund the loan must be identical and, subject to the applicable provisions of state and federal law or the code, must be established by the eligible borrower and the lender.

Subp. 4. **Loan documents.** Except as provided in subpart 1 with respect to certain loan security agreements, all loan and bond transactions must be evidenced by use of the authority's standard loan documents. The documentation must include loan agreements, a promissory note, a bond, various closing certificates, legal opinions, and other documents as bond counsel requires.

#### Subp. 5. Tax exemption.

A. The authority must try to issue each bond as a "qualified small issue bond" within the meaning of section 144(a) of the

code. Interest payable on a qualified small issue bond is not includable in gross income of the recipient for federal income tax purposes, or in net income of individuals, estates, or trusts for Minnesota income tax purposes. At the loan closing, the authority shall furnish to the lender an opinion of an attorney or firm of attorneys nationally recognized as bond counsel as to the validity of the bond and the tax exempt nature of the interest payable on the bond, addressed to the lender. The form of that opinion is available upon request to the authority by any eligible lender joining in a loan application.

B. The lender may not rely upon information provided by the authority as to state and federal tax matters, but may rely only upon representations, warranties, or covenants made by the authority in the loan documents and the legal opinion.

C. The lender is responsible to determine the applicability and effect of other state and federal laws on the lender's income, deductions, or tax status for state and federal tax purposes as a result of the purchase of a bond.

**Subp. 6. Use of bond proceeds; certification.** Bond proceeds may not be used for a purpose other than an eligible purpose or by a person other than an eligible borrower. If funds are not fully disbursed at the time of closing, the lender and borrower must certify to the authority that the proceeds were used for an eligible purpose by an eligible borrower, and were fully expended within six months after the loan closing date.

**Subp. 7. Assignment of bond.** A lender may assign a bond in whole or in part to any person, but the lender is responsible for compliance with all state and federal laws applicable to the assignment. Servicing of the loan may also be assigned. The authority must be notified in writing prior to assignment of servicing of a loan.

**Subp. 8. Assumption of loans; substitution of collateral and transfer of property.** Loans may not be assumed without the prior approval of the authority, and then only if the purchaser of the property is an eligible borrower. Depreciable agricultural property may be exchanged or traded for similar property, and other property such as breeding livestock may be added or substituted as collateral at the discretion of the lender without the prior approval of the authority. The benefits of the loan made at the tax exempt rate from the proceeds of an authority bond must remain with the eligible lender, and no person to whom property is traded or otherwise transferred may obtain the benefits of the authority loan.

#### **1650.0541 APPLICATION PROCEDURES.**

##### **Subpart 1. Application.**

A. An applicant and an eligible lender who wish to request the authority to make a loan to the applicant and issue a bond to the lender to fund the loan must jointly complete, sign, and submit an application to the authority. All supporting documents must be submitted with the application.

B. The eligible lender shall present the documents in item A to the authority by the close of the business day on the Friday prior to the first Wednesday of each month. Presentation of the documents constitutes an offer to purchase a bond to fund the loan.

C. Lenders shall use their own forms of financial statement and other forms considered necessary to document the eligibility of the applicant. Financial statements must be dated as of a date not more than 120 days before the date on which the application is submitted to the authority.

**Subp. 2. Application fee.** The applicant shall provide to the eligible lender for submission to the authority with the application a check payable to the Minnesota Department of Agriculture in an amount established by the authority under *Minnesota Statutes*, section 41C.12, as an application fee. The fee is not refundable.

**Subp. 3. Volume cap allocation charge.** The applicant must also provide to the eligible lender for submission to the authority with the application, a check payable to the Minnesota Department of Agriculture in the amount determined under *Minnesota Statutes*, section 474A.03, as a volume cap allocation fee. If the application is approved and the authority makes application for a volume cap allocation as described in part 1650.0551, subpart 2, the fee must be delivered to the commissioner of finance in payment of the application charge imposed by *Minnesota Statutes*, chapter 474A. If the application is rejected, the volume cap allocation fee must be returned to the applicant.

**Subp. 4. Use of allocation.** The allocation purchased from the finance department must be used within 90 days. If the allocation expires due to no fault of the authority, the authority may require payment of additional fees to secure a new allocation.

**Subp. 5. Insufficient funds.** If there are insufficient funds to allocate to all applications received, priority must be given in the order of the application number. If the allocation requested exceeds the allocation fund balance, the next application must then be

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## Proposed Rules

allowed to request the allocation. This procedure must be used until the balance of the allocation fund is depleted. Eligible lenders are responsible to verify that an allocation has been secured before closing on their bond.

Subp. 6. **Authority review.** The executive director, or a designee, shall review the information provided and accept or reject the application. If the information provided is not sufficient to make a determination, the executive director, or a designee, shall request additional information from the eligible lender and applicant. The review must include, but is not limited to, whether the loan complies with the act and parts 1650.0501 to 1650.0571. The authority shall notify the applicant and eligible lender whether the application has been approved or rejected. If the application is not approved, a written notice must state the reasons for disapproval.

Subp. 7. **Administrative reconsideration.** If a proposed application is not approved, the applicant or the eligible lender may petition the executive director for an administrative reconsideration. The petition must be in writing and must be sent within 15 business days of the date of the disapproval. The petition must state the petitioner's reasons for disagreeing with the disapproval and may include additional information relevant to the request for reconsideration. Within 15 business days of receiving the petition, the executive director shall send a written response to the petitioner upholding or reversing the original decision and giving the reasons for the decision.

Subp. 8. **Appeal.** A petitioner may appeal the executive director's reconsideration directly to the authority's board, by written notice to the executive director within 15 business days of receiving the executive director's reconsideration decision. The decision of the board is final.

Subp. 9. **Application expiration.** An application that remains inactive for 120 days from the date of the preliminary resolution is considered canceled and the application fee is forfeited.

### 1650.0551 HEARING AND OTHER PROCEDURAL REQUIREMENTS.

Subpart 1. **Hearing and approval requirement.** Under section 147(f) of the code, in order to make the interest payable on a bond excludable from gross income for federal tax purposes, prior to the issuance of the bond the authority or its designated representative must hold a public hearing on the issuance of the bond, and the issuance of the bond must be approved by an "applicable elected representative" of the state, which means, in this case, the governor or another elected official of the state designated by the governor. Notice of the hearing must be published at least 14 days before the hearing in a newspaper of general circulation in the state and where the property being financed is or is to be located. The notice must set forth the date, time, place, and purpose of the hearing; the authority's intention to issue the bond; the maximum principal amount of the bond to be issued; the source of payment of the bond; the purpose for which the proceeds of the bond will be loaned to the borrower; the name of the borrower; and the location of the property being acquired with the proceeds of the loan or where it will be used.

Subp. 2. **Volume cap allocation requirement.** Under section 146 of the code, in order to make the interest payable on a bond excludable from gross income for federal tax purposes, the authority must obtain a volume cap allocation in an amount equal to the amount of the bond, pursuant to the state volume cap allocation law, *Minnesota Statutes*, chapter 474A. In order to obtain a volume cap allocation, the authority must submit an application for it to the state Department of Finance together with a preliminary resolution of the authority approving the loan and the issuance of a bond to fund it, a statement of bond counsel that the proposed bond requires an allocation under *Minnesota Statutes*, chapter 474A, and a statement that the bond is a "qualified small issue bond" within the meaning of section 144 of the code. The authority has no control over whether a volume cap allocation will be received with respect to any volume cap application submitted by it.

Subp. 3. **Executive director authority.** If upon review of a loan application and all supporting documents and other information requested by the authority in connection with the application the executive director determines that the application is in compliance with the program and parts 1650.0501 to 1650.0571, the executive director will:

A. cause a preliminary resolution approving the loan and the issuance of the bond requested by the application to be placed upon the agenda of the next meeting of the authority for consideration by it;

B. establish a date, time, and place of the public hearing required in subpart 1 and cause notice of the hearing to be published, which date must be at least three business days after the meeting of the authority at which the preliminary resolution approving the loan and bond described in the notice will be considered by the authority;

C. conduct, or designate other members of the authority's staff to conduct, the public hearing; and

D. following adoption of the preliminary resolution by the authority, make application for a volume cap allocation as described in subpart 2.

Subp. 4. **Preliminary resolution.** The authority shall consider the adoption of the preliminary resolution described in subpart 3 at its first meeting following approval of an application by the executive director.

Subp. 5. **Public hearing.** A public hearing must be held at the offices of the authority during regular business hours on regular business days. A person appearing in person at the hearing will be allowed ten minutes to present views. A protest may also be made in writing by mailing or faxing it to the authority. The authority is not responsible for delays in delivery of written protests.

The person conducting the hearing shall make a written record of the hearing and all information or views presented at the hearing. The record must be maintained as part of the public records of the authority.

Subp. 6. **Public approval.** Following the public hearing, if no information is presented indicating that the loan to be made and the bond to be issued are not in accordance with the program and parts 1650.0501 to 1650.0571, the executive director shall cause to be prepared and sent to the governor's office, or the office of the elected official of the state designated by the governor, a statement describing each bond or series of bonds it proposes to issue, along with a summary of the public comments received at the hearings. Any information received at the hearing must be presented to the authority at its next meeting, at which the authority shall confirm or take further action on the application in question that may be indicated.

#### **1650.0561 LOAN DOCUMENTS; CLOSING PROCEDURES.**

Subpart 1. **Loan documents.** The executive director shall provide standard forms of all loan documents and closing documents necessary to evidence a bond and related loan transaction to all applicants and prospective lenders. All bond and loan transactions must be done on standard forms, with only insertions and changes necessary to accurately reflect the transaction in question or to assure compliance with section 144 of the code.

Subp. 2. **Lender's responsibility.** The lender must use its own form of additional security documents (mortgage, security agreement, or guarantee) it believes are necessary and appropriate under the particular loan circumstances. These items must be referenced in the bond documents. Any additional requirements not specifically provided for in the bond documents, such as insurance coverage and amounts, must also be added. It is the lender's responsibility to ensure that any security agreements, mortgages, guarantees, or other security documents that the lender requires in a transaction, have been completed and signed, and that any financing statements have been filed, mortgages recorded, or any other necessary steps taken to protect the lender's interests. The authority makes no warranties or representations with respect to the effectiveness, validity, or priority of any liens or security interests, that a lender has, or believes it may have, with respect to a particular loan or bond.

Subp. 3. **Authority's responsibility.** The authority shall by resolution authorize all documents to be executed by it and is responsible for the preparation, execution, and delivery by the borrower and the authority of the authority's loan documents and closing documents; compliance with the procedures in part 1650.0551; the issuance of necessary legal opinions by the authority's bond counsel; the filing with the Internal Revenue Service of all reports and forms required to be filed in connection with the issuance of a bond; and the furnishing of fully executed copies of those items to the borrower and the lender.

Subp. 4. **Origination fee and closing costs.** At the loan closing, the applicant shall deliver to the authority a check payable to the Minnesota Department of Agriculture in an amount sufficient to pay the origination fee as established in *Minnesota Statutes*, section 41C.12. Under no circumstances shall this fee be less than \$200. The authority shall estimate and the borrower shall pay these costs at closing. Loan proceeds may be used to pay closing costs subject to the limitation established by the code, which is described in part 1650.0531, subpart 1, item B, subitem (2).

#### **1650.0571 GENERAL MATTERS.**

Subpart 1. **Forms.** The executive director shall provide forms necessary for administration and implementation of the program. The number and type of forms must be sufficient to safeguard the interests of the authority.

Subp. 2. **Waivers.** The authority or the executive director may waive or vary particular provisions of parts 1650.0501 to 1650.0571 to conform to requirements of the code necessary to make the interest on any bond excludable from gross income of the recipient for federal tax purposes. No waiver may conflict with *Minnesota Statutes*, chapter 41C.

Subp. 3. **Right to audit.** The authority may audit at any time the records of the lender and the borrower relating to a loan and bond to ensure that bond proceeds were used for an eligible purpose by an eligible borrower.

Subp. 4. **Data privacy.** Financial information, including credit reports, financial statements, and net worth calculations received by the authority regarding any loan and the name of each eligible borrower who is the recipient of a loan are private data under *Minnesota Statutes*, chapter 13, and may be disclosed only in accordance with *Minnesota Statutes*, chapter 13. The name of an eligible borrower, the proposed amount of any loan, the purpose of the loan, and the location of the property to be acquired with the loan proceeds or the location where it is to be used must be disclosed as provided in part 1650.0551 and as required by the code in order to make the interest payable on the bond issued to fund the loan excludable from gross income for federal tax purposes.

**REPEALER.** *Minnesota Rules*, parts 1650.0500; 1650.0510; 1650.0520; 1650.0530; 1650.0540; 1650.0550; 1650.0560; and 1650.0570, are repealed.

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## Proposed Rules

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### Department of Agriculture

#### Proposed Permanent Rules Relating to RFA Agricultural Improvement Loans

##### Notice of Intent to Adopt a Rule Without a Public Hearing

The Minnesota Rural Finance Authority (RFA) intends to adopt rules without a public hearing following the procedures set forth in the Administrative Procedures Act sections 14.22-14.28. You have 30 days to submit written comment on the proposed rules and may also submit a written request that a hearing be held on the rules.

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

Carol Milligan, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107: Phone (612) 296-6906, Fax (612) 297-7678.

**Subject of Rules and Statutory Authority.** The proposed rules are about criteria and procedures used by the RFA to administer the agricultural improvement loan program. The program issues bonds to finance agricultural improvement loans. The statutory authority to adopt these rules is *Minnesota Statutes*, section 41B.07. A copy of the proposed rules is published in the *State Register* and attached to this notice as mailed.

**Comments.** You have until 4:30 p.m. *January 25*, 1996, to submit written comment in support of or in opposition to the proposed rules or any subpart of the rules. Your comments 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 25*, 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 request in writing. If a public hearing is required, the department will proceed according to *Minnesota Statutes*, sections 14.131-14.20.

**Modifications.** The proposed rules may be modified as a result of public comment. The modifications must be supported by the data and views submitted to the department and may not result in a substantial change in the proposed rules as attached and 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 from the department contact person. 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.

**Small Business Considerations.** Most of the businesses affected by this rule would be defined as a small business according to *Minnesota Statutes*, section 14.115. Therefore, the rule has been designed to provide time schedules, compliance requirements and performance standards acceptable to small business within the constraints of the law.

**Adoption and Review of the Rules.** 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 that 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 the department contact person listed above.

Dated: 17 November 1995

Jim Boerboom  
Director

##### Rules as Proposed (all new material)

#### AGRICULTURAL IMPROVEMENT LOAN PROGRAM

##### 1650.0601 APPLICABILITY AND PURPOSE.

Subpart 1. **Applicability.** Parts 1650.0601 to 1650.0651 establish the criteria and procedures to be used by the RFA in administering the agricultural improvement loan program authorized by *Minnesota Statutes*, section 41B.043.

Subp. 2. **Purpose.** The purpose of the agricultural improvement loan program and for the issuance of bonds to finance the program is to preserve and develop the state's agricultural resources. This is accomplished by extending credit on real estate security through the purchase of participation interests in first priority mortgage farm real estate loans.

**1650.0611 DEFINITIONS.**

Subpart 1. **Scope.** The definitions in this part apply to parts 1650.0601 to 1650.0651.

Subp. 2. **Agricultural improvements.** "Agricultural improvements" has the meaning given in *Minnesota Statutes*, section 41B.02, subdivision 19.

Subp. 3. **Agricultural improvement loan program or program.** "Agricultural improvement loan program" or "program" means the program authorized by *Minnesota Statutes*, section 41B.043.

Subp. 4. **Agricultural land.** "Agricultural land" means land suitable for use in farming.

Subp. 5. **Applicant.** "Applicant" means a potential borrower who submits an application directly to the RFA for a direct loan or through an eligible lender for a loan participation.

Subp. 6. **Application.** "Application" means an application for a loan under the agricultural improvement loan program in the form provided by the RFA.

Subp. 7. **Assets.** "Assets" means all property, real or personal, tangible or intangible, and all contract rights of value that constitute assets, including cash crops or feed on hand, livestock held for sale, breeding stock, receivable notes, receivables, cash invested in growing crops, cash value of life insurance, machinery and equipment, cars, trucks, farms and other real estate including life estates and personal residences, and the value of a beneficial interest in trusts.

Subp. 8. **Borrower.** "Borrower" means the person or persons liable on a mortgage loan made under the program. A borrower may also be a domestic family farm corporation as defined in *Minnesota Statutes*, section 500.24.

Subp. 9. **Collateral.** "Collateral" means all assets pledged as security for a borrower's obligation under a mortgage loan made under the program, including all assets, guarantees, money, letters of credit, or assignments of collateral or a pledge for a loan on which the lender has a security interest or lien.

Subp. 10. **Direct loan.** "Direct loan" means a loan originated and serviced by the RFA without involvement of an eligible lender.

Subp. 11. **Executive director.** "Executive director" means the executive director of the RFA or any other officer authorized to act on behalf of the board of the RFA or its executive director.

Subp. 12. **Farming.** "Farming" means the cultivation or use of land or land improvements, and personal property for the production of agricultural crops, vegetables, fruit or other horticultural crops, forest products, bees and apiary products, livestock, dairy animals, dairy products, poultry or poultry products, fur-bearing animals, aquaculture, hydroponics, exotic species of plants or animals, or other products related to agriculture. Farming also includes:

A. the use of wetlands, pasture, forest land, wildlife, and homestead and other real property associated with the agricultural use of land; and

B. the practices and facilities needed to conserve soil and water, protect human and animal health, have a safe and efficient operation, and meet local, state, and federal laws and regulations relating to the operation of the farm.

Subp. 13. **Fixtures.** "Fixtures" means an article of personal property that has been affixed or annexed to real estate so that it is regarded as a part of the real property. A thing is considered to be affixed or annexed to real estate if it is attached to it by roots, imbedded in it, permanently resting upon it, or permanently attached to it, as by means of cement, plaster, nails, bolts, or screws.

Subp. 14. **Liabilities.** "Liabilities" means debts or other obligations for which an applicant is responsible, including accounts payable, notes or other indebtedness owed, taxes, rent, amounts owed on real estate contracts or mortgages, judgments, and accrued interest payable.

Subp. 15. **Mortgage loan or loan.** "Mortgage loan" or "loan" means a direct loan from the RFA or loan participation under the program that is secured by a first mortgage on real property.

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Subp. 16. **Net worth.** "Net worth" means the total value of an applicant's assets and the assets of the applicant's spouse and dependents, less the liabilities of the same parties.

Subp. 17. **Real estate.** "Real estate" means land and anything permanently affixed to the land, such as buildings, fences, and things attached to the buildings, such as light fixtures, plumbing, and heating fixtures, or other items that would be personal property if not attached.

Subp. 18. **RFA.** "RFA" means the Rural Finance Authority established by *Minnesota Statutes*, section 41B.025.

### 1650.0621 DIRECT LOANS.

Subpart 1. **Borrower eligibility.** To receive a direct loan under the agricultural improvement loan program, an applicant must meet the criteria in items A to G.

A. The applicant must be a resident of Minnesota or a domestic family farm corporation as defined in *Minnesota Statutes*, section 500.24, subdivision 2.

B. At least one of the applicants must be the principal operator of the farm upon which the agricultural improvements will be located.

C. At least one of the applicants must be actively engaged in farming.

D. The applicant must show the ability to repay the loan.

E. The applicant must show an inability to make the proposed improvements without the availability of financing under parts 1650.0601 to 1650.0651.

F. The applicant's total net worth must not exceed the total net worth established for the basic beginning farmer loan participation program.

G. The applicant must not be a current or previous participant in the RFA Restructure II Program.

#### Subp. 2. **Application and procedures.**

A. An applicant shall complete an application form provided by the RFA and submit it to the RFA along with other information required by the RFA. Financial statements must be dated within 90 days of the application.

B. A personal history letter may be submitted with the application to explain the type of project for which funds will be used, the applicant's background, and the type of farming unit.

C. The applicant must submit with the application the nonrefundable application fee as established in *Minnesota Statutes*, section 41B.043, subdivision 3. The loan origination fee as established in *Minnesota Statutes*, section 41B.043, subdivision 3, must be submitted by the applicant at the closing of the loan. The loan origination fee and other loan closing expenses may be financed with proceeds of the loan. The applicant must also pay all other out-of-pocket costs required to complete the closing of the loan, such as filing fees, mortgage registration, taxes, and appraisal fees. The RFA shall pay its own legal fees.

D. The maximum term of a loan is ten years. The applicant must agree on the loan terms such as interest rate, length of loan, repayment schedule, and prepayment options. The maximum loan amount is \$35,000 and the loan may not have a balloon.

E. The collateral securing the loan must have a value of at least 150 percent of the loan.

F. The applicant shall not begin acquisition or construction of any part of the agricultural improvements before the RFA approves the application. If the application is approved, upon notice to and approval by the RFA, the applicant may move forward with acquisition or construction of the agricultural improvements. A lender may provide interim financing for the agricultural improvements until the closing of the loan. The principal of the interim financing must be paid with the proceeds of the loan.

G. If a change occurs in the information provided by the applicant to the RFA, the applicant shall immediately update and correct that information. Misrepresentation in the application or failure to update any required information is grounds to reject an application, revoke a notice of approval, or refuse to close the loan.

#### Subp. 3. **RFA review, notice, appeal.**

A. The RFA shall accept or reject applications within 45 working days of their receipt. If the documentation is not sufficient to make a determination, the RFA may request additional information to establish creditworthiness and eligibility of the applicant.

B. The RFA shall accept an application if:

(1) the applicant meets all eligibility criteria;

(2) the proposed agricultural improvements meet specifications set by statute and rule;

(3) the applicant demonstrates an ability to repay the mortgage loan and other obligations, based on the financial information submitted with the application; and

(4) the RFA has sufficient funds available to make the loan.

C. The RFA shall promptly notify the applicant in writing whether or not the application is approved. If the application is rejected, the notice must state the reasons. For accepted applications, the notice shall delineate any conditions related to the acceptance of the application.

D. If the application is rejected, the applicant may petition the executive director for reconsideration. The petition must be in writing and must be sent within 15 working days of the RFA's mailing of its notice of rejection. The petition must state the grounds for the appeal and may include additional relevant information. Within 15 working days of receiving the petition, the executive director shall send a written response to the petitioner upholding or reversing the original decision and giving reasons for the decision.

E. After appeal to the executive director, a petitioner may appeal the executive director's decision directly to the RFA board by written notice to the executive director within 15 working days of the executive director's mailing of its notice of rejection. The decision of the board is final.

**Subp. 4. Loan administration, enforcement, inspection.**

A. The RFA shall perform all tasks and functions customarily performed in administering the loans with the degree of care and diligence usually maintained by agricultural real estate lenders. The RFA has custody and control of all loan documents.

B. The RFA shall manage, administer, and enforce the loan, including, without limitation, the right to accelerate the loan on default and to foreclose or otherwise enforce remedies against the borrower.

C. At any time during the term of a loan, the RFA or the state legislative auditor may inspect the collateral during normal business hours.

**1650.0661 LOAN PARTICIPATION.**

**Subpart 1. Borrower eligibility.** To be eligible for assistance through a loan participation under the agricultural improvement loan program, an applicant must meet the criteria in items A to F.

A. The applicant must be a resident of Minnesota or a domestic family farm corporation as defined in *Minnesota Statutes*, section 500.24, subdivision 2.

B. At least one of the applicants must be the principal operator of the farm upon which the agricultural improvement will be located.

C. At least one of the applicants must be actively engaged in farming.

D. The applicant must show the ability to repay the loan.

E. The applicant's total net worth must not exceed the total net worth established for the basic beginning farmer loan participation program.

F. The applicant must not be a current or previous participant in the RFA Restructure II Program.

**Subp. 2. Lender eligibility.**

A. A bank, credit union, or savings association chartered by the state or federal government, a subdivision of the Farm Credit System (Agri Bank), the Federal Deposit Insurance Corporation, or an insurance company, fund, or other financial institution doing business as an agricultural lender in Minnesota may apply to the RFA for certification as an approved lender.

B. Upon a lender's demonstration of its ability to originate and service agricultural real estate loans, the RFA shall designate the lender as an approved lender for purposes of RFA programs.

C. Before offering mortgage loans to the RFA for participation, each approved lender must enter into an RFA master participation agreement. The agreement must specify the relationship between the parties and the terms and conditions of mortgage loans to be made by the lender under the agricultural improvement loan program and offered to the RFA for participation.

**Subp. 3. Application process and offer of participation.**

A. All applications under the program must be in forms provided by the RFA. A lender and an applicant must jointly com-

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## Proposed Rules

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plete and sign an application and prepare all supporting documents identified in the application. Financial statements must be dated within 120 days of the application.

B. The applicant shall not begin acquisition or construction of any part of the agricultural improvements before RFA approval of the application. Upon notice to the lender of approval by the RFA, the applicant may move forward with acquisition or construction of the agricultural improvements.

C. The lender shall complete the initial review of the proposal and determine the creditworthiness of the applicant and the value of the collateral to be used to secure the loan. If the lender agrees to make a mortgage loan to the applicant, the lender and the applicant shall jointly prepare the application and the required loan documents.

D. The lender, as the originator of the mortgage loan, shall present the application and loan documents to the RFA. Presentation of the documents constitutes an offer to sell a participation interest in the loan.

E. The nonrefundable application fee as established in *Minnesota Statutes*, section 41B.043, subdivision 3, must be submitted with the application.

F. The loan must be for a maximum term of ten years. The maximum participation is 45 percent of the loan principal or \$100,000, whichever is less. The loan may have a balloon.

G. The RFA is restricted to participation in loans that do not exceed 80 percent of the appraised value of the real estate offered for collateral. Additional collateral may be required based on the depreciability and saleability of the collateral and creditworthiness of the applicant.

H. If a change occurs in the information provided by the lender to the RFA, the lender shall immediately update and correct that information. Misrepresentation in the application or failure to update any required information is grounds to reject an application, revoke a notice of approval, or refuse to close the loan.

### Subp. 4. RFA review, notice, appeal.

A. Within 30 business days after receipt of a lender's offer, the RFA shall accept or reject the lender's offer to participate in the loan. If the documentation is not sufficient to make a determination, the RFA may request additional information to establish creditworthiness and eligibility of the applicant.

B. The RFA shall accept an application if:

(1) the applicant meets all eligibility criteria;

(2) the applicant demonstrates an ability to repay the mortgage loan and other obligations based on the financial information submitted with the application;

(3) the proposed agricultural improvements meet specifications set by statute and rule; and

(4) the RFA has sufficient funds available to purchase a participation in the loan.

C. The RFA shall promptly notify the lender in writing whether or not the offer is accepted. If the offer is not accepted, the notice must state the reasons.

D. If an offer is rejected, either the lender or the applicant may petition for RFA reconsideration. The petition must be in writing and must be sent within 30 days of the date of the RFA notice. The petition must state the grounds for the appeal, and may include additional relevant information. Within 15 working days of receiving the petition, the executive director shall send a written response to the petitioner upholding or reversing the original decision and giving the reasons for the decision.

E. After administrative appeal, a petitioner may appeal the executive director decision directly to the RFA board by written notice to the director within 15 days of receiving the director's reconsideration decision. The decision of the board is final.

### Subp. 5. Loan closing, purchase of participation, and loan management.

A. Upon receiving notification of authority acceptance, the lender shall close the mortgage loan. The lender must record and cross-reference all documents relating to the loan, including the RFA note and loan agreement. The lender must notify the RFA that the loan is closed and recorded by signing the lender certification section and returning the original RFA application and copies of the recorded documents and final title opinion to the RFA.

B. Within ten business days of receipt of written notice under item A that the mortgage loan is closed and recorded, the RFA shall initiate payment to the lender for the RFA's participation interest in the loan.

C. Within five business days after the receipt of finally collected funds, the lender shall complete and return a participation certificate provided by the RFA witnessing the RFA's undivided pro rata interest in the agricultural improvement mortgage loan.

D. The lender shall manage the loan, including the RFA participation interest, with the degree of care and diligence usually maintained by agricultural real estate lenders. The lender shall have custody and control of all loan documents except the original

application, which must be kept by the RFA. The lender shall manage, administer, and enforce the loan documents in the lender's own name and also on behalf of itself and the RFA, including, without limitation, the right to accelerate a mortgage loan on default and to foreclose or otherwise enforce remedies against the borrower.

E. The lender shall promptly notify the RFA of occurrences that substantially affect the security, collection, or enforcement of a mortgage loan.

F. The lender shall obtain the prior written consent of the borrower and the RFA before:

(1) making or consenting to a release, substitution, or exchange of collateral that reduces the aggregate value of the collateral;

(2) waiving a claim against the borrower or a guarantor, surety, or obligor in connection with the indebtedness; or

(3) modifying or waiving a term of the notes or related instruments evidencing or securing the first mortgage loan.

**Subp. 6. Participation repurchase.**

A. An originating lender is under no obligation to repurchase RFA participation interest in an agricultural improvement mortgage loan except as provided in this subpart.

B. A lender may, at its option and upon written approval by the RFA, repurchase RFA participation interest at any time.

C. A lender shall repurchase the RFA participation interest when the first mortgage loan is paid in full or refinanced.

D. A lender shall repurchase the RFA participation interest if the lender has made misrepresentations or fails to perform its obligations under the participation agreement, has received written notice from the RFA, and has not corrected the representation or performance under the notice.

E. A repurchase must be for the principal balance of the RFA participation plus accrued interest and any penalties or costs incurred by the RFA to secure repurchase.

**Subp. 7. Review of loan and collateral.**

A. At any time during the term of an agricultural improvement mortgage loan, the RFA or the state legislative auditor may inspect the books, records, documents, and accounting practices of the lender relative to the loan to determine compliance with the terms and conditions of the loan and the participation agreement. An inspection must be made during the lender's normal business hours. The lender shall allow the RFA to copy any documents relating to the mortgage loan and the RFA participation.

B. The lender and the RFA may physically inspect the collateral securing the mortgage loan upon notice to the borrower. An inspection must be conducted at a reasonable time.

**REPEALER.** *Minnesota Rules*, parts 1650.0600; 1650.0610; 1650.0620; 1650.0630; 1650.0640; 1650.0650; and 1650.0660, are repealed.

## Department of Agriculture

### Proposed Permanent Rules Relating to RFA Seller-Sponsored Loans

#### Notice of Intent to Adopt a Rule Without a Public Hearing

The Minnesota Rural Finance Authority (RFA) intends to adopt rules without a public hearing following the procedures set forth in the Administrative Procedures Act sections 14.22-14.28. You have 30 days to submit written comment on the proposed rules and may also submit a written request that a hearing be held on the rules.

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

Carol Milligan, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107: Phone (612) 296-6906, Fax (612) 297-7678.

**Subject of Rules and Statutory Authority.** The proposed rules are about criteria and procedures used by the RFA to administer

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## Proposed Rules

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the seller-sponsored loan participation program. The program issues bonds to finance agricultural improvement loans. The statutory authority to adopt these rules is *Minnesota Statutes*, section 41B.07. A copy of the proposed rules is published in the *State Register* and attached to this notice as mailed.

**Comments.** You have until 4:30 p.m. *January 25, 1996*, to submit written comment in support of or in opposition to the proposed rules or any subpart of the rules. Your comments 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 25, 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 request in writing. If a public hearing is required, the department will proceed according to *Minnesota Statutes*, sections 14.131-14.20.

**Modifications.** The proposed rules may be modified as a result of public comment. The modifications must be supported by the data and views submitted to the department and may not result in a substantial change in the proposed rules as attached and 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 from the department contact person. 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.

**Small Business Considerations.** Most of the businesses affected by this rule would be defined as a small business according to *Minnesota Statutes*, section 14.115. Therefore, the rule has been designed to provide time schedules, compliance requirements and performance standards acceptable to small business within the constraints of the law.

**Adoption and Review of the Rules.** 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 that 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 the department contact person listed above.

Dated: 17 November 1995

Jim Boerboom  
Director

### Rules as Proposed (all new material)

#### SELLER-SPONSORED LOAN PARTICIPATION PROGRAM

##### 1651.0011 APPLICABILITY AND PURPOSE.

Subpart 1. **Applicability.** Parts 1651.0011 to 1651.0101 establish the criteria and procedures to be used by the RFA in administering the seller-sponsored loan participation program authorized by *Minnesota Statutes*, chapter 41B.

Subp. 2. **Purpose.** The purpose of the RFA seller-sponsored loan participation program and for the issuance of bonds to finance or provide security for the program is to preserve and develop the state's agricultural resources. This is accomplished by extending credit on real estate security through the purchase of participation interests in first priority mortgage farm real estate loans. Loans to persons entering or reentering farming and meeting the eligibility criteria in this chapter are eligible for participation. Under this program, the eligible seller of a farm must partially finance the sale of the farm through a loan to an eligible borrower. An eligible lender and the state, acting through the RFA, shall jointly provide the remainder of the financing needed by the borrower.

##### 1651.0021 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part apply to parts 1651.0011 to 1651.0101.

Subp. 2. **Agricultural purposes or farming.** "Agricultural purposes" or "farming" means the cultivation or use of land or land improvements and personal property for the production of agricultural crops, vegetables, fruit, or other horticultural crops, forest products, bees and apiary products, livestock, dairy animals, dairy products, poultry or poultry products, fur-bearing animals, aquaculture, hydroponics, exotic species of plants or animals, or other agriculturally related products. "Agricultural purposes" and "farming" include:

A. the use of wetlands, pasture, forest land, wildlife, and homestead and other real property associated with the agricultural use of land; and

B. the practices and facilities needed to conserve soil and water, protect human and animal health, have a safe and efficient operation, and meet local, state, and federal laws and regulations relating to the operation of a farm.

Subp. 3. **Applicant.** "Applicant" means a potential borrower who submits an application to the RFA through an eligible lender.

Subp. 4. **Application.** "Application" means the application for the seller-sponsored loan participation in the form provided by the RFA.

Subp. 5. **Assets.** "Assets" mean property, real or personal, tangible or intangible, and all contract rights of value that constitute assets, including cash crops or feed on hand, livestock held for sale, breeding stock, marketable bonds and securities, securities not readily marketable, accounts receivable, notes receivable, cash invested in growing crops, cash value of life insurance, machinery and equipment, cars and trucks, farm and other real estate including life estates and personal residence, and the value of a beneficial interest in trusts.

Subp. 6. **Borrower.** "Borrower" means the person or persons liable on a first mortgage loan made under this program. A borrower may also be a domestic family farm corporation as defined in *Minnesota Statutes*, section 500.24.

Subp. 7. **Collateral.** "Collateral" means all assets pledged as security for a borrower's obligation under a first mortgage loan made under this program. It includes all instruments, personal and real property, guaranties, money, letters of credit, and assignments and pledges of money or property for or on which the lender has a security interest or lien.

Subp. 8. **Executive Director.** "Executive director" means the executive director of the RFA or any other officer authorized to act on behalf of the RFA board or its executive director.

Subp. 9. **First mortgage loan.** "First mortgage loan" means a loan secured by a first priority real estate mortgage on a farm, made by an eligible lender to an eligible borrower for the purchase of the farm, that is offered to the RFA for participation under the seller-sponsored program, and in which the RFA purchases a participation.

Subp. 10. **Liabilities.** "Liabilities" means the debts or other obligations for which an applicant is responsible, including: accounts payable, notes or other indebtedness, taxes, rent, amounts owed on real estate contracts or mortgages, judgments, and accrued interest payable.

Subp. 11. **Net worth.** "Net worth" means the total value of an applicant's assets and the assets of the applicant's spouse and dependents, less the liabilities of the same parties.

Subp. 12. **Note and loan agreement.** "Note and loan agreement" means the form provided by the RFA that is signed by a borrower evidencing the terms of the first mortgage loan and the borrower's obligation to repay the loan.

Subp. 13. **Participation agreement.** "Participation agreement" means the document entered into between the RFA and an approved lender that establishes the relationship between the parties and the terms and conditions of first mortgage loans to be offered to the RFA for participation under the seller-sponsored loan participation program.

Subp. 14. **RFA.** "RFA" means the Rural Finance Authority established by *Minnesota Statutes*, section 41B.025.

Subp. 15. **RFA participation.** "RFA participation" means the RFA's undivided interest in the principal of a first mortgage loan, all payments arising under the loan, the first security real estate mortgage securing the loan, any other collateral pledged to secure the loan, and the first mortgage loan documents.

Subp. 16. **RFA seller-sponsored loan participation program; seller-sponsored program; or seller-assisted loan participation program.** "RFA seller-sponsored loan participation program," "seller-sponsored program," or "seller-assisted loan participation program" means the RFA program for the purchase of participation interests in first security mortgage real estate loans made under parts 1651.0011 to 1651.0101.

Subp. 17. **Seller.** "Seller" means the person or persons selling a farm under the seller-sponsored program.

Subp. 18. **Seller-sponsor's loan commitment form or seller-assisted loan commitment form.** "Seller-sponsor's loan commitment form" or "seller-assisted loan commitment form" means the form provided by the RFA that is signed by a seller evidencing

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## Proposed Rules

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the seller's understanding of the seller-sponsored program, its rules, and the seller's commitment to make a loan to an applicant and to subordinate the seller's loan to the first mortgage loan made by an eligible lender.

### 1651.0031 SELLER ELIGIBILITY.

To qualify as an eligible seller under the program, a seller must meet the following criteria:

- A. a seller must be a natural person, a partnership, or a family farm corporation as defined in *Minnesota Statutes*, section 500.24, selling a farm located within Minnesota;
- B. the seller must not be a current or former participant in the family farm security program under *Minnesota Statutes*, chapter 41;
- C. the seller must complete a seller-assisted loan commitment form certifying that the seller will partially finance the purchase of the farm property by making a loan to the borrower;
- D. the seller's loan to the borrower must be for the additional required financing necessary to complete the transaction after the down payment, if any;
- E. the seller's financing made to the borrower must be subordinated to the first mortgage loan of the lender in which the RFA is a participant; and
- F. the seller must disclose all of the terms and conditions of the seller-assisted sale in a written purchase agreement to be given to the lender at the time of application.

### 1651.0041 BORROWER ELIGIBILITY.

Subpart 1. **Criteria.** To be eligible for assistance under the seller-sponsored program, all applicants must meet the criteria in subpart 2. Applicants must also meet the requirements of either subpart 3 or 4.

Subp. 2. **General eligibility criteria.** Each applicant must:

- A. be a resident of Minnesota;
- B. certify that the applicant or one of the applicants will be the principal operator of the farm and will make farming their principal occupation, and that the farm being purchased will be used for agricultural purposes only;
- C. not be a current or previous participant in the family farm security program under *Minnesota Statutes*, chapter 41;
- D. certify that the applicant is eligible for the program;
- E. submit the correct fees as established in *Minnesota Statutes*, section 41B.03, subdivision 6; and
- F. not be a current or previous participant in the RFA Restructure II Program.

Subp. 3. **Beginning farmer criteria.** In addition to the requirements of subpart 2, a beginning farmer applicant must:

- A. have sufficient education, training, or experience to succeed in the type of farming to be undertaken;
- B. have a financial need for the loan and the ability to repay the first mortgage loan;
- C. agree to enroll and continue in a farm business management program approved by the commissioner of agriculture in accordance with *Minnesota Statutes*, section 41B.03, subdivision 3, paragraph (a), clause (7), for the first five years of the loan, if an approved program is available within 45 miles from the borrower's residence;
- D. agree to file a soil and water conservation plan approved by the soil conservation service in the county where the land is located; and
- E. have a total net worth not to exceed the amount established pursuant to *Minnesota Statutes*, section 41B.03, subdivision 3, the current amount of which is available from the RFA office.

Subp. 4. **Reentry farmer criteria.** In addition to the requirements of subpart 2, a reentry farmer applicant must:

- A. fulfill the criteria in subpart 3, items A to D;
- B. have a total net worth not to exceed the amount established pursuant to *Minnesota Statutes*, section 41B.03, subdivision 3, excluding the value of the applicant's residential structure;
- C. have previously owned and operated a farm; and
- D. not currently own any real estate that is used for an agricultural purpose other than a homestead as defined by *Minnesota Statutes*, chapter 510.

### 1651.0051 LENDER ELIGIBILITY.

Subpart 1. **Statutory eligibility.** A bank, credit union, or savings association chartered by the state or federal government, a sub-

division of the Farm Credit System (Agri Bank), the Federal Deposit Insurance Corporation, or an insurance company, fund, or other financial institution doing business as an agricultural lender within the state may apply to the RFA for certification as an approved lender.

Subp. 2. **Approval.** Upon a lender's demonstration of its ability to originate and service agricultural real estate loans, the RFA shall designate it as an approved lender for purposes of RFA programs.

Subp. 3. **Participation agreement.** Before offering first mortgage loans to the RFA for participation, each approved lender must enter into an RFA participation agreement. The agreement must specify the contractual relationship between the parties and the terms and conditions of first mortgage loans to be made by the lender under the seller-sponsored program and offered to the RFA for participation.

#### **1651.0061 APPLICATION PROCESS AND OFFER OF PARTICIPATION.**

Subpart 1. **Request for a first mortgage loan.** A sponsoring seller and an applicant must jointly present an initial proposal to an approved lender. The proposal must include a signed and dated purchase agreement and a completed seller-sponsor's loan commitment form evidencing the seller's intent to make a loan to the applicant and agreeing to subordinate their financing as required under the program.

Subp. 2. **Lender determination.** The lender shall review the proposal and determine the creditworthiness of the applicant and the value of the collateral to be used to secure the loan. If the lender agrees to make a first mortgage loan to the applicant, the lender and the applicant shall jointly prepare an application and the required loan documents described in the application and master participation agreement.

Subp. 3. **Offer.** The lender, as the originator of the first mortgage loan, shall present the application and loan documents to the RFA. Presentation of the documents constitutes an offer to sell a participation interest in the loan.

#### **1651.0071 RFA REVIEW, NOTICE, AND APPEAL.**

Subpart 1. **RFA review.** The RFA shall accept or reject a lender's offer to participate in the loan within 30 business days after receipt of the lender's offer. If the documentation is not sufficient to make a determination, the RFA may request additional information to establish creditworthiness and eligibility of the applicant.

Subp. 2. **RFA acceptance.** The RFA shall accept an offer if:

- A. the seller is eligible;
- B. the applicant is eligible;
- C. the applicant demonstrates an ability to repay the first mortgage loan and other obligations based on the financial information submitted under part 1651.0061, subpart 2;
- D. the sale price of the property is not substantially in excess of its fair market value; and
- E. the RFA has sufficient funds available to purchase a participation in the loan.

Subp. 3. **RFA notice.** The RFA shall promptly notify the lender in writing whether or not the offer is accepted. If the offer is not accepted, the notice must state the reasons.

Subp. 4. **Administrative appeal.** If an offer is rejected, either the lender or the applicant may petition for RFA reconsideration. The petition must be in writing and must be sent within 30 working days of the date of the RFA notice. The petition must state the grounds for the appeal, and may include additional relevant information. Within 15 working days of receiving the petition, the executive director shall send a written response to the petitioner upholding or reversing the original decision and giving the reasons for the decision.

Subp. 5. **Formal appeal.** After administrative appeal, a petitioner may appeal the executive director's decision directly to the RFA board by written notice to the executive director within 15 days of receiving the executive director's reconsideration decision. The decision of the board is final.

#### **1651.0081 LOAN CLOSING, PURCHASE OF PARTICIPATION, AND LOAN MANAGEMENT.**

Subpart 1. **Closing.** Upon receiving notification of RFA acceptance, the lender shall close the first mortgage loan. At the time of closing, the sponsoring seller must present all legal documents relating to the sale, including the seller's proposed financing for the seller's loan to the applicant. The lender must record and cross-reference all documents relating to the loan, including the RFA note

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## Proposed Rules

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and loan agreement. The lender is not responsible for preparation of the seller's financing, but must record the seller's financing to ensure that it is recorded in a secondary security position. The lender must notify the RFA that the loan is closed and recorded by certifying and submitting the original RFA application and copies of the recorded documents and final title opinion to the RFA.

Subp. 2. **Payment.** Within ten business days of receipt of written notice under subpart 1 that the first mortgage loan is closed and recorded, the RFA shall initiate payment to the lender for the RFA's participation interest in the loan.

Subp. 3. **Participation certificate.** Within five working days after receipt of finally collected funds, the lender shall complete and return a participation certificate as provided by the RFA witnessing the RFA's undivided pro rata interest in the seller-sponsored first mortgage loan.

Subp. 4. **Loan management.** The lender shall manage the first mortgage loan, including the RFA participation interest, with the degree of care and diligence usually maintained by agricultural real estate lenders. The lender shall have custody and control of all loan documents except the original application which must be retained by the RFA.

The lender shall manage, administer, and enforce the loan documents in its own name and also on behalf of itself and the RFA, including, without limitation, the right to accelerate a seller-sponsored first mortgage loan on default and to foreclose or otherwise enforce remedies against the borrower.

Subp. 5. **Lender notification.** The lender shall promptly notify the RFA of occurrences that substantially affect the security, collection, or enforcement of any first mortgage loan. The lender shall also notify the seller of any defaults that remain unresolved over 45 days.

Subp. 6. **Prior written consent.** The lender shall obtain the prior written consent of the borrower and the RFA before:

- A. making or consenting to a release, substitution, or exchange of collateral that reduces the aggregate value of the collateral;
- B. waiving a claim against the borrower or a guarantor, surety, or obligor in connection with the indebtedness; or
- C. modifying or waiving a term of the notes or related instruments evidencing or securing the first mortgage loan.

Subp. 7. **Limitations on responsibility.** Neither the lender nor the RFA is in any way responsible for the administration of the seller-sponsor's loan, or the protection of any of the seller's legal rights.

### 1651.0091 PARTICIPATION REPURCHASE.

A. An originating lender is under no obligation to repurchase any RFA participation interest in a seller-sponsored first mortgage loan except as provided in this part.

B. A lender may, at its option and upon written approval by the RFA, repurchase a RFA participation interest at any time.

C. A lender must repurchase the RFA participation interest whenever the first mortgage loan is paid in full or refinanced.

D. A lender must repurchase the RFA participation interest if the lender has made misrepresentations or fails to perform its obligations under the participation agreement, has received written notice from the RFA, and has not corrected the representation or performance under the notice.

E. Any repurchase must be for the principal balance of the RFA participation plus accrued interest and any penalties or costs incurred by the RFA to secure repurchase.

### 1651.0101 REVIEW OF LOAN AND COLLATERAL.

Subpart 1. **Inspection.** At any time during the term of a seller-sponsored first mortgage loan, the RFA or the state legislative auditor may inspect the books, records, documents, and accounting practices of the lender relative to the loan to determine compliance with the terms and conditions of the loan and the participation agreement. Inspections must be during the lender's normal business hours. The lender must allow the RFA to copy any documents relating to the first mortgage loan.

Subp. 2. **Collateral.** The lender and the RFA may physically inspect the collateral securing the first mortgage loan upon notice to the borrower. An inspection must be conducted at a reasonable time.

**REPEALER.** *Minnesota Rules*, parts 1651.0010; 1651.0020; 1651.0030; 1651.0040; 1651.0050; 1651.0060; 1651.0070; 1651.0080; 1651.0090; and 1651.0100, are repealed.

## Department of Agriculture

### Proposed Permanent Rules Relating to RFA Restructure Participation Program

#### Notice of Intent to Adopt a Rule Without a Public Hearing

The Minnesota Rural Finance Authority (RFA) intends to adopt rules without a public hearing following the procedures set forth in the Administrative Procedures Act sections 14.22-14.28. You have 30 days to submit written comment on the proposed rules and may also submit a written request that a hearing be held on the rules.

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

Carol Milligan, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107: Phone (612) 296-6906, Fax (612) 297-7678.

**Subject of Rules and Statutory Authority.** The proposed rules are about criteria and procedures used by the RFA to administer the restructure participation program. The statutory authority to adopt these rules is *Minnesota Statutes*, section 41B.07. A copy of the proposed rules is published in the *State Register* and attached to this notice as mailed.

**Comments.** You have until 4:30 p.m. *January 25, 1996*, to submit written comment in support of or in opposition to the proposed rules or any subpart of the rules. Your comments 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 25, 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 request in writing. If a public hearing is required, the department will proceed according to *Minnesota Statutes*, sections 14.131-14.20.

**Modifications.** The proposed rules may be modified as a result of public comment. The modifications must be supported by the data and views submitted to the department and may not result in a substantial change in the proposed rules as attached and 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 from the department contact person. 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.

**Small Business Considerations.** Most of the businesses affected by this rule would be defined as a small business according to *Minnesota Statutes*, section 14.115. Therefore, the rule has been designed to provide time schedules, compliance requirements and performance standards acceptable to small business within the constraints of the law.

**Adoption and Review of the Rules.** 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 that 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 the department contact person listed above.

Dated: 17 November 1995

Jim Boerboom  
Director

**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

## Rules as Proposed (all new material)

### CHAPTER 1653 RURAL FINANCE AUTHORITY RESTRUCTURE II PROGRAM

#### 1653.0011 APPLICABILITY AND PURPOSE.

Subpart 1. **Applicability.** Parts 1653.0011 to 1653.0111 establish the criteria and procedures to be used by the RFA in administering the restructure participation program authorized by *Minnesota Statutes*, section 41B.04.

Subp. 2. **Purpose.** The purpose of the RFA restructure II program and the issuance of bonds to finance or provide security for the program is to preserve and develop the state's agricultural resources. This is accomplished by extending credit on real estate security through the purchase of participation interests in first priority mortgage farm real estate loans.

#### 1653.0021 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part apply to parts 1653.0011 to 1653.0111 and the master participation agreement.

Subp. 2. **Agricultural purposes.** "Agricultural purposes" means the cultivation or use of land, land improvements, and personal property for the production of agricultural crops, vegetables, fruit or other horticultural crops, forest products, bees and apiary products, livestock, dairy animals, dairy products, poultry or poultry products, fur-bearing animals, aquaculture, hydroponics, exotic species of plants or animals, and other agriculturally related products. "Agricultural purposes" also includes the use of wetlands, pasture, forest land, wildlife, and homestead and other real property associated with the agricultural use of land. "Agricultural purposes" also includes the practices and facilities needed to conserve soil and water, protect human and animal health, have a safe and efficient operation, and meet local, state, and federal laws, rules, and regulations relating to the operation of a farm.

Subp. 3. **Amortized loan.** "Amortized loan" means a loan that will be fully paid, including all principal and interest, in a specific period of time.

Subp. 4. **Annual expenses.** "Annual expenses" means the total of all expenses incurred during the year plus an estimate of family living expenses.

Subp. 5. **Annual gross income.** "Annual gross income" means the total of all income earned on or off the farm for the calendar year.

Subp. 6. **Applicant.** "Applicant" means a potential borrower who submits an application to the RFA through an eligible lender.

Subp. 7. **Application.** "Application" means the application for the restructure loan participation in the form provided by the RFA.

Subp. 8. **Appraised value.** "Appraised value" means the dollar value placed on the farm being offered for collateral for a first mortgage loan.

Subp. 9. **Assets.** "Assets" means property, real or personal, tangible or intangible, and all valuable contract rights, including cash crops or feed on hand, livestock held for sale, breeding stock, marketable bonds and securities, securities not readily marketable, accounts receivable, notes receivable, cash invested in growing crops, cash value of life insurance, machinery and equipment, cars, trucks, farm and other real estate including life estates and personal residence, and the value of a beneficial interest in trusts.

Subp. 10. **Borrower.** "Borrower" means the person or persons liable on a first mortgage participation made under this program. "Borrower" includes a domestic family farm corporation as defined in *Minnesota Statutes*, section 500.24.

Subp. 11. **Debt-to-asset ratio.** "Debt-to-asset ratio" means the total outstanding liabilities of an applicant divided by the total outstanding assets of the applicant expressed as a percentage.

Subp. 12. **Liabilities.** "Liabilities" means debts or other obligations for which an applicant is responsible, including accounts payable, notes or other indebtedness owed, taxes, rent, amount owed on real estate contracts or mortgages, judgments, and accrued interest payable.

Subp. 13. **Net worth.** "Net worth" means the total value of an applicant's assets and the assets of the applicant's spouse and dependents, less the liabilities of the same parties.

Subp. 14. **Note and loan agreement.** "Note and loan agreement" means the form provided by the RFA that is signed by a borrower evidencing the terms of the first mortgage loan and the borrower's obligation to repay the loan.

Subp. 15. **Participation agreement.** "Participation agreement" means the document entered into between the RFA and an approved lender that establishes the relationship between the parties and the terms and conditions of first mortgage loans to be offered to the RFA for participation under the RFA restructure II program.

Subp. 16. **Restructure loan.** "Restructure loan" means a first mortgage loan made by an eligible lender to an eligible borrower, offered to the RFA for participation, and in which the RFA has purchased a participation.

Subp. 17. **RFA.** "RFA" means the Rural Finance Authority established by *Minnesota Statutes*, section 41B.025.

Subp. 18. **RFA participation.** "RFA participation" means the RFA's undivided interest in the principal of a first mortgage loan, all rights and interests in the loan documents, all payments arising under the loan, the first security real estate mortgage securing the loan, and any other collateral pledged to secure the loan.

Subp. 19. **RFA restructure II program.** "RFA restructure II program" means the RFA program redefined on or after July 1, 1993, for the purchase of a participation interest in first mortgage real estate loans made to eligible borrowers so that the borrowers may reorganize their agricultural debt.

#### **1653.0031 BORROWER ELIGIBILITY.**

Subpart 1. **Criteria.** To be eligible for assistance under the RFA restructure II program, an applicant must meet the criteria in subparts 2 and 3.

Subp. 2. **General requirements.** Each applicant must:

- A. be a resident of Minnesota;
- B. certify that the applicant or one of the applicants will be the principal operator of the farm and will make farming his or her principal occupation, and that the debt being reorganized is of an agricultural nature;
- C. not be a current or previous participant in an RFA farm debt reorganization program;
- D. have a net worth of \$400,000 or less;
- E. have sufficient education, training, or experience to succeed in the type of farming to be undertaken;
- F. have a financial need for the loan and the ability to repay the first mortgage loan;
- G. agree to visit the local soil and water conservation service office in the county where the land is located to inquire about the soil and water conservation needs for the identified farm property; and
- H. certify that the applicant is eligible for the program.

Subp. 3. **Restructure farmer requirements.** Each applicant must:

- A. have received at least 50 percent of average annual gross income from farming for the past three years;
- B. have a debt-to-asset ratio greater than 50 percent;
- C. have projected annual expenses that do not exceed 95 percent of projected annual income; and
- D. demonstrate difficulty in paying the applicant's debt without reorganization.

#### **1653.0041 COLLATERAL REQUIREMENTS.**

The RFA may participate only in loans that do not exceed 80 percent of the appraised value of the real estate offered for collateral. Additional collateral may be required based on the depreciability and saleability of the collateral and creditworthiness of the applicant.

#### **1653.0051 APPRAISAL.**

The appraisal to determine appraised value must be completed by a person with knowledge of agricultural appraising that is approved by both the lender and the RFA. An appraisal must be completed in a manner approved by the appraisal industry and must contain comparable sales information. If comparable sales information is not available, either the cost approach or the income approach must be used.

#### **1653.0061 LENDER ELIGIBILITY.**

Subpart 1. **Statutory eligibility.** Any bank, credit union, or savings association chartered by the state or federal government, a subdivision of the farm credit system (Agri Bank), the Federal Deposit Insurance Corporation, or any insurance company, fund, or other financial institution doing business as an agricultural lender within the state may apply to the RFA for certification as an approved lender.

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## Proposed Rules

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Subp. 2. **Approval.** If a lender demonstrates its ability to originate and service agricultural real estate loans, the RFA shall designate the lender as an approved lender for purposes of RFA programs.

Subp. 3. **Participation agreement.** Before offering first mortgage loans to the RFA for participation, each approved lender must enter into an RFA master participation agreement specifying the relationship between the parties and the terms and conditions of first mortgage loans to be made by the lender under the restructure participation program and offered to the RFA for participation.

### 1653.0071 APPLICATION PROCESS AND OFFER OF PARTICIPATION.

Subpart 1. **Request for a first mortgage loan.** A lender and an applicant must jointly complete and sign an application and prepare all supporting documents identified in the application.

Subp. 2. **Lender determination.** The lender shall complete the initial review of the applicant's proposal. The lender shall determine the creditworthiness of the applicant and the value of the collateral to be used to secure the loan. If the lender agrees to make a first mortgage loan to the applicant, the lender and the applicant shall jointly prepare the application and the required loan documents.

Subp. 3. **Offer.** The lender, as the originator of the first mortgage loan, shall present a completed application and loan documents to the RFA. Presentation of the documents constitutes an offer to sell a participation interest in the loan.

### 1653.0081 RFA REVIEW, NOTICE, APPEAL.

Subpart 1. **RFA review.** Within 30 days after receipt of a lender's offer the RFA shall accept or reject the lender's offer to participate in the loan. If the documentation is not sufficient to make a determination, the RFA may request additional information to establish the creditworthiness and eligibility of an applicant.

Subp. 2. **RFA acceptance.** The RFA shall accept applications if:

- A. the applicant meets all eligibility criteria;
- B. the applicant demonstrates an ability to repay the first mortgage loan and other obligations;
- C. collateral offered as security for the first mortgage real estate loan is sufficient to protect the state's interests; and
- D. the RFA has sufficient funds available to purchase a participation in the loan.

Subp. 3. **RFA notice.** The RFA shall notify the lender in writing whether or not an offer is accepted. If the offer is not accepted, the notice must state the reasons.

Subp. 4. **Administrative appeal.** If an offer is rejected, either the lender or the applicant may petition for RFA reconsideration. The petition must be in writing and must be sent within 30 working days of the date of the RFA notice. The petition must state the grounds for the appeal, and may include additional relevant information. Within 15 working days of receiving the petition, the RFA program director shall send a written response to the petitioner upholding or reversing the original decision and giving the reasons for the decision.

Subp. 5. **Formal appeal.** After administrative appeal, a petitioner may appeal the program director's decision directly to the RFA board by written notice to the director within 15 days of receiving the director's reconsideration decision. The decision of the board is final.

### 1653.0091 LOAN CLOSING, PURCHASE OF PARTICIPATION, AND LOAN MANAGEMENT.

Subpart 1. **Closing.** Upon receiving notification of RFA acceptance, the lender shall close the first mortgage loan. The lender must record security documents and may cross-reference all documents relating to the loan including the RFA note and loan agreement. The lender must notify the RFA that the loan is closed and recorded by certifying and submitting the original RFA application, and submit a copy of the note and loan agreement, copies of recorded documents, and the final title opinion.

Subp. 2. **Payment.** Within ten business days of receipt of written notice under subpart 1 that the first mortgage loan is closed and recorded, the RFA shall initiate payment to the lender for the RFA's participation interest in the loan.

Subp. 3. **Participation certificate.** Within five business days after the receipt of finally collected funds, the lender shall complete and return a participation certificate as provided by the RFA witnessing the RFA's undivided pro rata interest in the first mortgage loan.

Subp. 4. **Loan management.** The lender shall manage the first mortgage loan, including the RFA participation interest, with the degree of care and diligence usually maintained by agricultural real estate lenders. The lender shall have custody and control of all loan documents except the original application, which must be kept by the RFA. The lender shall manage, administer, and enforce the loan documents in its own name and also on behalf of itself and the RFA, including, without limitation, the right to accelerate first mortgage loans on default and to foreclose or otherwise enforce remedies against the borrower.

Subp. 5. **Lender notification.** The lender shall promptly notify the RFA of occurrences that substantially affect the security, collection, or enforcement of any first mortgage loan.

Subp. 6. **Prior written consent.** The lender shall obtain the prior written consent of the borrower and the RFA before:

- A. making or consenting to a release, substitution, or exchange of collateral that reduces the aggregate value of the collateral;
- B. waiving a claim against the borrower or a guarantor, surety, or obligor in connection with the indebtedness; or
- C. modifying or waiving a term of the notes or related instruments evidencing or securing the first mortgage loan.

#### **1653.0101 PARTICIPATION REPURCHASE.**

An originating lender is under no obligation to repurchase an RFA participation interest in a restructure first mortgage loan covered by parts 1653.0011 to 1653.0111 except as provided in this part.

A lender may, at its option and upon written approval by the RFA, repurchase an RFA participation interest at any time.

A lender must repurchase the RFA participation interest whenever the first mortgage loan is paid in full or refinanced.

A lender must repurchase the RFA participation interest if the lender:

- A. has made misrepresentations or is aware that the applicant has made them or fails to perform its obligations under the participation agreement;
- B. has received written notice from the RFA; and
- C. has not corrected the representation or performance under the notice.

A repurchase under this part must be for the principal balance of the RFA participation plus accrued interest and any penalties or costs incurred by the RFA to secure repurchase.

#### **1653.0111 REVIEW OF LOAN AND COLLATERAL.**

Subpart 1. **Inspection.** At any time during the term of a restructure first mortgage loan, the RFA or the state legislative auditor may inspect the books, records, documents, and accounting practices of the lender relative to the loan to determine compliance with the terms and conditions of the loan and the participation agreement. An inspection must be during the lender's normal business hours. The lender must allow the RFA to copy any documents relating to the first mortgage loan and the RFA participation.

Subp. 2. **Collateral.** The lender and the RFA may physically inspect the collateral securing the first mortgage loan upon notice to the borrower. An inspection must be conducted at a reasonable time.

**REPEALER.** *Minnesota Rules*, parts 1653.0010; 1653.0020; 1653.0030; 1653.0040; 1653.0050; 1653.0060; 1653.0070; 1653.0080; 1653.0090; 1653.0100; and 1653.0110, are repealed.

## **Department of Agriculture**

### **Proposed Permanent Rules Relating to RFA Livestock Expansion Loan Program**

#### **Notice of Intent to Adopt a Rule Without a Public Hearing**

The Minnesota Rural Finance Authority (RFA) intends to adopt rules without a public hearing following the procedures set forth in the Administrative Procedures Act sections 14.22-14.28. You have 30 days to submit written comment on the proposed rules and may also submit a written request that a hearing be held on the rules.

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

Carol Milligan, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107: Phone (612) 296-6906, Fax (612) 297-7678.

**Subject of Rules and Statutory Authority.** The proposed rules are about criteria and procedures used by the RFA to administer the Livestock Expansion Loan Program. The statutory authority to adopt these rules is *Minnesota Statutes*, section 41B.07. A copy of the proposed rules is published in the *State Register* and attached to this notice as mailed.

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## Proposed Rules

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**Comments.** You have until 4:30 p.m. *January 25, 1996*, to submit written comment in support of or in opposition to the proposed rules or any subpart of the rules. Your comments 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 25, 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 request in writing. If a public hearing is required, the department will proceed according to *Minnesota Statutes*, sections 14.131-14.20.

**Modifications.** The proposed rules may be modified as a result of public comment. The modifications must be supported by the data and views submitted to the department and may not result in a substantial change in the proposed rules as attached and 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 from the department contact person. 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.

**Small Business Considerations.** Most of the businesses affected by this rule would be defined as a small business according to *Minnesota Statutes*, section 14.115. Therefore, the rule has been designed to provide time schedules, compliance requirements and performance standards acceptable to small business within the constraints of the law.

**Adoption and Review of the Rules.** 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 that 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 the department contact person listed above.

Dated: 17 November 1995

Jim Boerboom  
Director

### Rules as Proposed (all new material)

#### LIVESTOCK EXPANSION LOAN PROGRAM

##### 1655.0011 APPLICABILITY AND PURPOSE.

Subpart 1. **Applicability.** This chapter establishes the criteria and procedures to be used by the RFA in administering the Livestock Expansion Loan Program authorized by *Minnesota Statutes*, section 41B.045.

Subp. 2. **Purpose.** The purpose of the RFA Livestock Expansion Loan Program and for the issuance of bonds to finance the program is to promote livestock in the state and encourage the adoption of efficient, state of the art production facilities and practices. This is accomplished by participating in loans made to applicants who meet the eligibility requirements in this chapter. The repayment of the loans must be secured by mortgage liens on real property.

##### 1655.0021 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part apply to this chapter.

Subp. 2. **Applicant.** "Applicant" means a potential borrower who submits an application to the RFA through an eligible lender.

Subp. 3. **Application.** "Application" means the application for a loan participation under the Livestock Expansion Loan Program in the form provided by the RFA.

Subp. 4. **Assets.** "Assets" means property, real or personal, tangible or intangible, and all valuable contract rights, including cash crops or feed on hand, livestock held for sale, breeding stock, marketable bonds and securities, securities not readily marketable, accounts receivable, notes receivable, cash invested in growing crops, cash value of life insurance, machinery and equipment, cars, trucks, farm and other real estate including life estates and personal residence, and the value of a beneficial interest in trusts.

Subp. 5. **Borrower.** "Borrower" means the person or persons liable on a mortgage loan made under the program. "Borrower" includes a domestic family farm corporation as defined in *Minnesota Statutes*, section 500.24.

Subp. 6. **Collateral.** "Collateral" means all assets pledged as security for a borrower's obligation under a mortgage loan made

under the program, including assets, guarantees, money, letters of credit, assignment of collateral, or pledge for a loan on which the lender has a security interest or lien.

Subp. 7. **Executive director.** "Executive director" means the executive director of the RFA or another officer authorized to act on behalf of the RFA board or its executive director.

Subp. 8. **Fixture.** "Fixture" means an article in the nature of personal property that has been affixed or annexed to real estate so that it is regarded as a part of the real estate. A thing is "affixed or annexed to real estate" when it is attached to it by roots, embedded in it, permanently resting upon it, or permanently attached to it, as by means of cement, plaster, nails, bolts, or screws.

Subp. 9. **Liabilities.** "Liabilities" means debts or other obligations for which an applicant is responsible, including accounts payable, notes or other indebtedness owed, taxes, rent, amounts owed on real estate contracts or mortgages, judgments, and accrued interest payable.

Subp. 10. **Livestock expansion.** "Livestock expansion" has the meaning given in *Minnesota Statutes*, section 41B.02, subdivision 10a.

Subp. 11. **Livestock Expansion Loan Program or program.** "Livestock Expansion Loan Program" or "program" means the program authorized and created by *Minnesota Statutes*, section 41B.045.

Subp. 12. **Livestock operation.** "Livestock operation" means the use of land or land improvements and personal property for the production of livestock as defined in *Minnesota Statutes*, section 17A.03, subdivision 5, dairy products, and poultry or poultry products. "Livestock operation" also includes:

A. the use of wetlands, pasture, forest land, wildlife, and homestead and other real property associated with the agricultural use of land; and

B. the practices and facilities needed to conserve soil and water, protect human and animal health, have a safe and efficient operation, and meet local, state, and federal laws and regulations relating to the operation.

Subp. 13. **Mortgage loan or loan.** "Mortgage loan" or "loan" means a loan participation under the program that is secured by a first mortgage on real property.

Subp. 14. **Net worth.** "Net worth" means the total value of an applicant's assets and the assets of the applicant's spouse and dependents, less the liabilities of the same parties.

Subp. 15. **Real estate or real property.** "Real estate" or "real property" means land and anything permanently affixed to the land, such as buildings, fences, and those things attached to the buildings, such as light fixtures, plumbing and heating fixtures, and other items that would be personal property if not attached.

Subp. 16. **RFA.** "RFA" means the Rural Finance Authority established by *Minnesota Statutes*, section 41B.025.

#### **1655.0031 BORROWER ELIGIBILITY.**

To be eligible for assistance under the Livestock Expansion Loan Program, an applicant must meet the criteria in items A to F.

A. All of the applicants must be residents of the state of Minnesota or a domestic family farm corporation as defined in *Minnesota Statutes*, section 500.24.

B. At least one of the applicants must be the principal operator of the livestock operation upon which the livestock expansion will be located.

C. At least one of the applicants must be actively engaged in a livestock operation.

D. The applicants must have the ability to repay the loan.

E. The applicants' net worth may not exceed \$400,000.

F. The applicants must not be current or previous participants in the RFA Restructure II Program.

#### **1655.0041 DEMONSTRATION PROGRAM; RESTRICTIONS.**

For fiscal years 1996 and 1997, all loans must comply with the restrictions in items A and B.

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## Proposed Rules

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A. To the extent that herd health will not be jeopardized, livestock operations receiving assistance from the RFA must be available for tours within the first two years after completion of the expansion.

B. All livestock expansion loans must be for expansions that include up-to-date and efficient systems. Projects must be reviewed by a University of Minnesota extension livestock specialist prior to approval by the RFA.

### 1655.0051 LENDER ELIGIBILITY.

Subpart 1. **Statutory eligibility.** Any bank, credit union, or savings association chartered by the state or federal government, a subdivision of the farm credit system (Agri Bank), the Federal Deposit Insurance Corporation, or any insurance company, fund, or other financial institution doing business as an agricultural lender within the state may apply to the RFA for certification as an approved lender.

Subp. 2. **Approval.** If a lender demonstrates its ability to originate and service agricultural real estate loans, the RFA shall designate the lender as an approved lender for purposes of RFA programs.

Subp. 3. **Participation agreement.** Before offering mortgage loans to the RFA for participation, each approved lender must enter into an RFA master participation agreement specifying the relationship between the parties and the terms and conditions of mortgage loans to be made by the lender under the Livestock Expansion Loan Program and offered to the RFA for participation.

### 1655.0061 APPLICATION PROCESS AND OFFER OF PARTICIPATION.

Subpart 1. **Request for livestock expansion loan participation.** A lender and an applicant must jointly complete and sign an application and prepare all supporting documents identified in the application.

Subp. 2. **Acquisition or construction.** The applicant shall not begin acquisition or construction of any part of the livestock expansion before RFA approval of the application. Once the application has been approved, upon notice to the lender of RFA approval, the applicant may move forward with acquisition or construction of the livestock expansion collateral requirements.

Subp. 3. **Collateral requirements.** The RFA may participate only in loans that do not exceed 80 percent of the appraised value of the real estate offered for collateral. Additional collateral may be required based on the depreciability and saleability of the collateral and creditworthiness of the applicant.

Subp. 4. **Lender determination.** The lender shall complete the initial review of the proposal and determine the creditworthiness of the applicant and the value of the collateral to be used to secure the loan. If the lender agrees to make a mortgage loan to the applicant, the lender and the applicant shall jointly prepare the application and the required loan documents.

Subp. 5. **Offer.** The lender, as the originator of the mortgage loan, shall present a completed application and loan documents to the RFA. Presentation of the documents constitutes an offer to sell a participation interest in the loan.

Subp. 6. **Fees.** A nonrefundable application fee as established by *Minnesota Statutes*, section 41B.045, subdivision 4, must be submitted with each application. The loan origination fee established by *Minnesota Statutes*, section 41B.045, subdivision 4, must be submitted by the applicant at the closing of the loan. The loan origination fee and other loan closing expenses may be financed with proceeds of the loan.

Subp. 7. **Terms and conditions of loan.** The maximum term of a loan participation is ten years. The maximum participation is 45 percent of the loan principal or \$250,000, whichever is less. The loan may have a balloon payment.

Subp. 8. **Misrepresentation in application.** If a change occurs in the information provided by the lender to the RFA prior to the closing of a loan, the lender shall immediately update and correct that information. Misrepresentation in the application or failure to update any required information is grounds to reject an application, revoke a notice of approval, or refuse to close the loan.

### 1655.0071 RFA REVIEW, NOTICE, APPEAL.

Subpart 1. **RFA review.** The RFA shall accept or reject all applications within 60 days after their receipt. If the documentation is not sufficient to make a determination, the RFA may request additional information to establish the creditworthiness and eligibility of an applicant.

Subp. 2. **RFA acceptance.** The RFA shall accept applications based upon whether:

- A. the applicant meets all eligibility criteria;
- B. the applicant demonstrates an ability to repay the the mortgage loan and other obligations;
- C. the proposed livestock expansion meets specifications set by statute and rule;
- D. none of the loan proceeds are being used to refinance existing debt; and
- E. the RFA has sufficient funds available to purchase a participation in the loan.

Subp. 3. **RFA notice.** The RFA shall notify the lender in writing whether or not an application is accepted. If the application is not accepted, the notice must state the reasons.

Subp. 4. **Administrative appeal.** If an application is rejected, either the lender or the applicant may petition for administration reconsideration by the RFA. The petition must be in writing and must be sent within 30 days of the date of the RFA notice. The petition must state the grounds for the appeal, and may include additional relevant information. Within 15 working days of receiving the petition, the executive director shall send a written response to the petitioner upholding or reversing the original decision and giving the reasons for the decision.

Subp. 5. **Formal appeal.** After administrative appeal, a petitioner may appeal the executive director's decision directly to the RFA board by written notice to the director within 15 days of receiving the director's reconsideration decision. The decision of the board is final.

#### **1655.0081 LOAN CLOSING, PURCHASE OF PARTICIPATION, AND LOAN MANAGEMENT.**

Subpart 1. **Closing.** Upon receiving notification of RFA acceptance, the lender shall close the mortgage loan. The lender must record and cross-reference all documents relating to the loan, including the RFA note and loan agreement. The lender must notify the RFA that the loan is closed and recorded by signing part 9 and submitting the original RFA application, and include copies of the recorded documents and final title opinion to the RFA.

Subp. 2. **Payment.** Within ten business days of receipt of written notice under subpart 1 that the mortgage loan is closed and recorded and receipt of all required documents, the RFA shall initiate payment to the lender for the RFA's participation interest in the loan.

Subp. 3. **Participation certificate.** Within five working days after the receipt of finally collected funds, the lender shall complete and return a participation certificate as provided by the RFA witnessing the RFA's undivided pro rata interest in the livestock expansion mortgage loan.

Subp. 4. **Loan management.** The lender shall manage the loan, including the RFA participation interest, with the degree of care and diligence usually maintained by agricultural real estate lenders. The lender shall have custody and control of all loan documents except the original application, which must be kept by the RFA. The lender shall manage, administer, and enforce the loan documents in its own name and also on behalf of itself and the RFA, including, without limitation, the right to accelerate a mortgage loan on default and to foreclose or otherwise enforce remedies against the borrower.

Subp. 5. **Lender notification.** The lender shall promptly notify the RFA of occurrences that substantially affect the security, collection, or enforcement of any mortgage loan.

Subp. 6. **Prior written consent.** The lender shall obtain the prior written consent of the borrower and the RFA before:

- A. making or consenting to a release, substitution, or exchange of collateral that reduces the aggregate value of the collateral;
- B. waiving a claim against the borrower or a guarantor, surety, or obligor in connection with the indebtedness; or
- C. modifying or waiving a term of the notes or related instruments evidencing or securing the first mortgage loan.

#### **1655.0091 PARTICIPATION REPURCHASE.**

A lender is under no obligation to repurchase an RFA participation interest in a livestock expansion mortgage loan except as provided in this part. A lender may, at its option and upon written approval by the RFA, repurchase an RFA participation interest at any time. A lender must repurchase the RFA participation interest whenever the first mortgage loan is paid in full or refinanced. A lender must repurchase the RFA participation interest if the lender:

- A. has made misrepresentations or is aware that the applicant has made them or fails to perform its obligations under the participation agreement;
- B. has received written notice from the RFA; and
- C. has not corrected the representation or performance under the notice.

A repurchase under this part must be for the outstanding and unpaid principal balance of the RFA participation plus accrued interest and any penalties or costs incurred by the RFA to secure repurchase.

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## Proposed Rules

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### 1655.0101 REVIEW OF LOAN AND COLLATERAL.

Subpart 1. **Inspection.** At any time during the term of a livestock expansion mortgage loan, the RFA or the state legislative auditor may inspect the books, records, documents, and accounting practices of the lender relative to the loan to determine compliance with the terms and conditions of the loan and the participation agreement. Inspections must be during the lender's normal business hours. The lender must allow the RFA to copy any documents relating to the mortgage loan and the RFA participation.

Subp. 2. **Collateral.** The lender and the RFA may physically inspect the collateral securing the mortgage loan upon notice to the borrower. Inspections must be conducted at reasonable times.

**REPEALER:** *Minnesota Rules*, parts 1655.0010; 1655.0020; 1655.0030; 1655.0040; 1655.0050; 1655.0060; 1655.0070; 1655.0080; 1655.0090; and 1655.0100, are repealed.

## Department of Agriculture

### Proposed Permanent Rules Relating to RFA Value-Added Agricultural Product Loans

#### Notice of Intent to Adopt a Rule Without a Public Hearing

The Minnesota Rural Finance Authority (RFA) intends to adopt rules without a public hearing following the procedures set forth in the Administrative Procedures Act sections 14.22-14.28. You have 30 days to submit written comment on the proposed rules and may also submit a written request that a hearing be held on the rules.

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

Carol Milligan, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107: Phone (612) 296-6906, Fax (612) 297-7678.

**Subject of Rules and Statutory Authority.** The proposed rules are about criteria and procedures used by the RFA to administer the value-added agricultural product loan program. The program issues bonds to finance agricultural improvement loans. The statutory authority to adopt these rules is *Minnesota Statutes*, sections 41B.046, subd. 6 and 41B.07. A copy of the proposed rules is published in the *State Register* and attached to this notice as mailed.

**Comments.** You have until 4:30 p.m. *January 25, 1996*, to submit written comment in support of or in opposition to the proposed rules or any subpart of the rules. Your comments 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 25, 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 request in writing. If a public hearing is required, the department will proceed according to *Minnesota Statutes*, sections 14.131-14.20.

**Modifications.** The proposed rules may be modified as a result of public comment. The modifications must be supported by the data and views submitted to the department and may not result in a substantial change in the proposed rules as attached and 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 from the department contact person. 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.

**Small Business Considerations.** Most of the businesses affected by this rule would be defined as a small business according to *Minnesota Statutes*, section 14.115. Therefore, the rule has been designed to provide time schedules, compliance requirements and performance standards acceptable to small business within the constraints of the law.

**Adoption and Review of the Rules.** 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 that 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 the department contact person listed above.

Dated: 17 November 1995

Jim Boerboom  
Director

**Rules as Proposed (all new material)**

**VALUE-ADDED AGRICULTURAL PRODUCT LOAN PROGRAM**

**1656.0011 APPLICABILITY AND PURPOSE.**

Subpart 1. **Applicability.** This chapter establishes the criteria and procedures to be used by the RFA in the administration of the value-added agricultural product loan program authorized by *Minnesota Statutes*, section 41B.046.

Subp. 2. **Purpose.** The purpose of the value-added agricultural product loan program is to foster and maintain a diverse agricultural industry that is economically profitable by providing affordable credit to help farmers finance the purchase of stock in a cooperative proposing to directly or indirectly build or purchase and operate an agricultural product processing facility.

**1656.0021 DEFINITIONS.**

Subpart 1. **Scope.** The definitions in this part apply to this chapter.

Subp. 2. **Agricultural commodity.** "Agricultural commodity" has the meaning given in *Minnesota Statutes*, section 17.90.

Subp. 3. **Agricultural energy resources.** "Agricultural energy resources" has the meaning given in *Minnesota Statutes*, section 41B.046, subdivision 1.

Subp. 4. **Agricultural product processing facility.** "Agricultural product processing facility" has the meaning given in *Minnesota Statutes*, section 41B.046, subdivision 1.

Subp. 5. **Applicant.** "Applicant" means a potential borrower who submits an application to the RFA through an eligible lender.

Subp. 6. **Application.** "Application" means the application for a stock loan in the form provided by the RFA.

Subp. 7. **Assets.** "Assets" means property, real or personal, tangible or intangible, and all contract rights of value that constitute assets, including cash crops or feed on hand, livestock held for sale, breeding stock, marketable bonds and securities, securities not readily marketable, accounts receivable, notes receivable, cash invested in growing crops, cash value of life insurance, machinery and equipment, cars and trucks, farm and other real estate including life estates and personal residence, and the value of a beneficial interest in trusts.

Subp. 8. **Borrower.** "Borrower" means the person or persons liable on a stock loan made under this program. A borrower may also be a domestic family farm corporation as defined in *Minnesota Statutes*, section 500.24.

Subp. 9. **Executive director.** "Executive director" means the executive director of the RFA or any other officer authorized to act on behalf of the RFA board or its executive director.

Subp. 10. **Farm-generated wind energy production facility.** "Farm-generated wind energy production facility" has the meaning given in *Minnesota Statutes*, section 41B.046, subdivision 1.

Subp. 11. **Liabilities.** "Liabilities" means the debts or other obligations for which an applicant is responsible including accounts payable, notes or other indebtedness owed to any source, taxes, rent, amount owed on real estate contracts or mortgages, judgments, and accrued interest payable.

Subp. 12. **Net worth.** "Net worth" means the total value of an applicant's assets and the assets of the applicant's spouse and dependents, less the liabilities of the same parties.

Subp. 13. **Note and loan agreement.** "Note and loan agreement" means the form provided by the RFA that is signed by a borrower evidencing the terms of the stock loan and the borrower's obligation to repay the loan.

Subp. 14. **Participation agreement.** "Participation agreement" means the document entered into between the RFA and an approved lender that establishes the relationship between the parties and the terms and conditions of stock loans to be offered to the RFA for participation under the value-added stock loan participation program.

Subp. 15. **RFA.** "RFA" means the Rural Finance Authority established by *Minnesota Statutes*, sections 41B.01 to 41B.23.

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## Proposed Rules

Subp. 16. **RFA participation.** "RFA participation" means the RFA's undivided interest in the principal of a stock loan, all rights and interests in the loan documents, all payments arising under the loan, the stock securing the loan, and any other collateral pledged to secure the loan.

Subp. 17. **Stock loan or loan.** "Stock loan" or "loan" means a loan secured by the stock purchased, a personal note executed by the borrower, and whatever other security is required by the lender or the RFA, made by an eligible lender to an eligible borrower, offered to the RFA for participation, and in which the RFA has purchased a participation.

Subp. 18. **Unit of stock.** "Unit of stock" means the minimum number of shares of common stock an applicant must purchase to become a member of a cooperative proposing to directly or indirectly build or purchase and operate an agricultural product processing facility.

Subp. 19. **Value-added agricultural product.** "Value-added agricultural product" has the meaning given in *Minnesota Statutes*, section 41B.046, subdivision 1.

Subp. 20. **Value-added stock loan participation program; value-added agricultural product loan program; or program.** "Value-added stock loan participation program," "value-added agricultural product loan program," or "program" means the program authorized and created by *Minnesota Statutes*, section 41B.046.

### 1656.0031 BORROWER ELIGIBILITY.

To be eligible for assistance through a loan participation under the value-added stock loan participation program, an applicant must:

- A. be a resident of Minnesota or a domestic family farm corporation as defined in *Minnesota Statutes*, section 500.24, subdivision 2;
- B. be a grower of the agricultural product which is to be processed by an agricultural product processing facility;
- C. demonstrate an ability to repay the loan;
- D. have a total net worth not to exceed the total net worth established for the basic beginning farmer participation program, which is available by calling the RFA office for a current quote; and
- E. have not previously participated in the value-added stock loan participation program.

### 1656.0041 LENDER ELIGIBILITY.

Subpart 1. **Statutory eligibility.** A bank, credit union, or savings association chartered by the state or federal government, a subdivision of the Farm Credit System (Agri Bank), the Federal Deposit Insurance Corporation, or an insurance company, fund, or other financial institution doing business as an agricultural lender within the state may apply to the RFA for certification as an approved lender.

Subp. 2. **Approval.** Upon a lender's demonstration of its ability to originate and service agricultural loans, the RFA shall designate it as an approved lender for purposes of RFA programs.

Subp. 3. **Participation agreement.** Before offering stock loans to the RFA for participation, each approved lender must enter into an RFA master participation agreement. The agreement shall specify the relationship between the parties and the terms and conditions of stock loans to be made by the lender under the value-added stock loan participation program and offered to the RFA for participation.

### 1656.0051 APPLICATION PROCESS AND OFFER OF PARTICIPATION.

Subpart 1. **Request for a value-added stock loan participation.** A lender and an applicant must jointly complete and sign an application and prepare all supporting documents identified in the application. Financial statements must be dated within 120 days of the application.

Subp. 2. **Lender determination.** The lender shall review the proposal and determine the creditworthiness of the applicant and the value of the collateral to be used to secure the loan. If the lender agrees to make a stock loan to the applicant, the lender and the applicant shall jointly prepare the application and the required loan documents.

Subp. 3. **Offer.** The lender, as the originator of the stock loan, shall present the application and loan documents to the RFA. Presentation of the documents constitutes an offer to sell a participation interest in the loan.

Subp. 4. **Fee.** The nonrefundable application fee as established in *Minnesota Statutes*, section 41B.046, subdivision 5, paragraph (e), must be submitted with each application.

Subp. 5. **Loan participation.** The maximum RFA participation is 45 percent of the loan principal or \$24,000, whichever is less. The interest rate on the loan participation must be 4.0 percent or one-half of the lender's effective rate (APR), rounded down to the

nearest one-tenth of one percent, at the time of loan closing, whichever rate is lower. This rate shall remain the fixed rate for the duration of the loan participation.

Subp. 6. **Terms of loan.** The maximum term of the loan is eight years. Loan payments of interest only are permitted for up to two years, with a fully amortized repayment schedule of interest and principal calculated for the remaining years. The loan may not have a balloon. The lender may, for its portion of the loan, use a variable interest rate correlated to a specific index.

Subp. 7. **Misrepresentation in application.** If a change occurs in the information provided by the lender to the RFA prior to the closing of a loan, the lender shall immediately update and correct that information. Misrepresentation in the application or failure to update any required information is grounds to reject an application, revoke a notice of approval, or refuse to close the loan.

#### **1656.0061 RFA REVIEW, NOTICE, AND APPEAL.**

Subpart 1. **RFA review.** The RFA shall accept or reject an application within 30 business days after its receipt. If the documentation is not sufficient to make a determination, the RFA may request additional information to establish creditworthiness and eligibility of the applicant.

Subp. 2. **RFA acceptance.** The RFA shall accept an application if:

- A. the applicant meets all eligibility criteria;
- B. the applicant demonstrates an ability to repay the stock loan and other obligations based on the financial information submitted with the application;
- C. the loan is for the purchase of new issue stock purchased directly from the issuing cooperative whose facilities are or will be located in Minnesota;
- D. no more than 95 percent of the purchase price of the first unit of stock purchased, 80 percent of the second unit, or any portion thereof, and 50 percent of any additional units, or any portion thereof, purchased will be financed under this program. The number of stock units is cumulative irrespective of the number of cooperatives in which the applicant is purchasing stock; and
- E. the RFA has sufficient funds available to purchase a participation in the loan.

Subp. 3. **RFA notice.** The RFA shall promptly notify the lender in writing whether or not an application is accepted. If the application is not accepted, the notice must state the reasons.

Subp. 4. **Administrative appeal.** If an application is rejected, either the lender or the applicant may petition for administration reconsideration. The petition must be in writing and must be sent within 30 days of the date of the RFA notice. The petition must state the grounds for the appeal, and may include additional relevant information. Within 15 working days of receiving the petition, the executive director shall send a written response to the petitioner upholding or reversing the original decision and giving the reasons for the decision.

Subp. 5. **Formal appeal.** After administrative appeal, a petitioner may appeal the executive director's decision directly to the RFA board by written notice to the executive director within 15 days of receiving the executive director's reconsideration decision. The decision of the board is final.

#### **1656.0071 LOAN CLOSING, PURCHASE OF PARTICIPATION, AND LOAN MANAGEMENT.**

Subpart 1. **Closing.** Upon receiving notification of RFA acceptance, the lender shall close the stock loan. The lender must record needed security instruments and cross-reference all documents relating to the loan, including the RFA note and loan agreement. The lender must notify the RFA that the loan is closed and the required security instruments are recorded and submit the original RFA application and copies of the recorded documents to the RFA.

Subp. 2. **Payment.** Within ten business days of receipt of written notice under subpart 1 that the stock loan is closed and recorded, the RFA shall initiate payment to the lender for the RFA's participation interest in the loan.

Subp. 3. **Participation certificate.** Within five working days after the receipt of RFA funds and participation certificate, the lender shall complete and return the certificate as provided by the RFA witnessing the RFA's undivided pro rata interest in the stock loan.

Subp. 4. **Loan management.** The lender shall manage the loan, including the RFA participation interest, with the degree of care and diligence usually maintained by agricultural lenders. The lender shall have custody and control of all loan documents, except

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## Proposed Rules

the original application which shall be retained by the RFA. The lender shall manage, administer, and enforce the loan documents in its own name and also on behalf of itself and the RFA, including, without limitation, the right to accelerate a stock loan on default and to foreclose or otherwise enforce remedies against the borrower.

Subp. 5. **Lender notification.** The lender shall promptly notify the RFA of occurrences that substantially affect the security, collection, or enforcement of any stock loan.

Subp. 6. **Prior written consent.** The lender shall obtain the prior written consent of the borrower and the RFA before:

- A. making or consenting to a release, substitution, or exchange of collateral that reduces the aggregate value of the collateral;
- B. waiving a claim against the borrower or a guarantor, surety, or obligor in connection with the indebtedness; or
- C. modifying or waiving a term of the notes or related instruments evidencing or securing the stock loan.

### 1656.0081 PARTICIPATION REPURCHASE.

- A. A lender is under no obligation to repurchase any RFA participation interest in a stock loan except as provided in this part.
- B. A lender may, at its option and upon written approval by the RFA, repurchase an RFA participation interest at any time.
- C. A lender must repurchase the RFA participation interest whenever the stock loan is paid in full or refinanced.

D. A lender must repurchase the RFA participation interest if the lender has made misrepresentations or fails to perform its obligations under the participation agreement, has received written notice from the RFA, and has not corrected the representation or performance under the notice.

E. A repurchase must be for the outstanding and unpaid principal balance of the RFA participation plus accrued interest and any penalties or costs incurred by the RFA to secure repurchase.

### 1656.0091 REVIEW OF LOAN AND COLLATERAL.

Subpart 1. **Inspection.** At any time during the term of a stock loan, the RFA or the state legislative auditor may inspect the books, records, documents, and accounting practices of the lender relative to the loan to determine compliance with the terms and conditions of the loan and the participation agreement. Inspections must be during the lender's normal business hours. The lender must allow the RFA to copy any documents relating to the stock loan and the RFA participation.

Subp. 2. **Collateral.** The lender and the RFA may physically inspect the collateral securing the stock loan upon notice to the borrower. An inspection must be conducted at a reasonable time.

### 1656.0095 STOCK IN CERTAIN LIVESTOCK PROCESSING FACILITIES ELIGIBLE.

An applicant may be eligible for a loan participation under this part if:

A. the facility is owned and operated by a cooperative organized under *Minnesota Statutes*, chapter 308A. For purposes of this part, "owned and operated" includes a contractual arrangement with another entity to provide management and operations services for a facility owned by the cooperative; and

B. its agricultural product processing facility is located in Minnesota and operated primarily for the processing of livestock.

### 1656.0100 STOCK IN FARM-GENERATED WIND ENERGY PRODUCTION FACILITIES ELIGIBLE.

An applicant is eligible for a loan participation under this part if:

A. the facility is owned and operated by a cooperative organized under *Minnesota Statutes*, chapter 308A. For purposes of this part, "owned and operated" includes a contractual arrangement with another entity to provide management and operations services for a facility owned by the cooperative;

B. all shares and membership in the cooperative are held by natural persons or estates, at least 51 percent of whom reside in a county or contiguous to a county where farm-generated wind energy production facilities of the cooperative are located; and

C. its farm-generated wind energy production facilities are located entirely on agricultural property in Minnesota principally used for farming as defined in *Minnesota Statutes*, section 500.24, subdivision 2, paragraph (a), owned by the shareholders of the cooperative, with no more than two megawatts of nameplate capacity located on any one shareholder's agricultural property.

**REPEALER.** *Minnesota Rules*, parts 1656.0010; 1656.0020; 1656.0030; 1656.0040; 1656.0050; 1656.0060; 1656.0070; and 1656.0080, are repealed.

## Department of Commerce

### Proposed Permanent Rules Relating to the Consolidation of Prelicensing and Continuing Education Requirements For Appraisers, Building Contractors, Real Estate, and Insurance Licensees

#### Notice of Intent to Adopt Rules Without a Public Hearing

The Minnesota Department of Commerce 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. You have 30 days to submit written comments on the proposed rules and during that 30 day period, you 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:

Donna M. Watz, Staff Attorney  
Minnesota Department of Commerce  
133 East 7th Street  
St. Paul, MN 55101  
(612) 296-6593

**Subject of Rules and Statutory Authority.** The proposed rules consolidate into one chapter of *Minnesota Rules* all of the education requirements for certain licensees regulated by the department of commerce, namely appraisers, building contractors, insurance agents and real estate brokers and salespeople. Most of these requirements already exist under *Minnesota Rules* in other parts. The statutory authority to adopt these rules is found under *Minnesota Statutes*, sections 60K.19 subd. 6(c), 82.22, 82B.13 and 326.87. The proposed rules are published in the *State Register* and attached to this notice as mailed.

**Comments.** You have until 4:30 p.m. on January 25, 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 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 be received by the agency contact person by 4:30 p.m. on January 25, 1996. Your 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 department 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 department 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 from the agency contact person. 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.

**Small Business Consideration.** The provisions of *Minnesota Statutes*, sections 14.115, subdivision 4 have been reviewed and it has been determined that these proposed rules will affect small businesses. The proposed rules will assist small businesses by clarifying and simplifying the educational requirements for certain licensees in Minnesota. It is not expected that these rules will adversely affect small businesses. A detailed discussion of this topic is included in the Statement of Need and Reasonableness.

**Expenditure of Public Money by Local Public Bodies.** The provisions of *Minnesota Statutes*, section 14.11, subdivision 1 have been reviewed and it has been determined that these proposed rules will not require the expenditure of public money by local public bodies greater than \$100,000 in the two years following rule adoption.

**Impact on Agricultural Lands.** The provisions of *Minnesota Statutes*, section 14.11, subdivision 2 have been reviewed and it has been determined that these proposed rules will not affect agricultural land.

**Adoption and Review of the Rule.** 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

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## Proposed Rules

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extent form relates to legality. You may request to be notified of the date the rules is submitted to the attorney general or be notified of the attorney general's decisions on the rules. If you want to be so notified, or wish to receive a copy of the adopted rules, submit your written request to the agency contact person listed above.

Dated: 11 December 1995

Patrick L. Nelson  
Acting Commissioner of Commerce

### Rules as Proposed (all new material)

#### 2809.0010 DEFINITIONS.

Subpart 1. **Terms.** For the purposes of this chapter, the terms defined in this part have the meanings given them.

Subp. 2. **Appropriate and related knowledge.** "Appropriate and related knowledge" means facts, information, or principles that are clearly relevant to the licensee in performing responsibilities under a license. These facts, information, or principles must convey substantive and procedural knowledge as it relates to postlicensing issues and must be relevant to the technical aspects of a particular area of continuing education.

Subp. 3. **Classroom hour.** "Classroom hour" means a 50-minute hour. Breaks may not be accumulated in order to dismiss the class early. Classes shall not be offered by a provider to any one student for longer than eight hours in one day, excluding meal breaks.

Subp. 4. **Commissioner.** "Commissioner" means the commissioner of commerce.

Subp. 5. **Coordinator.** "Coordinator" means an individual who is responsible for monitoring approved educational offerings.

Subp. 6. **Instructor.** "Instructor" means an individual lecturing in an approved educational offering.

Subp. 7. **Licensee.** "Licensee" means a person licensed by the Minnesota Department of Commerce for whom an examination is required before licensure.

Subp. 8. **Overpayment.** "Overpayment" means any payment of money in excess of a statutory fee.

Subp. 9. **Person.** "Person" means a natural person, firm, institution, partnership, corporation, limited liability company, limited liability partnership, or association.

Subp. 10. **Professional designation.** "Professional designation" means a written, proctored, and graded examination, the passage of which leads to a bona fide professional designation used by licensees.

Subp. 11. **Sponsor.** "Sponsor" means a person offering or providing approved education.

#### 2809.0020 PAYMENT OF FEES.

Subpart 1. **Manner of payment.** All fees must be paid by check, draft, or other negotiable or nonnegotiable instrument or order of withdrawal that is drawn against funds held by a financial institution. Cash will not be accepted.

Subp. 2. **Refunds.** An overpayment of a course or coordinator approval fee must be refunded within 90 days after a letter requesting the refund is received by the commissioner and signed by the person making the overpayment.

Refunds must not be given for other than overpayment of fees. A request for a refund of an overpayment must be received by the commissioner within six months of the date of deposit or it will be forfeited.

#### 2809.0030 FORMS.

All forms required by this chapter shall be in the form set forth by the commissioner. Forms may be duplicated, but must be readable. Computer generated lists and forms with the same information as required in existing forms must be accepted by the department if prior approval is granted by the department.

#### 2809.0040 TEXTBOOKS REQUIRED.

All prelicense courses must require the use of a textbook or a detailed workbook. The textbook or workbook must cover the subject matter of the course and must be current.

#### 2809.0050 INITIAL EDUCATION.

Subpart 1. **Content.** Successful completion of prelicense education includes full-time classroom attendance throughout the course, completion of required assignments or reading materials if applicable, and passage of an examination designed by the sponsor that is sufficiently comprehensive to measure the student's knowledge of all aspects of the course.

Prelicensing courses may include coverage of subject matter not prescribed in this part. However, the subject matter must be presented in addition to, and may not be substituted for, the course content or hours specified for the particular industry. Students shall not be required to pass an examination, or part of an examination, on this material in order to be able to obtain their license.

Subp. 2. **Course submission.** Courses shall be submitted by the coordinator, instructor, or sponsor at least 30 days before the initial offering of the course.

### **2809.0060 CONTINUING EDUCATION.**

Subpart 1. **Content.** Continuing education consists of approved courses that impart appropriate and related knowledge in the field for which approval is requested. The burden of demonstrating that courses impart appropriate and related knowledge is upon the person seeking approval or credit. The commissioner shall approve any educational offering approved by Minnesota Board of Continuing Legal Education relating to the specific industry for which approval is sought, any educational offering approved by the regulatory agency of another state if it does not conflict with *Minnesota law*, and any courses leading to a nationally recognized professional designation used by licensees regulated by this chapter.

Subp. 2. **Examinations.** Course examinations will not be required for continuing education courses unless they are required by the sponsor. When certain prelicense courses are permitted to be used for continuing education, the licensee must take the same examination as is required for those taking the course for prelicensing.

Subp. 3. **Textbooks.** Textbooks are not required to be used for continuing education courses unless the course is also approved as a prelicense course. If textbooks are not used, students are to be provided with a syllabus containing, at a minimum, the course title, the times and dates of the course offering, the names and addresses or telephone numbers of the course coordinator and instructor, and a detailed outline of the subject materials to be covered. Any written or printed material given to students must be of readable quality and contain accurate and current information.

Subp. 4. **Credit earned.** Upon completion of approved courses, students shall earn one hour of continuing education credit for each hour approved by the commissioner. Continuing education courses must be attended in their entirety in order to receive credit for the number of approved hours. Courses may be approved for partial credit. Courses may be approved for full or partial credit for more than one industry.

Qualified instructors shall earn three hours of continuing education credit for each classroom hour of approved instruction. Credit may not be earned if the licensee has previously obtained credit for the same course as either a student or instructor in the past three years.

Subp. 5. **Nonapproved courses for continuing education.** The following will not be approved for credit:

- A. Courses designed solely to prepare students for passing a license examination.
- B. Courses in mechanical office or business skills, including typing, speed reading, or other machines or equipment. Computer courses are allowed, if appropriate and related to the industry to which the courses are directed.
- C. Courses in sales promotion, including meetings held in conjunction with the general business of the licensee.
- D. Courses in motivation, salesmanship, psychology, time management, or communication, except as prescribed in prelicense training.
- E. Courses related to office management or intended to improve the operation of the licensee's business. This item does not apply to building contractor continuing education courses.
- F. Courses that are primarily intended to impart knowledge of specific products of specific companies, if the use of the product or products relates to the sales promotion or marketing of one or more of the products discussed.

Subp. 6. **Credit for prelicense courses.** An approved prelicense course may be taken for continuing education if the licensee has not taken the course in the previous three years and the commissioner determines that the course is appropriate and related to the licensee's license type.

Subp. 7. **Course approval.**

A. Courses must be approved by the commissioner in advance and will be approved or disapproved on the basis of their compliance with the provisions of laws and rules relating to the appropriate industry. The commissioner shall make the final determination as to accreditation and assignment of credit hours for courses. Courses must be at least one hour in length.

Individuals wishing to receive credit for continuing education courses that have not been previously approved may submit the course information for approval. Courses must be in compliance with the laws and rules governing the types of courses that will and will not be approved.

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## Proposed Rules

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Approval will not include time spent on meals or other unrelated activities.

B. Courses must be submitted 30 days before the course offering.

C. Approval must be granted for a subsequent offering of identical continuing education courses without requiring a new application if a notice of the subsequent offering is filed with the commissioner at least 30 days in advance of the date the course is to be held. The commissioner shall deny future offerings of courses if they are found not to be in compliance with the laws relating to course approval.

Subp. 8. **Courses open to all.** All course offerings must be open to any interested individuals. Access may be restricted by the sponsor based on class size only. Courses must not be approved if attendance is restricted to any particular group of people, except for company sponsored courses allowed by statute.

### 2809.0070 COURSE COORDINATOR.

Subpart 1. **Requirement.** Each course of study shall have at least one coordinator, approved by the commissioner, who is responsible for supervising the program and assuring compliance with all laws and rules. Sponsors may engage an additional approved coordinator in order to assist the coordinator or to act as a substitute for the coordinator in the event of an emergency or illness.

Subp. 2. **Approval.** The commissioner shall approve as a coordinator a person meeting one or more of the following criteria: at least three years of full-time experience in the administration of an education program during the five-year period immediately before the date of application, or a degree in education plus two years experience during the immediately preceding five-year period in one of the regulated industries for which courses are being approved, or a minimum of five years experience within the previous six years in the regulated industry for which courses are held.

Subp. 3. **Responsibilities.** A coordinator is responsible for:

- A. assuring compliance with all laws and rules relating to educational offerings governed by the commissioner;
- B. assuring that students are provided with current and accurate information relating to the laws and rules governing their licensed activity;
- C. supervising and evaluating courses and instructors. Supervision includes assuring, especially when a course will be taught by more than one instructor, that all areas of the curriculum are addressed without redundancy and that continuity is present throughout the entire course;
- D. ensuring that instructors are qualified to teach the course offering;
- E. furnishing the commissioner, upon request, with copies of course and instructor evaluations and qualifications of instructors. Evaluations must be completed by students and coordinators;
- F. investigating complaints related to course offerings and instructors and forwarding a copy of the written complaints to the Department of Commerce;
- G. maintaining accurate records relating to course offerings, instructors, tests taken by students, and student attendance for a period of three years from the date on which the course was completed. These records must be made available to the commissioner upon request. In the event that a sponsor ceases operation for any reason, the coordinator is responsible for maintaining the records or providing a custodian for the records acceptable to the commissioner. The coordinator must notify the commissioner of the name and address of that person. In order to be acceptable to the commissioner, custodians must agree to make copies of acknowledgments available to students at a reasonable fee. Under no circumstances will the commissioner act as custodian of the records;
- H. assuring that the coordinator is available to instructors and students throughout course offerings and providing to the students and instructor the name of the coordinator and a telephone number at which the coordinator can be reached;
- I. attending workshops or instructional programs as reasonably required by the commissioner;
- J. providing course completion certificates within ten days of, but not before, completion of the entire course. Course completion certificates must be completed in their entirety. Course completion notices must contain the following statement: "If you have any comments about this course offering, please mail them to the Minnesota Commissioner of Commerce." The current address of the department must be included. A coordinator may require payment of the course tuition as a condition for receiving the course completion certificate; and
- K. notifying the commissioner of any change in the course or coordinator approval application.

### 2809.0080 INSTRUCTORS.

Subpart 1. **Requirement.** Each course of study, except self-study courses, shall have an instructor who is qualified by education, training, or experience to ensure competent instruction. Failure to have only qualified instructors teach at an approved course offer-

ing will result in loss of course approval. Coordinators are responsible to ensure that an instructor is qualified to teach the course offering.

Subp. 2. **Qualification for continuing education instructors.** Qualified continuing education instructors must have one of the following qualifications:

- A. a four-year degree in any area plus two years practical experience in the subject area being taught;
- B. five years practical experience in the subject area being taught; or
- C. a college or graduate degree in the subject area being taught.

Subp. 3. **Qualifications for preclicensing instructors.** Qualified preclicensing instructors must have one of the following qualifications:

- A. a four-year degree in the industry for which the course is being taught;
  - B. a four-year degree with three years full-time experience in the industry for which the course is being taught;
  - C. a four-year degree with three years full-time experience in the business or profession relating to the subject being taught;
  - D. a postgraduate degree and completion of 45 hours of continuing education in the industry for which the course is being taught;
  - E. a two-year degree in the industry for which the education is being given and completion of 45 hours of continuing education in the industry for which the course is being taught;
  - F. a two-year degree or certificate with five years full-time experience in the industry for which the course is being taught;
  - G. a degree or certificate with five years full-time experience in the business or profession relating to the subject being taught;
- or
- H. eight years of recent experience in the subject area being taught in the eight years immediately preceding the first course offering taught.

Subp. 4. **Responsibilities.** Approved instructors are responsible for:

- A. compliance with all laws and rules relating to industry education;
- B. providing students with current and accurate information;
- C. maintaining an atmosphere conducive to learning in the classroom;
- D. assuring and certifying attendance of students enrolled in courses;
- E. providing assistance to students and responding to questions relating to course materials; and
- F. attending the workshops or instructional programs that are required by the commissioner.

#### **2809.0090 PROHIBITED PRACTICES FOR COORDINATORS AND INSTRUCTORS.**

Subpart 1. **Prohibitions.** In connection with an approved course, coordinators and instructors shall not:

- A. recommend or promote the services or practices of a particular business;
- B. encourage or recruit individuals to engage the services of, or become associated with, a particular business;
- C. use materials, clothing, or other evidences of affiliation with a particular entity;
- D. require students to participate in other programs or services offered by the instructor, coordinator, or sponsor;
- E. attempt, either directly or indirectly, to discover questions or answers on an examination for a license;
- F. disseminate to any other person specific questions, problems, or information known or believed to be included in licensing examinations;
- G. misrepresent any information submitted to the commissioner;
- H. fail to cover, or ensure coverage of, all points, issues, and concepts contained in the course outline approved by the commissioner during the approved instruction; and

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## Proposed Rules

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I. issue inaccurate course completion certificates.

Subp. 2. **Notification of disciplinary action.** Coordinators shall notify the commissioner within ten days of a felony or gross misdemeanor conviction or of disciplinary action taken against an occupational license held by the coordinator or an instructor teaching an approved offering. The notification shall be grounds to suspend, deny, or revoke the approval of the coordinator and grounds to disallow the use of a particular instructor.

Subp. 3. **Notification of approval application information.** Coordinators shall notify the commissioner within ten days of any change in the information set forth in an application for approval on file with the commissioner.

### **2809.0100 FEES.**

Fees for approved courses and related materials must be clearly identified to students. In the event that a course is canceled for any reason, all fees must be returned within 15 days from the date of cancellation. In the event that a course is postponed for any reason, students shall be given the choice of attending the course at a later date or of having their fees refunded in full. If a student is unable to attend a course or cancels the registration in a course, sponsor policies regarding refunds shall govern.

### **2809.0110 FACILITIES.**

Each course of study, except self-study courses, must be conducted in a classroom or other facility that is adequate to comfortably accommodate the faculty and the number of students enrolled. The sponsor may limit the number of students enrolled in a course. Approved courses shall not be held on the premises of a company doing business in the regulated area, except for company sponsored courses allowed by statute, and except in the building contractor industry where specific product application is appropriate and related.

### **2809.0120 SUPPLEMENTARY MATERIALS.**

An adequate supply of supplementary materials to be used or distributed in connection with an approved course must be available in order to ensure that each student receives all of the necessary materials. Outlines and any other materials that are reproduced must be of readable quality.

### **2809.0130 ADVERTISING COURSES.**

Items A to F govern the advertising of prelicense and continuing education courses.

A. Advertising must be truthful and not deceptive or misleading. Courses may not be advertised in any manner as approved unless approval has been granted in writing by the commissioner.

B. No advertisement, pamphlet, circular, or other similar materials pertaining to an approved offering may be circulated or distributed in this state, unless one of the following statements is prominently displayed:

For prelicense education courses, "This course has been approved by the Minnesota Commissioner of Commerce for (relevant industry) prelicense education."

For continuing education courses, "This course has been approved by the Minnesota Commissioner of Commerce for ..... hours for (relevant industry) continuing education."

C. Advertising of approved courses must be clearly distinguishable from the advertisement of other nonapproved courses and services.

D. Courses may not be advertised before approval, unless the course is described in the advertising as "approval pending" and that is, in fact, the case.

E. The number of hours for which a course has been approved must be prominently displayed on an advertisement for the course. If the course offering is longer than the number of hours of credit to be given, it must be clear that credit is not earned for the entire course.

F. The course approval number must not be included in any advertisement.

### **2809.0140 NOTICE TO STUDENTS.**

At the beginning of each approved offering, the following notice must be handed out in printed form or must be read to students: "This educational offering is recognized by the Minnesota commissioner of commerce as satisfying ..... hours of credit toward (choose one or more of the following as appropriate: prelicensing, postlicensing, or continuing) (insert appropriate industry) education requirements."

### **2809.0150 AUDITS.**

The commissioner reserves the right to audit subject offerings with or without notice to the sponsor.

**2809.0160 FALSIFICATION OF REPORTS.**

A licensee or applicant found to have falsified an education report to the commissioner shall be considered to have violated the laws relating to the industry for which the person has a license and shall be subject to suspension or revocation of the license or denial of the application for licensure.

The commissioner reserves the right to audit a licensee's education records.

**2809.0170 DISCIPLINARY ACTION.**

The commissioner may deny, censure, suspend, or revoke the approval of a coordinator or course and disallow the use of a qualified instructor if it is determined that they are not in compliance with this chapter.

**2809.0180 WAIVERS AND EXTENSIONS.**

If a licensee provides documentation to the commissioner that the person is unable, and will continue to be unable, to attend actual classroom course work or complete a self-study program because of a physical handicap, medical condition, or similar reason, attendance at continuing education courses shall be waived for a period not to exceed one year. The commissioner shall require that the individual read a sufficient number of textbooks, or listen to a sufficient number of tapes, related to that industry, as would be necessary for the licensee to satisfy educational credit hour needs. The commissioner shall award the licensee credit hours for reading books or listening to tapes by determining how many credit hours would be granted to a classroom course involving the same material and giving the licensee the same number of credit hours under this part. The licensee may apply each year for a new waiver upon the same terms and conditions as were necessary to secure the original waiver, and must demonstrate that in subsequent years, the licensee was unable to complete a self-study course. The commissioner may request documentation of the condition upon which the request for waiver is based as is necessary to satisfy the commissioner of the existence of the condition and that the condition does preclude attendance at continuing education courses.

Upon written proof demonstrating a financial or medical hardship, the commissioner shall extend, for up to 90 days, the time period during which the continuing education must be successfully completed. Loss of income from either attendance at courses or cancellation of a license is not a bona fide financial hardship. Requests for extensions must be submitted in writing no later than 60 days before the education is due and must include an explanation with verification of the hardship, plus verification of enrollment at an approved course of study.

**2809.0190 REPORTING REQUIREMENTS.**

Required education must be reported in a manner prescribed by the commissioner.

**2809.0200 REAL ESTATE EDUCATION; REAL ESTATE COURSE CURRICULUM.****Subpart 1. Course I.**

- Introduction to real estate - one hour
- Title closing - six hours
- Real estate law - eight hours
- Basic law of contracts - three hours
- Principles of financing - five hours
- Types and classifications of property - four hours
- Environmental issues - three hours

**Outline for Course I**

- I. Introduction to Real Estate
  - A. Overview of Course I
    - 1. Course goals
    - 2. Attendance/breaks
    - 3. Examination policy
    - 4. Course and instructor evaluation
  - B. Scope of Industry

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## Proposed Rules

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- C. Areas of Specialization
- D. Industry Terminology
- E. Professional Standards and Ethics
- F. Broker/Salesperson Relationship

### II. Title Closing

- A. Examination of Title
  - 1. History
  - 2. Examination of abstract
  - 3. Title insurance
    - a. Owners
    - b. Purchasers
    - c. Mortgage
  - 4. Title registration (torrens)
- B. Closing
  - 1. Closing checklist
  - 2. Methods of closing
    - a. Closing through escrow
    - b. Other
  - 3. Delivery of deed
  - 4. Responsibilities of buyer and seller
    - a. Taxes and liens
    - b. Reduction certificate (assumption statement)
    - c. Insurance
    - d. Leases
    - e. Bill of sale
    - f. Title search
    - g. Survey
    - h. Certificate of occupancy
    - i. Violations (ordinances)
    - j. Apportionments
  - 5. Adjournment of closing (settlement)
  - 6. Real Estate Settlement Procedures Act (RESPA)
    - a. Lender requirements
    - b. Truth in lending (regulation Z)
    - c. Settlement (closing)
  - 7. Responsibilities of broker
  - 8. Deeds
    - a. Parts of a deed
      - 1. Parties
      - 2. Consideration
      - 3. Words of conveyance
      - 4. Property description
      - 5. Appurtenances
      - 6. Habendum (estate)
      - 7. Execution and acknowledgment
      - 8. Seal
    - b. Delivery
    - c. Recording
    - d. Types of deeds
      - 1. Quitclaim
      - 2. Warranty deed and covenants
      - 3. Special warranty deed
      - 4. Other
    - e. Covenants running with the land
    - f. Validity
- C. Search and Examination of Title
  - 1. Object of search

- a. Chain of title
  - b. Recording acts
  - 2. Grantor-grantee system of indexing
    - a. Running the chain of title
    - b. Grantors
    - c. Mortgages
    - d. Lis pendens
    - e. Judgments
    - f. Liens
    - g. Taxes
    - h. Probate court
    - i. Special assessments
  - 3. Lot and block indexing
- III. Real Estate Law
- A. Real Estate License Law
    - 1. Purpose of law and rules
    - 2. Administration of law
      - a. Department of Commerce
      - b. Penalties for violation
    - 3. Substantive provisions of law
      - a. Trust accounts
      - b. Prohibition of fraudulent, deceptive, or dishonest practices
      - c. Standards of conduct
      - d. Real Estate Research and Recovery Fund
      - e. Licensing and education requirements
  - B. Laws Relating to Agency
  - C. Subdivided Land Act
    - 1. Scope of law
    - 2. Registration provisions
    - 3. Licensing requirements
  - D. Securities Act-Potential Applicability to Real Estate
  - E. Appraiser Licensing Law
- IV. Basic Law of Contracts
- A. Definition
  - B. Essentials
  - C. Breach-Remedies
  - D. Types of Real Estate Contracts
    - 1. Purchase agreement-parties to
    - 2. Listing agreement-parties to
    - 3. Contract for deed
    - 4. Options
    - 5. Lease
  - E. Cancellation
- V. Principles of Financing
- A. Types
    - 1. FHA
    - 2. VA
    - 3. Conventional/insured conventional
    - 4. ARM

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## Proposed Rules

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- 5. Other
- 6. Points
- B. Sources of Mortgage Funds
  - 1. Lenders
  - 2. Secondary mortgage market
  - 3. Owner financing
- C. Usury
- VI. Types and Classifications of Property
  - A. Residential Construction
    - 1. Government regulation
  - B. Land Development and Use
    - 1. City planning
    - 2. Zoning
  - C. Condominiums, Cooperatives, PUDs, Common Interest Communities, Manufactured Housing
    - 1. Definitions
    - 2. Financing
    - 3. Licenses required to sell
    - 4. Homeowner's associations
    - 5. Bylaws
- VII. Environmental Issues
- Subp. 2. **Course II.**

Valuation - three hours  
Financing applications - seven hours  
Contracts - sixteen hours  
Fair housing - three hours  
Real estate specialties - one hour

### Outline for Course II

- I. Valuation
  - A. Evaluation vs. Appraisal
  - B. Methods of Valuation
    - 1. Market approach
    - 2. Cost approach
    - 3. Income approach
  - C. Tax value
- II. Financing Applications
  - A. Review of Course I Financing
  - B. Mortgages
    - 1. Legal elements
    - 2. Theories
      - a. Lien
      - b. Title
    - 3. Mortgage note
    - 4. Assumption
  - C. Foreclosure/Default
- III. Contracts
  - A. Review of Course I Contracts
  - B. Purchase Agreement
    - 1. Essential elements
  - C. Listing Agreement
    - 1. Employment contract - broker

- 2. Essential elements
- D. Contract for Deed
  - 1. Essential elements

IV. Fair Housing

- A. Federal Fair Housing Laws
- B. State Fair Housing Laws

V. Real Estate Specialties

Subp. 3. **Course III.** Course III shall be a 30-hour course consisting of one of the following:

- Real Estate Appraisal
- Closing Procedures
- Farm and Ranch Brokerage
- Real Estate Finance
- Real Estate Investment
- Real Estate Law
- Real Estate Management
- Business Brokerage
- Commercial Real Estate
- Residential Architecture and Construction
- A combination course of no more than three of the above subjects

I. Real Estate Appraisal

- A. Nature, importance, and purposes of appraisals
- B. Nature, importance, and characteristics of property and value
- C. Principles controlling real estate value
- D. The appraisal process
- E. Economic and neighborhood analysis
- F. Considerations and fundamentals of site evaluation
- G. Construction methods and materials
- H. Architectural styles and utility
- I. Cost approach; estimating costs and accrued depreciation
- J. Analysis
- K. Market data approach
- L. Income approach; income and expense analysis, capitalization theory and techniques
- M. Reconciliation and final value estimate
- N. Writing the report
- O. USPAP
- P. Course examination

II. Closing Procedures

- A. Overview of closing; persons present, protocol, timeliness
- B. Review of purchase agreement, supplements, addendum
- C. Compilation of data needed to prepare a closing file
- D. Legal documents
- E. Abstracts, title procedures
- F. Review of settlement costs; buyer, seller

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## Proposed Rules

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- G. Closing statement; prorations and other math
- H. Review of sample cases
- I. Follow-up procedures
- J. Course examination
- III. Farm and Ranch Brokerage
  - A. Responsibilities of broker to seller and buyer
  - B. Selling options
  - C. Sources of financing
  - D. Factors in selecting a farm or ranch
  - E. Advantages and disadvantages of irrigation systems
  - F. Determination of farm and ranch value
  - G. Considerations in the constructing of purchase agreements
  - H. Course examination

### IV. Real Estate Finance

- A. Introduction to the mortgage market
- B. Sources of mortgage money
- C. Real estate investment trusts and syndication
- D. Mortgage banking
- E. Financing residential properties
- F. Financing income producing properties
- G. Construction and land development loans
- H. Special techniques used in financing real estate
- I. Junior mortgages
- J. Land contracts
- K. Financing long-term leases
- L. Course examination

### V. Real Estate Investment

- A. Real estate investments
- B. Discounted cash flow analysis
- C. Measuring investment returns
- D. Estimation of real estate cash flows
- E. Real estate financing
- F. The tax process
- G. Acquisitions and operations
- H. Dispositions and exchanges
- I. After-tax investment analysis
- J. Speculative land investment
- K. Multiple exchanges
- L. Course examination

### VI. Real Estate Law

- A. The process of real estate law
- B. Real estate brokerage
- C. Contract for the sale of real estate
- D. Property conveyance
- E. Title insurance and closing
- F. Property ownership and taxes
- G. Estates in land and landlord/tenant relationships
- H. Cooperatives, condominiums, and planned unit developments
- I. Real estate lending and land use regulations
- J. Course examination

### VII. Real Estate Management

- A. Overview and economics of real estate management
- B. Government involvement

- C. The management plan
- D. Owner relations and record keeping
- E. Marketing and leasing
- F. Property operations
  - 1. Tenant administration
  - 2. Physical plant maintenance
  - 3. Staffing and employee relations
- G. Residential management
  - 1. Rental housing
  - 2. Condominiums and cooperatives
- H. Commercial management
  - 1. Office building and special purpose properties
  - 2. Shopping centers and retail properties
- I. The management office
- J. Creative property management
- K. Course examination

**VIII. Business Brokerage**

- A. Business financial statements
- B. Financial statement ratio analysis
- C. Cash flow, rate of return, and break-even analysis
- D. Competitive market analysis
- E. Valuation of the business
- F. Developing the business plan
- G. Qualifying the buyer
- H. Terms of the purchase agreement
- I. Financing the business opportunity
- J. Evaluation of business risk
- K. Course examination

**IX. Commercial Real Estate**

- A. Types of commercial properties
- B. Introduction to commercial real estate sales
- C. Office leasing
- D. Industrial leasing
- E. Retail leasing
- F. Business opportunity sales
- G. Course examination

**X. Residential Architecture and Construction**

- A. Architectural styles and designs
- B. Blueprints and plans
- C. Construction basics
- D. Exteriors
- E. Interiors
- F. Mechanical systems
- G. Course examination

A combination course shall consist of no more than three of the preceding ten subjects and shall devote at least ten hours to each subject. A sponsor that proposes to offer a combination course III shall submit to the commissioner, as part of the application for approval, an outline setting forth the subjects to be addressed and the number of hours proposed to be devoted to each topic.

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## Proposed Rules

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Subp. 5. **Broker course.** The required course for real estate brokers shall consist of the following subject hours:

- Broker licensing requirements - three hours
- Trust account requirements - two hours
- Agency - five hours
- Antidiscrimination - three hours
- Real estate principles update - one hour
- Real estate sale, lease, and transfer - two hours
- Financing and valuation update - three hours
- Broker's role in closing - three hours
- Income taxation - three hours
- Employment laws and insurance - three hours
- Final exam

I. Broker Licensing Requirements

- A. Ownership and operational forms
- B. Minnesota License Law Review

II. Trust Account Requirements

- A. Opening the trust account
- B. Deposit requirements
- C. Trust account records

III. Agency

- A. Current statutes and agency law
- B. Statutory addenda and disclosures

IV. Antidiscrimination

- A. Federal fair housing
- B. Americans with Disabilities Act
- C. Minnesota Human Rights Act

V. Real Estate Principles Update

- A. Land improvements, estates
- B. Legal descriptions
- C. Governmental rights
- D. Property taxation and special assessments

VI. Real Estate Sale, Lease, and Transfer

- A. Purchase agreement and addenda
- B. Lease types and terms
- C. Deed types and clauses
- D. Contract for deed

VII. Financing and Valuation Update

- A. Sources of financing
- B. Foreclosure Law
- C. Principles of value
- D. Methods of valuation

VIII. Broker's Role in Closing

- A. Prorating
- B. Closing statements
- C. Closing documents
- D. Deposit requirements

IX. Income Taxation

- A. Tax rules of home ownership
- B. Investment tax issues
- C. Sale of personal residence

X. Employment Laws and Insurance

- A. Fair Labor Standards Act
- B. Tax laws, withholding, reports
- C. Independent contractor vs. employee
- D. State and Federal Unemployment Tax Act
- E. Errors and omissions insurance

XI. Final Exam

**2809.0210 INSURANCE EDUCATION.**

Subpart 1. **Approval.** The commissioner shall approve or disapprove nationally recognized professional designation examinations. In order for an agent to receive full continuing education credit for a professional designation examination, the agent must pass the examination. An agent may not receive credit for classroom instruction preparing for the professional designation examination and also receive continuing education credit for passing the professional designation examination.

Subp. 2. **Prelicensure education.** Prelicensure education shall consist of 45 hours of education.

- A. The first 30 hours shall be an introduction to insurance and insurance-related concepts:
  - (1) rules, regulations, and law;
  - (2) basic fundamentals of insurance;
  - (3) property and casualty;
    - (a) types of policies;
    - (b) policy provisions;
    - (c) perils, exclusions, deductibles, and liability; and
    - (d) evaluating needs; and
  - (4) life/accident and health;
    - (a) types of policies;
    - (b) policy provisions; and
    - (c) group insurance.
- B. The second 15 hours of insurance prelicensure education shall be composed of courses that consist of either of the following:
  - (1) life/accident and health;
    - (a) types of life insurance policies;
    - (b) types of health insurance policies; and
    - (c) *Minnesota laws*, rules, and regulations pertinent to life/accident and health insurance; and
  - (2) property/casualty;
    - (a) personal lines;
    - (b) commercial lines; and
    - (c) *Minnesota laws*, rules, and regulations pertinent to property/casualty insurance.

**2809.0220 APPRAISER EDUCATION.**

Subpart 1. **Certified general real property appraiser initial education.** Various appraisal courses may be credited toward the

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## Proposed Rules

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75 classroom hour education requirement. Applicants must demonstrate that their education involved coverage of all the following topics, with particular emphasis on the appraisal of one of four unit residential properties:

- A. influences on real estate value;
- B. legal considerations in appraisal;
- C. types of value;
- D. economic principles;
- E. real estate markets and analysis;
- F. valuation process;
- G. property description;
- H. highest and best use analysis;
- I. appraisal statistical concepts;
- J. sales comparison approach;
- K. site value;
- L. cost approach;
- M. income approach;
  - (1) gross rent multiplier analysis;
  - (2) estimation of income and expenses; and
  - (3) operating expense ratios;
- N. valuation of partial interests; and
- O. appraisal standards and ethics.

Subp. 2. **Certified residential real property appraiser initial education.** Various appraisal courses may be credited toward the 165 classroom hour education requirements. Applicants must demonstrate that their education involved coverage of all the following topics, with particular emphasis on the appraisal of one to four unit residential properties:

- A. influences on real estate value;
- B. legal considerations in appraisal;
- C. types of value;
- D. economic principles;
- E. real estate markets and analysis;
- F. valuation process;
- G. property description;
- H. highest and best use analysis;
- I. appraisal statistical concepts;
- J. sales comparison approach;
- K. site value;
- L. cost approach;
- M. income approach;
  - (1) gross rent multiplier analysis;
  - (2) estimation of income and expenses;
  - (3) operating expense ratios; and
  - (4) direct capitalization;
- N. valuation of partial interests;
- O. appraisal standards and ethics; and
- P. narrative report writing.

Subp. 3. **Certified general real property appraiser initial education.** Various appraisal courses may be credited toward the 165 classroom hour education requirement. Applicants must demonstrate that their education included coverage of all the following topics, with particular emphasis on the appraisal of one of four unit residential properties:

- A. influences on real estate value;
- B. legal considerations in appraisal;
- C. types of value;
- D. economic principles;
- E. real estate markets and analysis;
- F. valuation process;
- G. property description;
- H. highest and best use analysis;
- I. appraisal math and statistics;
- J. sales comparison approach;
- K. site value;
- L. cost approach;
- M. income approach;
  - (1) estimation of income and expenses;
  - (2) operating statement ratios;
  - (3) direct capitalization;
  - (4) cash flow estimates;
  - (5) measures of cash flow; and
  - (6) discounted cash flow analysis;
- N. valuation of partial interests;
- O. appraisal standards and ethics; and
- P. narrative report writing.

**2809.0230 BUILDING CONTRACTOR AND REMODELER EDUCATION.**

Subpart 1. **Lead abatement.** Each licensee must, during the licensee's first complete continuing education reporting period, complete and report one hour of continuing education relating to lead abatement rules in safe lead abatement procedures.

Subp. 2. **Building codes.** Each licensee must, during each continuing education reporting period, complete and report one hour of continuing education relating to energy codes for buildings and other building codes designed to conserve energy.

**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

## Board of Dentistry

### Proposed Permanent Rules Relating to Faculty and Resident Dentist Licensure

#### Notice of Intent to Adopt Rules Without a Public Hearing

The Minnesota Board of Dentistry 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. 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 proposed rules.

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

Patricia H. Glasrud, Executive Director  
Minnesota Board of Dentistry  
2700 University Avenue West, Suite 70  
St. Paul, Minnesota 55114  
(612) 642-0579 OR  
MN Relay Service for Hearing and Speech Impaired  
(612) 297-5353 or (800) 627-3529

**Subject of Rules and Statutory Authority.** The proposed rules govern faculty and resident dentists. The statutory authority to adopt these rules is contained in *Minnesota Statutes* sections 150A.04, and 214.06. A copy of the proposed rules is published in the *State Register* and attached to this notice as mailed.

**Comments.** You have until 4:30 p.m., January 25, 1996 to submit written comment in support of or in opposition to the proposed rules and 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 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., January 25, 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 to the agency 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 agency shall proceed under the provisions of 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 Board and may not result in a substantial change in the proposed rules as published 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 by calling the Board office at (612) 642-0581 or MN Relay Service for Hearing and Speech Impaired at (612) 297-5353 or (800) 627-3529. 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.

**Small Business Considerations.** The Board has determined that *Minnesota Statutes* section 14.115 does not apply to these rules for two alternative reasons: (1) the rules do not affect small businesses directly; and (2) to the extent these rules may affect small businesses directly, such businesses are service businesses regulated by government bodies for standards and costs, such as providers of medical care.

If it is determined that *Minnesota Statutes* section 14.115 does apply to these rules, then it is the Board's position that it would not be feasible to implement any of the methods for reducing the impact of the rules on small businesses because doing so would adversely affect public health, safety or welfare and would be contrary to the statutory objectives which are the basis for the proposed rulemaking, which are to license faculty and resident dentists.

The Board has provided an opportunity for small businesses to participate in the rulemaking process by (1) publishing notice in the *State Register* and the Board's newsletter, and (2) discussing the proposed rules at public Board and Rules Committee meetings.

**Expenditure of Public Money by Local Public Bodies.** The adoption of these rules will not require the expenditure of public money by local public bodies, and therefore the Board need not prepare a fiscal note pursuant to *Minnesota Statutes* section 14.11, subdivision 1.

**Impact on Agriculture Lands.** These rules will not have a direct and substantial adverse impact on agricultural land in the state,

and therefore the Board need not comply with the requirements of *Minnesota Statutes* sections 17.80 to 17.84, pursuant to *Minnesota Statutes* section 14.11, subdivision 2.

**Adoption and Review of Rule.** 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 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 the agency contact person listed above.

Dated: 7 December 1995

Patricia H. Glasrud  
Executive Director

## Rules as Proposed

### 3100.0100 DEFINITIONS.

[For text of subps 1 to 11, see M.R.]

Subp. 11a. Faculty dentist. "Faculty dentist" has the meaning given it in *Minnesota Statutes*, section 150A.01, subdivision 6a.

[For text of subps 12a to 18, see M.R.]

Subp. 18a. Resident dentist. "Resident dentist" has the meaning given it in *Minnesota Statutes*, section 150A.01, subdivision 8a.

[For text of subps 20 and 21, see M.R.]

### 3100.1150 LICENSE TO PRACTICE DENTISTRY AS A FACULTY DENTIST.

#### Subpart 1. Licensure.

A. In order to practice dentistry, a faculty member must be licensed by the board.

B. The board must license a person to practice dentistry as a faculty dentist if:

(1) the person completes and submits to the board an application furnished by the board;

(2) the person is not otherwise licensed to practice dentistry in Minnesota;

(3) the dean of a school of dentistry or the director of an advanced dental education program accredited by the Commission on Accreditation certifies to the board, in accordance with the requirements of item C, that the person is a member of the school's faculty and practices dentistry; and

(4) the person has not engaged in behavior for which licensure may be suspended, revoked, limited, modified, or denied on any of the grounds specified in *Minnesota Statutes*, sections 150A.08, 214.17 to 214.25, 214.33, subdivision 2, or part 3100.6100, 3100.6200, or 3100.6300.

C. The board must accept an applicant as a faculty dentist if the dean of a school of dentistry or the director of an advanced dental education program accredited by the Commission on Accreditation provides to the board the following information:

(1) the applicant's full name;

(2) the applicant's social security number;

(3) the applicant's home and work address;

(4) a statement that the applicant is a member of the faculty and practices dentistry within the school or its affiliated teaching facilities, but only for purposes of instruction or research;

(5) the dates of the applicant's employment by the school of dentistry;

(6) a statement that the applicant has been notified of the need to be licensed by the board as a faculty dentist; and

(7) a statement that the information provided is accurate and complete.

#### Subp. 2. Termination of licensure.

**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

A. A person's license to practice dentistry as a faculty dentist is terminated when the person is no longer a member of the faculty of a school of dentistry or when the person discontinues practicing dentistry.

B. A person licensed to practice dentistry as a faculty dentist must inform the board when the licensee is no longer a member of the faculty of a school of dentistry or when the person discontinues practicing dentistry.

C. A person who fails to inform the board as required in item B is deemed to have committed fraud or deception within the meaning of *Minnesota Statutes*, section 150A.08, subdivision 1, clause (1).

### **3100.1160 LICENSE TO PRACTICE DENTISTRY AS A RESIDENT DENTIST.**

#### **Subpart 1. Licensure.**

A. In order to practice dentistry, an enrolled graduate student or a student of an advanced education program must be licensed by the board.

B. The board must license a person to practice dentistry as a resident dentist if:

(1) the person completes and submits to the board an application furnished by the board;

(2) the person is not otherwise licensed to practice dentistry in Minnesota;

(3) the person provides evidence of having graduated from a dental school;

(4) the person provides evidence of being an enrolled graduate student or a student of an advanced dental education program accredited by the Commission on Accreditation; and

(5) the person has not engaged in behavior for which licensure may be suspended, revoked, limited, modified, or denied on any of the grounds specified in *Minnesota Statutes*, section 150A.08.

#### **Subp. 2. Termination of licensure.**

A. A person's license to practice dentistry as a resident dentist is terminated when the person is no longer an enrolled graduate student or a student of an advanced dental education program accredited by the Commission on Accreditation.

B. A person licensed to practice dentistry as a resident dentist must inform the board when the licensee is no longer an enrolled graduate student or a student of an advanced dental education program accredited by the Commission on Accreditation.

C. A person who fails to inform the board as required in item B is deemed to have committed fraud or deception within the meaning of *Minnesota Statutes*, section 150.08, subdivision 1, clause (1).

### **3100.1700 TERMS AND RENEWAL OF LICENSE LICENSURE AND REGISTRATION; GENERAL.**

Subpart 1. **Terms Requirements.** Each initial license or registration issued by the board is valid from the date issued until renewed or terminated in accordance with the procedures specified in this part. Each annually renewed license or registration issued by the board is valid from January 1 of the year for which it was issued until renewed or terminated in accordance with the procedures specified in this part. The requirements of this part apply to the terms and renewal of licensure or registration of an applicant other than a faculty or resident dentist. The requirements for the terms and renewal of licensure as a faculty or resident dentist are specified in part 3100.1750.

Subp. 1a. **Terms.** An initial license or registration issued by the board is valid from the date issued until renewed or terminated in accordance with the procedures specified in this part. An annually renewed license or registration issued by the board is valid from January 1 of the year for which it was issued until renewed or terminated in accordance with the procedures specified in this part.

[For text of subps 2 to 5, see M.R.]

### **3100.1750 TERMS AND RENEWAL OF LICENSURE; FACULTY AND RESIDENT DENTISTS.**

Subpart 1. **Requirements.** The requirements of this part apply to the terms and renewal of licensure as a faculty or resident dentist.

Subp. 2. **Terms.** An initial license issued by the board is valid from the date issued until renewed or terminated in accordance with the procedures specified in this part. An annually renewed license issued by the board is valid from July 1 of the year for which it was issued until renewed or terminated in accordance with the procedures specified in this part.

#### **Subp. 3. Renewal applications.**

A. A faculty or resident dentist must complete and submit to the board an application form furnished by the board, together with the applicable annual renewal and late fees, no later than June 30 of the year preceding the year for which licensure renewal is requested. The board must not accept a renewal application received by the board after the first workday following June 30.

B. An applicant must submit on the application form the following:

- (1) the applicant's signature;
- (2) the applicant's institutional addresses;
- (3) the applicant's license number; and
- (4) any additional information requested by the board.

**3100.2000 FEES.**

Subpart 1. **Application fees.** Each applicant for licensure as a dentist or dental hygienist or for registration as a registered dental assistant or for a limited registration as a dental assistant under part 3100.8500, subpart 3, shall submit with a license or registration application a fee in the following amounts:

- A. dentist application, \$140;
- B. ~~dental hygienist~~ faculty dentist application, ~~\$55~~ \$140;
- C. ~~dental assistant~~ hygienist application, ~~\$35; and~~ \$55;
- D. ~~limited registration~~ resident dentist application, ~~\$15~~ \$55;
- E. dental assistant application, \$35; and
- F. limited registration application, \$15.

Subp. 2. **Annual license or registration fees.** Each dentist, dental hygienist, and registered dental assistant, and dental assistant with a limited registration under part 3100.8500, subpart 3, shall submit with an annual license or registration renewal application a fee as established by the board not to exceed the following amounts:

- A. dentist, ~~\$138~~ \$168;
- B. ~~dental hygienist, \$50~~ faculty dentist, \$168;
- C. ~~registered dental assistant hygienist, \$34; and~~ \$59;
- D. ~~dental assistant with a limited registration, \$12~~ resident dentist, \$59;
- E. registered dental assistant, \$40; and
- F. dental assistant with a limited registration, \$12.

[For text of subps 3 to 10, see M.R.]

**EFFECTIVE DATE.** Minnesota Rules, parts 3100.0100, subparts 11, 11a, and 18a; 3100.1150; 3100.1160; 3100.1700, subparts 1 and 1a; 3100.1750; and 3100.2000, subparts 1 and 2, are effective August 31, 1997.

**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

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### Board of Dentistry

#### Proposed Permanent Rules Relating to Continuing Dental Education

##### Notice of Intent to Adopt Rules Without a Public Hearing

The Minnesota Board of Dentistry intends to adopt permanent rules without a public hearing following the procedures set forth in the Administrative Procedure Act, *Minnesota Statutes*, section 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 proposed rules.

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

Patricia H. Glasrud, Executive Director  
Minnesota Board of Dentistry  
2700 University Avenue West, Suite 70  
St. Paul, Minnesota 55114  
(612) 642-0579 OR  
MN Relay Service for Hearing and Speech Impaired  
(612) 297-5353 or (800) 627-3529

**Subject of Rules and Statutory Authority.** The proposed rules govern continuing dental education requirements. The statutory authority to adopt these rules is contained in *Minnesota Statutes* sections 150A.04, and 214.06. A copy of the proposed rules is published in the *State Register* and attached to this notice as mailed.

**Comments.** You have until 4:30 p.m., January 25, 1996 to submit written comment in support of or in opposition to the proposed rules and 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 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., January 25, 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 to the agency 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 agency shall proceed under the provisions of 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 Board and may not result in a substantial change in the proposed rules as published 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 by calling the Board office at (612) 642-0581 or MN Relay Service for Hearing and Speech Impaired at (612) 297-5353 or (800) 627-3529. 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.

**Small Business Considerations.** The Board has determined that *Minnesota Statutes* section 14.115 does not apply to these rules for two alternative reasons: (1) the rules do not affect small businesses directly; and (2) to the extent these rules may affect small businesses directly, such businesses are service businesses regulated by government bodies for standards and costs, such as providers of medical care.

If it is determined that *Minnesota Statutes* section 14.115 does apply to these rules, then it is the Board's position that it would not be feasible to implement any of the methods for reducing the impact of the rules on small businesses because doing so would adversely affect public health, safety or welfare and would be contrary to the statutory objectives which are the basis for the proposed rulemaking, which are to establish minimal standards for the training and education of dentists, dental hygienists and registered dental assistants, and to enforce those standards for the protections of the public.

The Board has provided an opportunity for small businesses to participate in the rulemaking process by (1) publishing notice in the *State Register* and the Board's newsletter, and (2) discussing the proposed rules at public Board and Rules Committee meetings.

**Expenditure of Public Money by Local Public Bodies.** The adoption of these rules will not require the expenditure of public money by local public bodies, and therefore the Board need not prepare a fiscal note pursuant to *Minnesota Statutes* section 14.11, subdivision 1.

**Impact on Agriculture Lands.** These rules will not have a direct and substantial adverse impact on agricultural land in the state,

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## Proposed Rules

and therefore the Board need not comply with the requirements of *Minnesota Statutes* sections 17.80 to 17.84, pursuant to *Minnesota Statutes* section 14.11, subdivision 2.

**Adoption and Review of Rule.** 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 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 the agency contact person listed above.

Dated: 7 December 1995

Patricia H. Glasrud  
Executive Director

### Rules as Proposed

#### 3100.0100 DEFINITIONS.

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

**Subp. 7a. Clinical participation.** "Clinical participation" means that participants provide clinical treatment to, or practice clinical techniques on, humans.

[For text of subps 8 and 8a, see M.R.]

**Subp. 9. Course Continuing dental education.** "Course" means an educational offering, class, presentation, meeting, or other similar event which is offered by a sponsor and qualifies for CDE credit or for which a licensee or registrant requests CDE credit pursuant to part 3100.4300. "Continuing dental education" means courses and activities approved by the board or presented by CDE sponsors approved by the board for credit toward the continuing education requirements for the renewal of licenses and registrations.

[For text of subps 9a to 12b, see M.R.]

**Subp. 12c. Laboratory or preclinical participation.** "Laboratory or preclinical participation" means that participants practice treatment techniques using study models, casts, manikins, or other simulation methods.

[For text of subps 13 to 21, see M.R.]

#### 3100.2000 FEES.

[For text of subps 1 to 6, see M.R.]

**Subp. 8. Application for initial approval as sponsor of CDE courses.** ~~A person~~ An organization applying for approval as a sponsor of CDE courses pursuant to part 3100.4200, subpart 2, shall submit ~~with an application a fee in the amount of \$75 a fee of \$100 with the initial application and a fee of \$50 with each annual renewal application.~~

[For text of subps 8a to 10, see M.R.]

#### 3100.4100 CONTINUING DENTAL EDUCATION.

**Subpart 1. Evidence of attendance.** Each licensee and registrant shall provide evidence of attendance at, or participation in, continuing dental education (CDE) as required by parts 3100.4100 to ~~3100.4600~~ 3100.4500. Such evidence must be presented to the board on preprinted cards supplied by the board.

[For text of subps 2 to 5, see M.R.]

#### 3100.4200 CDE SPONSORS.

**Subpart 1. Sponsor approval system** ~~Approval of sponsors. The board adopts a sponsor approval CDE system except as provided for in part 3100.4300. Except as provided in part 3100.4300, sponsors of CDE courses must be approved by the board in accordance with the requirements in this part.~~

**Subp. 2. Application procedure.** ~~Persons or Organizations~~ intending to offer courses for CDE credit shall present a completed application on a form provided by the board. The form will request the submission of information which will enable the board to determine whether the applicant meets the standards for sponsor approval as specified in subpart 5. The board may require the sub-

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## Proposed Rules

mission of any other information it deems necessary to determine whether the applicant meets those standards. Each application for sponsor approval submitted to the board must include the application fee established in part 3100.2000 before the application will be considered. The board may use as a consultant consult with a committee, which may include nonboard members, to evaluate sponsor applications.

Subp. 4. **Sponsor renewal.** When the board approves a sponsor, the approval will remain in effect for four years. In order to remain an approved sponsor, the sponsor must again submit an application and fee as provided for in subpart 2 and be approved before the expiration of the four-year period. Each approved sponsor must complete and submit to the board a renewal application provided by the board by May 1 of each year. Sponsors receiving initial approval must submit their first renewal application by May 1 of the following year. Each renewal application submitted to the board must include the renewal application fee established in part 3100.2000.

Subp. 5. **Approval standards.** The board will approve as a sponsor those applicants which meet the following standards:

A. The applicant is formally organized as a corporation (for profit or not for profit), partnership, accredited educational institution, or other formal association and has as one of its principal purposes the sponsoring of CDE courses. To be approved by the board as a sponsor, an applicant must comply with the standards specified in subitems (1) to (6).

(1) The applicant must be an accredited post-secondary educational institution, a professional association, a corporation, a partnership, a sole proprietorship, or other formal organization.

(2) The organization must have as one of its stated purposes the provision of continuing dental education for persons licensed or registered by the board.

(3) The organization must have a designated individual to plan and manage CDE activities.

(4) The organization must disclose to the board any disciplinary or legal action taken or pending against the organization, its officers, or members of the organization directly involved in CDE activities.

(5) The organization must have written policies on any conflict of interest which an individual presenting a course might have. The policies must minimize the potential for conflict of interest and require disclosure of a potential conflict of interest.

(6) In the materials used to publicize course offerings for CDE credit, the organization must provide complete and accurate information.

B. The courses proposed by a sponsor must have significant intellectual or practical content which deal in the clinical and scientific aspect of dentistry and patient communication or in nonclinical subjects relating to the dental profession as specified in part 3100.4100, subpart 2. Courses offered for CDE credit by the sponsor must meet the criteria specified in subitems (1) to (5).

(1) The course must be presented as an organized program of learning.

(2) The methods used for presenting course materials must include one or more of the following: clinical participation, group discussion, laboratory or preclinical participation, lecture, media usage, and self-instruction.

(3) The course must be on clinical subjects or on nonclinical subjects as specified in part 3100.4100, subpart 2, and must be designed to review existing dental concepts and techniques or to update participants on advances in the dental sciences or related sciences on oral health subjects.

(4) The subject matter of a clinical participation course must be within the legal scope of practice of the licensee or registrant in Minnesota.

(5) The content of the course must promote practices that are scientifically valid, have proven efficacy, or ensure public safety.

C. The applicant shall permit only those who are qualified by practical or academic experience to teach, speak, lecture, or make presentations at CDE course sponsored by it. Courses must be presented, conducted, or designed by individuals who have competence as well as education, training, or experience in the subject of the course.

D. Activities must be conducted in a classroom, laboratory, or other facility appropriate for the subject offered.

E. Except as provided in item F, when videotapes, motion pictures, audio tapes, interactive television classrooms, teleconferences, distance learning activities, or other interactive devices or methods are used to present CDE materials, a qualified individual must be available to interact with the participants and to verify attendance. For purposes of this item, a "qualified individual" is an individual who has competence as well as education, training, or experience in the subject of the course.

F. Courses designed as self-instructional activities must include a test which measures the licensee's or registrant's level of comprehension of the course content. The test must be submitted to the sponsor for grading and determination of successful completion of the course.

Subp. 6. **Proof of participation.** Each sponsor, at least once during each CDE course sponsored by it, shall announce to all par-

participants that in order to receive CDE credit that they submit to the sponsor a card supplied by the board within two weeks of completion of the course. The sponsor must inform the participants of each CDE course it presents that it is an approved sponsor for CDE in Minnesota and that the participant will receive credit for the course by submitting the licensee's or registrant's preprinted CDE card to the sponsor upon completion of the course. The sponsor shall submit all cards to the board in an envelope provided by the board within three weeks 30 days after completion of the course.

**Subp. 6a. Record keeping.**

A. The sponsor must maintain records of each CDE course offering. Records must include the date and location of the course; the number of hours; the subject matter of the course, including the title, objectives, program, and other printed information relating to content; the name and credentials of the presenter; and the names of the participants. For an annual convention or mid-year meeting, records of the names of the participants do not have to be maintained for each CDE course offering; records of the names of the participants for the convention or meeting as a whole are sufficient. For purposes of this item, "annual convention or mid-year meeting" means an annual convention or mid-year meeting that does not require preregistration for individual course offerings and that is sponsored by the Minnesota Dental Association, the Minnesota Dental Hygienists Association, the Minnesota Dental Assistants Association, or a district or component society of one of these associations. The records required under this item must be maintained for three years following the course offering.

B. The board may review records maintained pursuant to item A and may conduct a survey of a sample of the participants in a course to determine the sponsor's compliance with the standards specified in subpart 5.

Subp. 7. **Denial or revocation of approval.** The board shall state in writing its reasons for denying any sponsor application.

The board may deny approval of a specific course offered by an approved sponsor if such a course does not meet the standards of courses as specified by part 3100.4300, ~~subpart 3~~ 3100.4200, subpart 5, items B to E.

The board may revoke its approval of ~~any~~ a sponsor for ~~failure~~ failing to comply with provisions of subparts 4, 5, and 6 and ~~part~~ 3100.4700, and 6a, for falsification of any information requested or required by the board relating to the application for approval as a sponsor or to the administration of courses of a sponsor, or for other just cause.

**3100.4300 APPROVAL OF COURSES ATTENDED PRESENTED BY NONAPPROVED SPONSORS.**

Subpart 1. **Credit for ~~nonapproved~~ courses by nonapproved sponsors.** Licensees or registrants may apply ~~individually~~ for approval of ~~CDE~~ courses for CDE credit which are sponsored by organizations which have not ~~applied and~~ been approved as sponsors pursuant to part 3100.4200. ~~Information as~~ Licensees or registrants shall submit to the board the information specified in subpart 2 as well as any other information which the board may reasonably require for the purposes of evaluating the course for which approval is sought ~~shall be submitted to the board.~~ The board may ~~use as consultants~~ consult with a committee appointed ~~for such evaluation to perform the evaluations.~~

Subp. 2. **Information required.** The following information, ~~along with the form supplied by the board for reporting participation in CDE courses with the back side of it completed;~~ shall be submitted to the board by a licensee or registrant seeking approval of courses pursuant to this part:

A. the name and address of the organization sponsoring the course for which credit is requested a completed CDE card supplied by the board for reporting participation in a CDE course;

B. the name and address of the person in the sponsoring organization with which the board may correspond with respect to the course for which credit is requested evidence of the licensee's or registrant's attendance at, or participation in, the course;

C. a detailed description of the content of the course the name and address of the organization sponsoring the course for which credit is requested;

D. the name and credentials of each instructor or person making a presentation the name and address of a person in the sponsoring organization with whom the board may correspond with respect to the course for which credit is requested;

E. the location including the name and address of the facility at which the course will be conducted; an outline or written description of all the material covered in the course;

F. the name and credentials of each person making a presentation at the course; and

G. the name and address of the facility at which the course was conducted.

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## Proposed Rules

Subp. 2a. Time limits for notice of attendance. If a course is taken from a sponsor not approved by the board under part 3100.4200, the licensee or registrant must apply for course approval under this part within 30 days after completing the course.

Subp. 3. Course approval standards. The board shall must grant CDE credit for any a course which meets the following standards specified in part 3100.4100, subpart 2, and 3100.4200, subpart 5. The course shall have significant intellectual or practical content dealing in the clinical and scientific aspect of dentistry and patient communication, or in nonclinical subjects related to the dental profession as specified in part 3100.4100, subpart 2-

Subp. 4. Qualifications to present courses ~~Written denial~~. Each person making a CDE course presentation shall be qualified by practical or academic experience to teach the subjects he or she covers. Participants shall attend courses in a classroom, laboratory, or setting suitable for the course. Video, motion picture, or sound tape presentations may be used provided a qualified person is present to verify attendance. The board must state in writing its reasons for denying a request for approval of a course or activity for CDE credit hours.

Subp. 5. [See repealer.]

Subp. 6. [See repealer.]

### **3100.4400 ESTABLISHING CREDIT HOURS FOR CDE COURSES AND ACTIVITIES.**

For courses presented by sponsors approved pursuant to part 3100.4200, and for courses approved pursuant to part 3100.4300, the board shall ~~fix~~ must set the number of hours of CDE credit based upon the following criteria: in this part.

A. Multiday convention-type meetings such as state or national dental conventions or their equivalent Dental conventions which last more than one day will be given awarded three clock hours credit.

B. Scientific or educational meetings or courses or similar offerings will be credited on an hour-for-hour basis. Courses presented through the use of one of the following methods will be awarded one credit for each hour of the course: clinical participation, group discussion, laboratory or preclinical participation, lecture, and media usage.

C. Home study with an accompanying examination will be awarded hourly credit if the Self-instructional courses for which an examination is successfully completed will be awarded credit based upon a the board's determination by the board or sponsor of the reasonable amount of time necessary to cover the material and take the examination and. Credit will not be awarded on the basis of the individual time taken by the licensee or registrant to study or review the material.

D. A presentation of a CDE course made on behalf of an approved sponsor will be credited on an hour-for-hour basis awarded one credit per hour of the presentation.

E. Authoring or co-authoring a published scientific article will be awarded five credits per article.

F. Successful completion of postgraduate courses will be awarded ten credits per credit hour.

G. Successful completion of a jurisprudence examination administered by the board will be awarded two credits once during each five-year CDE cycle, starting with the licensee's or registrant's second five-year CDE cycle. For purposes of this item, a "jurisprudence examination" means an examination on the requirements of this chapter, Minnesota Statutes, chapter 150A, 214, or 319A, or all of the foregoing.

### **3100.4500 SOURCES OF CDE CREDIT HOURS FOR EXAMINATIONS AND ADVANCED EDUCATION PROGRAM.**

Subpart 1. [See repealer.]

Subp. 2. Other forms of CDE. The board may also approve other forms of CDE examinations and advanced education programs for CDE credit if the approval standards as specified in parts 3100.4100, subpart 2, and 3100.4200, subpart 5 and 3100.4300, subpart 3, are met. Examples of such other forms of CDE examinations and advanced education program are:

A. Successfully passing Successful completion of part II of the national board examination for dentists if taken five or more years after graduation. Except for any specific topic area required by statute or rule, this will fulfill the five-year requirement for dentists.

B. Satisfactory Successful completion of an advanced education program such as an internship or residency accredited by the American Dental Association Commission on Accreditation and approved by the board. Except for any specific topic area required by statute or rule, such programs will fulfill the five-year requirement for dentists.

C. Successfully passing Successful completion of the national board examination for dental hygiene if taken five or more years after graduation. Except for any specific topic area required by statute or rule, this will fulfill the five-year requirement for hygienists.

D. Satisfactory completion of an advanced education program approved by the board. Except for any specific topic area required by statute or rule, this will fulfill the five-year requirement for hygienists.

E. Publication of articles or books. CDE credit will be granted on an individual consideration basis. Successful completion of the examination for initial registration as a registered dental assistant if taken five or more years after initial registration. Except for any specific topic area required by statute or rule, this will fulfill the five-year requirement for registered dental assistants.

E. Successful completion of an advanced education program approved by the board. Except for any specific topic area required by statute or rule, this will fulfill the five-year requirement for registered dental assistants.

**REPEALER.** Minnesota Rules, parts 3100.4300, subparts 5 and 6; 3100.4500, subpart 1; and 3100.4600, are repealed.

## Board of Dentistry

### Proposed Permanent Rules Relating to Duties of Dental Hygienists and Registered Dental Assistants

#### Notice of Intent to Adopt Rules Without a Public Hearing

The Minnesota Board of Dentistry 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. 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 proposed rules.

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

Patricia H. Glasrud, Executive Director  
Minnesota Board of Dentistry  
2700 University Avenue West, Suite 70  
St. Paul, Minnesota 55114  
(612) 642-0579 OR  
MN Relay Service for Hearing and Speech Impaired  
(612) 297-5353 or (800) 627-3529

**Subject of Rules and Statutory Authority.** The proposed rules govern the duties a dental hygienist may perform under general supervision and direct supervision (*Minnesota Rule* 3100.8700) and the duties a registered dental assistant may perform under general supervision, indirect supervision and direct supervision (*Minnesota Rule*, 3100.8500). The statutory authority to adopt these rules is contained in *Minnesota Statutes* sections 150A.04, and 150A.10. A copy of the proposed rules is published in the *State Register* and attached to this notice as mailed.

**Comments.** You have until 4:30 p.m., January 25, 1996 to submit written comment in support of or in opposition to the proposed rules and 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 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., January 25, 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 to the agency 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 agency shall proceed under the provisions of 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 Board and may not result in a substantial change in the proposed rules as published 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 by calling the Board office at (612) 642-0581 or MN Relay Service for Hearing and Speech Impaired at (612) 297-5353 or (800) 627-3529. This statement

**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

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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.

**Small Business Considerations.** The Board has determined that *Minnesota Statutes* section 14.115 does not apply to these rules for two alternative reasons: (1) the rules do not affect small businesses directly; and (2) to the extent these rules may affect small businesses directly, such businesses are service businesses regulated by government bodies for standards and costs, such as providers of medical care.

If it is determined that *Minnesota Statutes* section 14.115 does apply to these rules, then it is the Board's position that it would not be feasible to implement any of the methods for reducing the impact of the rules on small businesses because doing so would adversely affect public health, safety or welfare and would be contrary to the statutory objectives which are the basis for the proposed rulemaking, which are to establish the services which may be performed by dental hygienists and registered dental assistants.

The Board has provided an opportunity for small businesses to participate in the rulemaking process by (1) publishing notice in the *State Register* and the Board's newsletter, and (2) discussing the proposed rules at public Board and Rules Committee meetings.

**Expenditure of Public Money by Local Public Bodies.** The adoption of these rules will not require the expenditure of public money by local public bodies, and therefore the Board need not prepare a fiscal note pursuant to *Minnesota Statutes* section 14.11, subdivision 1.

**Impact on Agriculture Lands.** These rules will not have a direct and substantial adverse impact on agricultural land in the state, and therefore the Board need not comply with the requirements of *Minnesota Statutes* sections 17.80 to 17.84, pursuant to *Minnesota Statutes* section 14.11, subdivision 2.

**Adoption and Review of Rule.** 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 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 the agency contact person listed above.

Dated: 7 December 1995

Patricia H. Glasrud  
Executive Director

### Rules as Proposed

#### 3100.1300 APPLICATION FOR REGISTRATION AS A REGISTERED DENTAL ASSISTANT.

Any person desiring to be registered as a dental assistant shall submit to the board an application and credentials as prescribed by the act and shall conform to the following rules:

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

C. Submission of evidence of satisfactorily passing a board-approved registration examination designed to determine the applicant's knowledge of the clinical duties specified in part 3100.8500, ~~subpart~~ subparts 1 to 1b.

[For text of items D and E, see M.R.]

#### 3100.8500 REGISTERED DENTAL ASSISTANTS.

Subpart 1. Duties under general supervision. A registered dental assistant may perform the following duties if a dentist has authorized the procedures and the registered dental assistant performs the procedures in accordance with the dentist's diagnosis and treatment plan: cut arch wires, remove loose bands, or remove loose brackets on orthodontic appliances to provide palliative treatment.

Subp. 1a. Duties under indirect supervision. A registered dental assistant, in addition to the services performed by the assistant, may perform the following services if a dentist is in the office, authorizes the procedures, and remains in the office while the procedures are being performed:

- A. take radiographs;
- B. take impressions for casts and appropriate bite registration. Dental assistants shall not take impressions and bite registrations for final construction of fixed and removable prostheses;
- C. apply topical medications that are physiologically reversible, topical fluoride, bleaching agents, and cavity varnishes prescribed by dentists;
- D. place and remove rubber dam;
- E. remove excess cement from inlays, crowns, bridges, and orthodontic appliances with hand instruments only;
- F. perform mechanical polishing to clinical crowns not including instrumentation. Removal of calculus by instrumentation must be done by a dentist or dental hygienist before mechanical polishing;

- G. preselect orthodontic bands;
- H. place and remove periodontal dressings;
- I. remove sutures;
- J. monitor a patient who has been induced by a dentist into nitrous oxide inhalation analgesia;
- K. place and remove elastic orthodontic separators; ~~and~~
- L. remove and place ligature ties and arch wires on orthodontic appliances. A dentist must select and, if necessary, adjust arch wires prior to placement;
- M. dry root canals with paper points; and
- N. place cotton pellets and temporary restorative materials into endodontic access openings.

Subp. ~~1a~~ **1b. Duties under direct supervision.** A registered dental assistant may perform the following services if a dentist is in the dental office, personally diagnoses the condition to be treated, personally authorizes the procedure, and evaluates the performance of the auxiliary before dismissing the patient:

- A. remove excess bond material from orthodontic appliances with hand instruments only;
- B. etch appropriate enamel surfaces before bonding of orthodontic appliances by a dentist;
- C. etch appropriate enamel surfaces and apply pit and fissure sealants. Before the application of pit and fissure sealants, a registered dental assistant must have successfully completed a course in pit and fissure sealants at a dental school, dental hygiene school, or dental assisting school that has been accredited by the Commission on Accreditation; ~~and~~
- D. make preliminary adaptation of temporary crowns; and
- E. remove temporary crowns with hand instruments only.

[For text of subs 2 and 3, see M.R.]

### **3100.8700 DENTAL HYGIENISTS.**

Subpart 1. **Duties under general supervision.** A dental hygienist may perform the following services if a dentist has authorized them and the hygienist carries them out in accordance with the dentist's diagnosis and treatment plan:

- A. all services permitted under parts 3100.8400 to 3100.8500, ~~subpart 1~~ subparts 1 and 1a;
- B. complete prophylaxis to include scaling, root planing, and polishing of restorations; ~~and temporary replacement of restorations~~;
- C. preliminary charting of the oral cavity and surrounding structures to include case histories, and periodontal charting (this does not infer the making of a diagnosis);
- D. dietary analysis, salivary analysis, and preparation of smears for dental health purposes;
- E. application of pit and fissure sealants; ~~and~~
- F. ~~remove removal of~~ excess bond material from orthodontic appliances; and
- G. replacement of intact temporary crowns or restorations with temporary restorative materials prior to the placement of a permanent restoration. Replacement of restorations does not include the construction of temporary crowns.

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

Subp. 2a. **Duties under direct supervision.** A dental hygienist may perform the following procedures if a dentist is in the office, personally diagnoses the condition to be treated, personally authorizes the procedure, and evaluates the performance of the dental hygienist before dismissing the patient:

- A. etch appropriate enamel surfaces before bonding of orthodontic appliances by a dentist; ~~and~~
- B. make preliminary adaptation of temporary crowns; and
- C. remove temporary crowns with hand instruments only.

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

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# Proposed Rules

## Board of Dentistry

### Proposed Permanent Rules Relating to Advertising, CPR, Licensure by Credentials, and Reinstatements

#### Notice of Intent to Adopt Rules Without a Public Hearing

The Minnesota Board of Dentistry intends to adopt permanent rules without a public hearing following the procedures set forth in the Administrative Procedure Act, *Minnesota Statutes*, section 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 proposed rules.

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

Patricia H. Glasrud, Executive Director  
Minnesota Board of Dentistry  
2700 University Avenue West, Suite 70  
St. Paul, Minnesota 55114  
(612) 642-0579 OR  
MN Relay Service for Hearing and Speech Impaired  
(612) 297-5353 or (800) 627-3529

**Subject of Rules and Statutory Authority.** The proposed rules govern Application for Licensure by Credentials (*Minnesota Rule* 3100.1400); Adequate Safety and Sanitary Conditions for Dental Offices (CPR Training) (*Minnesota Rule* 3100.6300); Advertising Dental Specialty Practice (*Minnesota Rule* 3100.7000); and Reinstatement of Licensure or Registration (*Minnesota Rule* 3100.1850, subpart 4). The statutory authority to adopt these rules is contained in *Minnesota Statutes* sections 150A.04, 150A.06, 150A.08, 150A.10, 150A.11, 214.15 and 319A.18. A copy of the proposed rules is published in the *State Register* and attached to this notice as mailed.

**Comments.** You have until 4:30 p.m., January 25, 1996 to submit written comment in support of or in opposition to the proposed rules and 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 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., January 25, 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 to the agency 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 agency shall proceed under the provisions of 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 Board and may not result in a substantial change in the proposed rules as published 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 by calling the Board office at (612) 642-0581 or MN Relay Service for Hearing and Speech Impaired at (612) 297-5353 or (800) 627-3529. 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.

**Small Business Considerations.** The Board has determined that *Minnesota Statutes* section 14.115 does not apply to these rules for two alternative reasons: (1) the rules do not affect small businesses directly; and (2) to the extent these rules may affect small businesses directly, such businesses are service businesses regulated by government bodies for standards and costs, such as providers of medical care.

If it is determined that *Minnesota Statutes* section 14.115 does apply to these rules, then it is the Board's position that it would not be feasible to implement any of the methods for reducing the impact of the rules on small businesses because doing so would adversely affect public health, safety or welfare and would be contrary to the statutory objectives which are the basis for the proposed rulemaking, which are to carry out the purposes and enforce the provisions of the Dental Practice Act.

The Board has provided an opportunity for small businesses to participate in the rulemaking process by (1) publishing notice in the *State Register* and the Board's newsletter, and (2) discussing the proposed rules at public Board and Rules Committee meetings.

**Expenditure of Public Money by Local Public Bodies.** The adoption of these rules will not require the expenditure of public money by local public bodies, and therefore the Board need not prepare a fiscal note pursuant to *Minnesota Statutes* section 14.11, subdivision 1.

**Impact on Agriculture Lands.** These rules will not have a direct and substantial adverse impact on agricultural land in the state, and therefore the Board need not comply with the requirements of *Minnesota Statutes* sections 17.80 to 17.84, pursuant to *Minnesota Statutes* section 14.11, subdivision 2.

**Adoption and Review of Rule.** 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 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 the agency contact person listed above.

Dated: 7 December 1995

Patricia H. Glasrud  
Executive Director

### Rules as Proposed

#### 3100.1400 APPLICATION FOR LICENSURE BY CREDENTIALS.

Any person who is already a licensed dentist or dental hygienist in another state or Canadian province desiring to be licensed to practice dentistry or dental hygiene in Minnesota shall, in order to demonstrate the person's knowledge of dental subjects and ability to practice dentistry or dental hygiene in Minnesota, comply with the requirements in items A to ~~M~~ N.

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

N. An applicant may apply for licensure by credentials only once within any five-year period of time.

#### 3100.4200 CDE SPONSORS.

[For text of subps 1 to 6, see M.R.]

Subp. 7. **Denial or revocation of approval.** The board shall state in writing its reasons for denying any sponsor application.

The board may deny approval of a specific course offered by an approved sponsor if such a course does not meet the standards of courses as specified by part 3100.4300, subpart 3.

The board may revoke its approval of any sponsor for failure to comply with provisions of subparts 4, 5, and 6 ~~and part 3100.4700~~, for falsification of any information requested or required by the board relating to the application for approval as a sponsor or to the administration of courses of a sponsor, or for other just cause.

#### 3100.6300 ADEQUATE SAFETY AND SANITARY CONDITIONS FOR DENTAL OFFICES.

[For text of subps 1 to 12, see M.R.]

Subp. 13. **CPR training.** A minimum of one person who ~~is currently certified in~~ has completed, within the previous two years, an advanced cardiac life support or basic cardiac life support as provided in educational programs recognized educational program provided by the American Heart Association, the American Red Cross, or ~~other agencies~~ another agency whose courses are equivalent to the American Heart Association or American Red Cross courses must be present in the dental office when dental services are provided.

[For text of subps 14 and 15, see M.R.]

#### 3100.7000 ADVERTISING DENTAL SPECIALTY PRACTICE.

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

Subp. 2. **Postdoctoral course completion.** Only licensed dentists who have successfully completed a postdoctoral course approved by the Commission on Accreditation in one of the specialty areas, or who announced a limitation of practice prior to 1967, or who have been approved by one of the following specialty examining boards, may announce specialty practice and may advertise as a specialist: American Board of Dental Public Health, American Board of Endodontics, American Board of Oral and Maxillofacial Surgery, American Board of Oral Pathology, American Board of Orthodontics, American Board of ~~Pedodontics~~ Pediatric Dentistry, American Board of Periodontology, and American Board of Prosthodontics.

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

**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

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### 3100.8400 ASSISTANTS.

Subpart 1. **Permissible duties.** Assistants may: perform all those duties not directly related with performing dental treatment or services on patients; retract a patient's cheek, tongue, or other parts of tissue during a dental operation; assist with the placement or removal of a rubber dam and accessories used for its placement and retention, as directed by an operating dentist during the course of a dental operation; remove such debris as is normally created or accumulated during the course of treatment being rendered by a licensed dentist during or after operative procedures by the dentist by the use of vacuum devices, compressed air, mouthwash, and water; provide any assistance, including the placement of articles and topical medication in a patient's oral cavity, in response to a specific direction to do so by a licensed dentist who is then and there actually engaged in performing a dental operation as defined in the act and who is then actually in a position to give personal supervision to the rendition of this assistance; and aid dental hygienists and registered dental assistants in the performance of their duties as defined in subpart 2 and ~~parts 3100.8600 and~~ part 3100.8700.

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

### 3100.9300 REVOCATION OF REGISTRATION.

The board shall revoke or, if appropriate, refuse to renew the registration of any corporation which no longer meets all the requirements of the Minnesota Professional Corporations Act. The corporation's eligibility to be registered or to continue registration must be adjudicated under the applicable provisions of the Administrative Procedure Act, *Minnesota Statutes*, chapter 14, and the rules of the Office of Administrative Hearings, parts 1400.5100 to ~~1400.8500~~ 1400.8401.

**REPEALER.** *Minnesota Rules*, part 3100.1850, subpart 4, is repealed.

## Office of Environmental Assistance

### Proposed Permanent Rules Relating to the Pollution Prevention Grant Program

#### Notice of Intent to Adopt Rule Amendments Without a Public Hearing

The Minnesota Office of Environmental Assistance (OEA) intends to amend permanent rules without a public hearing following the procedures set forth in the Administrative Procedures 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 public hearing be held on the rules.

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

Erin Barnes-Driscoll  
Minnesota Office of Environmental Assistance  
520 Lafayette Road North  
St. Paul, Minnesota 55155-4100  
Telephone: (612) 215-0211  
1-800-657-3843  
Facsimile: (612) 215-0246  
(612) 297-8709

**Subject of Rules and Statutory Authority.** The rules, as amended, will establish the criteria and procedures for awarding grants under the pollution prevention grant assistance program and loans under the solid waste source reduction grant and loan program. The statutory authority to adopt these rules is contained in *Minnesota Statutes* sections 115A.55, subd. 3 (d) and 115D.05, subd. 3 (b), which direct the OEA to adopt rules for administering solid waste reduction grant and loan programs and pollution prevention grant programs, and by *Minnesota Laws* 1995, ch. 247, Art. 1, sec. 3, codified at *Minnesota Statutes* section 115A.0715, which permits the OEA to consolidate several of its grant and loan programs. A copy of the proposed rules, as amended, is published immediately after this notice.

**Comments.** You have until 4:30 p.m., January 25, 1996, to submit written comment in support of or in opposition to the proposed rules and any part or subpart of the rules. Your comment must be in writing and received by the OEA contact person by the due date. Comment is encouraged. Your comment should identify the portion of the proposed rule address, 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 OEA contact person by 4:30 p.m. on January 25, 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 OEA 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 OEA and may not result in a substantial change in the proposed rules as printed immediately after this notice. 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 from the OEA contact person. 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.

**Adoption and Review of Rules.** If no hearing is required, after the end of the comment period the OEA 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 the OEA contact person listed above.

Dated: 11 December 1995

Arthur E. Dunn  
Deputy Director

## Rules as Proposed

### 9205.0400 SCOPE AND AUTHORITY.

Parts 9205.0400 to 9205.0445 govern the administration of grants for hazardous waste reduction under *Minnesota Statutes*, section 115A.154 and for the prevention of pollution under *Minnesota Statutes*, section 115D.05 implement the pollution prevention grant program created and described under *Minnesota Statutes*, sections 115A.154, 115A.55, and 115D.05, by establishing the substantive criteria and procedural conditions under which the director may award grants for waste source reduction and pollution prevention projects.

### 9205.0410 DEFINITIONS.

Subpart 1. **Scope.** The terms defined in this part apply to parts 9205.0400 to 9205.0445. For terms not defined in this part, the definitions in *Minnesota Statutes*, ~~section~~ sections 115A.03 and 115D.03, apply, unless the context requires otherwise.

Subp. 4. **Director.** "Director" means the director of the Office of ~~Waste Management~~ Environmental Assistance.

[For text of subps 5a to 7, see M.R.]

Subp. 10a. **Office.** "Office" means the Office of ~~Waste Management~~ Environmental Assistance established in *Minnesota Statutes*, section 115A.055.

Subp. 11. **Person.** "~~Person~~" ~~means a natural person or a corporation, association, operation, firm, partnership, trust, or other form of organization~~ has the meaning given it in *Minnesota Statutes*, section 115A.03, subdivision 23.

Subp. 16. **Pollution prevention ~~or~~, prevent pollution, ~~or~~ source reduction.** "Pollution prevention," ~~or~~ "prevent pollution," ~~or~~ "source reduction" means eliminating or reducing at the source the quantity or toxicity of toxic pollutants, hazardous substances, hazardous wastes, solid wastes, or industrial wastes used, generated, or released. ~~Examples of technologies or methods to prevent pollution include process modification, inventory control measures, feedstock substitutions, various housekeeping and management practices, and improved efficiency of machinery.~~

Subp. 17. **Release.** "Release" has the meaning given it in *Minnesota Statutes*, section 115D.03, subdivision 10.

Subp. 17a. **Solid waste.** "Solid waste" has the meaning given it in *Minnesota Statutes*, section 116.06, subdivision 22.

[For text of subp 18, see M.R.]

### 9205.0420 ELIGIBILITY CRITERIA.

Subpart 1. **Eligible applicants.** Eligible applicants are persons who use, generate, or release toxic pollutants, hazardous sub-

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stances, hazardous wastes, solid wastes, or industrial wastes in a business, institutional, or governmental setting in Minnesota or associations that represent persons who use, generate, or release toxic pollutants, hazardous substances, hazardous wastes, or industrial wastes in a business, institutional, or governmental setting in Minnesota, or individuals or organizations in Minnesota that provide assistance to such persons and/or to other persons affected by the generation of such pollutants or wastes in Minnesota.

Subp. 2. **Eligible projects.** Eligible projects are:

A. projects to study or demonstrate the feasibility of applying new technologies or methods to prevent pollution by the eligible applicant; and

B. projects to study or demonstrate the feasibility of applying existing technologies or methods to prevent pollution by the eligible applicant in previously untested applications. Decreases in quantity or toxicity are not reductions where the decrease is solely the result of a decrease in the output of the facility projects that primarily develop or implement pollution prevention projects or practices.

Projects currently under development by the applicant and new projects are eligible; however, grant funds shall only be awarded for costs incurred after the effective date of the grant agreement.

Subp. 3. **Eligible costs.** Eligible costs are limited to the costs of conducting studies and analyses developing or implementing pollution prevention projects or practices consistent with subpart 2. Eligible costs are limited to a maximum of two-thirds three-quarters of the total cost of the project. Grant money awarded through this program may not be spent for capital improvements or the purchase of equipment. The director may restrict the use of grant funds for capital improvements or the purchase of equipment, if all such restrictions appear in the Request for Proposals required by part 9205.0425 for the grant round to which they apply.

### **9205.0425 REQUEST FOR PROPOSALS.**

To initiate the process for awarding a pollution prevention grant, the director shall publish a Request for Proposals (RFP) notice in the State Register advising eligible applicants of the availability of pollution prevention grants. The RFP shall describe the procedure for awarding grants and establish a deadline by which applications must be submitted. In the RFP, the director may limit or prioritize the types of projects for which a grant would be awarded in the funding round initiated by the RFP, may specify the maximum amount of funding to be awarded to a project, and may set limitations on eligible costs as described in part 9205.0420, subpart 3. In the RFP, the director may establish application information requirements and evaluation criteria that correlate to specific grant program targets, in addition to the requirements of part 9205.0430, subparts 2 and 5.

### **9205.0430 GRANT APPLICATION.**

Subpart 1. [See repealer.]

Subp. 2. **Applications.** Following the publication of a notice the RFP in the *State Register*, applicants that seek assistance must submit applications in the form specified by the director. Applications must be received by the director by the deadline established in the notice RFP. Upon the request of the applicant, the office shall handle specific information in the grant application as non-public data in accordance with the criteria established by *Minnesota Statutes*, section 115A.06, subdivision 13; however, all information developed as a result of a pollution prevention grant shall be public data. Each application must include the following:

A. the names, qualifications, and addresses of the applicant and other project participants;

B. a description of the proposed project, including:

C. project information, including:

(1) a description of the method or technology proposed to be studied, with a list of project activities and an implementation schedule a work plan that includes a list of each project activity or task, an implementation schedule with specific timelines, and persons involved in completing each activity or task;

(2) a statement as to whether this method or technology is new or existing, with a literature search or similar demonstration in support of this statement the location of the proposed project;

(3) the type and source of pollution to be eliminated or reduced by the proposed project;

(4) a discussion of whether implementation of this method or technology the proposed project is likely to minimize the transfer of pollution from one environmental medium to another;

(4) (5) a listing of the toxic pollutants, hazardous substances, hazardous wastes, or industrial wastes that are the subject of the proposed project, with a statement, in pounds, of the quantity of each of these pollutants, substances, or wastes that the applicant generated in the previous calendar year a description or identification of the potential applicability of the proposed project activities and results to other persons or organizations in Minnesota;

(5) (6) an estimate, in pounds, of the decrease in the quantity of the toxic pollutants, hazardous substances, hazardous

wastes; or industrial wastes that the applicant believes could be realized if the methods and technologies to be studied in the proposed project were implemented a description of the statewide significance of the project; and

~~(6)~~ (7) a statement of the current status of the proposed project;

C. D. if relevant, information demonstrating that the project will comply with applicable regulations, including a list of permits required for the project;

D. a statement of the willingness of the applicant to implement the methods and technologies proposed to be studied, if those methods and technologies are found to be technically and economically feasible;

E. a statement of the willingness of the applicant to assist the director in disseminating information about the results of the project;

F. a statement describing the statewide significance of the information to be gained from the proposed project;

G. E. a project budget that:

(1) identifies the total cost of the proposed project and identifies each of the expenditures that make up this cost; and

(2) states the amount of grant funds being requested and the amount of matching funds being supplied by the applicant or others. If a person other than the applicant is providing matching funds, the application must identify the sources of the additional funds; and

F. additional program-specific information as established by the director in the RFP required in part 9205.0425.

Subp. 2a. Nonpublic data. Sales information or specific data in the grant application that meets the definition in Minnesota Statutes, section 13.37, subdivision 1, paragraph (b), shall be handled as provided by Minnesota Statutes, section 115A.06, subdivision 13; however, all information developed as a result of a pollution prevention grant shall be public data.

Subp. 3. [See repealer.]

Subp. 4. [See repealer.]

Subp. 5. **Evaluation of proposal.** In order to determine which projects should receive a pollution prevention grant, the director shall evaluate each application that is determined to be eligible and complete. ~~In making this evaluation, the director shall consider whether using the following criteria:~~

A. ~~the proposed project involves the study or analysis of a method or technology that has a significant potential to prevent pollution~~ clarity and completeness of application;

B. ~~the proposed project involves the study or analysis of a method or technology that is consistent with the legislative goals and policies in Minnesota Statutes, sections 115A.02 and 115D.02~~ potential of proposed project to prevent pollution;

C. ~~the persons who will undertake the proposed project are qualified to~~ qualifications of the individuals who will perform the work described in the project;

D. ~~implementation of the method or technology that is the subject~~ potential of the proposed project is likely to minimize the transfer of pollution from one environmental medium to another;

E. ~~the proposed project will comply if applicable,~~ compliance of the proposed project with regulatory requirements;

F. ~~the applicant is willing to implement methods and technologies that the proposed project finds to be feasible~~ emphasis of the proposed project on prevention of pollution over other methods of management;

G. ~~the applicant is willing to assist the director in disseminating information about the results of the project; and~~ cost-effectiveness of the proposed project;

H. ~~the proposed project has statewide significance;~~ assets and resources available to the applicant to conduct the project;

I. innovativeness of the proposed project;

J. applicability of the proposed project and future dissemination of project results to other persons or organizations in the state;

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K. consistency of the proposed project with the legislative goals and policies in *Minnesota Statutes*, sections 115A.02 and 115D.02; and

L. additional criteria specified in the RFP required by part 9205.0425.

The director may request additional information from the applicant by letter or interview during the evaluation process to clarify the information provided pursuant to subpart 1.

[For text of subp 6, see M.R.]

Subp. 7. **No grant awards.** If the director determines that no proposed project has sufficient potential to prevent pollution in Minnesota, the director shall not award any grants. The director may then reinstate the process for awarding grants by publishing a notice the RFP under subpart 1.

Subp. 8. **Consultation.** In the director's evaluation of an application, the director may solicit and consider any recommendations provided by Office of ~~Waste Management~~ Environmental Assistance advisory councils, task forces, citizen groups, or any independent consultant hired by the director to assist in the review of applications.

### **9205.0432 FEDERAL GRANT MATCHES.**

The director may award grants as a match to obtain federal pollution prevention grants without issuing a RFP under part 9205.0425, if the following conditions are met:

A. the applicant is eligible under part 9205.0420, subpart 1;

B. the project is eligible under part 9205.0420, subpart 2;

C. a proposal is submitted to the director by the applicant containing all of the elements described in part 9205.0430, subpart 2;

D. the proposed project meets the criteria outlined in part 9205.0430, subpart 5; and

E. the grant awarded under this part makes up no more than 25 percent of the total project costs.

### **9205.0435 LIMITATIONS.**

Subpart 1. **Reduced grant awards.** The director ~~shall~~ may ask an applicant to document the impacts of reduced financial assistance before finalizing an award for less than the eligible amount requested by an applicant or less than the maximum award established in the ~~notice RFP~~ RFP under part 9205.0430, ~~subpart 1~~ subpart 1 and 9205.0425. Reduced funds shall be awarded where the director determines:

A. program resources are insufficient to provide full assistance to all applicant to which the director intends to award grants or loans; or

B. the applicant could operate the project at a reduced level and still achieve project objectives.

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

### **9205.0445 GRANT AGREEMENT.**

A grant agreement shall:

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

C. require that the recipient provide periodic written and oral reports to the director on the progress and results of the project, and a one-page project summary at the conclusion of the project, in a format specified by the director;

[For text of items D and E, see M.R.]

F. provide that the results of ~~all studies or analyses~~ the project performed under this agreement are public data;

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

## **SOLID WASTE REDUCTION GRANT AND LOAN PROGRAM**

### **9210.0700 SCOPE AND AUTHORITY.**

Parts 9210.0700 to 9210.0770 implement the solid waste source reduction ~~grant and~~ loan program created and described under *Minnesota Statutes*, section 115A.55, by establishing the substantive criteria and procedural conditions under which the director may award ~~grants or~~ loans for solid waste source reduction projects.

### **9210.0710 DEFINITIONS.**

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

Subp. 2. **Director.** "Director" means the director of the Office of ~~Waste Management~~ Environmental Assistance.

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

Subp. 3. **Office.** "Office" means the Minnesota Office of ~~Waste Management~~ Environmental Assistance established in *Minnesota Statutes*, section 115A.055.

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

Subp. 5. **Program.** "Program" means the Solid Waste Source Reduction ~~Grant and~~ Loan Program.

[For text of subps 6 and 7, see M.R.]

#### **9210.0720 APPLICATION PROCEDURES.**

Subpart 1. **Notification by director.** To initiate the process for awarding ~~grants and~~ loans for solid waste source reduction projects, the director shall publish a notice in the *State Register* advising eligible applicants of the availability of solid waste source reduction ~~grants and~~ loans. The notice shall describe the maximum amount of funding available for a project, and establish a deadline by which proposals must be submitted. In the notice, the director may also limit the types of projects for which a ~~grant or~~ loan would be awarded in the funding round initiated by the notice.

Subp. 2. **Proposals.** Following the publication of a notice in the *State Register*, eligible applicants that seek assistance must submit proposals to the director. Proposals must be received by the director by the deadline established in the notice. Upon the request of the applicant, the office shall handle specific information as nonpublic data pursuant to *Minnesota Statutes*, section 115A.06, subdivision 13; however, all information developed as a result of a ~~grant or~~ loan shall be made available to persons through the office's public information program.

- A. ~~Proposals for grants under part 9210.0750 shall contain the information in part 9210.0750, subpart 5.~~
- B. ~~Proposals for grants under part 9210.0760 shall contain the information in part 9210.0760, subpart 5.~~
- C. ~~Proposals for loans under part 9210.0770 shall contain the information in part 9210.0770, subpart 5.~~

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

Subp. 5. **Evaluation of proposal.** The director shall evaluate each proposal that is determined to be eligible and complete:

- A. ~~Proposals for grants under part 9210.0750 shall be evaluated using the criteria in part 9210.0750, subpart 6.~~
- B. ~~Proposals for grants under part 9210.0760 shall be evaluated using the criteria in part 9210.0760, subpart 6.~~
- C. ~~Proposals for loans under part 9210.0770 shall be evaluated using the criteria in part 9210.0770, subpart 6.~~

Subp. 6. **Award of ~~grants or~~ loans.** The director shall award ~~grants or~~ loans for those projects that the director determines best satisfy the criteria applicable to the program under which the applicant is requesting financial assistance. The director shall notify those applicants that do not receive ~~grant or~~ loan awards. An applicant that does not receive an award may resubmit a proposal upon future notice by the director under subpart 1.

Subp. 7. **No ~~grant or~~ loan awards.** If the director determines that no proposal will provide sufficient assistance to the state in achieving its solid waste source reduction goals, the director may decide not to award any ~~grant or~~ loan. The director may then reinstate the process for awarding ~~grants or~~ loans by publishing a notice under subpart 1.

Subp. 8. **Consultation.** In the director's evaluation of the proposal, the director shall consider recommendations provided by the ~~Solid Waste Management Advisory Council~~ advisory councils to the office.

#### **9210.0730 LIMITATIONS.**

Subpart 1. **Reduced ~~grant or~~ loan awards.** The director shall ask an applicant to document the impacts of reduced financial assistance before awarding funds less than the eligible amount requested by the applicant or less than the maximum award established in the notice under part 9210.0720, subpart 1. Reduced funds shall be awarded where the director determines that:

- A. program resources are insufficient to provide full assistance to all applicants to which the director intends to award ~~grants or~~ loans; or
- B. the applicant could operate the project at a reduced level and still achieve project objectives.

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Subp. 2. **Limitations on disbursement of funds.** No ~~grant or~~ loan funds shall be disbursed until the recipient has executed a written ~~grant or~~ loan agreement with the director.

### 9210.0740 ~~GRANT AND LOAN AGREEMENTS.~~

A ~~grant or~~ loan agreement shall:

- A. incorporate by reference the proposal submitted to the director;
- B. provide that any cost overruns incurred in the development and implementation of the proposed project shall be the sole responsibility of the recipient;
- C. require that the recipient provide periodic written reports to the director on the implementation and results of the project;
- D. identify the interest rate and repayment obligations for the loan recipient;
- E. ~~authorize the director to rescind the grant and require the grant recipient to repay the grant in full if the director determines that, due to the bad faith of the grant recipient, a project has not been developed and implemented according to the terms and conditions of the grant agreement;~~
- F. authorize the director to determine that the loan recipient is in default and require that loan recipient immediately repay the loan in full if the director determines that, due to the bad faith of the loan recipient, a project has not been developed and implemented according to the terms and conditions of the loan agreement;
- G. ~~E.~~ authorize the director to cease making further disbursements to the ~~grant or~~ loan recipient and to recover the unspent funds if the director determines that, for reasons other than bad faith, a project has not been developed and implemented according to the terms and conditions of the ~~grant or~~ loan agreement and amendment of the agreement is not justified;
- H. ~~G.~~ require that the recipient perform and complete project activities according to the work plan in the proposal submitted to the director and incorporated into the ~~grant and~~ loan agreement;
- I. ~~H.~~ require that the recipient provide objective, detailed information in its final report listing the solid waste source reduction achieved during the project in terms of:
  - (1) changes in disposed volume when measured under uncompacted conditions;
  - (2) changes in disposed weight;
  - (3) cost changes in purchase and handling of materials;
  - (4) cost changes in solid waste disposal; and
  - (5) changes in toxicity, if any;
- J. ~~I.~~ require that all information developed as a result of a ~~grant or~~ loan shall be made available to other persons through the office's public information program;
- K. ~~J.~~ require that the recipient maintain detailed records of all expenditures related to the project; and
- L. ~~K.~~ establish other conditions or terms needed to manage or implement the ~~grant or~~ loan agreement.

**REPEALER.** Minnesota Rules, parts 9205.0430, subparts 1, 3, and 4; 9210.0750; and 9210.0760, are repealed.

## Ethical Practices Board

### Proposed Permanent Rules Relating to Ethics Rules Revision

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

**Introduction:** The Ethical Practices Board (EPB) intends to adopt permanent rules without a public hearing following the procedures set forth in the Administrative Procedures 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:

Gary Goldsmith  
Ethical Practices Board  
1st Floor South, Centennial Building  
658 Cedar Street  
St. Paul, MN 55155-1603  
(612) 296-1720  
Fax: (612) 296-1722

**Subject of Rule and Statutory Authority.** The proposed rules relate to administration and interpretation of the Ethics in Government Act, which is *Minnesota Statutes* chapter 10A. Specifically, the proposed rules include significant revision and rearrangement of existing rules, and the addition of new material. A new chapter 4501 is added to include definitions and general provisions applicable to all of Chapter 10A. A new chapter 4512 is added to assist in the implementation of the prohibition of certain gifts under *Minnesota Statutes*, section 10A.071. Chapters on Campaign Financing, Economic Interest Disclosure, Lobbyist Registration and Reporting, Conflicts of Interest, Representation Disclosure, and Hearings are all amended. The statutory authority to adopt these rules is *Minnesota Statutes*, section 10A.02, subdivision 13. A copy of the proposed rules is published in the *State Register* and attached to this notice as mailed.

**Copy of the Rule.** A free copy of proposed rules is also available upon request from the agency contact person listed above.

**Comments.** You have until 4:30 p.m. on January 25, 1996, to submit written comment in support of or in opposition to the proposed rules or any part or subpart of a rule. 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 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 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 25, 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 rule 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 agency 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 EPB and may not result in a substantial change in the proposed rules as attached and 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 from the agency contact person and on the agency's worldwide web site at <http://www.state.mn.us/ebranch/epb>. The statement describes the need for and reasonableness of each provision of the proposed rules. One free copy of the statement may be obtained by contacting the agency contact person listed above.

**Small Business Considerations.** The rulemaking considerations required by *Minnesota Statutes*, section 14.115 do not apply because the proposed rules are for the purpose of administration and interpretation of the *Minnesota Statutes* chapter 10A and do not affect small business directly. The Statement of Need and Reasonableness addresses this in greater detail.

**Expenditure of Public Money by Local Public Bodies.** The agency estimates that the proposed rules will not result in any

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direct additional local costs because the rules do not impose significant requirements on local public bodies. The Statement of Need and Reasonableness addresses this in greater detail.

**Impact on Agricultural Lands.** The agency has determined in the review required under *Minnesota Statutes*, section 14.11, subdivision 2, that the proposed rules do not have a direct and substantial adverse impact on agricultural land in Minnesota, nor will they affect farming operations within the meaning of *Minnesota Laws* 1995, Ch. 233, Art. 1, § 1.

**Adoption and Review of Rule.** 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 legality and form to the extent form relates to legality. You may request to be notified of the date that the rules are submitted to the attorney general or be notified of the attorney general's decision on the rule. If you so wish to be notified, or wish to receive a copy of the adopted rule, submit your request to the agency contact person listed above.

Dated: 13 December 1995

Jeanne Olson  
Executive Director

### Rules as Proposed

#### **4501.0010 SCOPE AND AUTHORITY.**

This chapter and chapters 4503 to 4530 govern compliance with the Ethics in Government Act, Minnesota Statutes, chapter 10A. This chapter contains provisions and definitions of general application. This chapter and chapters 4503 to 4530 are adopted pursuant to Minnesota Statutes, section 10A.02, subdivision 13.

#### **4501.0100 DEFINITIONS.**

**Subpart 1. Scope.** The definitions in this part apply to this chapter and chapters 4503 to 4530 and Minnesota Statutes, chapter 10A. The definitions in Minnesota Statutes, chapter 10A, also apply to chapters 4503 to 4530.

**Subp. 2. Address.** "Address" means the complete mailing address, including the zip code. An individual may use either the person's business address or home address. An association's address is the address from which the association conducts its business.

**Subp. 3. Business day.** A "business day" is from 8:00 a.m. to 4:30 p.m., Monday through Friday, except for official state holidays.

**Subp. 4. Compensation.** "Compensation" means every kind of payment for labor or personal services. Compensation does not include payments of social security, unemployment compensation, workers' compensation, or pension benefits.

**Subp. 5. Honorarium.** "Honorarium" means anything of value given or received for services such as making speeches, writing articles, or making presentations when there is no obligation on the part of the giver to make payment.

**Subp. 6. Money.** "Money" means cash and cash equivalents such as checks, money orders, travelers checks, negotiable instruments, and other paper commonly accepted by a bank as a deposit. A transfer of money includes an electronic transfer of funds.

**Subp. 7. Occupation.** "Occupation" means a person's usual trade, profession, employment, or other similar endeavor, and includes categories for which there is no direct financial compensation, such as homemaker.

**Subp. 8. Principal place of business.** "Principal place of business" means:

**A.** for an employed person, the name of the employer and the address from which the employee conducts the employer's business;

**B.** for a self-employed person or a person not employed, the address from which the person conducts business or personal matters; or

**C.** for an association, the name and business address of the association.

**Subp. 9. Promptly.** "Promptly" means completed not later than the end of the third business day after the event that gave rise to the requirement.

#### **4501.0200 SECURITIES.**

**Subpart 1. Items which are securities.** Securities include any stock, share, bond, warrant, option, pledge, note, mortgage, debenture, lease, or commercial paper, in any corporation, partnership, mutual fund, trust, or other association.

**Subp. 2. Items which are not securities.** Securities do not include deposits in a savings account, certificates of deposit, money market certificates, treasury bills, bonds or notes, dividends from securities, or holdings in a pension or retirement plan.

**Subp. 3. Holder of securities.** A "holder of securities" is an individual having an ownership interest in a security, or who is the

trustee or beneficiary of a trust having an ownership in a security. An individual owning shares in a mutual fund does not have an ownership interest in underlying securities owned by the fund.

Subp. 4. Valuation of securities. The value of a security is its fair market value. For securities traded on national exchanges, the fair market value is the closing bid price for the security on a given date. The value of a partial interest in a security is the value of the holder's proportionate share.

Subp. 5. Exception for charitable trusts. Trustees of associations organized for charitable, philanthropic, religious, social service, educational, or other public use or purpose are not holders of securities owned by the associations.

#### **4501.0300 CERTIFICATION, SIGNATURES, AND NOTARIZATION.**

Subpart 1. Signature required. The original signature of the person responsible for preparation or filing of a report or other document is required to make the report or document complete. Only signed reports or documents may be filed with the board. A document filed by facsimile transmission meets the requirements of this part if the original document being transmitted bears the required signature.

Subp. 2. Certification. The signature of a person authorized to sign a report or form constitutes certification by that person of the truth and accuracy of the report or form.

Subp. 3. Notarization. The only documents that must be notarized are affidavits of contributions filed pursuant to *Minnesota Statutes*, section 10A.323, and sworn statements relating to independent expenditures filed pursuant to *Minnesota Statutes*, section 10A.20, subdivision 6a.

Subp. 4. Candidates. A candidate may sign any report or other document that the treasurer or deputy treasurer of the candidate's principal campaign committee may sign.

#### **4501.0400 DETERMINATION OF LOCAL OR PUBLIC OFFICIAL STATUS.**

Subpart 1. Metropolitan governmental units to determine local official status. Annually, each metropolitan governmental unit must determine which positions within the metropolitan governmental unit constitute its local officials and must provide the board with a list of those positions.

Subp. 2. Acting or part-time local or public official. An individual who fills a local or public official position on an acting or part-time basis is a local or public official.

#### **4501.0500 FILINGS, SUBMISSIONS, AND DISCLOSURES.**

Subpart 1. Completion of filing. A filing with the board is complete upon:

A. receipt in the board office of the document being filed, bearing the original signature of the person responsible for filing the document;

B. receipt of a facsimile transmission of the document according to subpart 5; or

C. the postmark date of a first class or certified mailing of the document being filed, properly addressed to the board at its current address.

Subp. 2. Alternative filing by facsimile transmission. A document that may be filed with the board may be filed by facsimile transmission and the filing is complete upon receipt in the board office of the facsimile transmission. A document filed by facsimile transmission has the same force and effect as the original. The original signed document must be received in the board office within five business days after the facsimile transmission is made. If it is not, the board may take any appropriate action, including, but not limited to, considering the filing null and void.

Subp. 3. Filings on nonbusiness days. If a scheduled filing date falls on a Saturday, Sunday, or state holiday, the filing is due on the next business day.

Subp. 4. Submissions and disclosures. Any required submission or disclosure to the board must be in the form of a written document filed with the board.

#### **4501.0600 UNDELIVERED CERTIFIED MAIL.**

Subpart 1. Refused certified mail. A certified letter that is returned by the post office to the board as refused is considered to have been received by the addressee on the date refused.

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Subp. 2. Returned certified mail. A certified letter that is returned by the post office to the board as undelivered must be forwarded by first class mail to the original addressee and, if not returned by the post office, is considered received by the addressee five business days after the first class mailing.

### **4501.0700 ASSESSMENT OF LATE FILING FEES.**

Late filing fees are not assessed for Saturdays, Sundays, or state holidays.

### **4503.0010 SCOPE.**

This chapter applies to the campaign finance activities of candidates and their principal campaign committees, political party units, political committees, and political funds regulated by *Minnesota Statutes*, sections 10A.11 to 10A.335.

### **4503.0100 DEFINITIONS.**

Subpart 1. Scope. The definitions in this part apply to this chapter and *Minnesota Statutes*, chapter 10A. The definitions in chapter 4501 and *Minnesota Statutes*, chapter 10A, also apply to this chapter.

Subp. 2. Adjournment sine die. "Adjournment sine die" means adjournment by the legislature at the end of the second year of a biennium.

Subp. 3. Anonymous contribution. "Anonymous contribution" means a contribution for which the name and address of the donor cannot be determined.

Subp. 4. Fundraising event. "Fundraising event" means a meal, party, entertainment event, rally, or similar gathering of three or more individuals where contributions are solicited or received.

Subp. 5. Receipted bill. "Receipted bill" means an invoice marked paid by the vendor or a canceled check with a corresponding invoice indicating the purpose of the expenditure.

Subp. 6. Services for a constituent. "Services for a constituent" means services performed or provided by an incumbent legislator or constitutional officer for the benefit of one or more residents of the official's district. "Services for a constituent" do not include gifts, congratulatory advertisements, charitable contributions, or similar expenditures.

Subp. 7. Statewide election. "Statewide election" means an election for a statewide constitutional office, appeals court, or supreme court office, or an election in which a question or proposition on the ballot can be voted on by all voters of the state.

Subp. 8. Unpaid bill. "Unpaid bill" means an advance of credit for which payment has not been made. An advance of credit is an unpaid bill from the time it is incurred, regardless of when an actual invoice is received.

### **4503.0200 ORGANIZATION OF POLITICAL COMMITTEES AND POLITICAL FUNDS.**

Subpart 1. Organizational information to be provided by a political party. The statement of organization of a political party must include a list of the names of the party units organized in each house of the legislature and in congressional districts, counties, legislative districts, municipalities, and precincts, along with the name and address of the treasurer and chair of each unit, and must be updated annually.

Subp. 2. Officers of principal campaign committee. A candidate may be chair, treasurer, or both, of the candidate's own principal campaign committee. The candidate is ultimately responsible for the principal campaign committee's compliance with *Minnesota Statutes*, chapter 10A.

Subp. 3. When registration is not required. When a person or group merely solicits contributions with the approval of a candidate or the treasurer, deputy treasurer, or agent of a political committee or political fund and when those contributions are made directly to the reporting committee or fund, that person or group need not establish a separate political committee or political fund.

Subp. 4. Change of officer. The treasurer of a political committee or political fund must file with the board a written notice of any change of officers within ten business days after the change occurs. The notice must include the name and address of each new officer and the effective date of the change.

Subp. 5. Termination of responsibility of former treasurer. A former treasurer who transfers political committee or political fund records and receipts to a new treasurer or to the chair of the committee or fund is relieved of future responsibilities when notice required under subpart 4 is filed or when the former treasurer notifies the board in writing of the change.

Subp. 6. Depositories. The depositories of a political committee or political fund include any depository in which the committee or fund has a savings, checking, or similar account, or purchases a money market certificate or certificate of deposit.

### **4503.0300 TERMINATION OF POLITICAL COMMITTEE OR POLITICAL FUND.**

Subpart 1. Termination report. A termination report must cover the period from the closing date of the last report filed through the date of termination.

Subp. 2. Time of termination after making transfers between principal campaign committees. A principal campaign committee which makes a transfer or contribution to another principal campaign committee in anticipation of termination must complete its termination by the end of the reporting period in which the transfer or contribution was made.

Subp. 3. Transfer of debts. An agreement to transfer debts upon the termination of a candidate's principal committee for one office under Minnesota Statutes, section 10A.241, must be made in writing, signed by the candidate and the committee treasurers, and preserved in the records of each committee.

Subp. 4. Payment plan pending dissolution of inactive political committee or political fund. An inactive political committee or political fund that must dissolve according to Minnesota Statutes, section 10A.242, and that has liquidated its available assets to pay its debts may submit to the board a proposed payment schedule to settle any remaining debts. Upon approval of the schedule, the board may allow the committee or fund to defer dissolution until all debts are paid.

#### **4503.0400 DISTRICT COURT JUDICIAL CANDIDATES.**

Subpart 1. Donations in kind. Donations in kind to a candidate for district court judge which in aggregate exceed \$100 must be disclosed in accordance with Minnesota Statutes, section 10A.20, subdivision 3, paragraph (b).

Subp. 2. Contributions from one source. Contributions to a candidate for district court judge from any one source totaling more than \$400 received between the last day covered in the last report prior to an election and the election must be reported to the board in person, by telegram or mailgram, or by certified mail within 48 hours after receipt and must also be included in the next required report.

#### **4503.0500 CONTRIBUTIONS.**

Subpart 1. Transmission of contributions. Promptly after receipt of any contribution or on demand of the treasurer, an individual must transmit the contribution together with any required record to the treasurer.

Subp. 2. Identification of contributor. The contributor of goods or of services is the individual or association that pays for the goods or services.

Subp. 3. Contributions from Hennepin county registered associations. In lieu of registration with the board, an association registered with the Hennepin county filing officer under Minnesota Statutes, sections 383B.041 to 383B.058, that makes contributions of more than \$100 to a committee or fund in a calendar year may notify the recipient committee of its registration with Hennepin county, including its registration number, and instruct the recipient committee to include the notice when the recipient committee discloses receipt of the contribution.

Subp. 4. Contributions by joint check. A contribution given by a check written on a joint account is considered to be a contribution by the persons who signed the check in equal proportions unless otherwise specified on the check by the signers.

Subp. 5. Forwarding anonymous contributions. An anonymous contribution in excess of \$20 must be forwarded to the board in its entirety within 14 days after its receipt by the treasurer along with a statement of the amount of the contribution and the date on which it was received.

Subp. 6. Value of contributions of automobile use. Automobile use provided without reimbursement to the provider is a donation in kind valued at the lowest rate used by the state of Minnesota to reimburse its employees for automobile use.

#### **4503.0700 CONTRIBUTION LIMITS.**

Subpart 1. Loans included in aggregation of contributions. Contribution limits apply to the aggregation of:

- A. money;
- B. donations in kind;
- C. outstanding loans from the contributor; and
- D. proceeds of outstanding loans endorsed by the contributor.

Subp. 2. Special election contribution limits. Election year contribution limits set forth in Minnesota Statutes, section 10A.27, apply to a special election cycle.

Subp. 3. Independent application of limits for special election. Contribution limits apply independently for election years, other years, and special election cycles.

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## Proposed Rules

### **4503.0800 DONATIONS IN KIND AND APPROVED EXPENDITURES.**

Subpart 1. Approved expenditure is always a donation in kind. Every approved expenditure is a donation in kind of the goods or services purchased with the expenditure.

Subp. 2. Multicandidate materials. An approved expenditure made on behalf of multiple candidates must be allocated between the candidates on a reasonable basis if the cost exceeds \$20 per candidate.

Subp. 3. Multipurpose materials. A reasonable portion of the fair market value of preparation and distribution of association newsletters or similar materials which, in part, advocate the nomination or election of a candidate is a donation in kind which must be approved by the candidate if the value exceeds \$20, unless an independent expenditure is being made.

Subp. 4. Office facilities. The fair market value of shared office space or services provided to a candidate without reimbursement is a donation in kind.

Subp. 5. Campaign expenditures for constituent services paid with personal funds. Costs of providing constituent services that are campaign expenditures and paid with the personal funds of the candidate are a donation in kind to the principal campaign committee of the candidate.

### **4503.0900 NONCAMPAIGN DISBURSEMENTS.**

Subpart 1. Additional definitions. In addition to those listed in *Minnesota Statutes*, section 10A.01, subdivision 10c, the following expenses are noncampaign disbursements:

A. transportation, meals, and lodging paid to attend a campaign school;

B. costs of campaigning incurred by a person with a disability, as defined in *Minnesota Statutes*, section 363.01, subdivision 13, and which are made necessary by the disability;

C. the cost to an incumbent or a winning candidate of providing services to residents in the district after the general election in an election year for the office held;

D. payment of advances of credit in a year after the year in which the advance was reported as an expenditure; and

E. payment of fines assessed by the board.

Subp. 2. Nonreportable noncampaign disbursements. Noncampaign disbursements for services to residents in the district paid with personal funds of an incumbent or winning candidate are not reportable.

### **4503.1000 CAMPAIGN MATERIALS INCLUDING OTHER CANDIDATES.**

Subpart 1. Inclusion of others without attempt to influence nomination or election. Campaign materials, including media advertisements, produced and distributed on behalf of one candidate which contain images of, appearances by, or references to another candidate, but which do not mention the candidacy of the other candidate or make a direct or indirect appeal for support of the other candidate, are not contributions to, or expenditures on behalf of that candidate.

Subp. 2. Multicandidate materials prepared by a candidate. A candidate who produces and distributes campaign materials, including media advertisements, which include images of, appearances by, or references to one or more other candidates, and which mention the candidacy of the other candidates or include a direct or indirect appeal for the support of the other candidates must collect from each of the other candidates a reasonable proportion of the production and distribution costs.

### **4503.1100 CARRYFORWARD OF CAMPAIGN FUNDS; UNPAID ADVANCES OF CREDIT.**

Subpart 1. Retention for unpaid advances of credit. In addition to the carryforward permitted under *Minnesota Statutes*, section 10A.25, subdivision 11, the treasurer of a principal campaign committee may retain into the next election cycle an amount equal to the sum of all unpaid advances of credit on the last day of the previous election cycle.

Subp. 2. Forgiveness and payment of advances of credit. When an advance of credit for which funds were retained under subpart 1 is later forgiven or paid by an individual or association other than the principal campaign committee, funds retained under subpart 1 based on the advance of credit must be disposed of pursuant to *Minnesota Statutes*, section 10A.25, subdivision 11.

### **4503.1200 JOINT FUNDRAISING EVENTS BY PRINCIPAL CAMPAIGN COMMITTEES.**

Subpart 1. General requirement. Proceeds and costs of joint fundraising events held by two or more principal campaign committees must be allocated in such a way as to avoid earmarking and prohibited transfers or contributions from one principal campaign committee to another.

Subp. 2. Elective procedures to assure compliance. Principal campaign committees may be certain that allocation of proceeds and costs of a joint fundraising event will not result in earmarking or a prohibited transfer or contribution if:

A. contributions are made individually to each committee by check payable to the committee, by cash given in a separate collection for the committee, or by cash with a record kept of each contributor and recipient;

B. expenses of the event are allocated among the participating committees in direct proportion to the contributions received by each committee; and

C. campaign expenditures and noncampaign disbursements are allocated separately and in the same proportion.

Subp. 3. Recordkeeping and reconciliation of expenses. The treasurers of principal campaign committees conducting a joint fundraising event must maintain records of all costs associated with the event. After the conclusion of the event, the treasurers shall complete a reconciliation and allocation of the costs of the event pursuant to this part, and shall make any transfers of funds between the committees necessary to properly allocate the expenses.

#### **4503.1300 GOVERNOR AND LIEUTENANT GOVERNOR.**

Subpart 1. Seeking endorsement as lieutenant governor. Raising and spending funds to seek endorsement as lieutenant governor may be done either through a separate principal campaign committee established by the lieutenant governor candidate or through a joint principal campaign committee of the governor and lieutenant governor candidates.

Subp. 2. Separate records for seeking endorsement. A principal campaign committee that makes expenditures and authorizes approved expenditures to seek endorsement for the office of lieutenant governor at the convention of a political party and intends those expenditures to be in addition to the expenditure limit established by *Minnesota Statutes*, section 10A.25, subdivision 2, shall maintain a separate record of those expenditures.

Subp. 3. Merger of committees. Separate committees of a candidate for governor and lieutenant governor must be merged not later than five business days after the joint endorsement or filing for office by the candidates for governor and lieutenant governor. The merger must be accomplished by amending the statement of organization of one of the committees making it a joint committee and by terminating the remaining committee. All funds, assets, and debt of the terminated committee must be transferred to the joint committee at the time of the merger. The transfer of debt must be by means of an agreement meeting the requirements of part 4503.0300, subpart 3.

Subp. 4. Contribution limits for governor and lieutenant governor before and after merger of separate committees. Prior to the merger of separate principal campaign committees for governor and lieutenant governor, each committee may accept contributions up to the limits set forth in *Minnesota Statutes*, section 10A.27, subdivision 1, clause (a), for governor and lieutenant governor running together. After the merger of the committees, contributions to either committee from a single source must be aggregated in determining whether the contribution limit for the joint committee has been reached or exceeded. If the limit has been exceeded, contributions must be returned in accordance with subpart 5.

Subp. 5. Return of contributions after merger. Funds transferred to the joint committee which result in aggregate contributions in excess of the applicable limits may be returned to the contributor within 60 days of the transfer of funds to the joint committee.

Subp. 6. Public subsidy agreement. Promptly following their joint endorsement or filing for office, candidates for governor and lieutenant governor who have not each signed a separate public subsidy agreement must jointly sign a public subsidy agreement if they wish to receive a public subsidy.

#### **4503.1400 PUBLIC SUBSIDY AGREEMENTS.**

Subpart 1. Expenditure limits. A candidate or officeholder who signs a public subsidy agreement is bound by the expenditure limits in an election cycle whether or not the candidate actually receives funds from the state elections campaign fund.

Subp. 2. Affidavit of contributions for special elections. For a special election for which the filing period does not coincide with a general election, the candidate must submit the affidavit of contributions not later than five days after filing an affidavit of candidacy or nominating petition for the office sought.

#### **4503.1500 AGREEMENT TO MAKE LOAN.**

An agreement to make a loan to a political committee or fund must be made in writing and signed by the borrower and endorsers.

#### **4503.1600 FUNDRAISING DURING LEGISLATIVE SESSION.**

If the board makes a public finding that there is probable cause to believe a violation of *Minnesota Statutes*, section 10A.065, has occurred, in lieu of pursuing or enforcing a judgment, the board may attempt to negotiate a settlement agreement with the candidate, political committee, or political fund for payment of the civil fine.

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## Proposed Rules

### 4505.0010 SCOPE.

This chapter applies to the filing of statements of economic interest required by *Minnesota Statutes*, section 10A.09.

### 4505.0100 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of ~~parts 4505.0100 to 4505.1000~~ this chapter and *Minnesota Statutes*, section 10A.09, the terms defined in this part have the meanings given them. The definitions in chapter 4501 and in *Minnesota Statutes*, chapter 10A, apply to this chapter.

Subp. 1a. [See repealer.]

Subp. 2. [See repealer.]

[For text of subs 3 to 6, see M.R.]

### 4510.0010 SCOPE.

This chapter implements the lobbyist registration and reporting requirements of *Minnesota Statutes*, chapter 10A.

### 4510.0050 INCORPORATION AND APPLICATION OF DEFINITIONS.

The definitions in chapter 4501 and in *Minnesota Statutes*, chapter 10A, apply to this chapter.

### 4512.0010 SCOPE.

This chapter applies to the prohibition of certain gifts pursuant to *Minnesota Statutes*, section 10A.071.

### 4512.0100 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part apply to this chapter and *Minnesota Statutes*, section 10A.071. The definitions in chapter 4501 and in *Minnesota Statutes*, chapter 10A, apply to this chapter.

Subp. 2. **Field of specialty.** "Field of specialty" means a vocation, profession, trade, craft, or avocation of the individual.

Subp. 3. **Gift.** In addition to those categories specified in *Minnesota Statutes*, section 10A.071, subdivision 1, the following are included within the definition of gift:

A. meals and entertainment;

B. loans of personal property for less than payment of fair market value;

C. giving preferential treatment for purchases;

D. honoraria; and

E. payment of loans or other obligations.

Subp. 4. **Insignificant value, insignificant monetary value, or unexceptional value.** "Insignificant value," "insignificant monetary value," and "unexceptional value" mean having a fair market value of less than \$5.

Subp. 5. **Individual services.** "Individual services" means services performed by an official outside of official duties.

Subp. 6. **Plaque or similar memento.** "Plaque or similar memento" means a decorative item with an inscription recognizing an individual for an accomplishment.

### 4512.0200 GIFTS WHICH MAY NOT BE ACCEPTED.

An official may not accept a gift given by a lobbyist or lobbyist principal or given as the result of a request by a lobbyist or lobbyist principal.

### 4512.0300 GIFTS PAID FOR BY THIRD PARTIES.

A gift is given by the individual or association paying for the gift or reimbursing another for the gift.

### 4512.0400 GIFTS PARTIALLY PAID FOR BY LOBBYIST OR LOBBYIST PRINCIPAL.

An official must contemporaneously reimburse the lobbyist or lobbyist principal for the fair market value of any part of a gift paid for by the lobbyist or lobbyist principal.

### 4512.0500 WHEN A GIFT IS REQUESTED BY LOBBYIST OR LOBBYIST PRINCIPAL.

A gift is requested by a lobbyist or lobbyist principal if it is the direct result of a request, suggestion, or other affirmative effort by the lobbyist or lobbyist principal.

### 4512.0600 SPECIFIC EXCLUSIONS FROM GIFT DEFINITION.

Subpart 1. **Payment for goods and services.** Payment of the regular price for goods or services provided by an official or an official's business is not a gift to the official.

Subp. 2. Employment compensation. A salary increase, promotion, or change from part-time to full-time status for an official who is an employee is not a gift to the official.

**4515.0010 SCOPE.**

This chapter applies to the conflict of interest provisions of Minnesota Statutes, section 10A.07.

**4515.0100 DEFINITIONS.**

Subpart 1. Applicability Scope. When they are used in The definitions in this part apply to this chapter, the terms defined in this part have the meanings given them and Minnesota Statutes, section 10A.07. The definitions in chapter 4501 and in Minnesota Statutes, chapter 10A, apply to this chapter.

Subp. 2. [See repealer.]

Subp. 4. [See repealer.]

Subp. 5. **Financial interest.** "Financial interest" means any asset owned ownership or controlled by an individual or business control in an asset which has the potential to produce a monetary return.

Subp. 6. [See repealer.]

Subp. 7. [See repealer.]

**4515.0500 REMOVAL FROM CONFLICT OF INTEREST ABSTENTION.**

Subpart 1. **Nonlegislator.** If the public official is not a legislator, subsequent to the filing of a potential conflict of interest notice, or subsequent to oral notice of a potential conflict of interest by a public official, the official's immediate superior shall assign the matter, if possible, to another employee who does not have a potential conflict of interest. If the a public official who is not a legislator or a member of the governing body of a metropolitan governmental unit and who has a potential conflict of interest and who does not have an immediate superior except for notification purposes, the public official shall do one of the following. A public official who has a potential conflict of interest and is not required by law to determine the matter, shall either assign abstain from the matter, if possible, by assigning the matter to a subordinate for disposition or request requesting the appointing authority to designate another to determine the matter. A public official who has a potential conflict of interest but is required by law to determine the matter, shall so notify by certified mail all affected parties known to the official by providing these parties with copies of the potential conflict of interest notice. A public official having the potential conflict of interest In such a case, the official shall not chair a meeting, participate in any vote, or offer any motion or discussion on the matter giving rise to the potential conflict of interest.

Subp. 2. [See repealer.]

**4515.0700 CHANGES AND CORRECTIONS.**

Any material changes in If information contained in a previously filed potential conflict of interest notice previously submitted, and any corrections, shall be reported in writing to the board materially changes or is found to be in error, the person who filed the notice shall file a written notice of the change or correction within ten days following of the date of the event prompting the change or the date upon which the person filing became aware of the inaccuracy. The change or correction shall identify the form and paragraph containing the information to be changed or corrected and shall be signed and certified to be true by the person filing it.

**4520.0010 SCOPE.**

This chapter applies to the representation disclosure requirements of Minnesota Statutes, section 10A.08.

**4520.0100 DEFINITIONS.**

Subpart 1. Applicability Scope. When they are used in The definitions in this part apply to this chapter, the terms defined in this part have the meanings given them and Minnesota Statutes, section 10A.08. The definitions in chapter 4501 and in Minnesota Statutes, chapter 10A, apply to this chapter.

Subp. 2. [See repealer.]

Subp. 4. **Fee.** "Fee" means any compensation or other consideration for service done or to be done services performed or for future services.

Subp. 5. [See repealer.]

Subp. 6. **Initial appearance at a hearing.** "Initial appearance at a hearing" means the first appearance by a public official rep-

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## Proposed Rules

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representing a client for a fee at a hearing on a single subject. ~~If a public hearing on a single subject is continued, the initial appearance means the first appearance by the public official at such hearing. Subsequent appearances at continuations of the same hearing are not initial appearances.~~

Subp. 7. [See repealer.]

### 4520.0400 OBLIGATION AND TIME TO REPORT DISCLOSE REPRESENTATION.

~~Any public official who represents a client for a fee before any individual, board, commission, or agency with rulemaking authority in a hearing conducted under *Minnesota Statutes*, chapter 14, or authority to set rates, site power plants and power lines, and grant certificates of need under *Minnesota Statutes*, chapter 116J shall disclose participation in the action within 14 days after the public official's obligation to disclose representation arises upon the public official's initial appearance by filing a representation disclosure statement with the board at a hearing.~~

### 4520.0500 REQUIRED REPORTING INFORMATION.

Each public official required to report shall provide the following information: name, address, and office held; name and address of each client represented at the hearing; the name of the individual, board, commission, or agency conducting the hearing and the date and location of the initial appearance at the hearing; and a general description of the subject or subjects on which the public official represented the client in the hearing.

### 4520.0700 CHANGES AND CORRECTIONS.

~~Any material changes in If information contained in a previously filed representation disclosure statement previously submitted, and any corrections, shall be filed in writing with the board materially changes or is found to be in error, the person who filed the statement shall file a written notice of the change or correction within ten days following the date of the event prompting the change or the date upon which the person filing became aware of the inaccuracy. The change or correction shall identify the form and paragraph containing the information to be changed or corrected, and shall be signed and certified to be true by the person filing it.~~

### 4525.0010 SCOPE.

This chapter applies to the conduct of hearings, audits, and investigations by the board.

### 4525.0100 DEFINITIONS.

Subpart 1. Scope. ~~For the purposes of parts 4525.0100 to 4525.1000 the terms defined in this part have the meanings given to them. The definitions in this part apply to this chapter and *Minnesota Statutes*, chapter 10A. The definitions in chapter 4501 and in *Minnesota Statutes*, chapter 10A, apply to this chapter.~~

Subp. 1a. [See repealer.]

Subp. 2. [See repealer.]

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

Subp. 4. [See repealer.]

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

Subp. 6. Person. ~~A "person" means any includes an individual, partnership, corporation, joint stock company, unincorporated an association or society, or any government or governmental subdivision, unit, or agency, other than a court of law.~~

Subp. 7. [See repealer.]

### 4525.0200 COMPLAINTS OF VIOLATIONS.

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

Subp. 4. Oath. ~~Before a witness gives Testimony given in a meeting conducted by the board under part 4525.0500 or this rule, the following oath chapter must be administered to the witness: "Do you solemnly swear or affirm that you will fully and truly answer all questions put to you and that all statements made or submitted to this board are true to the best of your knowledge?" under oath.~~

[For text of subs 5 and 6, see M.R.]

### 4525.1000 INITIATING ANONYMOUS PROCEEDINGS.

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

Subp. 2. Application. Any person wishing to proceed anonymously under this part shall make an application under part 4525.0900, subpart 1, which shall contain:

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

B. The name and address of a person who is authorized to receive official notices or correspondence from the board or upon whom service can be made of legal process may be made;

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

D. The name and address of a person who will appear for the applicant during the proceedings if the applicant wishes to remain anonymous: The person may be the same person on whom service is to be made;

[For text of items E and F, see M.R.]

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

RENUMBERER. Minnesota Rules, part 4500.2900 is renumbered to part 4503.0600.

REPEALER. Minnesota Rules, parts 4500.0100; 4500.0200; 4500.0300; 4500.0400; 4500.0600; 4500.0700; 4500.0800; 4500.0900; 4500.1000; 4500.1100; 4500.1200; 4500.1400; 4500.1500; 4500.1600; 4500.1700; 4500.1900; 4500.2000; 4500.2100; 4500.2200; 4500.2300; 4500.2400; 4500.2500; 4500.2600; 4500.2700; 4500.2800; 4500.3000; 4500.3100; 4500.3200; 4500.3300; 4500.3400; 4500.3500; 4500.3600; 4500.3700; 4500.3800; 4500.3900; 4500.4000; 4500.4300, subparts 1, 2, 4, and 5; 4500.4400; 4505.0100, subparts 1a and 2; 4505.0200; 4505.0300; 4505.0400; 4505.0500; 4505.0600; 4505.0800; 4505.0900, subpart 1; 4505.1000; 4510.0100; 4510.0200; 4510.0300; 4510.0400, subparts 1 and 2; 4510.0600, subpart 4; 4510.1000; 4510.1200; 4510.1300; 4510.1400; 4515.0100, subparts 2, 4, 6, and 7; 4515.0200; 4515.0300; 4515.0400; 4515.0500, subpart 2; 4515.0600; 4515.0800; 4520.0100, subparts 2, 5, and 7; 4520.0200; 4520.0300; 4520.0600; 4520.0800; 4525.0100, subparts 1a, 2, 4, and 7; and 4525.0500, subpart 4, are repealed.

## Department of Health

### Proposed Permanent Rules Relating to Asbestos-Related Work

#### 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 a permanent rule without a public hearing following the procedures set forth in the Administrative Procedures Act, *Minnesota Statutes*, sections 14.22 to 14.28. If, however, 25 or more persons submit a written request for a hearing on the rule by 4:30 p.m., January 25, 1996, a public hearing will be held on February 15, 1996, in Room LL56, in the Lower Level of the Metro Square Building, 121 East Seventh Place, St. Paul, Minnesota starting at 9 a.m. To find out whether the rule will be adopted without a hearing or if the hearing will be held, you should contact the agency contact person after January 25, 1996 and before February 15, 1996.

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

Kathy Norlien  
Division of Environmental Health  
Minnesota Department of Health  
121 E. Seventh Place, P.O. Box 64975  
St. Paul, Minnesota 55164-0975  
(612) 215-0876  
FAX (612) 215-0979

**Subject of Rule and Statutory Authority.** The authority for the commissioner of health to adopt rules regulating asbestos abatement is contained in the Asbestos Abatement Act, *Minnesota Statutes*, sections 326.70 to 326.81 as amended by *Laws of Minnesota* 1995, chapter 165, sections 12 to 15. General authority to establish standards for the protection of public health is contained in *Minnesota Statutes*, sections 144.05. To establish fees, authority is contained in *Minnesota Statutes*, sections 144.122 and 16A.1285. Authority to establish procedures and criteria for variance requests to rules is found in *Minnesota Statutes*, section 14.05, subdivision 4.

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## Proposed Rules

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Asbestos abatement is regulated to prevent unnecessary public exposure to asbestos when it is removed, enclosed or encapsulated. Exposure to asbestos can cause serious health problems if asbestos fibers are inhaled. Asbestos is a carcinogen.

The legislature began regulating asbestos in 1987 and rules were initially adopted in 1988. During the 1993, 1994 and 1995 legislative sessions changes to the Asbestos Abatement Act were adopted extending regulation to residences, requiring the certification of asbestos inspectors, management planners and project designers, regulating asbestos abatement management activity and project design, and the permitting of training courses for inspectors, planners and project designers. Certification and training course fees were mandated.

A copy of the proposed rules is published in the *State Register* and attached to this notice as mailed. A free copy of the proposed rule is available on request form Kathy Norlien.

**Comments.** You have 30 calendar days, until 4:30 p.m. on January 25, 1996, to submit written comment in support of or in opposition to the proposed rules or any part or subpart of a rule. 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 rule addressed, the reason for the comment, and any change proposed. You are encouraged to propose any change desired. Any comments you would like to make on the legality of the proposed rule must be made during this comment period.

**Request for a Hearing.** In addition to submitting comment, you have 30 calendar days to 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 agency contact person by 4:30 p.m. on January 25, 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 to which you object. You are encouraged to state the reason for the request and any changes you want made to the proposed rules.

**Withdrawal of requests.** 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 agency will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20.

**Accommodation.** If you need an accessibility accommodation, please contact the agency contact person at the address or telephone number listed above.

**Modifications.** The proposed rule may be modified, either as a result of public comment or as a result of the rule hearing process. Modifications must be supported by data and views submitted to the agency or presented at the hearing and the adopted rule may not be substantially different than this proposed rule. If the proposed rule affects you in any way, you are encouraged to participate in the rulemaking process.

**Cancellation of Hearing.** The hearing scheduled for February 15, 1996 will be canceled if the agency does not receive requests from 25 or more persons that a hearing be held on the rule. 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) 215-0876 after January 25, 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. The hearing will be held on the date and at the time and place listed above. The hearing will continue until all interested persons have been heard. 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, Minnesota 55401-2138, telephone (612) 349-2542, and FAX (612) 349-2665.

**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 submit 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. Following the comment period, there is a five-working-day response period during which the agency and any interested person may respond in writing 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. All comments or responses received will be available for review at the Office of Administrative Hearings. This rule hearing procedure is governed by *Minnesota Rules*, parts 1400.0200 to 1400.1200 and *Minnesota Statutes*, sections 14.14 to 14.20. Questions about procedure may be directed to the administrative law judge.

The agency requests that any person submitting written views or data to the administrative law judge prior to the hearing or during the comment or response period also submit a copy of the written views or data to the agency contact person at the address stated above.

**Statement of Need and Reasonableness.** A statement of need and reasonableness is now available from the agency from the agency contact person. This statement describes the need for and reasonableness of each provision of the proposed rule. This statement of need and reasonableness includes a summary of all the evidence and argument which the department anticipates presenting at the hearing, if one is held. Copies of the statement are also available at the cost of reproduction from the Office of Administrative Hearings.

**Small Business Considerations.** *Minnesota Statutes*, section 14.115 requires that an agency consider five factors for reducing the impact of proposed rules on small business. A discussion of the impact on small businesses is contained in the Statement of Need and Reasonableness.

**Impact on Agricultural Land; farming operations.** The proposed rule will have no direct or adverse impact on agricultural lands. (*Minnesota Statutes* section 14.11, subd. 2.); nor was additional action taken under *Minnesota Statutes*, section 14.111.

**Expenditure of Public Money by Local Public Bodies.** The adoption of the proposed rules do not directly require the expenditure of public money by local public bodies of greater than \$100,000 in the two years following promulgation. (*Minnesota Statutes* section 14.11, subd. 1.)

**Lobbyist Registration.** *Minnesota Statutes*, chapter 10A requires each lobbyist to register with the Ethical Practices Board. Questions about this requirement may be directed to the Ethical Practices Board, First Floor South, Centennial Office Building, St. Paul, Minnesota 55155, telephone: (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 rule after the end of the comment period. The rule and supporting documents will then be submitted to the Office of the Attorney General for review as to legality. You may ask 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 want to be so notified, or wish to receive a copy of the adopted rule, submit your request to agency contact person listed above.

**Adoption Procedure After the Hearing.** If a hearing is held, after the close of the hearing record, the administrative law judge will issue a report on the proposed rule. You may ask to be notified of the date on which the administrative law judge's report will be available, and can make this request at the hearing or in writing to the administrative law judge. You may also ask to be notified of the date on which the agency adopts the rule and files it with the secretary of state, and can make this request at the hearing or in writing to the agency contact person stated above.

Dated: 11 December 1995

Anne M. Barry  
Commissioner of Health

This notice and the proposed rule can be made available in alternative formats.

## Rules as Proposed

### **4620.3000 PURPOSE AND SCOPE APPLICABILITY.**

The purpose of parts 4620.3000 to 4620.3700 is to protect persons from asbestos exposure during and after asbestos related work, by requiring minimum qualifications for individuals engaged in asbestos related work and by assuring that prescribed procedures are followed for asbestos related work.

Parts 4620.3000 to 4620.3700 regulate asbestos related work involving friable asbestos containing material that contains greater than one percent asbestos by weight in quantities greater than or equal to 260 linear feet on pipes or 160 square feet on other facility components.

All asbestos related work must be performed by licensed asbestos abatement contractors employing certified asbestos abatement site supervisors and certified asbestos abatement workers.

Parts 4620.3000 to 4620.3724 apply to persons performing asbestos-related work.

### **4620.3100 DEFINITIONS.**

Subpart 1. **Scope.** For the purpose of this chapter parts 4620.3000 to 4620.3724, the following terms have the meanings given them.

**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. 1a. Abatement.** "Abatement" means the performance of asbestos-related work, other than air monitoring, in the quantities specified in Minnesota Statutes, section 326.71, subdivision 4. Abatement includes preparation, containment removal, and cleanup.

**Subp. 2.** [See repealer.]

**Subp. 2a. Adequately wet.** "Adequately wet" means mixed or penetrated with liquid to prevent the release of particulates.

**Subp. 2b. Alternative clearance standard.** "Alternative clearance standard" means the asbestos concentration of 70 structures per square millimeter (70 s/mm<sup>2</sup>) of filter surface when the clearance air samples are analyzed by transmission electron microscopy according to part 4620.3598.

**Subp. 2c. Alternative indoor air standard.** "Alternative indoor air standard" means the maximum permissible fiber concentration in the air established according to part 4620.3597.

**Subp. 3. Asbestos.** "Asbestos" means the asbestiform varieties of chrysotile (serpentine); ercoidolite (riebeckite); amosite (cumingtonite grunerite); anthophyllite; tremolite; and actinolite has the meaning given in Minnesota Statutes, section 326.71, subdivision 2.

**Subp. 4. Asbestos abatement contractor.** "Asbestos abatement contractor" means an employer a person who conducts asbestos-related work and includes employers persons who perform in-house asbestos-related work using their own employees.

**Subp. 5. Asbestos abatement project plan.** "Asbestos abatement project plan" means a the written plan which describes the equipment and procedures that will be used throughout the asbestos abatement project. Requirements for the plan are described in part 4620.3500, subpart 3, item A 4620.3560.

**Subp. 5a. Asbestos site supervisor.** "Asbestos site supervisor" means an individual who is certified under part 4620.3310.

**Subp. 5b. Asbestos work area.** "Asbestos work area" means an area established by the person performing asbestos-related work, where airborne concentrations of asbestos exceed or can reasonably be expected to exceed 0.01 fibers per cubic centimeter (f/cc) or the alternative indoor air standard established according to parts 4620.3594 to 4620.3598.

**Subp. 6. Asbestos abatement worker.** "Asbestos abatement worker" means any employee who conducts asbestos related work individual certified under part 4620.3300.

**Subp. 7. Asbestos-containing material or (ACM).** "Asbestos-containing material or (ACM)" means material that contains more than one percent asbestos by weight has the meaning given in Minnesota Statutes, section 326.71, subdivision 3.

**Subp. 7a. Asbestos inspection.** "Asbestos inspection" means an activity undertaken by visual or physical examination to determine the presence, the location, or to assess the condition of friable or nonfriable asbestos-containing material or suspected asbestos-containing material. Asbestos inspection includes reinspection of known asbestos-containing material or assumed asbestos-containing material. Asbestos inspection does not include:

**A.** the periodic surveillance performed under Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, section 763.92, paragraph (b), amended through February 3, 1994;

**B.** an inspection performed by an employee or agent of the federal, state, or local government solely for the purpose of determining compliance with applicable statutes or rules; and

**C.** visual inspections of the type described in parts 4620.3560 to 4620.3598 solely for the purpose of determining completion of asbestos-related work.

**Subp. 7b. Asbestos inspector.** "Asbestos inspector" is an individual as defined in Minnesota Statutes, section 326.71, subdivision 4a, and who is certified under part 4620.3330.

**Subp. 7c. Asbestos management plan.** "Asbestos management plan," as specified in part 4620.3470, means a site-specific written plan for:

**A.** the maintenance of asbestos-containing material in a condition that prevents the release of asbestos fibers; and

**B.** response procedures for an asbestos fiber release episode.

**Subp. 7d. Asbestos management planner.** "Asbestos management planner" is an individual as defined in Minnesota Statutes, section 326.71, subdivision 4c, and who is certified under part 4620.3340.

**Subp. 7e. Asbestos project design.** "Asbestos project design" as specified in part 4620.3480, means site-specific written project specifications for an asbestos-related work project. Bidding documents that incorporate written project specifications are also considered project design.

**Subp. 7f. Asbestos project designer.** "Asbestos project designer" is an individual as defined in Minnesota Statutes, section 326.71, subdivision 4d, and who is certified under part 4620.3350.

Subp. 8. **Asbestos-related work.** "Asbestos-related work" means the enclosure, removal, or encapsulation of friable asbestos containing material in quantities greater than or equal to 260 linear feet on pipes or 160 square feet on other facility components in one facility.

A. To determine whether planned enclosure, removal, or encapsulation operations constitute "asbestos related work," the contracting entity must predict the additive quantity of friable asbestos containing materials to be enclosed, removed, or encapsulated in the facility over the maximum period of time for which a prediction can be made, not to exceed one year.

B. To determine whether emergency enclosure, removal, or encapsulation operations constitute "asbestos related work," the contracting entity must estimate the quantity of friable asbestos containing materials to be enclosed, removed, or encapsulated as a result of the sudden, unexpected event that necessitated the operation has the meaning given in *Minnesota Statutes*, section 326.71, subdivision 4.

Subp. 9. [See repealer.]

Subp. 10. [See repealer.]

Subp. 10a. **Clearance standard.** "Clearance standard" means the maximum permissible fiber concentration in the air within an asbestos work area following completion of abatement. The clearance standard is 0.01 fibers per cubic centimeter of air (f/cc) when analyzed by phase contrast microscopy according to part 4620.3597, subparts 1, 3, and 4.

Subp. 11. **Commissioner.** "Commissioner" means the commissioner of health and the commissioner's designees has the meaning given in *Minnesota Statutes*, section 326.71, subdivision 5.

Subp. 11a. **Containment.** "Containment" means the structure which must be constructed as specified in part 4620.3598 around the asbestos work area.

Subp. 12. [See repealer.]

Subp. 13. **Contracting entity.** "Contracting entity" means a public or private body, board, natural person, corporation, partnership, proprietorship, joint venture, fund, authority, or similar entity that contracts with an employer or person to do asbestos related work for the benefit of the contracting entity has the meaning given in *Minnesota Statutes*, section 326.71, subdivision 6.

Subp. 14. **Critical containment barriers.** "Critical containment barriers" means the barriers constructed to separate and isolate the abatement asbestos work area from the rest of the building facility and the outdoors, including the barriers constructed over doors, windows, and air passageways. "Containment barriers" means the barriers constructed to separate and isolate the abatement area from the rest of the building and the outdoors, including the barriers constructed over doors, windows, and air passageways.

Subp. 14a. **Demolition.** "Demolition," with respect to a facility, means the:

A. wrecking or taking out of any load-supporting structural member of the facility together with any related handling operations; or

B. intentional burning of the facility.

Subp. 15. [See repealer.]

Subp. 16. **Emergency renovation project.** "Emergency renovation project" means asbestos related work a project which was not planned but results from a sudden, unexpected event whose consequences, if not immediately attended to, present either a safety or public health hazard or would damage equipment. This includes work required by nonroutine failures of equipment.

Subp. 17. [See repealer.]

Subp. 18. [See repealer.]

[For text of subps 19 and 20, see M.R.]

Subp. 20a. **Facility.** "Facility" means any:

A. institutional, commercial, public, industrial, or residential structure, building, or installation, including any structure, building, or installation containing condominiums or individual dwelling units operated as a residential cooperative; or

B. ship at dock in Minnesota.

Subp. 20b. **Facility component.** "Facility component" means any part of a facility including equipment.

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## Proposed Rules

Subp. 21. **Friable asbestos material.** "Friable asbestos material" means any material containing more than one percent asbestos by weight microscopic visual estimation by area, that hand pressure can crumble, pulverize, or reduce to powder when dry. Friable asbestos material includes previously nonfriable asbestos material which becomes damaged to the extent that when dry all or a portion of the material may be crumbled, pulverized, or reduced to powder by hand pressure.

Subp. 22. [See repealer.]

Subp. 23. **Glove bag.** "Glove bag" means a bag, fitted with arms, through which limited types of asbestos-related work may be performed, as allowed in part 4620.3500, ~~subpart 4~~ 4620.3580.

[For text of subp 24, see M.R.]

Subp. 24a. **Homogeneous area.** "Homogeneous area" means an area of surfacing materials, thermal system insulation materials, flooring, or other miscellaneous materials which upon examination for properties such as age, color, and texture appear to be composed of the same material.

Subp. 24b. **Indoor air standard.** "Indoor air standard" means the maximum permissible fiber concentration in the air outside of the asbestos work area during asbestos-related work. The indoor air standard is 0.01 fibers per cubic centimeter of air (f/cc) when analyzed by phase contrast microscopy according to part 4620.3597, unless an alternative indoor air standard has been established.

Subp. 25. **Industrial facility.** "Industrial facility" means a facility in an industry classified in the Standard Industrial Classification Manual, 1972 1987 edition, published by the Office of Management and Budget, within Major Groups 20 to 39, 46, and 49. This document is not subject to frequent change and, is incorporated by reference, and is available at the State Law Library, Minnesota Judicial Center, 25 Constitution Avenue, Saint Paul, Minnesota 55155.

Subp. 25a. **Installation.** "Installation" means any building or structure or any group of buildings or structures at a single demolition or renovation site that are under the control of the same owner or operator as described in Code of Federal Regulations, title 40, chapter I, subchapter R, part 61, subpart M, section 61.141, amended through July 1, 1994.

Subp. 25b. **Maintenance or maintenance activity.** "Maintenance" or "maintenance activity" means any encapsulation, enclosure, or removal of asbestos-containing material on or around a mechanical system or machinery to sustain the operating condition of the mechanical system or machinery.

Subp. 26. [See repealer.]

Subp. 27. **Occupied area immediately adjacent to an abatement area.** "Occupied area immediately adjacent to an abatement area" is a designation used during an asbestos-related work project and means an indoor space which ~~meets all of the following criteria:~~

- A. ~~The space is not considered part of the abatement asbestos work area;~~
- B. ~~The space shares a wall, floor, or ceiling with the temporary barriers constructed to enclose the abatement asbestos work area or shares a window, door, or similar opening to a room temporarily considered the abatement asbestos work area; and~~
- C. ~~The space is occupied by persons individuals not involved in asbestos-related work.~~

Subp. 27a. **Person.** "Person" has the meaning given in Minnesota Statutes, section 326.71, subdivision 8.

Subp. 27b. **Project.** "Project" means:

A. the area preparation, enclosure, removal, or encapsulation operations and air quality monitoring of asbestos-containing material in a quantity that meets or exceeds 260 linear feet of friable asbestos-containing material on pipes, 160 square feet of friable asbestos-containing material on other facility components, or if linear feet or square feet cannot be measured, a total of 35 cubic feet of friable asbestos-containing material on or off all facility components in one facility. The removal, enclosure, or encapsulation described in this item may not be subdivided to fall below the quantity specified in this item. In single-family residences and residential buildings with no more than four dwelling units, asbestos-containing materials excluded from this definition are floor tiles and sheeting, roofing materials, siding, and all ceilings with asbestos-containing material;

B. a series of activities, excluding maintenance activity, which individually consist of area preparation and the enclosure, removal, or encapsulation operations and air quality monitoring of asbestos-containing material in quantities less than the quantities specified in item A where the total quantity of asbestos-containing material enclosed, removed, or encapsulated during a calendar year meets or exceeds the quantities specified in item A in that facility;

C. a series of maintenance activities where the contracting entity has predicted that the additive quantity of maintenance during a calendar year will exceed 260 linear feet, 160 square feet, or 35 cubic feet in a facility during the calendar year; or

D. a small residential abatement.

Subp. 28. **Renovation.** "Renovation" means altering in any way one or more facility components. In asbestos-related work renovation includes the enclosure, removal, or encapsulation of friable asbestos-containing material.

Subp. 29. **Responsible individual.** "Responsible individual" means one who has the authority to represent the ~~company~~ asbestos contractor in all matters related to the asbestos ~~abatement~~ contractor license and is certified as a site supervisor under part 4620.3310.

Subp. 30. [See repealer.]

Subp. 31. **Small residential abatement.** "Small residential abatement" means any asbestos-related work performed in a single- or multifamily residence where the quantity of asbestos-containing material to be enclosed, removed, or encapsulated is greater than ten but less than 260 linear feet of friable asbestos-containing material on pipes or ducts or greater than six but less than 160 square feet of friable asbestos-containing material on other facility components.

A. The asbestos-related work described in this subpart may not be subdivided to fall below the quantities specified in this subpart.

B. Small residential abatement in single-family residences and residential buildings with no more than four dwelling units does not include work on floor tiles and sheeting, roofing materials, siding, and all ceilings with asbestos-containing materials.

Subp. 32. **Training course.** "Training course" means a course of instruction for an asbestos worker, asbestos site supervisor, asbestos inspector, asbestos management planner, asbestos project designer, or an individual who performs asbestos air monitoring.

Subp. 33. **Tunnel.** "Tunnel" means a below-grade corridor or crawl space which is not used for:

- A. a human thoroughfare;
- B. storage; or
- C. an air plenum for any ventilation system.

**4620.3200 LICENSING REQUIREMENTS FOR ASBESTOS ABATEMENT CONTRACTORS INTENDING TO PERFORM ASBESTOS RELATED WORK CONTRACTOR LICENSURE.**

Subpart 1. [See repealer.]

Subp. 2. **Initial Application for license.** An applicant for an ~~initial~~ asbestos ~~abatement~~ contractor license shall must submit the following to the commissioner:

A. a properly completed application on a form provided by the commissioner;

B. a \$100 nonrefundable application fee; in the form of ~~with~~ a business check, cashier's check, or money order payable to the Treasurer, State of Minnesota; ~~Department of Health;~~

C. the name, address, and social security number, and signature of the responsible individual who has taken the required training as specified under part 4620.3700 and is applying for a license on behalf of the asbestos abatement contractor; as defined in part 4620.3100, subpart 29;

D. evidence that the responsible individual who is applying has successfully completed a Minnesota approved initial training course for asbestos abatement contractors and site supervisors that meets the following requirements:

(1) for purposes of license applications submitted before January 1, 1989, a training course taken between June 1, 1987 and December 31, 1988, is considered Minnesota approved if it has full or contingent EPA approval; and the responsible individual completed the course within one year of application; and

(2) for purposes of license applications submitted on or after January 1, 1989, a training course must meet the additional criteria for training courses in part 4620.3700 to be Minnesota approved: a copy of the responsible individual's current site supervisor card issued by the Minnesota Department of Health;

E. a list of the other states in which the asbestos abatement contractor is licensed or certified for asbestos abatement ~~asbestos-related work;~~ and for each state, the license or certificate number and the expiration date of each license or certificate;

F. copies of any asbestos related citations or notices of violation issued by the Minnesota Occupational Safety and Health Review Board, the Minnesota Pollution Control Agency, the federal Occupational Safety and Health Administration, or the federal Environmental Protection Agency, within two years before the date of application; or similar citations received by the asbestos ~~abatement~~ contractor for work performed in other states, and a description of corrective actions taken; and

G. evidence of workers' compensation insurance coverage.

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## Proposed Rules

H. A statement that the asbestos abatement contractor does not owe outstanding Minnesota tax obligations.

I. ~~The social security number of the responsible individual and the asbestos abatement contractor's Minnesota business identification number.~~ the asbestos contractor's Minnesota business identification number and the United States Internal Revenue Service employer identification number.

Subp. 2a. Workers' compensation. As part of the application process in subpart 2, the applicant must provide evidence of workers' compensation insurance as required by Minnesota Statutes, section 176.182, unless the applicant is not liable to pay compensation under Minnesota Statutes, chapter 176.

A. If the applicant is not liable to pay compensation under Minnesota Statutes, chapter 176, the applicant must submit a letter to the commissioner, signed and dated, stating why the applicant is not liable.

B. The Minnesota Department of Health must be listed on the certificate of insurance as a certificate holder. A 30-day written notice to the Minnesota Department of Health, asbestos abatement unit, is required if the policy is canceled before the expiration date of the policy.

Subp. 3. Denial of asbestos contractor license application. An application for license may be denied for any of the following reasons: The commissioner shall deny an application for an asbestos contractor license if the applicant fails to comply with the requirements of subparts 2, 2a, and 4a. Additional grounds for the commissioner to deny an application are stated in Minnesota Statutes, section 144.99, subdivision 8, paragraph (a) or (b). An applicant:

A. failure of the applicant to complete the application;

B. failure of the applicant to submit the application with the required fee; or

C. failure of the applicant to meet the qualifications required by the Asbestos Abatement Act, Minnesota Statutes, sections 326.70 to 326.82, and parts 4620.3000 to 4620.3700, and state law relating to delinquent tax accounts.

An applicant shall be notified in writing of the denial and the reasons for the denial. A person who resubmits an initial application is not required to pay a second fee.

A. must be notified in writing of the denial of the license application and reasons for the denial; and

B. is not required to pay a second fee if the applicant submits a second asbestos contractor application according to subpart 2, within 30 days of the receipt of notice that the asbestos contractor license application has been denied. Fees are required for all subsequent applications.

Subp. 4. Terms of licensure. An applicant who meets the requirements in subpart 2, shall be issued a written Minnesota asbestos abatement contractor license. For licenses issued on or after January 1, 1989, the date of issuance is the date the applicant successfully completes the training requirements in subpart 2, item D. The following information shall appear on the front of the license:

A. the employer's name and address;

B. the name of the responsible individual;

C. the date the license is issued;

D. the date the license expires; and

E. the signature of the commissioner.

Copies certified by the commissioner shall be issued upon request. An asbestos contractor license is effective for one year unless it is revoked or suspended by the commissioner. An asbestos contractor license is not transferable.

Subp. 4a. Responsible individual. A licensed asbestos contractor must at all times have a responsible individual who represents the asbestos contractor. If the responsible individual identified on the current asbestos contractor license no longer serves in that capacity, the contractor, within ten days of the change in the responsible individual, must provide a statement to the commissioner identifying and signed by the new responsible individual and stating the date when that individual assumed the duties of the responsible individual.

Subp. 5. Annual license renewal. The license is effective for one year unless the commissioner revokes or suspends the license. Renewal licenses shall be issued to qualified applicants.

A. The commissioner may renew a license if the license holder submits a completed, approvable renewal application at least 30 but not more than 60 days before the expiration date of the existing license.

B. Renewal applications will only be accepted from the responsible individual who currently holds the license on behalf of the company. License holders applying for renewal of a license shall submit each of the following items:

- (1) a properly completed renewal application on a form provided by the commissioner;
- (2) a \$100 nonrefundable renewal application fee in the form of a check, payable to the Treasurer, State of Minnesota;

and

(3) evidence that the responsible individual has attended and successfully completed a Minnesota approved annual refresher training course for asbestos abatement contractors. The criteria for Minnesota approval of training courses are described under part 4620.3700. If a contractor wants to renew the asbestos contractor license, the contractor must submit an application under subpart 2 that is received by the commissioner at least 14 calendar days before the expiration date on the existing asbestos contractor license.

Subp. 6. [See repealer.]

Subp. 7. [See repealer.]

Subp. 8. **Procedures for obtaining duplicate license.** The commissioner ~~may~~ shall issue a duplicate asbestos contractor license to replace a lost, destroyed, or mutilated license; ~~if the responsible individual shall submit license submits~~ a properly completed application for a duplicate license on a form provided by the commissioner and pays a charge to the commissioner for the cost of duplicating the license. A duplicate license must have "duplicate" stamped on its face and must bear the same number and expiration date as the original license.

Subp. 9. Subcontractors. A subcontractor who performs asbestos-related work must hold a valid asbestos contractor license.

#### **4620.3250 USE OF QUALIFIED INDIVIDUALS.**

Qualified individuals must be used to perform asbestos-related work.

A. An asbestos contractor must employ only asbestos workers and site supervisors with current certificates issued by the commissioner to conduct asbestos-related work.

B. An asbestos contractor must ensure that a current asbestos worker certificate or asbestos site supervisor certificate for each individual engaged in asbestos-related work is readily available at the work site for review by the commissioner.

C. An asbestos contractor must ensure that a certified asbestos site supervisor is present at the work site during all times when asbestos-related work is performed.

#### **4620.3300 CERTIFICATION OF ASBESTOS ABATEMENT SITE SUPERVISORS AND ASBESTOS ABATEMENT WORKERS WORKER.**

Subpart 1. **Certification of supervisors and workers asbestos worker required.** On and after January 1, 1989, an employee An individual who performs asbestos-related work must be certified by the commissioner as an asbestos abatement site supervisor or asbestos abatement worker under this part unless that individual is certified as an asbestos site supervisor. Site supervisors and workers who perform asbestos related work shall be issued a written Minnesota asbestos abatement site supervisor or worker certificate with the person's name, the date issued, the date of expiration, and the signature of the commissioner appearing on the front of the certificate. The certified asbestos abatement site supervisor or worker must have the certificate readily available at the work site for inspection by the commissioner's designees.

Subp. 2. **Initial application for site supervisor or worker certification Qualifications or experience requirements.**

A. An applicant for initial certification as an asbestos abatement site supervisor or worker must submit the following:

- (1) a properly completed application on a form provided by the commissioner;
- (2) a nonrefundable application fee of \$50 in the form of a check, payable to the Treasurer, State of Minnesota; and
- (3) evidence of attendance and successful completion of a Minnesota approved initial training course that meets the following requirements:

(a) site supervisors must show evidence of attendance and successful completion of a Minnesota approved initial training course for contractors and site supervisors;

(b) workers must show evidence of attendance and successful completion of a Minnesota approved initial training course for workers;

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## Proposed Rules

(e) for purposes of applications submitted before January 1, 1989, a training course taken between June 1, 1987 and December 31, 1988, is considered Minnesota approved if it has full or contingent EPA approval, and the site supervisor or worker completed the course within one year of application; and

(d) for purposes of applications submitted on or after January 1, 1989, a training course must meet the additional criteria for training courses in part 4620.3700 to be Minnesota approved:

B. An applicant who meets the requirements of this subpart and subpart 3 shall be issued a written Minnesota asbestos abatement site supervisor or worker certificate. For certificates issued on or after January 1, 1989, the date of issuance of the certificate is the date the applicant successfully completes the Minnesota approved training course. To be eligible for certification as an asbestos worker, an individual must have completed:

A. two years full-time attendance, or the part-time equivalent, in an apprenticeship program for general commercial construction trades which is either approved by the Minnesota Department of Labor and Industry, Division of Voluntary Apprenticeship, or registered with the United States Department of Labor, Bureau of Apprenticeship and Training;

B. a vocational training program in a construction-related discipline of not less than 18 months; or

C. work experience of at least 1,000 hours of work experience in general commercial construction trades.

Subp. 3. **Additional Training or experience requirements for initial certification.** On and after January 1, 1989, to be eligible for certification as a site supervisor or worker, a person applying for certification must submit the information described in subpart 2 and also show evidence of completion of one of the following:

A. two years of attendance in an apprenticeship program within the construction industry which is either approved by the state of Minnesota, Department of Labor and Industry, Division of Voluntary Apprenticeship, or registered both the United States Department of Labor, Bureau of Apprenticeship and Training;

B. successful completion of a construction industry vocational technical program of not less than 18 months; or

C. work experience of at least 2,000 hours within the commercial or industrial building construction industry, verified in a notarized statement detailing the hours worked, provided by either the employer or the labor organization involved. To be eligible for initial certification as an asbestos worker:

A. an applicant must complete before the commissioner's receipt of the application, an initial asbestos worker training course that is:

(1) permitted by the commissioner under part 4620.3704;

(2) approved by the United States Environmental Protection Agency (EPA) with the EPA approval granted after June 1, 1987; or

(3) approved by a state asbestos training program accredited by the EPA; and

B. an applicant must complete, before the commissioner's receipt of the application, an asbestos worker refresher course permitted by the commissioner under part 4620.3704 if the applicant has completed an initial asbestos worker training course specified in item A, subitem (2) or (3).

Subp. 3a. **Training diploma expiration; retraining.** The applicant for certification as an asbestos worker must complete an annual asbestos worker refresher course permitted by the commissioner under part 4620.3704 when the diploma from an initial worker training course, as specified in subpart 3, item A, has expired before the commissioner's receipt of the application.

A. The most recent asbestos worker refresher course taken must be permitted by the commissioner under part 4620.3704.

B. Any refresher courses completed subsequent to the expiration of the diploma must have been completed no more than 12 months after the expiration date of the preceding diploma.

Subp. 4. **Denial of site supervisor or Application for initial asbestos worker certification.** An application for site supervisor or worker certification may be denied for any of the reasons for denying a license, listed in part 4620.3200, subpart 3. An applicant shall be notified in writing of the denial and the reasons for the denial. A person who resubmits an initial application is not required to pay a second fee. An applicant for initial certification as an asbestos worker must submit to the commissioner:

A. a completed application on a form provided by the commissioner;

B. a nonrefundable application fee of \$50 with a business check, cashier's check, or money order payable to the Minnesota Department of Health;

C. evidence of qualifications or experience described in subpart 2 as shown by:

(1) a document showing completion of the apprenticeship attendance requirement in subpart 2, item A;

(2) certified transcripts of coursework completed in the vocational training program described in subpart 2, item B; or

(3) an affidavit by each of the applicant's employers, contracting parties, or labor organizations detailing the dates of employment, hours worked, and job duties for the work experience described in subpart 2, item C; and

D. a copy of the applicant's original diploma for the initial asbestos worker training course completed and, if applicable, copies of each of the applicant's original diplomas for the asbestos worker refresher training courses completed.

**Subp. 5. Annual Renewal of certification.** The certificate is effective for one year unless the commissioner suspends or revokes it. Renewal certificates shall be issued to qualified applicants.

A. The commissioner may renew a certificate if the certificate holder submits a completed, approvable renewal application at least 30 but not more than 60 days before expiration of the existing certificate.

Failure to submit the properly completed application materials at least 30 days before the certificate expiration date may result in lapse of the certificate.

B. Certificate holders applying for renewal of the license shall submit the following: An individual certified as an asbestos worker must apply for renewal of the asbestos worker certification by submitting to the commissioner a completed renewal application at least 30 calendar days before the expiration date of the current asbestos worker certificate. The renewal application must include:

(1) a properly A. the completed renewal application on a form provided by the commissioner;

(2) B. a nonrefundable \$50 renewal application fee in the form of with a business check, cashier's check, or money order payable to the Treasurer, State of Minnesota Department of Health; and

(3) for site supervisors, evidence of attendance and successful completion of a Minnesota approved refresher training course for contractors and site supervisors; and for workers, evidence and successful completion of a Minnesota approved refresher training course for workers. The criteria for Minnesota approved refresher training courses are described in part 4620.3700.

C. An application for renewal of certification may be denied for any of the reasons for denying an asbestos abatement contractor license in part 4620.3200, subpart 3. The applicant shall be notified in writing of the denial and the reasons for the denial evidence of completion of the most recent asbestos worker refresher training course required by subpart 3a.

**Subp. 6. Procedures for obtaining duplicate site supervisor or worker certificate Denial of asbestos worker certification.** The commissioner may issue a duplicate certificate to replace a lost, destroyed, or mutilated certificate. The certificate holder shall submit a properly completed application for a duplicate certificate on a form provided by the commissioner. A duplicate certificate shall have "duplicate" stamped on the face and shall bear the same number and expiration date as the original certificate. The commissioner shall deny an application for asbestos worker certification if the applicant fails to comply with all applicable requirements in this part. Additional grounds for the commissioner to deny an application are stated in Minnesota Statutes, section 144.99, subdivision 8, paragraphs (a) and (b). An applicant:

A. must be notified in writing of the denial of the certificate and the reasons for the denial; and

B. is not required to pay a second fee if the applicant submits a second asbestos worker certification application according to subpart 4 or 5 within 30 days of receipt of notice that the asbestos worker certification has been denied. Fees are required for all subsequent applications.

**Subp. 7. Duration of certificate; transfer.** An asbestos worker certificate issued by the commissioner is valid for one year after the completion date on the training course diploma for the most recently completed training course. The asbestos worker certificate is not transferable.

**Subp. 8. Duplicate certificate.** To replace a lost, destroyed, or mutilated asbestos worker certificate, the certified asbestos worker must submit a completed application for a duplicate asbestos worker certificate on a form provided by the commissioner and pay the charge with a business check, cashier's check, or money order payable to the Minnesota Department of Health for the cost of duplicating the certificate.

#### **4620.3310 CERTIFICATION OF ASBESTOS SITE SUPERVISOR.**

**Subpart 1. Certification required.** An individual who supervises asbestos-related work or has the authority to act as the agent of the asbestos contractor at the asbestos work area must be certified as an asbestos site supervisor by the commissioner.

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Subp. 2. Qualifications or experience requirements. To be eligible for certification as an asbestos site supervisor, an individual must have:

A. work experience of at least 2,000 hours in asbestos-related work, safety, industrial hygiene, or other hazardous materials control;

B. a bachelor's degree in architecture, engineering, physical or life science, and work experience of at least 500 hours in asbestos-related work, safety, industrial hygiene, or hazardous materials control;

C. a master's degree in environmental health, industrial hygiene, or safety; or

D. completion of an apprenticeship program within the general commercial construction trades that is either approved by the Minnesota Department of Labor and Industry, Division of Voluntary Apprenticeship, or registered with the United States Department of Labor, Bureau of Apprenticeship and Training.

Subp. 3. Training requirements for initial certification. To be eligible for initial certification as an asbestos site supervisor:

A. an applicant must complete, before the commissioner's receipt of the application, an initial asbestos site supervisor training course that is:

(1) permitted by the commissioner under part 4620.3704;

(2) approved by the United States Environmental Protection Agency (EPA) with the EPA approval granted after June 1, 1987; or

(3) approved by a state asbestos training program accredited by the EPA; and

B. an applicant must complete, before the commissioner's receipt of the application, an asbestos site supervisor refresher course permitted by the commissioner under part 4620.3704 if the applicant has completed an initial asbestos site supervisor training course specified in item A, subitem (2) or (3).

Subp. 4. Training diploma expiration; retraining. The applicant for certification as an asbestos site supervisor must complete an annual asbestos site supervisor refresher course permitted by the commissioner under part 4620.3704 when the diploma from an initial site supervisor training course as specified in subpart 3, item A, has expired before the commissioner's receipt of the application.

A. The most recent asbestos site supervisor refresher course completed must be permitted by the commissioner under part 4620.3704.

B. Any refresher courses completed subsequent to the expiration of the diploma must have been completed no more than 12 months after the expiration date of the preceding diploma.

Subp. 5. Initial certification application. An applicant for initial certification as an asbestos site supervisor must submit to the commissioner:

A. a completed application on a form provided by the commissioner;

B. a nonrefundable application fee of \$50 with a business check, cashier's check, or money order payable to the Minnesota Department of Health;

C. the evidence of qualifications or experience described in subpart 2 as shown by:

(1) an affidavit by each of the applicant's employers, contracting parties, or labor organizations detailing the dates of employment, hours worked, and job duties for the work experience described in subpart 2, item A;

(2) both a certified transcript of the coursework completed for the degree described in subpart 2, item B, and affidavits by each of the applicant's employers, contracting parties, or labor organizations detailing the dates of employment, hours worked, and job duties for the work experience described in subpart 2, item B;

(3) certified transcripts of the coursework completed for the degree described in subpart 2, item C; or

(4) a certified copy of the document that verifies completion of the apprenticeship requirement in subpart 2, item D; and

D. a copy of the applicant's original diploma for the initial asbestos site supervisor training course completed and, if applicable, copies of each of the applicant's original diplomas for the asbestos site supervisor refresher training courses.

Subp. 6. Renewal. An individual certified as an asbestos site supervisor must apply for renewal of asbestos site supervisor certification by submitting to the commissioner a completed renewal application at least 30 calendar days before the expiration date of the current asbestos site supervisor certificate. The renewal application must include:

A. the completed renewal application on a form provided by the commissioner;

B. a nonrefundable \$50 renewal application fee with a business check, cashier's check, or money order payable to the Minnesota Department of Health; and

C. evidence of completion of the most recent asbestos site supervisor refresher training course required by subpart 4.

Subp. 7. Denial of certification. The commissioner shall deny an application for an asbestos site supervisor if the applicant fails to comply with all applicable requirements in this part. Additional grounds for the commissioner to deny an application are stated in Minnesota Statutes, section 144.99, subdivision 8, paragraphs (a) and (b). An applicant:

A. must be notified in writing of the denial of the certificate and the reasons for the denial; and

B. is not required to pay a second fee if the applicant submits a second asbestos site supervisor application within 30 days of the receipt of the notice that the asbestos site supervisor application has been denied. Fees are required for all subsequent applications.

Subp. 8. Duration of certificate; transfer. An asbestos site supervisor certificate is valid for 12 months after the completion date on the diploma for the most recently completed training course. The asbestos site supervisor certificate is not transferable.

Subp. 9. Duplicate certificate. To replace a lost, destroyed, or mutilated asbestos site supervisor certificate, the certified asbestos site supervisor must submit a completed application for a duplicate asbestos site supervisor certificate on a form provided by the commissioner and pay the charge with a business check, cashier's check, or money order payable to the Minnesota Department of Health for the cost of duplicating the certificate.

#### **4620.3330 CERTIFICATION OF ASBESTOS INSPECTOR.**

Subpart 1. Certification required. Beginning three months after the effective date of parts 4620.3000 to 4620.3724, an individual who performs an asbestos inspection, as defined in part 4620.3100, must be certified by the commissioner as an asbestos inspector.

Subp. 2. Qualifications and experience. Beginning six months after the effective date of parts 4620.3000 to 4620.3724, an individual applying for certification as an asbestos inspector must show evidence of either:

A. work experience of at least 500 hours in the field of building inspection, asbestos-related work, safety, industrial hygiene, or hazardous materials control;

B. completion of an apprenticeship program within the general commercial construction trades approved by the Minnesota Department of Labor and Industry, Division of Voluntary Apprenticeship, or registered with the United States Department of Labor, Bureau of Apprenticeship and Training;

C. licensure by Minnesota as a building official;

D. a bachelor's degree in architecture, engineering, industrial hygiene, industrial technology safety, or physical or life science, and 40 hours of on-site asbestos inspection experience accompanying a Minnesota-certified asbestos inspector; or

E. registration or certification as a registered architect, registered professional engineer, certified industrial hygienist, or certified safety professional.

Subp. 3. Training requirements for initial certification. To be eligible for initial certification as an asbestos inspector an applicant must complete, before the commissioner's receipt of the application:

A. an initial asbestos inspector training course that is:

(1) permitted by the commissioner under part 4620.3704;

(2) approved by the United States Environmental Protection Agency (EPA) with the EPA approval granted after June 1, 1987; or

(3) approved by a state asbestos training program accredited by the EPA; and

B. an asbestos inspector refresher course permitted by the commissioner under part 4620.3704 if the applicant has completed an initial asbestos inspector training course specified in item A, subitem (2) or (3).

Subp. 4. Training diploma expiration; retraining. The applicant for certification as an asbestos inspector must complete an annual asbestos inspector refresher course permitted by the commissioner under part 4620.3704 to maintain certification eligibility

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when the diploma from an initial inspector training course as specified in subpart 3, item A, has expired before the commissioner's receipt of the application.

A. The most recent asbestos inspector refresher course completed must be permitted by the commissioner under part 4620.3704.

B. Any refresher courses which have been completed subsequent to the expiration of the diploma must have been completed no more than 12 months after the expiration date of the preceding diploma.

Subp. 5. Application for initial certification. An applicant for initial certification as an asbestos inspector must submit to the commissioner:

A. a completed application on a form provided by the commissioner;

B. a nonrefundable application fee of \$100 with a business check, cashier's check, or money order payable to the Minnesota Department of Health;

C. the evidence of qualification or experience required by subpart 2 as shown by:

(1) an affidavit by each of the applicant's employers, contracting parties, or labor organizations detailing the dates of employment, hours worked, and job duties for the work experience described in subpart 2, item A;

(2) a certified copy of the document that verifies completion of the apprenticeship requirement described in subpart 2, item B;

(3) a certified copy of the applicant's current license by Minnesota as a building official described in subpart 2, item C;

(4) both the certified transcript of coursework completed for the degree described in subpart 2, item D, and affidavits by each of the applicant's employers, contracting parties, or labor organizations describing the dates of employment, hours worked, and job duties for the work experience described in subpart 2, item D; or

(5) a copy of the applicant's current registration or certification as described in subpart 2, item E; and

D. a copy of the applicant's original diploma for the initial asbestos inspector training course, and, if applicable, copies of each of the applicant's original diplomas from the asbestos inspector refresher training courses.

Subp. 6. Renewal. An individual certified as an asbestos inspector must apply for renewal of asbestos inspector certification by submitting to the commissioner a completed renewal application at least 30 calendar days before the expiration date of the current asbestos inspector certificate. The renewal application must include:

A. the completed renewal application on a form provided by the commissioner;

B. a nonrefundable \$100 renewal application fee with a business check, cashier's check, or money order payable to the Minnesota Department of Health; and

C. evidence of completion of the most recent asbestos inspector refresher training course required by subpart 4.

Subp. 7. Denial of certification. The commissioner shall deny an application for asbestos inspector certification if the applicant fails to comply with all applicable requirements in this part. Additional grounds for the commissioner to deny an application are stated in Minnesota Statutes, section 144.99, subdivision 8, paragraphs (a) and (b). An applicant:

A. must be notified in writing of the denial of the certificate and the reasons for the denial; and

B. is not required to pay a second fee if the applicant submits a second asbestos inspector application within 30 days of the receipt of the notice that the asbestos inspector application has been denied. Fees are required for all subsequent applications.

Subp. 8. Duration of certificate; transfer. An asbestos inspector certificate is valid for 12 months after the completion date on the diploma for the most recently completed training course. The asbestos inspector certificate is not transferable.

Subp. 9. Duplicate certificate. To replace a lost, destroyed, or mutilated asbestos inspector certificate, the certified asbestos inspector must submit a completed application for a duplicate asbestos inspector certificate on a form provided by the commissioner and pay the charge with a business check, cashier's check, or money order payable to the Minnesota Department of Health for the cost of duplicating the certificate.

### **4620.3340 ASBESTOS MANAGEMENT PLANNER CERTIFICATION.**

Subpart 1. Certification required. Beginning three months after the effective date of parts 4620.3000 to 4620.3724, an individual who develops an asbestos management plan must be certified by the commissioner as an asbestos management planner.

Subp. 2. Qualifications or experience requirements. Beginning six months after the effective date of parts 4620.3000 to 4620.3724, an individual applying for certification must show evidence of either:

A. work experience of at least 1,000 hours in the field of building inspection, asbestos-related work, safety, industrial hygiene, or hazardous materials control;

B. licensure by Minnesota as a building official;

C. a bachelor's degree in architecture, engineering, physical or life science, and work experience of 500 hours in the field of building inspection, asbestos-related work, safety, industrial hygiene, or hazardous materials control;

D. registration as a registered architect, licensure as a professional engineer, or certification as a certified industrial hygienist or certified safety professional; or

E. a master's degree in environmental health, industrial hygiene or safety, and work experience of 250 hours in the field of building inspection, asbestos-related work, safety, industrial hygiene, or hazardous materials control.

**Subp. 3. Training requirements for initial certification. To be eligible for initial certification as an asbestos management planner an applicant must complete, before the commissioner's receipt of the application:**

A. an initial asbestos management planner training course that is:

(1) permitted by the commissioner under part 4620.3704;

(2) approved by the United States Environmental Protection Agency (EPA) with the EPA approval granted after June 1, 1987; or

(3) approved by a state asbestos training program accredited by the EPA; and

B. an asbestos management planner refresher course permitted by the commissioner under part 4620.3704 if the applicant has completed the initial asbestos management planner training course specified in item A, subitem (2) or (3).

**Subp. 4. Training diploma expiration; retraining. The applicant for certification as an asbestos management planner must complete an annual asbestos management planner refresher course permitted by the commissioner under part 4620.3704 when the diploma from an initial management planner training course as specified in subpart 3, item A, has expired before the commissioner's receipt of the application.**

A. The most recent asbestos management planner refresher course completed must be permitted by the commissioner under part 4620.3704.

B. Any refresher courses which have been completed subsequent to the expiration of the diploma must have been completed no more than 12 months after the expiration date of the preceding diploma.

**Subp. 5. Application for initial certification. An applicant for initial certification as an asbestos management planner must submit to the commissioner:**

A. a completed application on a form provided by the commissioner;

B. a nonrefundable application fee of \$100 with a business check, cashier's check, or money order payable to the Minnesota Department of Health; and

C. the evidence of qualification or experience required by subpart 2 which is:

(1) an affidavit by each of the applicant's employers, contracting parties, or labor organizations detailing the dates of employment, hours worked, and job duties for the work experience described in subpart 2, item A;

(2) a copy of the applicant's current license by Minnesota as a building official described in subpart 2, item B;

(3) both the certified transcript of the coursework completed for the degree described in subpart 2, item C, and affidavits by each of the applicant's employers, contracting parties, or labor organizations describing the dates of employment, hours worked, and job duties for the work experience described in subpart 2, item C;

(4) a copy of the applicant's current registration or certification as described in subpart 2, item D; or

(5) both the certified transcript of the coursework completed for the degree described in subpart 2, item E, and affidavits by each of the applicant's employers, contracting parties, or labor organizations describing the dates of employment, hours worked, and job duties for the work experience described in subpart 2, item E; and

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D. a copy of the applicant's original diploma for the initial asbestos management planner training course and, if applicable, copies of each of the applicant's original diplomas for the asbestos management planner refresher training courses.

Subp. 6. Renewal. An individual certified as an asbestos management planner must apply for renewal of asbestos management planner certification by submitting to the commissioner a completed renewal application at least 30 calendar days before the expiration date of the current asbestos management planner certificate. The renewal application must include:

A. the completed renewal application on a form provided by the commissioner;

B. a nonrefundable \$100 renewal application fee with a business check, cashier's check, or money order payable to the Minnesota Department of Health; and

C. evidence of completion of the most recent asbestos management planner refresher training course required by subpart 4.

Subp. 7. Denial of certification. The commissioner shall deny an application for certification as an asbestos management planner if the applicant fails to comply with the requirements in this part. Additional grounds for the commissioner to deny an application are stated in Minnesota Statutes, section 144.99, subdivision 8, paragraphs (a) and (b). An applicant:

A. must be notified in writing of the denial of the certificate and the reasons for the denial; and

B. is not required to pay a second fee if the applicant submits a second asbestos management planner application within 30 days of the receipt of the notice that the asbestos management planner application has been denied. Fees are required for all subsequent applications.

Subp. 8. Duration of certificate; transfer. An asbestos management planner certificate is valid for 12 months after the completion date on the diploma for the most recently completed training course. The asbestos management planner certificate is not transferable.

Subp. 9. Duplicate certificate. To replace a lost, destroyed, or mutilated asbestos management planner certificate, the certified asbestos management planner must submit a completed application for a duplicate asbestos management planner certificate on a form provided by the commissioner and pay the charge with a business check, cashier's check, or money order payable to the Minnesota Department of Health for the cost of duplicating the certificate.

### **4620.3350 ASBESTOS PROJECT DESIGNER CERTIFICATION.**

Subpart 1. Certification required. Beginning three months after the effective date of parts 4620.3000 to 4620.3724, an individual who prepares an asbestos project design must be certified by the commissioner as an asbestos project designer.

Subp. 2. Qualifications or experience requirements. Beginning six months after the effective date of parts 4620.3000 to 4620.3724, to be eligible for certification as an asbestos project designer, an individual applying for certification must show evidence of completion of either:

A. work experience of at least 4,000 hours in asbestos-related work or asbestos management activity as defined in Minnesota Statutes, section 326.71; or

B. registration as a registered architect, licensure as a professional engineer, or certification as a certified industrial hygienist or certified safety professional.

Subp. 3. Training requirements for initial certification. To be eligible for initial certification as an asbestos project designer, an applicant must complete, before the commissioner's receipt of the application:

A. an initial asbestos project designer training course that is:

(1) permitted by the commissioner under part 4620.3704;

(2) approved by the United States Environmental Protection Agency (EPA) with the EPA approval granted after June 1, 1987; or

(3) approved by a state asbestos training program accredited by the EPA; and

B. an asbestos project designer refresher course permitted by the commissioner under part 4620.3704 if the applicant has completed the initial asbestos project designer training course specified in item A, subitem (2) or (3).

Subp. 4. Training diploma expiration; retraining. The applicant for certification as an asbestos project designer must complete an annual asbestos project designer refresher course permitted by the commissioner under part 4620.3704 when the diploma from an initial project designer training course as specified in subpart 3, item A, has expired before the commissioner's receipt of the application.

A. The most recent asbestos project designer refresher course completed must be permitted under part 4620.3704 by the commissioner.

B. Any refresher courses which have been completed subsequent to the expiration of the diploma must have been completed no more than 12 months after the expiration date of the preceding diploma.

Subp. 5. Application for initial certification. An applicant for initial certification as an asbestos project designer must submit to the commissioner:

A. a completed application on a form provided by the commissioner;

B. a nonrefundable application fee of \$100 with a business check, cashier's check, or money order payable to the Minnesota Department of Health;

C. a copy of the applicant's original diploma for the initial asbestos project designer training course and, if applicable, copies of each of the applicant's original diplomas from the asbestos project designer refresher training courses; and

D. the evidence of qualification or experience required by subpart 2 which is:

(1) an affidavit by each of the applicant's employers, contracting parties, or labor organizations detailing the dates of employment, hours worked, and job duties for the work experience discussed in subpart 2, item A; or

(2) a copy of the applicant's current certification, registration, or licensure described in subpart 2, item B.

Subp. 6. Renewal. An individual certified as an asbestos project designer must apply for renewal of asbestos project designer certification by submitting to the commissioner a completed renewal application at least 30 calendar days before the expiration date of the current asbestos project designer certificate. The renewal application must include:

A. the completed renewal application on a form provided by the commissioner;

B. a nonrefundable \$100 renewal application fee with a business check, cashier's check, or money order payable to the Minnesota Department of Health; and

C. evidence of completion of the most recent asbestos project designer refresher training course required by subpart 4.

Subp. 7. Denial of certification. The commissioner shall deny an application for an asbestos project designer certificate if the applicant fails to comply with the requirements in this part. Additional grounds for the commissioner to deny an application are stated in Minnesota Statutes, section 144.99, subdivision 8, paragraphs (a) and (b). An applicant:

A. must be notified in writing of the denial of the certificate and the reasons for the denial; and

B. is not required to pay a second fee if the applicant submits a second asbestos project designer application within 30 days of the receipt of the notice that the asbestos project designer application has been denied. Fees are required for all subsequent applications.

Subp. 8. Duration of certificate; transfer. An asbestos project designer certificate is valid for 12 months after the completion date on the diploma for the most recently completed training course. The asbestos project designer certificate is not transferable.

Subp. 9. Duplicate certificate. To replace a lost, destroyed, or mutilated asbestos project designer certificate, the certified asbestos project designer must submit a completed application for a duplicate asbestos project designer certificate on a form provided by the commissioner and pay the charge with a business check, cashier's check, or money order payable to the Minnesota Department of Health for the cost of duplicating the certificate.

#### **4620.3410 ASBESTOS-RELATED WORK PROJECT NOTICE.**

Subpart 1. General. Each licensed asbestos contractor must notify the commissioner of each project to be performed in whole or in part by the licensed asbestos contractor.

Subp. 2. Requirements for notice. At least five calendar days before the beginning of a project, except as provided in part 4620.3420, the commissioner must receive from the licensed asbestos contractor:

A. a completed notice on a form provided by the commissioner;

B. the permit fee for the project as determined under part 4620.3430; and

C. except for small residential abatement projects, documentary evidence of the costs of the portion of the project to be performed by the licensed asbestos contractor, as described in part 4620.3430, signed by the contracting entity.

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Subp. 3. Notice of abatement schedule. The commissioner must be notified in advance of the dates and work shift times for abatement.

A. If a project will occur in two or more phases between the project start and end dates specified on the notice, the commissioner must receive a written schedule of abatement dates and work shift times from the licensed asbestos contractor performing abatement at least five calendar days before beginning the project.

B. For a project described in part 4620.3100, subpart 27b, item B or C, if the licensed asbestos contractor performing abatement cannot reasonably determine the schedule for abatement at the time of notice, the licensed asbestos contractor performing abatement must also submit notice to the commissioner of abatement dates and work shift times for each portion of the project which exceeds three linear feet or three square feet of asbestos-containing material, so that the commissioner receives the notice as soon as possible before that portion of the project begins.

C. Each notice required by this subpart must be submitted on a form provided by the commissioner.

D. The asbestos contractor performing abatement must ensure that at least one site supervisor is present at the project site on the dates and during the work shifts for which the commissioner has been notified.

E. The asbestos contractor performing abatement must ensure that abatement is performed only during dates and work shifts for which the commissioner has been notified.

### **4620.3415 AMENDMENT OF NOTICE.**

The licensed asbestos contractor performing abatement must notify the commissioner according to this part of any change in the information reported to the commissioner by that contractor under part 4620.3610.

A. All amendments except for work shift times and dates must be in writing on a form provided by the commissioner with the changes clearly indicated.

B. Any amendment of the project start date to an earlier start date must be received by the commissioner at least five calendar days before abatement begins.

C. An amendment, other than a change of the project start date to an earlier start date, must be received by the commissioner no later than the effective date and time of the change.

D. Any amendment of the dates or work shift times, other than the project start and end dates, must be received by the commissioner by voice mail, telephone, facsimile, or mail.

### **4620.3420 EMERGENCY PROJECT NOTICE.**

Subpart 1. Emergency project begun during work hours. For an emergency project which begins between 8:00 a.m. and 4:30 p.m. on the days the Minnesota Department of Health is open, the commissioner must receive from the licensed asbestos contractor:

A. a completed notice on a form provided by the commissioner as soon as possible before the project begins; and

B. within five calendar days after the emergency project begins, the items listed in part 4620.3410, subpart 2, items B and C.

Subp. 2. Emergency project begun after work hours. For an emergency project which begins at a time other than the times specified in subpart 1, the commissioner must receive from the licensed asbestos contractor:

A. a completed notice on a form provided by the commissioner by 4:30 p.m. of the next day the department is open; and

B. within five calendar days after the emergency project begins, the items listed in part 4620.3410, subpart 2, items B and C.

Subp. 3. Amendments to emergency project notice. Amendments to the emergency project notice form must be made according to part 4620.3415, items A, C, and D. An amendment to an emergency project notice must not include additional asbestos-containing material to be abated unless that material is part of the same emergency situation.

### **4620.3425 PERMIT ISSUANCE.**

If the licensed asbestos contractor performing abatement complies with the requirements of part 4620.3410, subparts 2 and 3, or 4620.3420, subpart 1 or 2, the commissioner shall issue a project permit to the licensed asbestos contractor. The project permit shall expire on the end date stated on the notice or any amendment of the end date made under part 4620.3415.

### **4620.3430 PERMIT FEES.**

Subpart 1. General. Fees are required for all projects.

Subp. 2. Permit fees for abatement other than small residential abatement. As required by Minnesota Statutes, section 326.75, subdivision 3, a project fee equal to one percent of the total cost of the abatement portion of a project must be paid to the commissioner.

A. The total cost of the abatement portion of a project must include the cost of abatement area preparation, decontamination

units, containment and permanent enclosures, alterations, abatement operations, repairs, wages, materials, waste disposal, profit, performance bonds, insurance, and administrative overhead. The total cost of the abatement portion of a project does not include the cost of reinsulation or the cost of air quality monitoring.

B. If the final invoice amount for the abatement portion exceeds the total cost of the abatement portion of the project previously reported on the notification form, additional fee payment in the amount of one percent of that difference must be submitted to the commissioner within 30 calendar days of the submission of the invoice to the contracting entity.

C. If the final project cost amount for the abatement portion is less than the total cost of the abatement portion of the project previously reported on the notification form, the commissioner must pay a refund of the excess fee payment to the licensed asbestos contractor.

Subp. 3. Permit fees for air quality monitoring, other than small residential abatement. As required by Minnesota Statutes, section 326.75, subdivision 3, a project fee equal to one percent of the total cost of the air quality portion of a project must be paid to the commissioner.

A. The total cost of the air quality monitoring portion of a project must include the cost of air quality monitoring as specified in part 4620.3598, wages, materials, profit, performance, bonds, insurance, and administrative overhead.

B. If the final invoice for the air quality monitoring portion of the project exceeds the total cost of the air quality monitoring portion of the project previously reported on the notification form, additional fee payment in the amount of one percent of that difference must be submitted to the commissioner within 30 calendar days of the submission of the invoice to the contracting entity.

C. If the final project cost amount for the air quality monitoring portion is less than the total cost of the air quality monitoring portion of the project previously reported on the notification form, the commissioner must pay a refund of the excess fee payment to the licensed asbestos contractor.

Subp. 4. Small residential abatement permit fee. Notwithstanding anything in this part, for each small residential abatement the person undertaking that abatement must pay to the commissioner a project permit fee of \$35 per project.

#### **4620.3435 POSTING THE WORK SITE.**

The licensed asbestos contractor performing abatement must post in a conspicuous place outside of the abatement area:

- A. a copy of the project permit;
- B. a copy of the project notice and all written amendments pertaining to that project; and
- C. if applicable, a copy of the notice submitted to the commissioner according to part 4620.3410, subpart 3.

#### **4620.3440 RECORDS.**

Subpart 1. On-site records. The records in this subpart must be compiled for each project and be readily available for review by the commissioner at the work site during the entire period of the project.

A. A daily sign-in and sign-out log must identify individuals entering containments, mini-containments, or working with glove bags, by name, certificate number, and length of time spent in the containments, mini-containments, or working with glove bags.

B. A copy of the asbestos project plan must be developed according to part 4620.3560.

C. All on-site air monitoring results for air monitoring required under parts 4620.3592 to 4620.3598 must be documented, including a written explanation of any fiber count excursion above the applicable standards.

D. The negative air pressure measurements required under part 4620.3570 must clearly indicate the measurement, the date and time of the measurement, and the containment to which the measurement applies. All instances of negative pressure deviation from the minimum requirement under part 4620.3570, subparts 4 and 5, must have a written explanation on or attached to the measurement record.

Subp. 2. Record retention. The records in subpart 1 must be retained by the asbestos contractor for 30 years after completion of the project. When the licensed asbestos contractor ceases operation, within 20 calendar days of ceasing operation, the responsible individual must submit written notice to the commissioner of the name, address, and telephone number of the individual with whom the records required by subpart 1 are deposited.

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### 4620.3450 DUTIES OF CONTRACTING ENTITY.

A contracting entity is responsible for compliance with this part. A contracting entity must:

A. maintain for at least three years, records of the amount of asbestos-containing material removed, enclosed, and encapsulated, during each calendar year, in each facility for which the contracting entity is responsible; and

B. before any person begins work involving the enclosure, removal, or encapsulation of asbestos-containing material, inform that person, in writing, of the cumulative quantities of all asbestos-containing materials enclosed, removed, or encapsulated within a facility during the current calendar year, as of the date of the writing.

### 4620.3460 INSPECTION AND ASSESSMENT OF ASBESTOS-CONTAINING MATERIALS.

Subpart 1. **Applicability.** When an asbestos inspection is performed, the asbestos inspection must be conducted according to this part.

Subp. 2. **Asbestos sampling.** Sampling must be conducted as provided in *Code of Federal Regulations*, title 40, chapter I, subchapter R, part 763, subpart E, section 763.86, amended through April 15, 1988, and *Code of Federal Regulations*, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, paragraph (B), subparagraph (3), amended through February 3, 1994.

Subp. 3. **Asbestos analysis.** Analysis of bulk samples collected as part of an asbestos inspection must be analyzed according to this subpart.

A. Bulk samples collected and submitted for analysis must be analyzed for asbestos using a laboratory accredited by the:

(1) National Institute of Science and Technology (NIST) through the National Voluntary Laboratory Accreditation Program (NVLAP); or

(2) American Industrial Hygiene Association (AIHA) with successful participation in the asbestos bulk analysis program.

B. Bulk samples must not be composited for analysis and shall be analyzed for asbestos content by polarized light microscopy (PLM), as specified in EPA Method for the Determination of Asbestos in Bulk Building Materials, United States EPA 600/R-93/116, 1993. This document is incorporated by reference, is not subject to frequent change, and is available through the Minitex interlibrary loan system.

C. A homogeneous area is determined not to contain asbestos only if the results of all samples required to be collected from the area show asbestos in amounts of one percent or less.

D. A homogeneous area is determined to contain asbestos if results of at least one sample collected from the area shows that asbestos is present in an amount greater than one percent.

E. The asbestos inspector must obtain an analysis report which contains the:

(1) name and address of the laboratory performing the analysis;

(2) date of the analysis; and

(3) name and signature of the person performing the analysis.

Subp. 4. **Assessment.** If the asbestos inspector performs an assessment of the condition of asbestos-containing material or suspected asbestos-containing material, the asbestos inspector must provide a written assessment using the categories from *Code of Federal Regulations*, title 40, chapter I, subchapter R, part 763, subpart E, section 763.88, paragraph (b), items (1) to (7), amended through April 15, 1988, for all known or assumed asbestos-containing material in the facility or portion of the facility inspected.

Subp. 5. **Inspector duties.** The asbestos inspector must prepare a written report which:

A. contains the exact location of each homogeneous area of material which is known or assumed to be asbestos-containing material;

B. if the asbestos inspector performs an assessment of asbestos-containing material or suspected asbestos-containing material, contains the condition of each homogeneous area of material which is known or assumed to be asbestos-containing material;

C. is signed by the inspector;

D. is dated by the inspector;

E. includes the inspector's Minnesota asbestos inspector certification number;

F. provides a photocopy of the current asbestos inspector certificate of each inspector who performed the inspection; and

G. is provided to the facility owner.

**4620.3470 ASBESTOS MANAGEMENT PLAN.**

**Subpart 1. Applicability.** When an asbestos management planner develops a written asbestos management plan for a facility or portion of a facility, the asbestos management plan must meet the requirements of this part.

**Subp. 2. General.** The asbestos management plan must address all materials known or assumed to be asbestos-containing material within the facility or portion of the facility.

A. An asbestos management plan must be developed by an individual certified as an asbestos management planner.

B. The asbestos management planner must carry a current asbestos management planner certificate at all times the asbestos management plan is being developed.

C. Any changes to an asbestos management plan must be made by an asbestos management planner.

D. The asbestos management planner must ensure that the asbestos management plan is available for review by the commissioner on request.

E. Material assumed by the asbestos inspector to be asbestos-containing material must be designated by the asbestos management planner in the asbestos management plan as asbestos-containing material, unless sampling of the material demonstrates the material is not asbestos-containing material.

**Subp. 3. Asbestos management plan contents.** The asbestos management plan must be specific for the facility designated in the plan and contain:

A. the name and address of the facility;

B. copies of all asbestos inspection reports including copies of all photographs, diagrams, or other items referred to in the report;

C. a blueprint, legible diagram, or written description of the facility that indicates the location of all known or assumed asbestos-containing material;

D. the name, address, and telephone number of the individual designated to implement and administer the asbestos management plan;

E. the name and signature of the management planners making the recommendations, and a photocopy of the valid asbestos management planner certificate belonging to each management planner;

F. response actions, or preventative measures performed or to be performed to minimize or prevent fiber release episodes; and

G. procedures to inform facility maintenance personnel and outside contractors of the location and identity of building materials known or assumed to be asbestos-containing material before the beginning of work in an area where these materials are located.

**4620.3480 ASBESTOS PROJECT DESIGN.**

**Subpart 1. Applicability.** When an asbestos project design is prepared, it must be prepared according to this part and signed by the asbestos project designer.

**Subp. 2. Use of asbestos project designer.** The asbestos project designer must have a current asbestos project designer certificate available for review by the commissioner at the designer's work site. The asbestos project designer must include in the asbestos project design a photocopy of the current asbestos project designer certificate of the asbestos project designer who prepared the asbestos project design.

**Subp. 3. Technical specification content requirements.** The asbestos project designer must include in the asbestos project design the method for complying with all applicable work practice requirements of parts 4620.3000 to 4620.3724. The asbestos project design must address:

A. preparation of each asbestos-related work area;

B. establishment of each containment;

C. establishment of each decontamination unit and procedures for use;

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- D. evaluation and selection of various fiber release control options;
- E. establishment, maintenance, and monitoring of negative air pressure within each containment;
- F. asbestos-containing material enclosure, removal, encapsulation, or repair work practices;
- G. visual inspection procedures for each asbestos abatement containment area;
- H. air monitoring, including analysis, documentation, and record keeping;
- I. respiratory protection and personal protective equipment requirements; and
- J. disposal of asbestos-containing materials and project waste.

### **4620.3559 APPLICABLE WORK PRACTICES FOR ABATEMENT.**

Any person performing asbestos-related work must ensure compliance with parts 4620.3560 to 4620.3598.

A. Notwithstanding this part, for asbestos-related work involving the enclosure, removal, or encapsulation of asbestos-containing material that is located outside the foundation, curtain walls, or roof of a facility and is above grade, the asbestos contractor must comply with parts 4620.3000 to 4620.3724 except parts 4620.3566; 4620.3567; 4620.3568, subparts 1 to 4; 4620.3569; 4620.3570; 4620.3575, subparts 1 to 8; 4620.3580; 4620.3581; 4620.3585; 4620.3592; 4620.3594; 4620.3596; 4620.3597; and 4620.3598.

B. Notwithstanding this part, in the case of asbestos-related work within a tunnel, as defined in part 4620.3100, subpart 33, the asbestos contractor must:

- (1) comply with parts 4620.3000 to 4620.3724 except part 4620.3568, subparts 2 to 4; and
- (2) use two layers of six-mil polyethylene sheeting for critical containment barriers when complying with part 4620.3567.

### **4620.3560 ASBESTOS PROJECT PLAN.**

Subpart 1. Applicability. For each project other than a project in a single-family residence executed by the domiciled owner of the residence, the person performing abatement must prepare a project-specific asbestos project plan.

Subp. 2. Plan availability. The person performing abatement must have a complete and current asbestos project plan available for inspection at the project site at the start of the project.

Subp. 3. Asbestos project plan content. The asbestos project plan must contain:

- A. the name and address of the project site;
- B. a list of the asbestos work areas, including room numbers if known, of the project;
- C. the amount and type of asbestos-containing material to be removed, encapsulated, or enclosed in each asbestos work area;
- D. the date when the heating, ventilating, and air conditioning (HVAC) system for each asbestos work area will be shut down;
- E. the name of any person responsible for the shutdown in item D;
- E. the rated capacity of each negative air machine used to establish and maintain the negative air pressure of each containment;
- G. the calculation showing the number of containment air changes per hour and the number of negative air machines used to establish and maintain the required containment negative air pressure for each containment;
- H. documentation if a negative air system is to be exhausted indoors, why it is technically infeasible to exhaust the negative air system outdoors; and
- I. a floor plan or sketch which indicates:
  - (1) the dimensions and volume of each containment;
  - (2) the location of any negative air machines used in the asbestos work area;
  - (3) the location of any decontamination unit to be used in conjunction with each asbestos work area; and
  - (4) the type, size, and location of any containment attachments through which asbestos waste containers are removed from the containment.

Subp. 4. Asbestos project plan changes. If any information was estimated or a change occurs during the project, the new information must be added to the asbestos project plan as it becomes known.

**4620.3566 CLEANING CONTAINMENT AREA BEFORE ABATEMENT.**

All surfaces of the containment area must be cleaned before abatement. The following actions must be taken before abatement begins.

A. Uncontaminated movable objects must be removed from the containment area.

B. Contaminated objects or objects suspected of being contaminated must be:

(1) vacuumed with a HEPA-filter equipped vacuum;

(2) wet wiped; or

(3) disposed of as asbestos waste.

C. Decontaminated movable objects must be removed from the containment area.

D. Objects that cannot be removed from the containment area must be cleaned by HEPA-filter equipped vacuuming or by wet wiping.

E. Before the critical barriers are constructed, all remaining surfaces in the containment area that will be in contact with the critical barriers must be cleaned by HEPA-filter equipped vacuuming or by wet wiping.

F. Any freestanding containment wall that needs to be constructed must be framed after the removal of all movable objects from the containment area.

**4620.3567 INSTALLATION OF CRITICAL BARRIERS.**

All openings between the containment area and uncontaminated areas must be sealed with at least one layer of six-mil polyethylene plastic sheeting securely fastened to achieve an airtight seal around the opening.

A. All objects or structures that cannot be removed from the containment area must be covered with at least one layer of six-mil polyethylene plastic sheeting securely fastened to achieve an airtight seal around the object or structure.

B. All heating, ventilating, and air conditioning intake and exhaust openings in the containment area and any seams in system components must be sealed with at least one layer of six-mil polyethylene sheeting securely fastened to achieve an airtight seal around the object or structure.

C. All penetrations, including electrical conduits, telephone wires, water supply pipes, and drain pipes, must be sealed with at least one layer of six-mil polyethylene plastic sheeting securely fastened to achieve an airtight seal around the object.

D. All porous surfaces except ceilings not addressed in items A to C must be sealed with at least one layer of six-mil polyethylene plastic sheeting securely fastened to achieve an airtight seal.

E. All openings between the asbestos abatement containment area and contaminated areas must be sealed with at least one layer of six-mil polyethylene plastic sheeting or comparable material securely fastened to achieve an airtight seal around the opening.

F. If any freestanding containment wall is to be used, the porous outside of the wall frame or frame of the freestanding containment must be covered with at least one layer of six-mil polyethylene sheeting securely fastened to achieve an airtight seal.

**4620.3568 CONTAINMENT.**

Subpart 1. General. The containment must be constructed to separate and isolate the containment area from the rest of the building and the outdoors. The containment must be airtight and leakproof.

Subp. 2. Floor sheeting. Floor sheeting must be placed over the entire floor as part of the containment.

A. Floor sheeting must consist of at least two layers of six-mil polyethylene plastic sheeting.

B. For the first layer, enough area for overlap with the wall sheeting must be provided to maintain an airtight and leakproof seal for the containment.

C. For the second layer, the sheeting must extend 12 inches beyond the wall or floor joints.

D. Floor sheeting must be sized to minimize seams.

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E. The floor must have no seams at wall and floor joints.

Subp. 3. Wall sheeting. Wall sheeting must be placed over the entire wall. Wall sheeting must:

A. consist of at least one layer of four-mil polyethylene plastic sheeting;

B. provide enough area for overlap with the other wall or floor sheeting to maintain an airtight and leakproof seal for the containment;

C. be sized to minimize seams;

D. extend to the deck area or floor joists;

E. not have seams located at wall and floor joints; and

E. have a 12-inch by 12-inch clear viewing window to allow for a view of the work area if the polyethylene plastic sheeting is not clear. This item is not applicable in a single-family residence if a basement is made into a single containment area with the decontamination unit abutting the entryway to the basement.

Subp. 4. Freestanding containment walls and freestanding containments. Freestanding containment walls and freestanding containments must:

A. have floor sheeting that complies with subpart 2;

B. have interior wall sheeting that complies with subpart 3;

C. have the frame painted with a nonporous paint if the framing materials used for a freestanding wall or containment are made of a porous material such as wood; and

D. have interior ceiling sheeting that consists of one layer of four-mil polyethylene plastic sheeting and is securely fastened to provide an airtight, leakproof containment if containment walls do not abut the ceiling.

Subp. 5. Posting asbestos work area. During asbestos-related work, warning signs must be displayed at all approaches to the asbestos work area. The sign must state: "DANGER. ASBESTOS CANCER AND LUNG HAZARD. AUTHORIZED PERSONNEL ONLY. RESPIRATORS AND PROTECTIVE CLOTHING ARE REQUIRED IN THIS AREA."

### 4620.3569 DECONTAMINATION UNITS.

Subpart 1. General. Procedures for the use of the decontamination unit must be established by the person performing abatement to prevent contamination outside the asbestos work area. A decontamination unit must be used by all persons when exiting a containment. The decontamination unit must:

A. be contiguous with the containment area except as provided in subpart 2;

B. consist of a series of connecting rooms with the middle room being the shower room;

C. have doorways between the rooms and entrances to the unit protected with two overlapping sheets of polyethylene or the functional equivalent; and

D. have a shower room that:

(1) is leakproof;

(2) contains a series of water filters with the last filter capable of collecting particles of 5.0 micron or less;

(3) is supplied with hot and cold water adjustable at the tap; and

(4) is supplied with soap and disposable towels.

Subp. 2. Location. In facilities classified in the Standard Industrial Classification Manual, 1987, as a B division, D division-major group 26, or E division-major group 49, the decontamination unit must be connected to the containment where feasible. The Standard Industrial Classification Manual, 1987, is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia, 22161, or from the State Law Library, Minnesota Judicial Center, 25 Constitution Avenue, St. Paul, Minnesota 55155.

Subp. 3. Waste. Filtered wastewater from the shower must be discharged to a sanitary sewer or a septic system, or may be collected in barrels for later disposal to a sanitary sewer or septic system.

Subp. 4. Small residential decontamination unit. For small residential abatement, the decontamination unit must consist of at least a clean room, shower room, and dirty room.

Subp. 5. Decontamination unit other than small residential abatement. For abatement in a facility other than small residential abatement, the decontamination unit must consist of a clean room, a three-foot air lock, a shower, a three-foot air lock, and a dirty room.

**4620.3570 HEPA-FILTERED NEGATIVE PRESSURE.**

Subpart 1. General. The containment must be provided with a HEPA-filter equipped ventilation system.

Subp. 2. HEPA-filter equipped negative air requirements. The HEPA-filter negative air machine must be equipped with:

A. a calibrated pressure gauge to measure the pressure drop across the filter;

B. an audible alarm or an automatic unit shutdown mechanism activated in the event of a breach in the filter or in the absence of a filter;

C. an audible alarm or automatic unit shutdown mechanism activated when the differential pressure across the filter exceeds a preset pressure; and

D. an automatic electrical power cutoff switch so the unit will not operate if the HEPA-filter is not present or not positioned correctly.

Subp. 3. Continuous operation of HEPA-filter equipped ventilation system. The HEPA-filter equipped ventilation system must operate continuously from the time of asbestos disturbance until results of analysis of the clearance samples indicate the air inside the containment is at or below the clearance standard or the alternative clearance standard.

Subp. 4. HEPA-filter equipped system criteria. The HEPA-filter equipped ventilation system must be operated according to the criteria in this subpart.

A. The amount of air exhausted from the containment must provide for at least four air changes per hour within the containment.

B. A negative pressure of at least 0.02 inches of water must be established and maintained within each containment with respect to the area outside of the containment.

C. The negative pressure must be measured by a recording manometer.

(1) The recording manometer must be placed as far from the intake of the HEPA-filter equipped ventilation system as possible.

(2) The recording manometer must be placed to ensure that the reading is of the containment's negative pressure.

(3) The recording manometer must be monitored every two hours throughout all abatement work shifts to ensure continuous recording operation.

(4) The recording manometer must be zeroed before work begins each day.

(5) Each recording manometer must be calibrated at least annually.

Subp. 5. Inability to establish or maintain a negative pressure of at least 0.02 inches of water. If it is not possible to establish or maintain a negative pressure of at least 0.02 inches of water in the containment with respect to the pressure outside the containment for a period of 15 minutes, items A to D apply in addition to the requirements of subpart 4, item C.

A. A pressure as close to negative 0.02 inches of water as possible must be maintained from the time construction of the containment is completed until results from clearance air samples are obtained.

B. The amount of air exhausted from the containment must be increased to at least six air changes per hour within the containment.

C. Documentation must be available on site for each case of the failure to establish negative pressure or each case of failure to maintain a pressure of negative 0.02 inches of water in the containment with respect to the air pressure outside the containment. The documentation must specify the:

(1) probable cause of failure to establish or maintain the required negative air pressure;

(2) date of failure to establish or maintain the required negative air pressure;

(3) times of failure to maintain the required negative air pressure; and

(4) name of the asbestos site supervisor in charge of the site at the time of failure to establish or maintain the required negative air pressure in the containment with respect to the air pressure outside the containment.

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D. Specific methods used to reestablish a negative pressure of at least 0.02 inches of water in the containment with respect to the air outside the containment must be documented and available for review on site.

Subp. 6. HEPA-filtered ventilation system exhaust. The HEPA-filter equipped ventilation system must be positioned to exhaust filtered air to the outside of the facility. If it is not technically feasible to exhaust the HEPA-filter equipped ventilation systems outdoors, there must be air monitoring every four hours during abatement activity in the vicinity of the HEPA-filter equipped ventilation system exhaust.

### **4620.3571 REMOVAL OF ASBESTOS-CONTAINING MATERIAL.**

Subpart 1. General. Water to which a surfactant has been added must be used before and during removal of asbestos-containing material to prevent fibers from becoming airborne during asbestos-related work. All asbestos-containing material must:

- A. be adequately wet before removal;
- B. be adequately wet during removal;
- C. be placed and sealed in containers while adequately wet; and
- D. not be allowed to dry.

Subp. 2. Removal of structures and objects covered with asbestos-containing material. A structure or object covered with asbestos-containing material must be:

- A. removed intact or in large sections where possible;
- B. adequately wet before being sealed in six-mil clear polyethylene sheeting or comparable material;
- C. adequately wet during removal of the structure or object; and
- D. lowered to the floor or ground and not dropped.

Subp. 3. Waste. Waste containers must be sealed to prevent drying of the asbestos-containing material.

### **4620.3572 ENCAPSULATION OF ASBESTOS-CONTAINING MATERIAL.**

Encapsulation of asbestos-containing material must meet the requirements in this part.

- A. Any loose or hanging asbestos-containing material must be removed before encapsulation according to part 4620.3571.
- B. Filler compound applied to gaps in existing asbestos-containing material must contain no asbestos, adhere well to the substrate, and provide a base for the encapsulant.
- C. Spray encapsulant must be applied using only airless spray equipment.
- D. Encapsulant must be water-based.
- E. Encapsulated asbestos-containing material must be labeled and the label must state: "DANGER. CONTAINS ASBESTOS FIBERS. AVOID CREATING DUST. CANCER AND LUNG DISEASE HAZARD."

### **4620.3573 PERMANENT ENCLOSURE OF ASBESTOS-CONTAINING MATERIAL.**

Installation of a permanent enclosure of asbestos-containing material must meet the requirements in this part.

- A. A permanent enclosure must:
  - (1) consist of a rigid barrier with impermeable sides;
  - (2) be designed to prevent air movement across the rigid barrier; and
  - (3) render the area behind it inaccessible.
- B. Any asbestos-containing materials that will be disturbed during the installation of hangers, brackets, or other portions of the permanent enclosure must be sprayed with water to which surfactant has been added.
- C. Any loose or hanging asbestos-containing material must be removed before construction of the enclosure.
- D. Permanently enclosed asbestos-containing material must be labeled and the label must state: "DANGER. CONTAINS ASBESTOS FIBERS. AVOID CREATING DUST. CANCER AND LUNG DISEASE HAZARD."

### **4620.3575 COMPLETION OF ABATEMENT.**

Subpart 1. Postabatement cleaning. After asbestos-containing material has been removed, encapsulated, or enclosed, interior surfaces of the containment and interior surfaces of the decontamination unit must be cleaned.

- A. HEPA-filter equipped vacuuming, wet wiping, or both, must be used.
- B. Cleaning must be performed until no asbestos dust, residue, dirt, or debris is visible on any part of the work area.

C. All liquid waste must be cleaned up and disposed of as described in subpart 2.

D. All abatement equipment must be cleaned and all equipment except the HEPA-filter equipped negative air machine must be removed from the containment.

E. Asbestos contaminated equipment that cannot be cleaned must be sealed in two layers of six-mil polyethylene before removal from the containment.

F. Asbestos-containing material which was removed must be taken out of the containment.

**Subp. 2. Visual inspection of containment after postabatement cleaning.** A visual inspection of the containment and the decontamination unit must be performed after the containment and decontamination unit have dried completely.

A. Any residue observed in the containment or decontamination unit must be considered to be asbestos.

B. The sequence of cleaning and inspection must be repeated until the area passes a visual inspection.

C. The inspection must establish completeness of removal, encapsulation, enclosure, and cleanup.

(1) Surfaces must be wiped using a dark damp cloth to collect the dust, debris, and residue from surfaces.

(2) The cloth must be inspected for evidence of dust.

(3) After the final inspection, residue, dust, dirt, or debris must not be visually detectable on any part of the work area, including floors, walls, ducts, conduits, pipes, and ceiling tile grid bars, as well as the asbestos abatement equipment.

**Subp. 3. Removal of containment walls and floors.** After the postabatement visual inspection, removal of the walls and floors must occur in the order specified in items A and B.

A. When porous surfaces inside the containment have not been covered according to part 4620.3568, encapsulant must be used on those porous surfaces to securely seal down any residual fibers.

(1) The encapsulant must be applied after the containment has passed the visual inspection required under subpart 2.

(2) The encapsulation must comply with part 4620.3572.

(3) The encapsulant must be allowed to dry completely before final clearance air samples are taken according to part 4620.3594.

B. The walls and floors of the containment may be removed only after:

(1) the containment and the decontamination unit have passed the visual inspection specified in subpart 2; and

(2) any encapsulant that has been applied is completely dry.

**Subp. 4. Visual inspection after removal of containment walls and floors.** Following removal of the walls and floors of the containment, all surfaces previously in contact with the walls and floors of the containment and the interior decontamination unit must be inspected.

A. The inspection must be done according to subpart 2.

B. Whenever contamination is observed, the entire area must be cleaned, using a HEPA-filter equipped vacuum, wet wiping, or both, until no contamination is visible.

**Subp. 5. Completion of clearance air sampling.** Clearance air sampling must be performed and samples analyzed according to part 4620.3596, 4620.3597, or 4620.3598, before removal of critical barriers and the decontamination unit.

**Subp. 6. Removal of critical barriers.** Critical barriers must be:

A. removed after the containment and the decontamination unit have passed the visual inspection specified in subpart 4 and completion of clearance air sampling as specified in subpart 5;

B. removed after the contracting entity grants permission to remove the barriers;

C. removed before the decontamination unit is disassembled; and

D. disposed of as asbestos-containing waste.

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Subp. 7. Final visual inspection of asbestos work area. Areas where critical barriers had been placed must be inspected and cleaned as specified in subpart 4 to ensure that no surface contamination is visible.

A. Whenever contamination is observed, the entire area must be cleaned, using a HEPA-filter equipped vacuum and wet wiping, or both, until no contamination is visible.

B. If contamination is found, the asbestos work area must be cleaned and cleared as specified in subpart 5.

Subp. 8. Replacement of heating, ventilating, and air-conditioning system filters. The interior surfaces of ventilation system ductwork must be decontaminated when a visual inspection indicates the presence of asbestos-containing material.

A. Except for small residential abatement, all disposable system filters that serve the asbestos work area must be:

(1) replaced at the conclusion of the project; and

(2) disposed of as asbestos waste.

B. A person performing small residential abatement must advise the owner of the residence of the need to replace disposable filters from heating, ventilation, and air-conditioning systems once the project is complete.

C. All nondisposable filters must be cleaned and decontaminated by the person performing abatement after the project is complete.

Subp. 9. On-site handling of asbestos-containing waste. Asbestos-containing waste must be handled on site according to this subpart.

A. Metal or fiber drums with locking ring tops must be used for disposal of asbestos-containing waste material that contains sharp edges, unless the sharp edges can be covered or blunted.

B. For asbestos-containing waste material that does not have sharp edges, bags of at least six-mil polyethylene must be used. Bags must be:

(1) clear;

(2) goosenecked before sealed; and

(3) doubled to prevent leakage.

### **4620.3580 GLOVE BAG PROCEDURES.**

Subpart 1. Application. When a portion of a project includes the removal, encapsulation, or enclosure of less than 25 linear feet of asbestos-containing pipe lagging or less than ten square feet of asbestos-containing material per room, for that portion of the project the person performing abatement may use the glove bag procedures in this part instead of the procedures in parts 4620.3565 to 4620.3575, subparts 1 to 8.

In process areas of facilities not accessible to the general public and designated in Division B, D, or E of the 1987 edition of the Standard Industrial Classification Manual, asbestos-containing material may be abated in quantities up to 25 linear feet or ten square feet for each 15,000 square foot area of floor space using the glove bag procedures in this part. Division B, D, and E of the 1987 edition of the Standard Industrial Classification Manual are incorporated by reference and are not subject to frequent change. A copy of this material is available from the State Law Library, Minnesota Judicial Center, 25 Constitution Avenue, St. Paul, MN 55155, or for loan or inspection from the Barr Library of the Minnesota Department of Health or through the Minitex interlibrary loan system.

Subp. 2. Placement of remote decontamination unit. A remote decontamination unit must be available for any individual performing the glove bag operation before the glove bag is set up. The remote decontamination unit must be:

A. placed within 20 feet of the glove bag operation; or

B. used with the procedures in subitems (1) and (2) to prevent contamination of any area between the glove bag operation and the remote decontamination unit.

(1) For an individual wearing a single layer of protective clothing, before leaving the asbestos work area, the individual must use a HEPA-filter equipped vacuum to remove contamination from protective clothing and exposed body surfaces. A clean second layer of protective clothing must be placed over existing protective clothing before proceeding to the remote decontamination area.

(2) For an individual wearing two layers of protective clothing, before leaving the asbestos work area, the individual must use a HEPA-filter equipped vacuum to remove contamination from the outer layer of protective clothing and exposed body surfaces. The individual must then remove the outer layer of protective clothing before proceeding to the remote decontamination unit.

C. The remote decontamination unit must be used whenever the individual leaves the asbestos work area.

Subp. 3. Remote decontamination unit. For each glove bag operation, a remote decontamination unit must be used that complies with part 4620.3569, subparts 1, items B to D, and 2.

Subp. 4. Glove bag set-up procedure. For each abatement project using a glove bag, the glove bag procedures in this subpart must be followed.

A. Before the glove bag operation begins, the area within ten feet of the glove bag operation must be cleaned using a HEPA-filter equipped vacuum, wet wiping, or both, until no dust nor debris is visible.

B. Polyethylene sheeting of at least one layer of six-mil or comparable material must be placed on the floor below the glove bag operation.

C. Glove bags must be constructed of transparent six-mil polyethylene.

D. If a glove bag is to be used on one portion of a continuous section of damaged or significantly damaged thermal system insulation, the entire section of damaged or significantly damaged thermal system insulation must be sealed in two layers of six-mil polyethylene sheeting. Edges of the sheeting must be secured with tape.

E. The glove bag must be attached so asbestos-containing material adjacent to the glove bag is not disturbed during glove bag preparation.

F. Removal and encapsulation of asbestos-containing material must be done inside the glove bag.

G. All openings in the glove bag, including openings from insertion of tools, sprayers, or HEPA-filter equipped nozzles must be securely sealed with tape before removal or encapsulation begins.

H. Before removal or encapsulation begins, the glove bag must be smoke tested for any breach in the seal.

(1) The smoke must be released inside the glove bag.

(2) To test the seal of the glove bag, pressure must be applied to the outside of the glove bag.

(3) The glove bag must be visually inspected for smoke leaking or escaping from the glove bag, with attention given to the seams of the glove bag and points of attachment.

(4) All detectable leaks must be repaired with tape before removal or encapsulation of the asbestos-containing material.

Subp. 5. Asbestos removal or encapsulation. For each abatement project using a glove bag, the procedures in this subpart must be followed for the removal or encapsulation of asbestos-containing material using a glove bag.

A. Sliding the glove bag during or following asbestos removal or encapsulation is prohibited.

B. A glove bag must not be used more than once.

C. Asbestos-containing material must be adequately wet at all times during removal.

D. An airless sprayer must be used to wet the asbestos-containing material.

E. Surfaces from which asbestos has been removed must be cleaned with a brush and wet wiped until no visible asbestos-containing material remains.

F. All exposed asbestos-containing material within the glove bag must be encapsulated with an encapsulant before the glove bag is removed according to part 4620.3672.

G. A visual inspection of the abated surface within the glove bag must be performed before the glove bag is removed. The glove bag operation is not complete until all visible asbestos-containing material is removed or encapsulated.

Subp. 6. Completion of glove bag operation. Every glove bag operation must be completed according to the procedures in this subpart.

A. Before the glove bag is removed, the interior surfaces of the glove bag must be cleaned using an airless sprayer until no visible residue is seen on the top and vertical sides of the glove bag.

B. Tools must be removed from the glove bag as specified in this item.

(1) With hands in the gloves, tools must be grabbed and the gloves pulled inside out.

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(2) The air in the glove bag must be evacuated using a HEPA-filter equipped vacuum.

(3) With the tools in them, the glove must be twisted and sealed with tape. The glove must then be cut off by cutting across the middle of the tape.

(4) The glove containing the tools must be labeled as asbestos-containing material.

(5) The glove containing the tools must be opened only inside another glove bag, decontamination unit, containment, or when submerged under water.

(6) The glove containing the tools, if transported off site, must be placed in a leak-tight container and labeled as asbestos-containing material.

(7) That portion of the airless sprayer that was inside the glove bag must be wet wiped as it is pulled out of the glove bag. The hole resulting from removal of the sprayer must immediately be sealed with tape.

C. The glove bag must be collapsed using a HEPA-filter equipped vacuum.

D. After the glove bag is collapsed, the glove bag must be squeezed tightly as close to the top of the glove bag as possible, twisted, and bound with tape.

E. The glove bag must then be cut from the pipe and placed in a leak-tight container and the container handled according to part 4620.3575, subpart 9.

F. The area beneath the glove bag operation must be inspected for any dust or debris resulting from the glove bag operation.

G. Dust and debris from the glove bag operation must be assumed to be asbestos-containing material and must be cleaned using a HEPA-filter equipped vacuum or wet wiped.

H. The six-mil polyethylene sheeting must not be reused. The sheeting must be bagged, labeled as asbestos-containing waste, and handled as specified in part 4620.3575, subpart 9.

Subp. 7. On-site handling of asbestos-containing waste. On-site handling of asbestos-containing waste from a glove bag operation must comply with part 4620.3575, subpart 9.

### **4620.3581 MINI-CONTAINMENT PROCEDURES.**

Subpart 1. Mini-containment. When a portion of a project includes abatement of less than ten linear feet of asbestos-containing pipe lagging or less than six square feet of asbestos-containing material per room, for that portion of the project, the person performing abatement may use the mini-containment procedures in this part instead of the procedures in parts 4620.3566 to 4620.3575.

Subp. 2. Remote decontamination. Before proceeding to the remote decontamination unit, individuals performing mini-containment operations must:

A. remove the outer layer of clothing worn during mini-containment abatement;

B. vacuum clean all exposed parts of the body and hair using a HEPA-filter equipped vacuum cleaner; and

C. don a nonpermeable layer of protective clothing which covers all body surfaces except the face and hands.

Subp. 3. Remote decontamination unit. A remote decontamination unit must be available that complies with part 4620.3569, subparts 1, items B to D, and 2. The remote decontamination must be:

A. available in the facility prior to the start of mini-containment operations;

B. used by individuals following mini-containment operations for each asbestos work area; and

C. placed in an area to minimize contamination of the area between the asbestos work area and the remote decontamination unit.

Subp. 4. Mini-containment set-up procedure. All mini-containment operations must comply with this subpart.

A. Before the mini-containment operation begins, the area within ten feet of the mini-containment operation must be cleaned using a HEPA-filter equipped vacuum, wet wiping, or both, until no dust nor debris is visible.

B. A mini-containment must:

(1) be constructed of one layer of six-mil polyethylene sheeting or comparable material;

(2) be equipped with a HEPA-filter equipped vacuum or a HEPA-filter equipped ventilation system so air pressure within the mini-containment is negative with respect to the air in the area outside the mini-containment; and

(3) have all seams in the polyethylene sheeting sealed.

Subp. 5. Asbestos removal or enclosure. All persons using a mini-containment to perform abatement must comply with this subpart.

A. Negative air pressure within the mini-containment must be maintained until the procedures in subpart 6, item H, are completed.

B. Surfaces from which asbestos-containing material has been removed must be thoroughly cleaned until no visible asbestos-containing material remains.

C. All exposed asbestos-containing material within the mini-containment must be encapsulated according to part 4620.3572 before the mini-containment is removed.

Subp. 6. Completion of mini-containment operation. Every mini-containment operation must be completed according to the procedures in this subpart.

A. All tools and equipment used in the mini-containment must be wet wiped until no visible residue remains.

B. The wet wiped tools and equipment must be passed through the mini-containment door in a sealed, leakproof container.

C. The leakproof container containing the tools must be opened only inside another mini-containment, decontamination unit, containment, or when submerged under water.

D. If the leakproof container with the tools is transported off-site, the container must be labeled as asbestos-containing material.

E. After the asbestos removal, encapsulation, or enclosure is complete, the interior of the mini-containment must:

(1) be cleaned using HEPA-filter equipped vacuuming, wet wiped, or both; or

(2) have an encapsulant applied to the interior of the mini-containment.

F. Before the mini-containment is removed, a visual inspection of the interior of the mini-containment and the abated surfaces must be performed as specified in part 4620.3575, subpart 2.

G. The mini-containment must be removed as specified in this item. The mini-containment must be removed by:

(1) sealing the door and collapsing the containment using a HEPA-filter equipped vacuum; or

(2) tearing down the mini-containment only after the results of clearance air sampling performed according to parts 4620.3594 to 4620.3598 indicate that fiber levels within the mini-containment do not exceed the clearance standard or alternative clearance standard in either part 4620.3100, subpart 2b or 10a.

**4620.3582 REMOVAL OF ENTIRE FACILITY COMPONENTS WITH INTACT ASBESTOS-CONTAINING MATERIAL.**

Subpart 1. Applicability. A person performing abatement may use the procedures in this part as an alternative to the procedures in parts 4620.3566 to 4620.3575 when the criteria in subpart 2 are met.

Subp. 2. Conditions for removal of entire facility components. The procedures in this part may be used to remove entire facility components with intact asbestos-containing material when the:

A. amount of asbestos-containing material to be glove bagged does not exceed 25 linear feet per room;

B. asbestos-containing material or its covering to be removed is not damaged; and

C. glove bag procedures in part 4620.3580 are followed.

Subp. 3. Procedures. The work practices of this subpart must be followed in the sequence provided.

A. Before disturbing the asbestos-containing material, cleaning of the area within ten feet of the asbestos-containing material to be removed must be completed according to part 4620.3566.

B. The asbestos-containing material or its covering to be removed must be adequately wet with amended water before wrapping.

(1) The covering must not be broken to wet the asbestos-containing material.

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(2) The asbestos-containing material and its covering must remain adequately wet until final disposal.

C. The facility component to be removed must be wrapped in two layers of six-mil polyethylene sheeting.

D. The polyethylene sheeting must be sealed with tape or a comparable material to provide an airtight seal around the facility component to be removed.

E. Areas which will be cut to release the facility component must be free of asbestos.

(1) When a glove bag is used to provide an asbestos-free surface, the glove bag must be attached to the polyethylene wrap.

(2) After the glove bag has been removed from the structure, the encapsulated ends must be wrapped in six-mil polyethylene sheeting and sealed with tape or a comparable material.

F. If the facility component is not located on the ground or floor, the facility component must be:

(1) supported while being released; and

(2) lowered to the ground or floor and not dropped or thrown.

G. Facility components must be labeled with asbestos warning labels and handled according to part 4620.3575, subpart 9.

H. If asbestos-containing material is removed from the facility component removed under this part, removal must be done according to parts 4620.3560 to 4620.3575.

### **4620.3585 ABATEMENT FOR DEMOLITION BY DESTRUCTION TO THE GROUND.**

Subpart 1. Applicability. This part may be used when a facility or portion of a facility:

A. will be subjected to demolition by destruction to the ground within 24 hours of the completion of asbestos-related work; and

B. has been secured to prevent entry following the completion of asbestos-related work.

Subp. 2. Exceptions. When demolition by destruction to the ground is performed as specified in subpart 1, the person performing abatement must comply with parts 4620.3000 to 4620.3724, except for parts 4620.3568, subparts 1 to 4, and 4620.3575, subparts 3, 4, and 8.

Subp. 3. Securing facility following asbestos-related work. To secure the facility or portion of the facility to be demolished by destruction to the ground, the person performing abatement must board up all windows, doorways, or other points of entry on the foundation and first levels of the facility or portion of the facility after asbestos-related work has been completed.

Subp. 4. Demolition prior to asbestos-related work. Abatement must comply with subpart 5 when:

A. a facility or portion of a facility is demolished by destruction to the ground; and

B. friable asbestos-containing material is present in amounts greater than six square feet or ten linear feet but less than 160 square feet or 260 linear feet for a former single- or multifamily dwelling or greater than 260 linear feet, 160 square feet, or 35 cubic feet in other facilities.

Subp. 5. Abatement following facility demolition. When a facility or portion of a facility is demolished as described in subpart 4, the person performing abatement must comply with items A to D.

A. The site must be secured and posted with warning signs that state: "DANGER. ASBESTOS. CANCER AND LUNG DISEASE HAZARD. AUTHORIZED PERSONNEL ONLY. RESPIRATORS AND PROTECTIVE CLOTHING ARE REQUIRED IN THIS AREA."

B. Notification of the project must be given to the commissioner as specified in part 4620.3420.

C. A person licensed as specified in part 4620.3200 must be used for removal of asbestos-containing material from the demolition rubble.

D. Individuals handling asbestos-containing material at the site must be certified as specified in parts 4620.3300 and 4620.3310.

### **4620.3592 INDOOR AIR MONITORING.**

Subpart 1. Applicability. As part of every project, indoor air monitoring must be performed as specified in this part except that indoor air monitoring is not required:

A. when a project is performed in preparation for demolition of a facility and the facility will not be entered or occupied by any individual not involved with asbestos-related work during and after the project; or

B. if a domiciled owner of a single-family residence conducts a project in the single-family residence.

Subp. 2. General. Indoor air monitoring must be conducted outside the containment area during all asbestos-related work including preparation and cleanup from the time disturbance of asbestos-containing material occurs until the results of clearance air sampling indicate fiber levels in the air within the containment do not exceed the clearance standard or alternative clearance standard.

A. For each containment, two air samples must be collected simultaneously no less than once every four hours while abatement personnel are on site.

B. One of the two indoor air monitoring samples required in item A must be collected within ten feet of the entrance to the decontamination unit. The other air sampling location must be selected to detect failures in the containment.

C. Sample collection must be performed within ten feet of the containment.

D. Not more than 3,000 liters of air must be drawn through each sample cassette. Sample collection and analysis must comply with part 4620.3597, subparts 2 to 4.

Subp. 3. Evacuation and corrective measures. If, during the project, the fiber concentration in air measured outside the containment exceeds the indoor air standard, or the alternative indoor air standard, or one or more samples are too heavily loaded to allow for quantitative analysis, the steps in items A and B must take place.

A. Except as noted in subpart 4, the occupied area immediately adjacent to the abatement area must be evacuated.

B. Evacuated areas must not be reoccupied until:

(1) the containment barriers are examined by the site supervisor for holes or separations in the barriers and any holes or separations are repaired;

(2) the negative pressure of the containment is checked by the site supervisor and if not in compliance with part 4620.3570, is brought into compliance;

(3) the areas adjacent to the containment are cleaned using HEPA-filter vacuum cleaning, wet wiping methods, or both;

(4) following completion of subitems (1) to (3), five air samples have been collected simultaneously according to parts 4620.3596 and 4620.3597 in which the area where elevated fiber levels occurred; and

(5) analysis indicates that the fiber concentration in all air samples collected under subitem (4) does not exceed the indoor air standard or the alternative indoor air standard.

Subp. 4. Suspected nonasbestos dust. When elevated fiber concentrations in the air outside the containment are suspected to be from nonasbestos dust in the air, evacuation of the occupied areas immediately adjacent to the asbestos work area may be delayed, provided the actions in this subpart are taken immediately.

A. The indoor air monitoring samples which indicate elevated fiber concentrations must be reanalyzed by transmission electron microscopy to distinguish between asbestos and nonasbestos fibers greater than five microns in length with an aspect ratio of three-to-one. Repeat analysis under this item must meet the requirements of "Mandatory Transmission Electron Microscopy Method," Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix A, section II, Parts A, E, F, H, I, and J, amended through October 30, 1987, and as qualified in subitems (1) and (2).

(1) Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix A, section II, part A, is modified as follows:

(a) The definition of "aspect ratio" is modified to read:

"3. "Aspect ratio" — a ratio of the length to the width of a particle. Minimum aspect ratio as defined by this method is equal to or greater than 3:1."

(b) The definition of "fiber" is modified to read:

"9. "Fiber" — a structure greater than or equal to five microns in length with an aspect ratio (length to width) of 3:1 or greater and having substantially parallel sides."

(2) Code of Federal Regulations, title 40, part 763, subpart E, appendix A, section II, part F, is modified as follows:

(a) Paragraph 9(a) is modified to read:

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### 9. Recording Rules.

a. Any continuous grouping of particles in which an asbestos fiber with an aspect ratio greater than or equal to 3:1 and a length greater than or equal to 5.0 microns is detected shall be recorded on the count sheet. These will be designated asbestos structures and will be classified as fibers, bundles, clusters, or matrices. Record as individual fibers any contiguous grouping having 0, 1, or 2 definable intersections. Groupings having more than 2 intersections are to be described as cluster or matrix. An intersection is a nonparallel touching or crossing of fibers, with the projection having an aspect ratio of 3:1 or greater. See the following Figure 2:

(b) Paragraph 9(a), figure 2, the portion entitled "DO NOT COUNT AS STRUCTURES," is modified by changing the aspect ratio from "5:1" to "3:1" and the micrometer length from "0.5" to "5.0."

(c) Paragraph 9(a)(i) is modified to read:

"i. Fiber. A structure having minimum length greater than or equal to five microns and an aspect ratio (length to width) of 3:1 or greater and substantially parallel sides. Note the appearance of the end of the fiber, i.e., whether it is flat, rounded, or dovetailed."

(d) Paragraph 10(a) is modified to read:

"a. Fiber. A structure having minimum length greater than or equal to 5 microns and an aspect ratio (length to width) of 3:1 or greater and substantially parallel sides. Note the appearance of the end of the fiber, i.e. whether it is flat, rounded, or dovetailed."

B. If the analysis results obtained according to item A indicate the concentration of asbestos fibers in the air exceeds 0.01 fibers per cubic centimeter of air, the occupied area immediately adjacent to the abatement area must be evacuated and not reoccupied until the corrective measures of subpart 3, item B, have been performed and documented.

Subp. 5. Indoor air monitoring during glove bag or mini-containment procedures. When the glove bag or mini-containment procedures in parts 4620.3580 and 4620.3581 are used, indoor air monitoring must be performed according to this subpart.

A. At least two indoor air samples per room must be collected continuously from the time of initial disturbance of the asbestos-containing material until the time all glove bags or mini-containments have been removed in the room.

B. Indoor air samples during glove bag or mini-containment procedures must be collected within ten feet of the glove bag or mini-containment operation.

C. The volume of air drawn through each indoor air sample cassette must not exceed 3,000 liters. Sample collection and analysis must be completed according to part 4620.3597, subparts 2 to 4.

D. The glove bag or mini-containment operation is not complete and the area must not be reoccupied until each of the indoor air samples has been analyzed and the result of each sample indicates a fiber level below the indoor air standard or the alternative indoor air standard.

E. If any indoor air sample result exceeds the indoor air standard or the alternative indoor air standard, or if any indoor air sample is too heavily loaded to be quantitatively analyzed, subitems (1) to (3) must be followed.

(1) The area where the glove bag or mini-containment operation was performed must be recleaned and reinspected according to part 4620.3575, subpart 4.

(2) After recleaning and reinspection, at least two indoor air samples must be collected according to item C within ten feet of the area where the glove bag or mini-containment operation was performed.

(3) If any air sample result exceeds the indoor air standard or alternative indoor air standard, subitems (1) and (2) must be repeated.

### **4620.3594 CLEARANCE AIR SAMPLING.**

Subpart 1. General. When enclosure, removal, or encapsulation is completed during an abatement, clearance air sampling must be performed to ensure that fiber levels in the air within the containment area do not exceed the clearance standard or alternative clearance standard.

A. The asbestos containment area must not be reoccupied until compliance with subitem (1) or (2) is achieved:

(1) each of five clearance air samples, collected according to subpart 2, are less than or equal to the alternative clearance standard; or

(2) for a small residential abatement each of three clearance air samples, collected according to subpart 2, are less than or equal to the clearance standard.

B. If any clearance air sample result exceeds the clearance standard or alternative clearance standard, or any clearance air

sample is too heavily loaded to be quantitatively analyzed, the containment area must be recleaned and reinspected according to part 4620.3575, subpart 4. Following compliance with part 4620.3575, subpart 4, clearance air sampling must be repeated according to this subpart.

**Subp. 2. Clearance air sampling procedures.** Clearance air sampling must be conducted in the containment area after the containment has been cleaned thoroughly, dried completely, and passed the visual inspection required under part 4620.3575, subpart 4.

A. The critical barriers specified in part 4620.3567 must remain in place.

B. The decontamination unit must remain in place and remain operational.

C. Negative pressure within the containment must be maintained until analysis of clearance air samples is complete.

D. The clearance air sampling sites must be selected on a random basis within the containment to provide unbiased and representative sampling of the air within the containment.

E. Clearance air sampling must be performed with equipment that has been cleaned and decontaminated before use.

E. Clearance air sampling must be conducted as specified in subitems (1) to (3).

(1) Before clearance air sampling, floors, ceilings, and walls must be blown with the air from a one horsepower leaf blower to agitate the air and reentrain loose fibers in the air within the containment.

(2) Stationary fans must be used within the containment to agitate containment air during clearance air sampling. The stationary fans must be placed in locations that do not interfere with clearance air sampling.

(3) When electrical power is provided, the power supply equipment must be underwriter laboratory approved and not modified. Wiring must be grounded and the circuits protected by ground fault interrupt devices.

G. Equipment such as fans and pumps must be wet wiped with clean water and disposable wipes before removal from the containment.

#### **4620.3596 GENERAL REQUIREMENTS FOR AIR MONITORING SAMPLE COLLECTION.**

The air monitoring samples required by parts 4620.3592 and 4620.3594 must be collected as specified in this part.

A. All air monitoring sample collection must be conducted by an individual who is either an asbestos worker or asbestos site supervisor and who:

(1) has completed a Minnesota asbestos air sampling course permitted by the commissioner under part 4620.3704; or

(2) is certified as a certified industrial hygienist by the American Board of Industrial Hygiene.

B. Air monitoring sample cassettes must be submitted for analysis on the day collected.

C. Air monitoring sample analysis results must be available orally or in writing no later than 48 hours after submission for analysis or before disassembly of the containment, whichever is earlier.

#### **4620.3597 PHASE CONTRAST MICROSCOPY.**

**Subpart 1. Phase contrast microscopy air sample analysis.** Analysis by phase contrast microscopy must comply with National Institute of Occupational Safety and Health (NIOSH) Method 7400, revision number 3, titled "Fibers" published in the NIOSH Manual of Analytical Methods, Third Edition, August 1994 supplement or equivalent methods. This document is incorporated by reference, is not subject to frequent change, and is available through the Minitex interlibrary loan system.

**Subp. 2. Procedures for establishing an alternative indoor air standard.** When collecting air monitoring samples to establish an alternative indoor air standard, the procedures in this part apply.

A. An alternative indoor air standard may be established only if background fiber levels in the asbestos work area exceed the indoor air standard before the start of abatement.

B. To establish an alternative indoor air standard, five air monitoring samples must be collected simultaneously and analyzed according to this part before the start of abatement including area preparation.

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C. The alternative indoor air standard must be calculated as the upper bound of the range defined by the 95 percent confidence interval from the average of the result of the five indoor air monitoring samples.

D. Locations for air monitoring sample collection must be selected to provide suitable data for comparison with indoor air monitoring samples collected after abatement begins. Sample locations must be indoors and within ten feet of where the containment will be constructed.

E. The alternative indoor air standard applies only to the containment area where the air samples used to establish the alternative indoor air standard were collected.

Subp. 3. Air monitoring sample collection and analysis. When phase contrast microscopy is used to analyze air monitoring samples:

A. air volumes drawn through the filter cassette must be sufficient to determine fiber concentrations to 0.01 fibers per cubic centimeter of air;

B. a volume of 2,000 liters must be drawn through the filter cassette, except as noted in item C; and

C. when a volume of 2,000 liters cannot be drawn through the filter cassette, subitems (1) to (5) apply.

(1) More fields must be counted than the 100 microscope field maximum which is specified in NIOSH method 7400.

(2) The maximum number of fields to be counted must be determined by dividing 2,000 liters by the volume filtered and multiplying the result by 100 fields.

(3) Additional segments of the filter must be used for counting.

(4) If the cumulative fiber count reaches 100 fibers before the maximum number of fields have been counted, the analysis must stop.

(5) The concentration must be calculated based on the number of fibers and the number of fields counted.

Subp. 4. Air monitoring sample analysis. Air monitoring samples must be analyzed by a person not affiliated with the person who collected the air samples and must be:

A. a laboratory that is accredited by the American Industrial Hygiene Association; or

B. an analyst participating in the American Industrial Hygiene Association's asbestos analyst registry program.

### **4620.3598 TRANSMISSION ELECTRON MICROSCOPY.**

Subpart 1. Use of alternative clearance standard. When the alternative clearance standard is used, items A and B apply.

A. The transmission electron microscopy method for air monitoring sample collection and analysis must comply with *Code of Federal Regulations*, title 40, chapter I, subchapter R, part 763, subpart E, appendix A, section II, amended through October 30, 1987.

B. The volume of air drawn through a 25-millimeter filter cassette must be equal to or greater than 1,200 liters. The volume of air drawn through a 37-millimeter filter cassette must be greater than or equal to 2,800 liters.

Subp. 2. Air monitoring sample analysis. Alternative clearance air monitoring samples analyzed by transmission electron microscopy must be analyzed by a laboratory accredited by the United States National Institute of Standards and Technology National Voluntary Laboratory Accreditation Program (NVLAP) for analysis of samples by transmission electron microscopy.

### **4620.3702 APPLICATION FOR TRAINING COURSE PERMIT.**

Subpart 1. Applications other than renewal. Except as provided in subpart 2, to obtain a permit from the commissioner for a training course, the training course provider must submit, to be received by the commissioner at least 60 days before the course is offered:

A. a completed application on a form provided by the commissioner;

B. a \$500 nonrefundable application fee payable to the Minnesota Department of Health in the form of a business check, cashier's check, or money order unless the course is for air sampling described in part 4620.3718, subpart 5;

C. the course curriculum;

D. a copy of all course materials;

E. the examination to be used and the answer key for the examination;

F. resumes of all course instructors which include information on coursework completed as specified in part 4620.3712, subpart 3, item A;

G. a copy of all enforcement actions taken against the provider by the United States Environmental Protection Agency and any other state; and

H. an example of the diploma to be issued by the provider to course participants who complete the course and pass the examination in the event the commissioner approves the permit application.

Subp. 2. Renewal. To obtain a renewal of a training course permit, the training course provider must submit, to be received by the commissioner at least 30 days before expiration of the current permit:

A. a completed renewal application on a form provided by the commissioner;

B. a \$250 nonrefundable renewal fee in the form of a business check, cashier's check, or money order payable to the Minnesota Department of Health unless the course is for air sampling as described in part 4620.3718, subpart 5; and

C. documentation of any change in the information on the training course most recently submitted by the provider under subpart 1, items C to H.

**4620.3704 PERMITTING TRAINING COURSES.**

Subpart 1. Applications other than renewal. For an application submitted under part 4620.3702, subpart 1, the commissioner shall issue a permit for the training course if the provider has complied with part 4620.3702, subpart 1, and if the provider, training course, and diploma meet all applicable requirements in parts 4620.3708 to 4620.3722.

Subp. 2. Renewal applications. For an application submitted under part 4620.3702, subpart 2, the commissioner shall renew the permit for the training course if:

A. the provider has complied with part 4620.3702, subpart 2;

B. the provider, training course, and diploma meet all applicable requirements in parts 4620.3708 to 4620.3722; and

C. for second and subsequent renewals of the same training course, the provider has presented the training course within the state while the permit was in effect and within two years before the date of the renewal application.

Subp. 3. Reciprocity with other states. A training course shall be permitted by the commissioner if the course is permitted or approved by another state's asbestos regulatory program equivalent to the Minnesota Department of Health's asbestos regulatory program and if the training course provider complies with part 4620.3702, subpart 1.

Subp. 4. Denial of permit. The commissioner shall deny an application for a training course permit if the applicant fails to comply with all applicable requirements in this part. Additional grounds for the commissioner to deny an application are stated in Minnesota Statutes, section 144.99, subdivision 8, paragraphs (a) and (b). An applicant:

A. must be notified in writing of the denial of the license application and reasons for the denial; and

B. is not required to pay a second fee if the applicant submits a second training course permit application according to subpart 2, within 30 days of the receipt of notice that the training course permit has been denied.

Subp. 5. Duration of permit. A training course permit shall be valid for one year.

**4620.3708 TRAINING COURSE DIPLOMAS.**

If a training course is permitted under part 4620.3704, the training course provider must ensure that each enrollee who successfully completes the training course receives an original diploma which:

A. meets the requirements of Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, part C, paragraph (1), as amended through February 3, 1994;

B. indicates the location of the course; and

C. clearly states: "Approved by the State of Minnesota under Minnesota Rules, parts 4620.3702 to 4620.3722."

**4620.3710 ADVANCE NOTICE AND AMENDMENTS.**

The training course provider must submit to the commissioner, by mail or facsimile, on a form provided by the commissioner:

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A. a notice of the date, time, and location of each permitted training course to be presented by the course provider, so the commissioner receives the notice at least 14 calendar days before the training course begins;

B. an amended notice for any change in the information contained in the original notice described in item A, other than an advancement of the training course date described in item C, so the commissioner receives the amended notice before the permitted training course begins;

C. an amended notice for any change in the date of the training course which advances the beginning date of the course, so the commissioner receives the amended notice at least 14 calendar days before the training course begins;

D. a notice of any change in any information submitted to the commissioner in part 47720.3702 other than the date, time, or location of the course or any information on a course instructor, so the commissioner receives the notice at least 30 calendar days before the training course begins; and

E. a notice of any change in any information submitted to the commissioner on any training course instructor, so the commissioner receives the notice at least seven calendar days before the training course begins.

### 4620.3712 ATTENDANCE REQUIREMENTS.

The training course provider must require participants to attend the entire training course as a condition for successful completion of the training course. A training course provider must:

A. maintain a daily sign-in log as documentation of attendance for each training course; and

B. submit a copy of the daily sign-in log to the commissioner within 48 hours of completion of the training course.

### 4620.3714 ENROLLMENT LIMITS.

The enrollment limits of this part apply to all permitted training courses.

A. The number of participants in a class must not exceed 24.

B. For training courses which require hands-on training, the participant-to-instructor ratio for hands-on training groups must not exceed eight-to-one.

### 4620.3716 TRAINING COURSE CONDITIONS.

Subpart 1. General. The course requirements in this part apply to all permitted training courses.

Subp. 2. Separation of training courses. Asbestos worker, asbestos site supervisor, asbestos inspector, asbestos management planner, asbestos project designer, and air sampling courses must be taught separately.

Subp. 3. Training course instructors. If all instructors for a training course meet the requirements in this subpart, the commissioner shall approve the instructors as part of any permit issued for the training course.

All training course instructors must:

A. complete coursework that teaches the application of methods designed to teach adults and methods of evaluation to continually monitor the participants' progress;

B. have knowledge about all subjects to be presented by the instructor; and

C. apply the methods of adult instruction described in item A.

Subp. 4. Written examinations. All training courses must include a written examination that meets the requirements in this subpart.

A. Each training course must include a written examination that is given only at the end of the training course.

B. If the commissioner provides an applicable written examination, the training course provider must use the written examination provided by the commissioner.

C. Training course examinations must be administered by the training course provider unless notified of other arrangements in advance by the commissioner.

D. If the training course provider administers the examination, the training course provider must:

(1) not reveal any portion of the examination contents to any participant before administering the examination;

(2) ensure the security of the examination;

(3) ensure that any participant who passes the examination does so on the participant's own merit;

(4) ensure that there is an empty chair or at least three feet between participants; and

(5) ensure that no written material other than the examination materials are allowed within the participant's viewing distance.

E. The training course provider must monitor the examination.

E. The written examination for an initial training course and refresher training course must incorporate questions about Minnesota law and rules related to asbestos and comply with the requirements of Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, part C, paragraph (2), amended through February 3, 1994.

G. The final written examination for an initial training course and refresher training course must meet the requirements in this item. A score of at least 70 percent is required to pass any training course written examination. The initial and refresher examination for an:

- (1) asbestos worker must consist of at least 50 multiple-choice questions;
- (2) asbestos site supervisor must consist of at least 100 multiple-choice questions;
- (3) asbestos inspector must consist of at least 50 multiple-choice questions;
- (4) asbestos management planner must consist of at least 50 multiple-choice questions;
- (5) asbestos project designer must consist of at least 100 multiple-choice questions; and
- (6) asbestos air sampling course must consist of at least 50 multiple-choice questions.

H. If a participant in a worker training course is unable to read the written examination, the training course provider must arrange to administer the examination in an alternative manner to the participant.

**Subp. 5. Successful completion of initial training course.** To successfully complete an initial training course, a participant must:

- A. attend the entire training course;
- B. demonstrate to the instructor proficiency during the hands-on portion of the course; and
- C. pass a closed-book written examination that complies with subpart 4.

**Subp. 6. Requirements for completion of refresher training courses.** To complete a refresher training course, the participant must:

- A. attend the entire training course; and
- B. pass a closed-book written examination that meets the requirements in subpart 4.

**Subp. 7. Training site.** All training courses must be presented in Minnesota.

#### **4620.3718 COURSE CONTENT AND LENGTH.**

**Subpart 1. General.** Course content for training courses permitted by the commissioner must meet the requirements of this part.

**Subp. 2. Incorporation of Minnesota law and rules.** The training course provider must incorporate all asbestos-related Minnesota law and rules into all course materials and instruction wherever the course material and instruction addresses a subject covered by Minnesota law and rules.

**Subp. 3. Incorporation of new material into training course.** The training course provider must incorporate any new information into course material as required by the commissioner.

**Subp. 4. Length and content of initial asbestos-related training courses.** Initial training course length and content must meet the requirements in this subpart with one day equal to eight hours including breaks and lunch. The initial training course length and content requirements for:

A. asbestos workers must meet the length and content requirements in Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, part B, paragraph (1), amended through February 3, 1994;

B. asbestos site supervisors must meet the training course length and content requirements in Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, part B, paragraph (2), amended through February 3, 1994;

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C. asbestos inspectors must meet the initial training course length and content requirements in *Code of Federal Regulations*, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, part B, paragraph (3), amended through February 3, 1994;

D. asbestos management planners must meet the initial training course length and content requirements in *Code of Federal Regulations*, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, part B, paragraph (4), amended through February 3, 1994; and

E. asbestos project designers must meet the initial training course length, content, and prerequisite requirements in *Code of Federal Regulations*, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, part B, paragraph (5), amended through February 3, 1994.

Subp. 5. Length and content of air sampling training. The initial training course for asbestos air sampling must be two days in length and meet the requirements in this subpart. The training must address:

A. the National Institute of Occupational Safety and Health's sampling method specified in part 4620.3597, subpart 1;

B. the sampling requirements and procedures in parts 4620.3592 to 4620.3598;

C. the sampling requirements and procedures specified in item B:

(1) the alternative indoor air standard;

(2) the alternative air clearance standard;

(3) the appropriate use of alternative standards;

(4) the number of fields to be counted and what to do when sampling volumes are below 2,000 liters;

(5) sampling techniques and requirements outside the containment during abatement;

(6) reasons to evacuate the facility, reentry after evacuation, and the reasons for delay of evacuation;

(7) sampling when negative air machines exhaust indoors;

(8) sampling during glove bag and mini-containment operations; and

(9) all phases of final containment clearance;

D. the Occupational Safety and Health Administration (OSHA) personal sampling requirements, procedures, and rationale, including calculation of time-weighted averages contained in *Code of Federal Regulations*, title 29, section 1926.1101, paragraphs (c) and (f), and appendix A, amended through September 29, 1995;

E. the Asbestos Hazard and Emergency Response Act (AHERA) sampling requirements and procedures in *Code of Federal Regulations*, title 40, section 763.90(i) and subpart E, appendix A, amended through April 15, 1988;

F. a comparison of the AHERA, OSHA, and Minnesota air sampling requirements;

G. an introduction to analysis procedures;

H. sampling equipment calibration methods;

I. problems that may be encountered during sample collection;

J. decontamination of sampling equipment after sampling; and

K. hands-on sampling training, including:

(1) calibrating a rotameter using primary standard;

(2) measuring sampling pump flow rate using a rotameter;

(3) assembling sampling cassettes;

(4) setting up a sampling train for area sampling, collecting an air sample, and calculating the volume sampled;

(5) setting up, on a course participant, a sampling train for personal sampling;

(6) calculating time-weighted averages; and

(7) calculating the alternative indoor air standard described in part 4620.3597, subpart 2.

Subp. 6. Hands-on training required. For initial worker and site supervisor training, the course must include lectures, demonstrations, hands-on training, course review, and an examination as specified in part 4620.3716, subpart 4. The hands-on training must be at least 14 hours in length and must include:

A. demonstration by the instructor of the use of the respiratory protection devices with at least six different respirator types;

B. demonstration by the instructor and practice by each course participant of disassembly, cleaning, and reassembly of a half-face air purifying respirator and a full-face powered air purifying respirator;

C. practice by each course participant in identifying faults with half-face air purifying and full-face powered air purifying respirators with damaged or missing parts;

D. demonstration by the instructor of respirator fit checking;

E. demonstration by the instructor of respirator fit testing;

F. practice by each participant in donning full-body protective clothing;

G. demonstration by the instructor and practice by each course participant of simulated asbestos abatement of pipe insulation using a glove bag;

H. practice by each course participant constructing a decontamination unit;

I. practice by each participant constructing a containment and using a HEPA-filtered negative air machine to produce negative pressure in the containment;

J. demonstration by the instructor and practice by each participant of simulated abatement of ceiling spray-on; and

K. demonstration by the instructor and practice by each course participant of removing and replacing the filter elements in a HEPA-filtered negative air machine.

Subp. 7. Annual refresher courses. Annual refresher courses for asbestos project designers, asbestos management planners, asbestos inspector, asbestos site supervisors, and asbestos workers must:

A. meet the refresher course length and content specified in Code of Federal Regulations, title 40, chapter I, subchapter R, part 763, subpart E, appendix C, section I, part D, amended through February 3, 1994;

B. include a review of the topics covered in an initial training course as specified in subpart 5; and

C. comply with part 4620.3716, subpart 6.

Subp. 8. Time limits for training courses. If extra time is required to complete the prescribed instruction of a permitted training course or to add subjects not prescribed for the training course, the course may be extended if:

A. instruction is not more than eight hours per day, including lunch and other breaks; and

B. the training course is held no more than five successive days.

#### **4620.3720 RECORDKEEPING REQUIREMENTS FOR TRAINING COURSE PROVIDERS.**

Each provider of a permitted training course must comply with this part.

A. If the commissioner requests any or all of the documents described in item B, the provider must submit the requested documents so the commissioner receives them within seven calendar days of the commissioner's request.

B. For each permitted training course, the provider must keep for six years:

(1) copies of all training course materials;

(2) records of all instructor qualifications and commissioner approvals of instructors;

(3) records of examinations including the name of the person who proctors the examination, a copy of the examination, the date and location of each examination, and participant scores of each individual taking the examination;

(4) records of certificates issued on completion of the training course including the discipline, unique certificate number, training dates and location, recipient, examination date and location, and expiration date of the certificate;

(5) records of the time and place the training course was held and the instructors for each day of the training course.

C. If a training course provider ceases to conduct training, the training course provider must notify the commissioner and give the commissioner the training records within 60 days of ceasing to provide training.

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## Proposed Rules

### 4620.3722 TRAINING COURSES WITH PROVISIONAL OR FULL APPROVAL BEFORE EFFECTIVE DATE.

The provider of a training course which has full approval from the commissioner before the effective date of parts 4620.3702 to 4620.3722 may apply for renewal under part 4620.3702, subpart 2, no later than 30 days before the expiration date of the approval.

A. The provider of a training course which has provisional approval from the commissioner before the effective date of parts 4620.3702 to 4620.3722 may apply for a renewal permit under part 4620.3702, subpart 2, no later than 90 days after the effective date of parts 4620.3702 to 4620.3722.

B. All provisional approvals shall expire 91 days after the effective date of parts 4620.3702 to 4620.3722.

### 4620.3724 VARIANCE.

The commissioner may grant a variance to part 4620.3710, item A, subitem (1), and, where space limitations prevent compliance with the specified requirements or where compliance with the specified requirements would create a greater hazard, to parts 4620.3566, 4620.3567, 4620.3568, subparts 1 to 4, 4620.3569, 4620.3571, subparts 1 and 2, and 4620.3575, subpart 3. A variance shall be considered only according to the procedures and criteria in parts 4717.7000 to 4717.7050.

### 4717.7000 VARIANCE REQUEST.

Subpart 1. Request. A party may ask the commissioner of health to grant a variance from the following rules:

A. clean indoor air, parts 4620.0100 to 4620.1500, except part 4620.0300;

B. formaldehyde in housing, part 4620.1800;

C. asbestos abatement, part 4620.3500, subpart 4, item B, and part 4620.3700, subpart 3, item B, first sentence 4620.3710, item A, subitem (1), and, where space limitations prevent compliance with the specified requirements or where compliance with the specified requirements would create a greater hazard, parts 4620.3566, 4620.3567, 4620.3568, subparts 1 to 4, 4620.3569, 4620.3571, subparts 1 and 2, and 4620.3575, subpart 3.

D. lodging establishments, parts 4625.0400 to 4625.0600; 4625.0900; 4625.1200 to 4625.1600; 4625.2000, except the last sentence; and 4625.2200;

E. food and beverage establishments, parts 4625.2901 to 4625.7801, except parts 4625.3601; 4625.3801, subpart 1; 4625.3901, subpart 3; 4625.4101, subpart 1; 4625.4301; 4625.4401; 4625.4601; 4625.5000; 4625.5101, subpart 7; 4625.5601; 4625.5701; 4625.6101, subparts 3 and 7; 4625.6601; 4625.6701; 4625.7101, subpart 7; 4625.7601; and 4625.7701;

F. manufactured home parks and recreational camping areas, parts 4630.0400; 4630.0600, subparts 2 to 4; and 4630.0900 to 4630.1700;

G. children's camps, parts 4630.2300 to 4630.4700;

H. migrant labor camps, parts 4630.5000 to 4630.6500;

I. roller towels, part 4635.0200;

J. enclosed sports arenas, parts ~~4635.1100~~ 4620.3900 to ~~4635.2000~~ 4620.4800, except part ~~4635.1500~~ 4620.4300;

K. water conditioning contractors and installers, parts 4715.5000 to 4715.6000;

L. public swimming pools, parts 4717.0100 to 4717.3900;

M. water haulers, parts 4720.4000 to 4720.4600;

N. wells and borings, parts 4725.0100 to ~~4725.7600~~ 4725.7450;

O. explorers and exploratory borings, parts 4727.0100 to 4727.1300; and

P. ionizing radiation, parts 4730.0100 to ~~4730.3610~~ 4730.3605, except parts 4730.0400 and 4730.0600.

[For text of subs 2 and 3, see M.R.]

**REPEALER.** *Minnesota Rules*, parts 4620.3100, subparts 2, 9, 10, 12, 15, 17, 18, 22, 26, and 30; 4620.3200, subparts 1, 6, and 7; 4620.3400; 4620.3500; 4620.3600; and 4620.3700, are repealed.

**PART 2 of 2**

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## Department of Health

### Proposed Permanent Rules Governing Examination Requirements for X-ray Equipment Operators

#### 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 a permanent rule without a public hearing following the procedures set forth in the Administrative Procedures Act, *Minnesota Statutes*, sections 14.22 to 14.28. If, however, 25 or more persons submit a written request for a hearing on the rule by 4:30 p.m., January 25, 1996, a public hearing will be held on February 6, 1996, in Room LL57, in the Lower Level of the Metro Square Building, 121 East Seventh Place, St. Paul, Minnesota starting at 9 a.m. To find out whether the rule will be adopted without a hearing or if the hearing will be held, you should contact the agency contact person after January 25, 1996 and before February 6, 1996.

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

Judith Ball  
Division of Environmental Health  
Minnesota Department of Health  
121 E. Seventh Place, P.O. Box 64975  
St. Paul, Minnesota 55164-0975  
(612) 215-0945  
FAX (612) 215-0979

**Subject of Rule and Statutory Authority.** The authority for the commissioner of health to adopt rules governing the examination requirements for x-ray equipment operators is contained in *Laws of Minnesota*, 1995, Chapter 146, which is to be codified as *Minnesota Statutes*, section 144.121, subdivisions 5, 6 and 7. This law provides that after January 1, 1997 an individual in a facility with x-ray equipment for use on humans that is registered with the department may not operate, nor may the facility allow the individual to operate, the x-ray equipment unless the individual has passed an examination approved by the commissioner of health, or an examination determined to the satisfaction of the commissioner of health to be an equivalent national, state or regional examination that demonstrates the individual's knowledge of basic radiation safety, proper use of x-ray equipment, darkroom and film processing and quality assurance procedures. The proposed rules establish the criteria for the approval of examinations.

A copy of the proposed rules is published in the *State Register* and attached to this notice as mailed. A free copy of the proposed rule is available on request from Judith Ball.

**Comments.** You have 30 calendar days, until 4:30 p.m. on January 25, 1996, to submit written comment in support of or in opposition to the proposed rules or any part or subpart of a rule. Your comment must be 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. You are encouraged to propose any change desired. Any comments you would like to make on the legality of the proposed rules must be made during this comment period.

**Request for a Hearing.** In addition to submitting comment, you have 30 calendar days to 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 25, 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 to which you object. You are encouraged to state the reason for the request and any changes you want made to the proposed rules.

**Withdrawal of requests.** 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 agency will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20.

**Accommodation.** If you need an accessibility accommodation, please contact the agency contact person at the address or telephone number listed above.

**Modifications.** The proposed rule may be modified, either as a result of public comment or as a result of the rule hearing process. Modifications must be supported by data and views submitted to the agency or presented at the hearing and the adopted rule may not

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## Proposed Rules

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be substantially different than this proposed rule. If the proposed rule 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 agency does not receive requests from 25 or more persons that a hearing be held on the rule. 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) 215-0945 after January 25, 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. The hearing will be held on the date and at the time and place listed above. The hearing will continue until all interested persons have been heard. The administrative law judge assigned to conduct the hearing is Allen Giles. Judge Giles can be reached at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota 55401-2138, telephone (612) 349-2543, and FAX (612) 349-2665.

**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 submit 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. Following the comment period, there is a five-working-day response period during which the agency and any interested person may respond in writing 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. All comments or responses received will be available for review at the Office of Administrative Hearings. This rule hearing procedure is governed by *Minnesota Rules*, parts 1400.0200 to 1400.1200 and *Minnesota Statutes*, sections 14.14 to 14.20. Questions about procedure may be directed to the administrative law judge.

The agency requests that any person submitting written views or data to the administrative law judge prior to the hearing or during the comment or response period also submit a copy of the written views or data to the agency contact person at the address stated above.

**Statement of Need and Reasonableness.** A statement of need and reasonableness is now available from the agency contact person. This statement describes the need for and reasonableness of each provision of the proposed rule. This statement of need and reasonableness includes a summary of all the evidence and argument which the department anticipates presenting at the hearing, if one is held. Copies of the statement are also available at the cost of reproduction from the Office of Administrative Hearings.

**Small Business Considerations.** *Minnesota Statutes*, section 14.115 requires that an agency consider five factors for reducing the impact of proposed rules on small business. A discussion of the impact on small businesses is contained in the Statement of Need and Reasonableness.

**Impact on Agricultural Land; farming operations.** The proposed rule will have no direct or adverse impact on agricultural lands. (*Minnesota Statutes* section 14.11, subd. 2.); nor was additional action taken under *Minnesota Statutes*, section 14.111.

**Expenditure of Public Money by Local Public Bodies.** The adoption of the proposed rules do not directly require the expenditure of public money by local public bodies of greater than \$100,000 in the two years following promulgation. (*Minnesota Statutes* section 14.11, subd. 1.)

**Lobbyist Registration.** *Minnesota Statutes*, chapter 10A requires each lobbyist to register with the Ethical Practices Board. Questions about this requirement may be directed to the Ethical Practices Board, First Floor South, Centennial Office Building, St. Paul, Minnesota 55155, telephone: (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 rule after the end of the comment period. The rule and supporting documents will then be submitted to the Office of the Attorney General for review as to legality. You may ask 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 want to be so notified, or wish to receive a copy of the adopted rule, submit your request to agency contact person listed above.

**Adoption Procedure After the Hearing.** If a hearing is held, after the close of the hearing record, the administrative law judge will issue a report on the proposed rule. You may ask to be notified of the date on which the administrative law judge's report will be available, and can make this request at the hearing or in writing to the administrative law judge. You may also ask to be notified of the date on which the agency adopts the rule and files it with the secretary of state, and can make this request at the hearing or in writing to the agency contact person stated above.

Dated: 6 December 1995

Anne M. Barry  
Commissioner of Health

This notice and the proposed rule can be made available in alternative formats.

**Rules as Proposed (all new material)****4730.5000 APPLICABILITY.**

After January 1, 1997, an individual operating X-ray equipment for use on humans must pass an examination as specified in parts 4730.5000 to 4730.5200 or part 4730.5400.

**4730.5050 DEFINITION.**

For purpose of parts 4730.5000 to 4730.5500, "individual operating X-ray equipment on humans" means an individual who exposes humans to ionizing radiation by being directly involved with any part of the X-ray procedure from setting the equipment exposure factors through processing the X-ray.

**4730.5100 EXAMINATION REQUIREMENTS.**

Subpart 1. **General.** To be approved by the commissioner, an examination must test an individual's knowledge of:

- A. basic radiation safety;
- B. proper use of X-ray equipment;
- C. darkroom and film processing; and
- D. quality assurance procedures.

Subp. 2. **Examination approval.** A set of examination questions based on the areas listed in subpart 1 must be submitted to the commissioner for approval:

- A. at least 60 calendar days before the examination is held;
- B. before the initial examination is used; and
- C. whenever question content is changed or additional questions are added to the question pool.

Subp. 3. **Availability of examinations.** An examination must be offered at least three times each calendar year.

Subp. 4. **Reporting examination results.** Within 30 calendar days after an examination has been administered, a list of all individuals who have passed the examination and those who have failed the examination must be submitted by the organization administering the examination to the commissioner.

Subp. 5. **Notice to individual.** Written notice to the individual who took the examination on a specific date must be provided by the organization administering the examination within 30 calendar days:

- A. indicating whether the individual passed or failed the examination;
- B. listing the areas in which the individual failed.

Subp. 6. **Examination security.** The identity of an individual taking the examination must be verified by requiring a picture identification at the time the individual takes the examination.

Subp. 7. **Passing level.** The passing level for an examination must be 70 percent.

Subp. 8. **Closed book examination.** An examination must be a closed book examination.

Subp. 9. **Validity standards.** An examination must meet validity standards for educational and psychological testing specified in the American Psychological Association's "Standards for Educational and Psychological Testing" (1986). The "Standards for Educational and Psychological Testing" are incorporated by reference, are not subject to frequent change, and are available at the Minnesota State Law Library.

Subp. 10. **Examination questions.** An examination must:

- A. consist of at least 75 multiple choice questions;
- B. include the highest percent of questions on radiation safety; and
- C. vary and reorder questions each time an examination is held.

Subp. 11. **Examination content.** An examination must adequately address the topic areas listed in subpart 1. Questions for each of the topic areas listed in subpart 1 must include the information specified in items A to D:

**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

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- A. radiation safety, including:
  - (1) the biological effects of radiation:
    - (a) somatic and genetic effects; and
    - (b) long-term and short-term effects;
  - (2) operator protection:
    - (a) patient protection; and
    - (b) gonad and room shielding and the use of lead aprons and gloves;
  - (3) beam restriction methods;
  - (4) personnel monitoring:
    - (a) types of monitors available; and
    - (b) how to wear monitors;
  - (5) dose:
    - (a) maximum permissible dose for patient and operator; and
    - (b) the concept of "as low as reasonably achievable" (ALARA);
  - (6) radiation terminology:
    - (a) meanings; and
    - (b) proper use; and
  - (7) restraint and holding procedures and precautions;
- B. the proper use of X-ray equipment, including:
  - (1) radiographic equipment;
  - (2) the parts of the X-ray machine and X-ray tube;
  - (3) the electronics and physics of X-ray generation;
  - (4) grids and buckys;
  - (5) automatic exposure controls;
  - (6) identification of imaging failures;
  - (7) proper maintenance of X-ray equipment;
  - (8) image production;
  - (9) technique factors:
    - (a) kVp, mA, mAs time and distance;
    - (b) function and interaction of kVp, mA, mAs time; and
    - (c) density, detail, contrast;
  - (10) cassettes and film compatibility; and
  - (11) technique conversion factors;
- C. darkroom and film processing, including:
  - (1) both automatic or manual chemistry;
  - (2) fog;
  - (3) temperature and time relationship;
  - (4) identification of artifacts;
  - (5) handling and storage of film, chemistry, and replenishing;
  - (6) safelights types, wattage, and compatibility with film; and
  - (7) darkroom maintenance;
- D. quality assurance procedures, including:

- (1) the importance of quality assurance procedures;
- (2) how to do quality assurance procedures for sensitometry and densitometry, screen tests, and fog test; and
- (3) what corrective measures are appropriate.

**4730.5200 REQUIREMENTS FOR FACILITIES USING X-RAY EQUIPMENT.**

A registrant in a facility with X-ray equipment used on humans must ensure that:

A. only an individual who has met the requirements in parts 4730.5000 to 4730.5200 or 4730.5400 is allowed to operate X-ray equipment; and

B. on request of the commissioner, written verification that the individual who operates X-ray equipment has met the requirements in parts 4730.5000 to 4730.5200 or 4730.5400 is available for inspection.

**4730.5300 EXEMPTIONS.**

An individual is exempt from the requirements in part 4730.5000 or 4730.5500 if the individual holds a current Minnesota license to practice medicine, chiropractic, podiatric medicine, osteopathic medicine, or dentistry.

**4730.5400 EQUIVALENT EXAMINATIONS.**

Subpart 1. **General.** An individual shall be determined by the commissioner to have met the requirements in parts 4730.5000 to 4730.5200 if the individual has passed any of the examinations listed in this part.

Subp. 2. **Licensed dental hygienist examination.** If an individual has passed the examination for the Minnesota dental hygienist license, the individual shall be determined to have met the requirements in parts 4730.5000 to 4730.5200 if the individual's practice is limited as set forth in part 3100.8700.

Subp. 3. **Registered dental assistant examination.** If an individual has passed the examination for the Minnesota dental assistant registration, the individual shall be determined to have met the requirements in parts 4730.5000 to 4730.5200 if the individual's practice is limited as set forth in part 3100.8500.

Subp. 4. **Limited dental radiographic registration examination.** If an individual has passed the radiographic examination that complies with part 3100.8500, the individual shall be determined to have met the requirements in parts 4730.5000 to 4730.5200 if the individual's practice is limited as set forth in part 3100.8500.

Subp. 5. **Radiologic technologist registration examination.** If an individual has passed the radiography examination of the American Registry of Radiologic Technologists, the individual shall be determined to have met the requirements in parts 4730.5000 to 4730.5200.

Subp. 6. **Chiropractic radiologic technologist registration examination.** If an individual has passed the radiography examination of the American Chiropractic Registry of Radiologic Technologists, the individual shall be determined to have met the requirements in parts 4730.5000 to 4730.5200.

Subp. 7. **Radiologic technologist license from other United States jurisdictions.** If an individual has passed a full or limited license examination in radiography from other United States jurisdictions, the individual may request that the commissioner review the license examination to determine if the license examination is equivalent to the examination described in parts 4730.5000 to 4730.5200. If the examination meets the requirements of part 4730.5100, the individual shall be determined by the commissioner to have met the requirements of part 4730.5000.

Subp. 8. **Other professional registrations.** If an individual has passed a registration examination other than one specified in this part, or an examination not approved under part 4730.5100, the individual may request a determination of equivalency according to the procedures and criteria in parts 4717.7000 to 4717.7050.

**4730.5500 INDIVIDUALS OPERATING X-RAY EQUIPMENT DURING TRAINING.**

An individual participating in a training course for physicians, dentists, chiropractors, podiatrists, radiologic technologists, chiropractic radiologic technologists, dental hygienists, or dental assistants is exempt from the requirements of part 4730.5000 for the duration of the training course.

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## Proposed Rules

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### Department of Human Services

#### Proposed Permanent Rules Relating to Second Medical Opinion

##### DUAL NOTICE

##### 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 Department of Human Services intends to adopt amendments to 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 rule within 30 days or by January 25, 1996 a public hearing will be held on February 12, 1996. To find out whether the rule will be adopted without a hearing or if the hearing will be held, you should contact the agency contact person after January 25, 1996 and before February 12, 1996.

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

Eleanor E. Weber  
Minnesota Department of Human Services  
Rules and Bulletins Section  
444 Lafayette Road  
Saint Paul, Minnesota 55155-3816  
(612) 297-4302  
Fax (612) 297-3173

**Subject of Rule and Statutory Authority.** The rule is about a second medical opinion as a condition to receive medical assistance payment as a provider of surgical procedures to persons eligible for medical assistance, general assistance medical care, and MinnesotaCare. The statutory authority to adopt the rule amendments is *Minnesota Statutes*, sections 256.991, 256.0625, subdivisions 1 and 4a, and 256D.03, subdivision 7 (b). The proposed rule amendments will: 1. remove the time limit on obtaining a second medical opinion; 2. replace the determination of the medical appropriateness of a surgical procedure by a second physician by a review and determination by the medical review agent under contract to the Department; 3. replace an opinion from a third physician by a review and opinion from a physician adviser who is certified or eligible for certification, if required, in the area of specialty that includes the surgical procedure for which a second medical opinion is required and who is under contract to the medical review agent; 4. provide full consideration and reconsideration of denials of authorization numbers for the surgical procedure through the use of second and third physician advisers and a panel of three physician advisers under contract to the medical review agent; 5. require the medical review agent to make determinations of medical appropriateness using persons who are qualified by licensure as professional nurses or physicians; 6. require second medical opinions for the same set of surgical procedures to obtain payment through MinnesotaCare; 7. combine all requirements about second medical opinion in one set of rules, parts 9505.5035 to 9505.5105; and 8. replace the term "second surgical opinion" by "second medical opinion", the term used in the authorizing statutes.

**Copy of the Rule.** A copy of the proposed amendments is published in the *State Register*. A free copy of these rule amendments is available upon request from the agency contact person listed above. A copy of the proposed rule may also be viewed at any of the county welfare or human service agencies in the State of Minnesota.

**Comments.** You have until 4:30 p.m. on January 25, 1996 to submit written comment in support of or in opposition to the proposed rule amendments or any part or subpart of the rule amendments. 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 rule amendments 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 agency contact person by 4:30 p.m. on January 25, 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 rule which caused your request, the reason for the request, and any changes you want made to the proposed rule or state that you oppose the entire 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.

**Accommodation.** If you need an accommodation to make this hearing accessible, please contact the agency person at the address or telephone number listed above.

**Modifications.** The proposed rule amendments 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 rule as 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 rule amendments affect you in any way, you are encouraged to participate in the rulemaking process.

**Cancellation of Hearing.** The hearing scheduled for February 12, 1996 will be canceled if the agency does not receive requests from 25 or more persons that a hearing be held on the rule. 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) 297-4301 after January 25, 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 rule amendments, a hearing will be held following the procedures in *Minnesota Statutes*, sections 14.14 to 14.20. The hearing will be held on February 12, 1996, at the Auditorium, Aeronautics Building, Department of Transportation, 222 East Plato Boulevard, St. Paul, MN 55107 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 Judge Phyllis A. Reha. Judge Reha can be reached at the Office of Administrative Hearings, 100 Washington Square, #1700, 100 Washington Avenue South, Minneapolis, Minnesota 55401-2138; telephone (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 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. Following the comment period, there is a five-working day response period during which the agency and any interested person may respond in writing to any new information submitted. No additional evidence may be submitted during the five-day response period. All written materials and responses submitted to the administrative law judge must be received at the Office of Administrative Hearing no later than 4:30 p.m. on the due date. This rule hearing procedure is governed by *Minnesota Rules*, parts 1400.0200 to 1400.1200 and *Minnesota Statutes*, sections 14.14 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 from the agency contact person. This statement describes the need for and reasonableness of each provision of the proposed rule amendments. It also includes a summary of all the evidence and argument which the agency anticipates presenting at the hearing, if one is held. 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 proposed amendments, the Department considered the requirements of *Minnesota Statutes*, section 14.115 but determined that these rules, as was found in the case of previously adopted medical assistance rules, are exempt from these requirements according to the exemption given in section 14.115, subdivision 7, clauses (2) and (3).

**Expenditure of Public Money by Local Public Bodies.** A copy of the fiscal note is available from the agency contact person at the address and telephone number listed above. The Department estimates that the proposed rule will not result in additional state and local costs.

**Impact on Agriculture Lands.** The Department has determined in the review required under *Minnesota Statutes*, section 14.11, subdivision 2 that the proposed amendments will have no impact on agriculture lands.

**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 1st Floor, Centennial Office Building, 658 Cedar Street, Saint Paul, Minnesota 55155; telephone (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 rule amendments. The rule amendments 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 want to be so notified, or wish to receive a copy of the adopted rule, submit your request to Eleanor Weber at the address listed above.

**Adoption Procedure After the Hearing.** If a hearing is held, after the close of the hearing record, the administrative law judge will issue a report on the proposed rule amendments. You may request to be notified of the date on which the administrative law

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## Proposed Rules

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judge's report will be available, after which date the agency may not take any final action on the rule 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 rule amendments are adopted and filed with the Secretary of State. The agency's notice of adoption must be mailed on the same day that the rule is 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 amended rule with the Secretary of State.

Dated: 6 December 1995

Maria R. Gomez  
Commissioner

### Rules as Proposed

#### 9505.0500 DEFINITIONS.

[For text of subps 1 to 4, see M.R.]

Subp. 4a. [See repealer.]

[For text of subps 5 to 17, see M.R.]

Subp. 18. **Medical review agent.** "Medical review agent" means the representative of the commissioner who is authorized by the commissioner to make decisions about admission certifications, concurrent reviews, continued stay reviews, and retrospective reviews; ~~and second surgical opinions if such opinions are a term of the agent's contract with the department.~~

[For text of subp 19, see M.R.]

Subp. 19a. [See repealer.]

[For text of subps 20 to 26, see M.R.]

Subp. 27. **Retrospective review.** "Retrospective review" means a review conducted after inpatient hospital services are provided to a recipient. The review is focused on validating the diagnostic category and determining the medical necessity of the admission, the medical necessity of any inpatient hospital services provided, ~~the medical appropriateness of a surgical procedure requiring a second opinion;~~ and whether all medically necessary inpatient hospital services were provided.

Subp. 28. [See repealer.]

[For text of subp 29, see M.R.]

#### 9505.0520 INPATIENT ADMISSION CERTIFICATION.

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

Subp. 3. **Admitting physician responsibilities.** The admitting physician who seeks medical assistance or general assistance medical care program payment for an inpatient hospital service to be provided to a recipient shall:

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

B. Request admission certification by contacting the medical review agent either by ~~phone~~ telephone or in writing and providing the information in subitems (1) to ~~(9)~~ (8):

[For text of subitems (1) to (7), see M.R.]

(8) information from the plan of care and the reason for admission as necessary for the medical review agent to determine if admission is medically necessary ~~or the procedure requiring a second surgical opinion is medically appropriate; or~~

~~(9) when applicable, information needed to prove that a procedure requiring a second surgical opinion meets the criteria for exemption from the requirement.~~

C. Provide the following information when applicable:

~~(1) surgeon's name and medical assistance provider number;~~

~~(2) expected date of surgery;~~

~~(3) affirmation that prior authorization has been received;~~

~~(4) affirmation that a procedure requiring a second surgical opinion that was denied by the medical review agent has been approved by a third physician; and~~

~~(5) when requested by the medical review agent, documentation that the procedure requiring a second surgical opinion meets the criteria for exemption from the requirement.~~

~~D.~~ Inform the hospital of the certification number.

~~E.~~ Provide the hospital documentation necessary for the verification required in subpart 4, item ~~D~~.

~~F. D.~~ For purposes of billing, enter the certification number, and any required prior authorization number, and second surgical opinion authorization number on invoices submitted to the department for payment.

Subp. 4. **Hospital responsibilities.** A hospital that seeks medical assistance or general assistance medical care payment for inpatient hospital services provided to a recipient shall:

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

B. Within 48 hours after the occurrence of an event described in subitem (1) ~~or (2)~~, and within 72 hours of the event described in subitem ~~(3)~~ (2), excluding weekends and holidays, inform, by ~~phone~~ telephone, the medical review agent of the event and provide the information required in subpart 3, ~~items item B and C~~, if applicable.

(1) An admission that is an emergency admission as specified in subpart 2.

(2) ~~A surgical procedure requiring a second surgical opinion that meets the requirements of part 9505.5040, item B or C, for exemption from the second opinion.~~

~~(3)~~ The admission of a pregnant woman that does not result in the delivery of a newborn or a stillbirth within 24 hours of her admission, as specified in subpart 2, item B.

For purposes of this subitem, the time limit for notifying the medical review agent is calculated beginning with the time of the admission of the pregnant woman.

If the hospital fails to notify the medical review agent within the required time limit, the hospital shall submit, at its own expense, a copy of the complete medical record to the medical review agent within 30 days after the recipient's discharge. Failure to submit the record within the 30 days shall result in denial of the certification number.

C. For billing purposes, enter the certification number and any required prior authorization number and second surgical opinion authorization number on all invoices submitted to the department for payment.

~~D.~~ Within 20 days, exclusive of weekends and holidays, of the date of a written request by the medical review agent, obtain and submit to the medical review agent an admitting physician's verification that a procedure requiring a second surgical opinion has been approved by a third physician. The verification must include at least the signed form required by the department to approve a procedure requiring a second surgical opinion.

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

Subp. 6. **Medical review agent responsibilities.** The medical review agent shall:

A. obtain and review the information required in subpart 3, ~~items item B and C~~, if applicable;

B. determine within 24 hours of receipt of the information, exclusive of weekends and holidays, whether admission is medically necessary, ~~whether a surgical procedure requires a second surgical opinion or is exempt from the requirement, and whether a procedure requiring a second surgical opinion meets the criteria of appropriateness established in part 9505.0540 or requires the approval of a third physician;~~

C. inform the admitting physician and the hospital of the determination, by ~~phone~~ telephone, within 24 hours of receipt of the information, exclusive of weekends and holidays;

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

E. determine if admission of a retroactively eligible recipient was medically necessary and if the surgical procedure requiring a second opinion was medically appropriate;

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

G. provide for a reconsideration of a denial or withdrawal of admission certification, and of an authorization number denied or withdrawn under subpart 8, item C;

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

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## Proposed Rules

I. notify the admitting physician and the person responsible for the hospital's utilization review, by ~~phone~~ telephone, of a reconsideration decision within 24 hours of the decision, exclusive of weekends and holidays;

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

[For text of subp 7, see M.R.]

Subp. 8. **Procedure for admission certification ~~or authorization of surgical procedure requiring a second surgical opinion~~.** The procedure for admission certification ~~or authorization of a surgical procedure requiring a second surgical opinion~~ shall be as in items A to H.

A. Upon receipt of the information requested in subpart 3, ~~items~~ item B and C, if applicable, the clinical evaluator shall review the information and determine whether the admission is medically necessary ~~or whether a procedure requiring a second surgical opinion is appropriate or meets the criteria for exemption from the requirement~~.

B. If the clinical evaluator determines that ~~one of the conditions in item A exists~~ the admission is medically necessary, the medical review agent shall issue a certification ~~or authorization~~ number.

C. If the clinical evaluator determines that a procedure requiring a second surgical opinion does not meet the criteria for exemption under part 9505.5040, except items B, C, and F, the medical review agent shall notify the admitting physician by phone and mail the admitting physician and the recipient a written notice within 20 days of the determination. If the exemption is denied, the recipient who wants the surgery may obtain a second or third surgical opinion. Exemptions from the second surgical opinion under part 9505.5040, items B and C, shall be subject to subpart 4, item B. Exemptions from the second surgical opinion under part 9505.5040, item F, shall be subject to part 9505.5096, subpart 4. If the medical review agent determines that the procedure requiring a second surgical opinion was not entitled to an exemption or that the surgical procedure was not medically appropriate under part 9505.5040, items B, C, and F, the medical review agent shall not issue or shall withdraw the authorization number and notify the admitting physician and the hospital of denial of the authorization number. The notice shall be in writing, mailed by certified letter within 20 days of the determination, and shall state that the admitting physician or the hospital may request reconsideration of the denial under subpart 9 or may directly appeal the denial under *Minnesota Statutes*, chapter 14.

~~D.~~ If the clinical evaluator is unable to determine that the admission is medically necessary ~~or that a procedure requiring a second surgical opinion is appropriate~~, the evaluator shall contact a physician adviser.

~~E.~~ D. If the physician adviser determines that the admission is medically necessary ~~or that a procedure requiring a second surgical opinion is appropriate~~, the medical review agent shall issue a certification ~~or authorization~~ number.

~~F.~~ E. If the physician adviser is unable to determine that the admission is medically necessary ~~or that a procedure requiring a second surgical opinion is appropriate~~, the physician adviser shall notify the clinical evaluator by phone telephone, the clinical evaluator shall notify the admitting physician by phone telephone, and the admitting physician may request a second physician adviser's opinion, ~~except in the case of a procedure requiring a second surgical opinion. In this case, the medical review agent shall notify the admitting physician that the recipient may obtain the opinion of a third physician as provided in parts 9505.5050 to 9505.5105.~~

~~G.~~ E. If the admitting physician does not request a second physician adviser's opinion, the medical review agent shall deny the admission certification, shall not issue a certification number, and shall notify the admitting physician, the hospital, and the recipient of the denial. The notice to the recipient shall be in writing and shall state the reasons for the denial and the recipient's right to appeal under *Minnesota Statutes*, section 256.045, and part 9505.0522. The notices to the admitting physician and the hospital shall be in writing, shall state the reasons for the denial, and shall state that the admitting physician or the hospital may request reconsideration of the denial under subpart 9 or may directly appeal the denial under *Minnesota Statutes*, chapter 14.

If the admitting physician requests a second physician adviser's opinion about an admission, the clinical evaluator shall contact a second physician adviser.

~~H.~~ G. If the second physician adviser determines that the admission is medically necessary, the medical review agent shall issue a certification number.

~~I.~~ H. If the second physician adviser is unable to determine that the admission is medically necessary, the medical review agent shall deny the admission certification, shall not issue a certification number, and shall notify the admitting physician, the hospital, and the recipient of the denial. The notice to the recipient shall be in writing and shall state the reasons for the denial and the recipient's right to appeal under *Minnesota Statutes*, section 256.045, and part 9505.0522. The notices to the admitting physician and the hospital shall be in writing and shall state the reasons for the denial and shall state that the admitting physician or the hospital may request reconsideration of the denial under subpart 9 or may directly appeal the denial under *Minnesota Statutes*, chapter 14.

Subp. 9. **Reconsideration.** The admitting physician or the hospital may request reconsideration of a decision to deny or with-

draw an admission certification ~~or an authorization number~~ under subpart 8, item ~~E~~ F or subpart 11. The admitting physician or the hospital shall submit the request in writing to the medical review agent together with the recipient's medical record and any additional information within 30 days of the date of receipt of the certified letter denying or withdrawing admission certification ~~or the authorization number~~. Upon receipt of the request, the medical record, and any additional information, the medical review agent shall appoint at least three physician advisers, none of whom shall have been involved previously in the procedure for the recipient's admission certification ~~or authorization number~~, to hear the reconsideration. The reconsideration may be conducted by means of a telephone conference call. The physician advisers may seek additional facts and medical advice as necessary to decide whether the admission is medically necessary ~~or whether the surgical procedure requiring a second surgical opinion meets the criteria of exemption or is medically appropriate under part 9505.5040, items B, C, and F~~. The reconsideration shall be completed within 45 days of the receipt of the information necessary to complete the reconsideration. The outcome of the reconsideration shall be the one chosen by the majority of the physician advisers appointed to consider the request. The admitting physician or the hospital may appeal the determination of the physician advisers according to the contested case provisions of *Minnesota Statutes*, chapter 14, by filing a written notice of appeal with the commissioner within 30 days of the date of receipt of the certified letter upholding the denial or withdrawal of admission certification ~~or authorization number~~. However, an admitting physician or hospital that does not request reconsideration or appeal under the contested case procedures of *Minnesota Statutes*, chapter 14, within 30 days after the denial or withdrawal of admission certification ~~or authorization number~~ is not entitled to an appeal under *Minnesota Statutes*, chapter 14.

[For text of subp 9a, see M.R.]

**Subp. 10. Medical record review and determination.** As specified in the contract between the department and the medical review agent, upon the request of the department, or upon the initiative of the medical review agent, the medical review agent shall conduct a concurrent, continued stay, or retrospective review of a recipient's medical record to validate the diagnostic category and to determine whether the admission was medically necessary, whether the inpatient hospital services were medically necessary, whether a continued stay will be medically necessary, whether all medically necessary services were provided, ~~or whether a surgical procedure requiring a second opinion was medically appropriate~~. The procedure for concurrent, continued stay, and retrospective reviews shall be as in items A to ~~E~~ F.

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

~~F. If the medical review agent conducting a retrospective review finds the recipient's medical record is inadequate to justify that a surgical procedure requiring a second opinion is medically appropriate, or that an exemption under part 9505.5040 was appropriate, the medical review agent may request a hospital to submit, at the hospital's expense, documentation substantiating the opinion of the third physician that the surgical procedure was medically appropriate, or that the exemption under part 9505.5040 was appropriate. The hospital shall submit the documentation within 20 days, exclusive of weekends and holidays, of the date of the notice requesting the documentation.~~

~~G.~~ If the clinical evaluator is unable to determine from the documentation in the recipient's medical records the reasons for the recipient's discharge and readmission, the clinical evaluator shall submit the medical records of the recipient's discharge and readmission to a physician adviser. The physician adviser shall review the records and determine the nature of the discharge and readmission according to the criteria in part 9505.0540, subparts 3 to 5, and if the determination of the medical review agent is different from that of the admitting physician or hospital, then the medical review agent shall notify the admitting physician or hospital by certified letter mailed within five days, exclusive of weekends and holidays, of the determination. The notice shall state the right of the admitting physician and hospital to request a reconsideration under subpart 9.

**Subp. 11. Consequences of withdrawal of admission certification ~~or authorization number~~; general.** The department or the medical review agent shall withdraw the certification number ~~or authorization number~~ and may take action as specified in items A to ~~F~~ E if the medical review agent determines any of the following: (1) that the admission was not medically necessary; (2) that all medically necessary inpatient hospital services were not provided; (3) that some or all of the inpatient hospital services were not medically necessary; ~~or~~ (4) that within 20 days, exclusive of weekends and holidays, the hospital has failed to comply with the department's or the medical review agent's request to submit the medical record or other required information to support that the admission was medically necessary, that all medically necessary inpatient hospital services were provided, or that some or all of the inpatient hospital services provided were medically necessary; ~~or~~ that the information submitted by the hospital was inadequate to support that the admission was medically necessary, that all medically necessary inpatient hospital services were provided, or that

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some or all of the inpatient hospital services provided were medically necessary; (5) that documentation submitted by the hospital at the request of the department or the medical review agent does not support that the surgical procedure was medically appropriate, or that the exemption under part 9505.5040 was appropriate; or (6) that within 20 days, exclusive of weekends and holidays, the hospital has failed to comply with the medical review agent's request to submit documentation to substantiate the opinion of a third physician that the surgical procedure was medically appropriate, or that the exemption under part 9505.5040 was appropriate.

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

E. If within 20 days, exclusive of weekends and holidays, the hospital failed to comply with the department's or the medical review agent's request to submit the medical record or other required information to support (1) that the admission was medically necessary; (2) that all medically necessary inpatient hospital services were provided; or (3) that some or all of the inpatient hospital services provided were medically necessary; or, if the information submitted by the hospital was inadequate to support clauses (1) to (3) of this item, all or part of the payment shall be denied or recovered as provided in items A to D.

F. If the documentation does not support that the surgical procedure was medically appropriate or that the exemption under part 9505.5040 was appropriate, or if the hospital failed to comply with the medical review agent's request to submit documentation to substantiate the opinion of the third physician that the surgical procedure was medically appropriate or that the exemption under part 9505.5040 was appropriate, payment for the surgical procedure shall be denied or recovered from the hospital, admitting physician, or other vendors as provided in subpart 15.

Subp. 12. **Reconsideration of denial or withdrawal of admission certification or authorization number.** The denial or withdrawal of admission certification or authorization number may be reconsidered under subpart 9.

[For text of subp 13, see M.R.]

Subp. 14. **Retroactive admission certification.** If the admitting physician fails to request admission certification by contacting the medical review agent prior to an admission for an inpatient hospital service other than a service under subpart 2, the admitting physician may retroactively request admission certification. The admitting physician shall submit at his or her own expense the recipient's complete medical record to the medical review agent within 30 days of the recipient's discharge. The medical record must contain the information required in subpart 3, items ~~item~~ B and C, and any other facts necessary to establish that the recipient's admission was medically necessary. The procedure outlined in subpart 8 shall also be followed in the case of retroactive admission certification. The denial of retroactive admission certification and the withdrawal of retroactive admission certification may be appealed to the medical review agent through the reconsideration process in subpart 9.

Subp. 15. **Recovery of payment after withdrawal of admission certification or denial of authorization of second surgical procedure number.** An admitting physician or hospital that receives a notice of withdrawal of a certification number or authorization number and that does not request reconsideration under subpart 9 or appeal under *Minnesota Statutes*, chapter 14, shall be subject to recovery of payment without further notice or right to appeal. If a reconsideration results in the denial or withdrawal of a certification number or authorization number, and the admitting physician or hospital does not appeal within the time permitted pursuant to other remedies, the department shall recover payment without further notice to the admitting physician and hospital. If an appeal results in the denial or withdrawal of a certification number or authorization number, the department shall recover the payment without further notice to the admitting physician and the hospital.

Recovery of overpayments may be made by:

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

### 9505.0521 PROHIBITION OF RECOVERY FROM RECIPIENT.

The provider may not seek payment from the recipient for inpatient hospital services provided under parts 9505.0500 to 9505.0540 if the certification or authorization number is not issued or is withdrawn.

### 9505.0522 RECIPIENT'S RIGHT TO APPEAL.

A recipient who is denied inpatient hospital services because of the medical review agent's determination that the services are not medically necessary or who is denied a surgical procedure requiring a second surgical opinion because of the medical review agent's determination that the surgical procedure is not appropriate, may appeal the medical review agent's determination under *Minnesota Statutes*, section 256.045.

### 9505.0540 CRITERIA TO DETERMINE MEDICAL NECESSITY OR APPROPRIATENESS.

Subpart 1. **Determination for admission for purpose other than chemical dependency treatment.** The medical review agent shall follow the Appropriateness Evaluation Protocol and Criteria for Inpatient Psychiatric Treatment of Blue Cross and Blue Shield of Minnesota in determining whether a recipient's admission is medically necessary, whether the inpatient hospital services provided to the recipient were medically necessary, whether the recipient's continued stay will be medically necessary, and whether all medically necessary inpatient hospital services were provided to the recipient.

In determining whether a surgical procedure requiring a second surgical opinion is medically appropriate, the medical review agent shall follow the criteria published in the *State Register* pursuant to *Minnesota Statutes*, section 256B.0625, subdivision 24.

[For text of subs 2 to 6, see M.R.]

### 9505.5005 DEFINITIONS.

[For text of subs 1 to 11, see M.R.]

Subp. 12. **Medical assistance or MA.** "Medical assistance" or "MA" means the Medicaid program established by title XIX of the Social Security Act and *Minnesota Statutes*, chapter 256B. For purposes of parts 9505.5035 to 9505.5105, medical assistance also refers to general assistance medical care and MinnesotaCare unless otherwise specified.

Subp. 12a. **Medical appropriateness or medically appropriate.** "Medical appropriateness" or "medically appropriate" refers to a determination, by a medical review agent ~~of the department~~, that the recipient's need for a surgical procedure requiring a second surgical medical opinion meets the criteria in ~~part 9505.0540~~ or that a second or third surgical opinion has substantiated the need for the procedure *Minnesota Statutes*, section 256B.0625, subdivisions ~~1, 4a, and 24~~.

Subp. 12b. **Medical review agent.** "Medical review agent" means the representative of the ~~department~~ commissioner who is authorized in ~~parts 9505.0500 to 9505.0540 to determine the medical appropriateness of procedures requiring by the commissioner to make decisions about second surgical~~ medical opinions under parts 9505.5035 to 9505.5100.

[For text of subs 13 and 13a, see M.R.]

Subp. 14. **Physician.** "Physician" means a person licensed to provide services within the scope of his or her profession as defined in *Minnesota Statutes*, chapter 147. For purposes of the second surgical medical opinion requirement in parts 9505.5035 to ~~9505.5100~~ 9505.5105, "physician" shall also mean:

A. a person licensed to provide dental services within the scope of his or her profession as defined in *Minnesota Statutes*, section 150A.06, subdivision 1; ~~or~~

B. a person who is qualified to render an opinion regarding the surgical procedure as evidenced by his or her certification or eligibility for certification from the appropriate specialty board if, according to the community standard, such certification or eligibility for certification is required of persons performing the surgical procedure in question.

Subp. 14a. **Physician adviser.** "Physician adviser" means a physician who is qualified to render an opinion about the surgical procedure as evidenced by the physician's certification or eligibility for certification from the appropriate specialty board if, according to the community standard, the certification or eligibility for certification is required of physicians performing the surgical procedure.

Subp. 14b. **Recipient ID number.** "Recipient ID number" means the unique 8-digit identification number assigned to a recipient who has been determined eligible for MA, GAMC, or MinnesotaCare.

[For text of subs 15 to 17, see M.R.]

Subp. 17a. **Reconsideration.** "Reconsideration" means a review, as set forth in part 9505.5078, of a second physician adviser's opinion that a surgical procedure is not medically appropriate.

[For text of subp 18, see M.R.]

Subp. 18a. **Second opinion or second surgical medical opinion.** "Second opinion" or "second surgical medical opinion" means the determination by the medical review agent under ~~part 9505.5050, subpart 1, or by a second physician under part 9505.5050, subpart 2, parts 9505.5035 to 9505.5105~~ that a surgical procedure requiring a second surgical medical opinion is or is not medically appropriate.

Subp. 18b. [See repealer.]

[For text of subp 19, see M.R.]

### 9505.5035 SURGICAL PROCEDURES REQUIRING SECOND MEDICAL OPINION.

Subpart 1. **General requirements.** ~~Except as provided in part 9505.5040, Second surgical medical opinions shall be required for medical assistance and, general assistance medical care, and MinnesotaCare recipients for inpatient and outpatient elective surgical procedures according to the list published in the *State Register* under *Minnesota Statutes*, section 256B.0625, subdivisions 1~~

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and 4, 4a, and 24. Publication shall occur in the last issue of the *State Register* for the month of October if there has been a revision in the list since the last October. In addition, the department shall publish any revision of the list at least 45 days before the effective date if the revision imposes a second surgical medical opinion requirement. The department shall send each provider a copy of the published list or a revision of the published list.

Subp. 2. **Requirements prior to eligibility determination.** The requirements of parts 9505.5035 to ~~9505.5100~~ 9505.5105 shall apply to individuals who have applied for MA or GAMC, but whose applications have not yet been approved or denied at the time the surgical procedure is performed.

### **9505.5041 SURGICAL PROCEDURE ELIGIBLE FOR MEDICARE PAYMENT.**

A provider who performs a surgical service requiring a second medical opinion on a recipient eligible for Medicare must bill Medicare as specified in part 9505.0440. If Medicare denies payment or makes a partial payment for the service, the provider may request the medical review agent to issue an authorization number for medical assistance billing purposes. The provider's claim for medical assistance payment must comply with part 9505.0440 and the time limit specified in part 9505.0450, subpart 4, item A.

### **9505.5045 CRITERIA TO DETERMINE WHEN SECOND MEDICAL OPINION IS REQUIRED.**

The commissioner shall use the criteria in items A to E D to determine which surgical procedures shall be subject to the second surgical medical opinion requirement.

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

E. The surgical procedure has at least a five percent rate of failure to obtain the requisite two physician's approvals, as determined by the Minnesota Medical Assistance Second Surgical Opinion Program or a similar second surgical opinion program.

### **9505.5046 CRITERIA TO DETERMINE MEDICAL APPROPRIATENESS.**

The criteria and standards to determine the medical appropriateness of a surgical procedure for which a second medical opinion is required shall be as required in Minnesota Statutes, section 256B.0625, subdivisions 1, 4a, and 24.

### **9505.5075 PHYSICIAN RESPONSIBILITY.**

The physician who provides a second or third opinion shall indicate his or her approval or disapproval of the requested surgical procedure, on a form supplied by the department. The completed form shall contain all the information considered necessary by the commissioner to substantiate the second opinion, shall be personally signed by each physician providing an opinion, and shall be attached to a completed and signed prior authorization form. The completed form must be returned to the physician offering to provide the surgical service and must be retained and made available, for at least five years, by the physician to the department as provided in part 9505.5080, or, on request, to a medical review agent under contract to the department. When a surgical procedure is subject to a second medical opinion, the physician offering to provide the surgical procedure must contact the medical review agent for a determination of whether the surgical procedure is medically appropriate. The physician must request the determination of whether the surgical service is medically appropriate before submitting a claim for medical assistance payment. The claim for payment must have the authorization number given by the medical review agent and must comply with the requirements of part 9505.0450.

The physician must give the medical review agent the following information by telephone:

A. the recipient's name, ID number, and date of birth;

B. the admitting physician's name and provider number;

C. the primary procedure code according to the most recent edition of Physicians' Current Procedural Terminology published by the American Medical Association or the International Classification of Diseases — Clinical Modification, published by the Commission on Professional and Hospital Activities, Green Road, Ann Arbor, Michigan 48105, which is incorporated by reference and available through the Minitex interlibrary loan system and is subject to change;

D. the expected date of the surgical procedure;

E. the recipient's diagnosis by diagnostic code according to the most recent edition of the International Classification of Diseases — Clinical Modification;

F. information from the recipient's medical record sufficient to enable the medical review agent to determine if the surgical procedure meets the criteria in part 9505.5046;

G. whether the surgical procedure is in response to an emergency;

H. whether the surgical procedure is a consequence of, or a customary and accepted practice incident to, a more major surgical procedure; and

I. the name and provider number of the inpatient or outpatient hospital where the surgical procedure was or will be performed.

**9505.5076 MEDICAL REVIEW AGENT DETERMINATION.**

**Subpart 1. Qualified staff.** The medical review agent shall provide professional and technical expertise to conduct the second medical opinion program for medical assistance, general assistance medical care, and the MinnesotaCare programs. Unless otherwise specified in parts 9505.5035 to 9505.5100, the professional and technical expertise shall consist of persons who are physicians or who are registered nurses licensed under Minnesota Statutes, sections 148.171 to 148.285, to practice professional nursing and qualified by training and experience to review the appropriateness of surgical procedures.

**Subp. 2. Medical review agent's determination upon receipt of required information.** The medical review agent must obtain and review the information required from the physician under part 9505.5075. If the medical review agent determines that the requested surgical procedure is medically appropriate, the medical review agent shall certify that the requirements of parts 9505.5035 to 9505.5105 are met and shall issue an authorization number. If the medical review agent determines that the requested surgical procedure is not medically appropriate, the medical review agent shall deny an authorization number. In either event, within 24 hours of receipt of the required information, exclusive of weekends and holidays, the medical review agent shall provide the notices required under part 9505.5082.

**Subp. 3. Medical review agent unable to determine medical appropriateness.** If the medical review agent is unable to determine if a surgical procedure requiring a second opinion is medically appropriate, the medical review agent shall consult a physician adviser as specified in part 9505.5077.

**Subp. 4. Retrospective review of medical record.** The medical review agent may conduct an on-site retrospective review of a recipient's inpatient hospital records on a surgical procedure to obtain information needed to make or verify a determination of medical appropriateness. If, after the review of the medical records, the medical review agent determines that the surgical procedure was not medically appropriate, the medical review agent shall deny an authorization number or, if an authorization number was issued, withdraw the authorization number. Upon completing the review, the medical review agent shall notify the physician as specified in part 9505.5082.

**9505.5077 DETERMINATION BY PHYSICIAN ADVISER.**

**Subpart 1. Physician adviser opinion.** Upon the request of an admitting physician or the medical review agent according to part 9505.5076, subpart 3, a physician adviser shall determine if a surgical procedure requiring a second medical opinion is medically appropriate. If the physician adviser determines that the surgical procedure requiring a second opinion is medically appropriate, the medical review agent shall issue an authorization number and notify the admitting physician and the recipient of the determination. If the physician adviser determines that the surgical procedure requiring a second opinion is not medically appropriate, the medical review agent shall deny an authorization number and notify the admitting physician and the recipient according to part 9505.5082. If the physician adviser is unable to determine if the surgical procedure is medically appropriate, the medical review agent shall notify the admitting physician by telephone, and the admitting physician may request a second physician adviser's opinion. If the admitting physician does not request a second physician adviser's opinion, the medical review agent shall deny the authorization number and shall notify the admitting physician and the recipient of the denial according to part 9505.5082.

**Subp. 2. Second physician adviser's opinion.** If the admitting physician requests a second physician adviser's opinion under subpart 1, the medical review agent shall contact a second physician adviser. If the second physician adviser determines that the surgical procedure requiring a second medical opinion is medically appropriate, the medical review agent shall issue an authorization number. If the second physician adviser is unable to determine if the surgical procedure is medically appropriate, or determines that the procedure is not medically appropriate, the medical review agent shall deny an authorization number and notify the recipient and the admitting physician of the denial under part 9505.5082.

**9505.5078 RECONSIDERATION.**

**Subpart 1. Reconsideration requested by physician.** If a second physician adviser determines a surgical procedure is not medically appropriate, an admitting physician requesting the second medical opinion may request reconsideration. The admitting physician who wants reconsideration must submit a written request to the medical review agent within 30 days of the date of receipt of the notice in part 9505.5077. The request must have the recipient's name and health care program identification number, the disputed surgery, the reason for the dispute, the medical record or part of the medical record needed to make a determination of medical appropriateness, any other relevant information, and the name, address, and telephone number of the physician.

**Subp. 2. Reconsideration; three physician advisers.** Upon receipt of a reconsideration requested under subpart 1, the medical

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review agent shall appoint at least three physician advisers who did not take part in the determination leading to a denial of an authorization number. Each physician adviser shall determine the medical appropriateness of the surgical procedure. The reconsideration decision shall be the opinion of the majority of the physician advisers. The reconsideration must be completed within 60 days of the receipt of the information required under subpart 1.

Subp. 3. Reconsideration; medical review agent. Upon completion of the reconsideration, the medical review agent shall notify the admitting physician by telephone within 24 hours of the decision, exclusive of weekends and holidays. Additionally, the medical review agent shall send, by certified mail, the admitting physician and the recipient the written notices required under part 9505.5082 no later than ten days following the decision, exclusive of weekends and holidays. The notice to the recipient must state the right of the recipient to appeal under part 9505.5105 and Minnesota Statutes, section 256.045. If the admitting physician has already performed the surgery, the notice to the admitting physician must state the right of the admitting physician to appeal under the contested case procedure under Minnesota Statutes, chapter 14.

### **9505.5079 INELIGIBILITY TO SERVE AS PHYSICIAN ADVISER.**

A physician shall not be eligible to serve as a physician adviser if:

- A. the physician is the admitting physician or the physician who will provide the surgical procedure;
- B. during the previous 12 months, the physician issued treatment orders or participated in the formulation or execution of the treatment plan for the recipient for whose surgical procedure a determination of medical appropriateness is required;
- C. the physician or the physician's spouse, child, grandchild, parent, or grandparent has an ownership interest of five percent or more in the hospital where the surgery was or will be performed; or
- D. the physician can obtain a financial benefit from the performance of the surgical procedure on the recipient.

### **9505.5080 FAILURE TO OBTAIN REQUIRED OPINIONS.**

Subpart 1. Opinion of medical review agent. Failure of the physician who offers to provide a surgical procedure requiring a second opinion to obtain a required surgical second medical opinion from the medical review agent shall result in denial of reimbursement payment for all costs, direct and indirect, associated with the surgery, including costs attributable to other providers and hospitals.

Subp. 2. [See repealer.]

Subp. 3. [See repealer.]

### **9505.5082 NOTICE ABOUT DETERMINATION OF MEDICAL APPROPRIATENESS.**

Subpart 1. Notice approving authorization number. If a surgical procedure requiring a second medical opinion is determined to be medically appropriate and the medical review agent issues an authorization number for the surgical procedure, the medical review agent must inform, by telephone, the physician requesting the procedure and mail the recipient and the physician a notice of the determination within 24 hours of the determination, exclusive of weekends and holidays.

Subp. 2. Notice denying authorization number. If a surgical procedure requiring a second medical opinion is determined not to be medically appropriate or a decision about whether the surgical procedure is medically appropriate cannot be reached, the medical review agent shall deny an authorization number for the surgical procedure and notify by telephone within 24 hours of the denial the physician requesting the procedure. Additionally, the medical review agent must mail written notices as specified in items A to D within 24 hours of the denial or failure to reach a decision, exclusive of weekends and holidays.

A. A notice to a recipient must state that the recipient may appeal the denial of the service under part 9505.5105 and Minnesota Statutes, section 256.045.

B. A notice to a physician must state the reason for the denial of the authorization number. Additionally, the notice must state that, as appropriate, the physician may request the opinion of a physician adviser under part 9505.5077, subpart 1, a second physician adviser under part 9505.5077, subpart 2, or a reconsideration under part 9505.5078. The notice must also state that the admitting physician who requests the opinion of a physician adviser or a second physician adviser, as appropriate, may submit additional information to document the medical appropriateness of the surgical procedure.

C. If on reconsideration a determination is made that the surgical procedure is not medically appropriate, notice to the physician must state the reason for the denial and must state that if the surgery has already been provided, the physician may appeal the denial under the contested case procedure under Minnesota Statutes, chapter 14, unless another procedure is required by statute. The notice must also state that the physician who appeals may submit additional information to document the medical appropriateness of the surgical procedure.

D. If the medical review agent withdraws an authorization number under part 9505.5076, subpart 3, the notice must state the reason for the withdrawal and must state that the physician may request the opinion of a physician adviser under part 9505.5077.

**9505.5085 PROHIBITION OF PAYMENT REQUEST.**

A physician, hospital, or other provider who is denied ~~reimbursement payment~~ because of failure to comply with parts 9505.5035 to ~~9505.5100~~ 9505.5105 shall not seek payment from the recipient of the service and the recipient shall not be liable for payment for the service for which ~~reimbursement payment~~ was denied.

**9505.5105 FAIR HEARINGS AND APPEALS.**

Subpart 1. **Appealable actions.** A recipient may appeal any of the following department actions:

A. the department has failed to act with reasonable promptness on a request for prior authorization as established under ~~parts 9505.5000 to 9505.5030~~ part 9505.5020, subpart 1, or the medical review agent has failed to act on an authorization request under the second ~~surgical~~ medical opinion program, as ~~established under part 9505.5090~~ within the time specified in parts 9505.5035 to 9505.5091;

B. the department has denied a request for prior authorization under ~~parts 9505.5000 to 9505.5030~~ part 9505.5020, subpart 1;

C. the ~~department~~ medical review agent has denied an authorization request under the second ~~surgical~~ medical opinion program subsequent to a reconsideration conducted according to part 9505.5078; or

D. the department has proposed a reduction in service as an alternative to authorization of a proposed service for which prior authorization under ~~parts 9505.5000 to 9505.5030~~ part 9505.5020, subpart 1, was requested.

Subp. 2. **No right to appeal.** The right to appeal shall not apply to the list of surgical procedures established according to *Minnesota Statutes, sections 256B.02, subdivision 8 and section 256B.0625, subdivisions 1, 4a, and 24.*

Subp. 3. **Request for fair hearing.** When a recipient requests assistance from a local agency in filing an appeal with the department, the local agency shall provide the assistance.

The request for a hearing must be submitted in writing by the recipient to the appeals unit of the department. The request must be filed either:

A. within 30 days of the date notice of denial of the request for prior authorization under ~~parts 9505.5000 to 9505.5030~~ part 9505.5020, subpart 1, or request for authorization of a surgical procedure was received; or

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

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

**RENUMBERER.** *Minnesota Rules, part 9505.5060, is renumbered as 9505.5091.*

**REPEALER.** *Minnesota Rules, parts 9505.0500, subparts 4a, 19a, and 28; 9505.5005, subpart 18b; 9505.5040; 9505.5050; 9505.5055; 9505.5065; 9505.5070; 9505.5080, subparts 2 and 3; 9505.5090; 9505.5096; and 9505.5100, are repealed.*

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# Department of Human Services

## Proposed Permanent Rules Relating to Mental Health Center and Mental Health Clinic Standards

### Notice of Intent to Adopt a Rule Without a Public Hearing

The Department of Human Services intends to adopt amendments to a permanent rule 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 rule and may also submit a written request that a hearing be held on the rule.

**Agency Contact Person.** Comments or questions on the rule amendments and written requests for a public hearing on the rule must be submitted to: Robert Klukas, Minnesota Department of Human Services, 444 Lafayette Rd., St. Paul, MN 55155-3816, telephone (612) 296-2794, fax number (612) 297-3173.

**Subject of Rule and Statutory Authority.** The rule and the proposed amendments are about the Department's standards for approval of mental health centers and mental health clinics for purposes of insurance and subscriber contract reimbursement. The statutory authority to adopt this rule is contained in *Minnesota Statutes*, section 245.69, subdivision 2, which permits the Department to promulgate and amend rules to require applicants to pay a fee which will recover the cost of applying to the commissioner for approval and determining compliance with the rules and *Minnesota Statutes*, section 245.69, subdivision 2. A copy of the proposed rule amendments is published in the *State Register* and attached to this notice as mailed.

**Comments.** You have until 4:30 p.m., January 26, 1996, to submit written comment in support of or in opposition to the proposed rule amendments or any part or subpart of the rule amendments. 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 rule amendments 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 amendments. 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 26, 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 amendments which caused your request, the reason for the request, and any changes you want made to the proposed rule amendments. 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 agency will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20.

**Modifications.** The proposed rule amendments may be modified as a result of public comment. The modifications must be supported by data and views submitted to the agency and may not result in a substantial change in the proposed rule amendments as attached and printed in the *State Register*. If the proposed rule amendments 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 from the agency contact person. This statement describes the need for and reasonableness of each provision of the proposed rule amendments and identifies the data and information relied upon to support the proposed rule.

**Small Business Considerations.** *Minnesota Statutes*, section 14.115, subdivision 2, requires the Department to consider specific methods for reducing the impact of the proposed rules on small businesses. However, *Minnesota Statutes*, section 14.115, subdivision 7, paragraph (3), provides that this rulemaking procedure is excepted from this requirement because the rule covers, "service businesses regulated by government bodies, for standards and cost," which would include providing medical care, including mental health treatment through mental health clinics or mental health centers under this rule.

**Expenditure of Public Money by Local Public Bodies.** Because the proposed rule amendments do not require the expenditure of added public money by local public bodies, *Minnesota Statutes*, section 14.11, subdivision 1, is not applicable.

**Impact on Agriculture Lands.** Because the proposed rule amendments do have a direct and substantial adverse impact on agriculture land in Minnesota, *Minnesota Statutes*, section 14.11, subdivision 2, is not applicable.

**Adoption and Review of Rule.** If no hearing is required, after the end of the comment period the agency may adopt the rule amendments. The rule amendments 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 amendments are submitted to the Attorney General or be notified of the Attorney General's decision on the rule amendments. If you wish to be so notified, or wish to receive a copy of the adopted rule amendments, submit your request to the agency contact person listed above.

Dated: 11 December 1995

Maria R. Gomez  
Commissioner

**Rules as Proposed****9520.0760 DEFINITIONS.**

[For text of subs 1 to 17, see M.R.]

Subp. 18. **Mental health professional.** "Mental health professional" means a staff person providing clinical services in the treatment of mental illness who is qualified in at least one of the following ways:

A. in psychiatric nursing: a registered nurse with either a master's degree in one of the behavioral sciences or related fields from an accredited college or university, or its equivalent, who is licensed under *Minnesota Statutes*, sections 148.171 to 148.285, with at least 4,000 hours of post master's supervised experience in the delivery of clinical services in the treatment of mental illness;

B. in clinical social work: a person with either a master's degree in social work from an accredited college or university, or its equivalent, with at least 4,000 hours of post master's supervised experience in the delivery of clinical services in the treatment of mental illness;

C. in psychology: a psychologist licensed under *Minnesota Statutes*, sections 148.88 to 148.98, who has stated to the Board of Psychology competencies in the diagnosis and treatment of mental illness;

D. in psychiatry: a physician licensed under *Minnesota Statutes*, chapter 147 and certified by the American Board of Psychiatry and Neurology or eligible for board certification in psychiatry; and

E. in allied fields: a person with either a master's degree from an accredited college or university in one of the behavioral sciences or related fields, or its equivalent, with at least 4,000 hours of post master's supervised experience in the delivery of clinical services in the treatment of mental illness.

Documentation of compliance with part 9520.0800, subpart 4, item B is required for designation of work as supervised experience in the delivery of clinical services. Documentation of the accreditation of a college or university shall be a listing in Accredited Institutions of Postsecondary Education, Programs, Candidates for the year the degree was issued. The master's degree in social work, behavioral sciences or related fields or its equivalent shall include a minimum of 28 semester hours of graduate course credit in mental health theory and supervised clinical training as documented by an official transcript has the meaning given in *Minnesota Statutes*, section 245.462, subdivision 18.

[For text of subs 19 to 22, see M.R.]

**9520.0790 MINIMUM TREATMENT STANDARDS.**

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

Subp. 3. **Assessment and diagnostic process.** The center shall establish an assessment and diagnostic process that determines the client's condition and need for clinical services. The assessment of each client shall include clinical consideration of the client's general physical, medical, developmental, family, social, psychiatric, and psychological history and current condition. The diagnostic statement shall include the diagnosis based on the codes in the International Classification of Diseases or the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders and refer to the pertinent assessment data. The diagnosis shall be by or under the supervision of and signed by a ~~psychiatrist or licensed consulting psychologist, or by and signed by a licensed psychologist~~ mental health professional.

[For text of subs 4 to 9, see M.R.]

**9520.0800 MINIMUM QUALITY ASSURANCE STANDARDS.**

[For text of subs 1 to 4, see M.R.]

Subp. 5. **Continuing education.** The center shall require that each multidisciplinary staff person attend a minimum of 36 clock hours every two years of academic or practical course work and training. This education shall augment job-related knowledge, understanding, and skills to update or enhance staff competencies in the delivery of clinical services to treat mental illness. Continued licensure as a mental health professional may be substituted for the continuing education requirement of this subpart.

[For text of subs 6 and 7, see M.R.]

**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

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### 9520.0810 MINIMUM STAFFING STANDARDS.

#### Subpart 1. Required staff. Required staff:

A. The multidisciplinary staff of a center shall consist of at least four mental health professionals. At least two of the mental health professionals shall each be employed or under contract for a minimum of 35 hours a week by the center. Those two mental health professionals shall be of different disciplines and shall be either a clinical social worker, psychiatric nurse, psychologist, or a psychiatrist.

B. The mental health professional staff shall include a psychiatrist and a licensed consulting psychologist.

C. The mental health professional staff shall include either a clinical social worker or a psychiatric nurse.

~~D.~~ The mental health professional employed or under contract to the center to meet a the requirement of item B or C shall be at the main office of the center and providing clinical services in the treatment of mental illness at least eight hours every two weeks. ~~The center shall employ or contract with the professionals required in item B so that these professionals together comprise ten percent of the full-time equivalent multidisciplinary staff time spent in clinical services to ensure and document their ongoing presence and availability in the provision of clinical services. The center shall employ or contract with the professionals required in item C so that each professional comprises five percent of the full-time equivalent multidisciplinary staff time spent in clinical services, or 35 hours, whichever is less, to ensure and document their ongoing presence and availability in the provision of clinical services.~~

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

## Department of Human Services

### Proposed Permanent Rules Governing Payment Rates for ICF/MR's

#### DUAL NOTICE:

**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 Department of Human Services intends to adopt amendments to the above permanent rule 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 rule within 30 days or by January 25, 1996 a public hearing will be held on Wednesday, February 7, 1996.

To find out whether the rule will be amended without a hearing or if the hearing will be held, you should contact the agency contact person after January 25, 1996 and before February 7, 1996.

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

Asha Sharma  
Minnesota Department of Human Services  
Rules Division  
444 Lafayette Road  
Saint Paul, Minnesota 55155-3816  
(612) 282-9850  
Fax (612) 297-3173

**Subject of Rule and Statutory Authority.** The proposed rule amendments are about payment rates for intermediate care facilities for the mentally retarded and related issues such as cost classification and allocation procedures, allowable and nonallowable costs, documentation and reporting requirements, and others. The statutory authority to amend the rule is *Minnesota Statutes*, section 256B.501. A copy of the proposed rule amendments is published in the *State Register* and attached to this notice as mailed.

**Copy of the Rule.** A free copy of this rule is available upon request from the agency contact person listed above. A copy of the proposed rule amendments may also be viewed at any of the county welfare or human service agencies in the State of Minnesota.

**Comments.** You have until 4:30 p.m. on January 25, 1996, to submit written comment in support of or in opposition to the proposed rule amendment or any part or subpart of the rule. 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 rule amendments 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 agency contact person by 4:30 p.m. on January 25, 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 rule amendment 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.

**Modifications.** The proposed rule 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 rule as 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 rule amendments affect you in any way, you are encouraged to participate in the rulemaking process.

**Cancellation of Hearing.** The hearing scheduled for February 7, 1996, will be canceled if the agency does not receive requests from 25 or more persons that a hearing be held on the rule. 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 Asha Sharma at (612) 282-9850 after January 25, 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 rule, a hearing will be held following the procedures in *Minnesota Statutes*, sections 14.14 to 14.20. The hearing will be held on Wednesday, February 7, 1996, in the auditorium at the Minnesota State Lottery Building, 2645 Long Lake Road, Roseville, Minnesota. The hearing will begin at 9 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 Judge Phyllis Reha. Judge Reha can be reached at the Office of Administrative Hearings, 100 Washington Square, #1700, Minneapolis, Minnesota 55401-2138; telephone (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 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. You and the agency may respond in writing within five business days after the submission period ends to any new information submitted. 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. No additional evidence may be submitted during the five-day period. This rule hearing procedure is governed by *Minnesota Rules*, parts 1400.0200 to 1400.1200 and *Minnesota Statutes*, sections 14.14 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 from the agency contact person. This statement describes the need for and reasonableness of each provision of the proposed rule. It also includes a summary of all the evidence and argument which the agency anticipates presenting at the hearing, if one is held. The statement may also be reviewed and copies obtained at the cost of reproduction from the Office of Administrative Hearings.

**Mailing List.** Persons may register with the agency for the purpose of receiving notice of rule proceedings and notice that a rule has been adopted. To register, contact Asha Sharma at the address or phone number listed above.

**Small Business Considerations.** Under *Minnesota Statutes*, section 14.115, subdivision 7, clause (3), the small business consideration in rulemaking does not apply to service businesses regulated by government bodies, for standards and costs, such as intermediate care facilities. Because the proposed amendments govern ICFs/MR, the requirements under *Minnesota Statutes*, section 14.115, do not apply.

**Expenditure of Public Money by Local Public Bodies.** The department expects no change in the fiscal impact of this rule on local public bodies. A fiscal note is available; a copy may be obtained by contacting Asha Sharma at the phone number or address listed above.

**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

**Impact on Agriculture Lands.** *Minnesota Statutes*, section 14.11, subdivision 2, requires agencies proposing rules that have a direct and substantial adverse impact on agriculture land in this state to comply with additional statutory requirements. The proposed amendments of this rule do not have a direct substantial adverse impact on agricultural land, and therefore the additional statutory provisions do not apply.

**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 1st Floor, Centennial Office Building, 658 Cedar Street, Saint Paul, Minnesota 55155; telephone (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 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 want to be so notified, or wish to receive a copy of the adopted rule, submit your request to Asha Sharma at the address listed above.

**Adoption Procedure After the Hearing.** If a hearing is held, after the close of the hearing record, the administrative law judge will issue a report on the proposed rule. You 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 rule 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 rule is adopted and filed with the Secretary of State. The agency's notice of adoption must be mailed on the same day that the rule is 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 rule with the Secretary of State.

Dated: 30 October 1995

Maria R. Gomez  
Commissioner

### Rules as Proposed

#### 9553.0010 SCOPE.

Parts 9553.0010 to 9553.0080 establish procedures for determining the total payment rates for all intermediate care facilities for persons with mental retardation or related conditions (ICFs/MR) participating in the medical assistance program, ~~except including state operated community-based ICFs/MR defined in *Minnesota Statutes*, section 252.50, subdivision 1.~~ Parts 9553.0010 to 9553.0080 do not apply to intermediate care facilities provided in state owned hospitals as defined ~~other state facilities specified in *Minnesota Statutes*, section 246.50, subdivision 5 3.~~ Parts 9553.0010 to 9553.0080 are effective for payment rates established on or after ~~January~~ October 1, 1986 ~~1996~~.

#### 9553.0020 DEFINITIONS.

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

Subp. 2. **Addition.** "Addition" means an extension, enlargement, or expansion of the physical plant of an ICF/MR for the purpose of increasing the number of licensed beds or improving ~~resident~~ client care.

Subp. 3. **Applicable credit.** "Applicable credit" means a receipt of funds or an expense reduction as a result of ~~public grants, purchase discounts, allowances, rebates, refunds, adjustments for overcharges, insurance claims settlements, recovered bad debts,~~ or any other adjustment or income which ~~reduce~~ reduces the costs claimed by the facility. Applicable credits include public grants, purchase discounts, allowances, rebates, refunds, adjustments for overcharges, insurance claims settlements, recovered bad debts, and portions of negotiated payments which exceed the facility's established payment rate.

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

Subp. 6. **Capital debt.** "Capital debt" means a debt incurred by the facility for the purpose of purchasing a capital asset, to the extent that the proceeds of the debt were actually applied to purchase the capital asset including points, financing charges, and bond premiums or discounts. Capital debt includes debt incurred for the purpose of refinancing a capital debt. A capital asset, or group of capital assets, originally purchased with cash may be financed with a capital debt if the debt is incurred on or before the last day of the reporting year in which the capital asset was purchased.

[For text of subp 7, see M.R.]

Subp. 8. **Class A beds.** "Class A beds" means beds licensed for ambulatory and mobile persons who are capable of taking appropriate action for self-preservation under emergency conditions as determined by part 4665.0500 ~~or 9525.0210 to 9525.0430.~~

Subp. 9. **Class B beds.** "Class B beds" means beds for ambulatory, nonambulatory, mobile, or nonmobile persons who are not mentally or physically capable of taking appropriate action for self-preservation under emergency conditions as determined by part 4665.0500 ~~or parts 9525.0210 to 9525.0430.~~

## Proposed Rules

**Subp. 9a. Client.** "Client" means a person with mental retardation as defined in part 9525.0016, subpart 2, item B, or a related condition as defined in Minnesota Statutes, section 252.27, subdivision 1a, who receives services from a facility, provider group, or related organization.

**Subp. 9b. Client day.** "Client day" means a day on which services provided to clients are rendered and billable, or a day for which a bed is held and billed.

**Subp. 10. Commissioner.** "Commissioner" means the commissioner of the Minnesota Department of Human Services or the commissioner's designee.

**Subp. 11. Cost categories.** "Cost categories" means any one of the groupings of costs in part 9553.0040, subparts ~~4 to~~ 1a, 5, and 6.

[For text of subps 12 and 13, see M.R.]

**Subp. 14. Depreciable equipment.** "Depreciable equipment" means the standard moveable ~~resident client~~ care equipment and support service equipment generally used in an ICF/MR. Depreciable equipment includes the equipment specified in the major moveable equipment table of the depreciation guidelines.

**Subp. 15. Depreciation guidelines.** "Depreciation guidelines" means The Estimated Useful Lives of Depreciable Hospital Assets, issued by the American Hospital Association, ~~840 North Lake Shore Drive 1 North Franklin Street,~~ Chicago, Illinois ~~60611 60606~~ (Chicago: ~~1983 1993~~). This material is not subject to frequent change. The depreciation guidelines are incorporated by reference and are available for reference at the Minnesota State Law Library, 25 Constitution Avenue, Saint Paul, Minnesota 55155. Only the 1983 publication will be used and will not change. The most current publication of depreciation guidelines will be used for establishing depreciation schedules, as identified in parts 9553.0010 to 9553.0080.

[For text of subp 16, see M.R.]

**Subp. 16a. Direct assignment.** "Direct assignment" means a process by which a cost can be identified to a specific site without the use of allocation methods.

[For text of subp 17, see M.R.]

**Subp. 17a. Employee.** "Employee" means an individual who is compensated by a facility or provider group on an hourly or salaried basis.

**Subp. 18. Equity.** "Equity" means the historical capital cost of the facility's capital assets subject to the limitations in part 9553.0060, subpart 1, item C; and subpart 3, item H, decreased by the outstanding principal amount of the capital debts, and the historical capital cost of any capital assets retired from service, sold, or otherwise disposed. Increases in the principal amount of existing capital debts due to refinancing, or new capital debts due to a change of ownership or reorganization of provider entity for which the increase in interest expense is disallowed according to part 9553.0060, subpart 3, item G, are not included in the outstanding principal amount of the capital debts for the purpose of calculating equity.

[For text of subp 19, see M.R.]

**Subp. 19a. Facility QMRP.** "Facility QMRP" means the qualified mental retardation professional, as defined in Code of Federal Regulations, title 42, section 483.430, paragraph (a), employed by the facility, who has primary responsibility for developing the client's individual program plan, as defined in Code of Federal Regulations, title 42, section 483.440, paragraph (c).

[For text of subps 20 and 21, see M.R.]

**Subp. 21a. Full time.** "Full time" means compensated for at least 2,080 hours annually in accordance with written personnel policies of the facility or provider group as verified by time and attendance records.

[For text of subps 22 and 23, see M.R.]

**Subp. 24. Historical general operating costs.** "Historical general operating costs" means the allowable operating costs incurred by the facility during the reporting year immediately preceding the rate year for which the payment rate becomes effective after the commissioner has reviewed those costs and determined them to be allowable costs under the medical assistance program and after the application of parts 9553.0010 to 9553.0080.

Subp. 25. [See repealer.]

**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. 26. **Land.** "Land" means the land owned or leased by the provider or provider group and which is necessary for resident client care.

[For text of subps 27 to 31, see M.R.]

Subp. 32. **Physical plant.** "Physical plant" means the building or buildings in which a program licensed to provide services to persons with mental retardation or related conditions under *Minnesota Statutes*, section 252.28, is located, and all equipment affixed to the building and not easily subject to transfer as specified in the building and fixed equipment tables of the depreciation guidelines, and auxiliary buildings in the nature of sheds, garages, and storage buildings located on the same site if related to resident client care, and the allocated portion of office space if the office is located in that facility. Physical plant does not include buildings or portions of buildings used by central, affiliate, or corporate offices if those offices are not located in that facility.

Subp. 33. **Private paying resident client.** "Private paying resident client" means a facility resident client whose care is not paid for by the medical assistance program, cost of care program, or the Community Social Services Block Grant for the date of service.

Subp. 34. **Program.** "Program" means those functions and activities of the facility that contribute to the care, supervision, developmental growth, and skill acquisition of the residents clients under parts 9525.0210 to 9525.0430 and *Code of Federal Regulations*, title 42, section 442.400, et seq 9525.0215 to 9525.0355.

[For text of subps 35 and 36, see M.R.]

Subp. 37. **Provider group.** "Provider group" means a parent corporation, any subsidiary corporations, partnerships, management organizations, and groups of facilities operated under common ownership or control that ~~incurred the costs shown on the cost report which are claimed for reimbursement under parts 9553.0010 to 9553.0080.~~

[For text of subps 38 and 39, see M.R.]

Subp. 40. **Repair.** "Repair" means the cost of labor provided by a person who is not an employee and materials needed to restore an existing capital asset to sound condition after damage or malfunction or to maintain an existing capital asset in a usable condition.

[For text of subps 41 and 42, see M.R.]

Subp. 43. [See repealer.]

Subp. 43a. **Shared costs.** "Shared costs" means a cost that is incurred for the benefit of more than one site.

Subp. 43b. **Site.** "Site" means a Minnesota ICF/MR, waived service, semi-independent living service, or day training and habilitation service; out-of-state service to persons with developmental disabilities; nondevelopmental disability service; or any other business operation owned or operated by the provider group whether or not that operation is a service to persons with developmental disabilities.

Subp. 44. **Respite Temporary care.** "Respite Temporary care" means short-term supervision, assistance, and care provided for less than 30 days to persons with mental retardation or related conditions due to the temporary absence or need for relief of the caregiver who normally provides these services and is not an institutional provider.

Subp. 45. [See repealer.]

Subp. 46. **Total payment rate.** "Total payment rate" means the amount established by the commissioner to reimburse the provider for service provided to each resident client. The total payment rate is calculated by adding the ~~total~~ general operating cost payment rate, the special operating cost payment rate, and the property-related cost payment rate.

[For text of subps 47 to 50, see M.R.]

### 9553.0030 COST CLASSIFICATION AND ALLOCATION PROCEDURES.

Subpart 1. **Cost classification.** Costs must be classified as provided in this subpart. Total costs for each category must be compiled and recorded on the cost report.

A. The provider shall classify costs using direct identification assignment of costs, without allocation, by routine classification of transactions when costs are recorded in the books and records of the facility. The classification of costs must be made according to the cost categories defined in part 9553.0040.

B. ~~In addition to costs which must be included in the administrative cost category, indirect costs such as generic supplies that cannot be readily assignable to one or more cost categories must be classified to the administrative cost category.~~

C. ~~Except for persons in top management, the compensation of any person having multiple duties, including persons who have only nominal top management responsibilities, must be directly identified and classified to the appropriate cost categories on the basis of time distribution records that show actual time spent, or an accurate estimate of time spent on various activities. Except as provided in item D, the compensation of persons who have top management responsibilities may be classified to a cost category.~~

other than administrative operating costs to the extent justified in time distribution records showing the actual time spent, or an accurate estimate of time spent on various activities. Any facility or provider group choosing to estimate the time spent in different cost categories must use a statistically valid method.

D. The compensation of a person who is classified as top management personnel and who performs any service for the central, affiliated, or corporate office must be allocated to the facility's administrative cost category in accordance with subpart 4, item C if the facility or provider group served by the central, affiliated, or corporate office has more than 48 licensed beds.

Subp. 2. Allocation of personal expenses for owners whose primary residence is in the facility. Allocation procedures in this subpart must be applied to personal expenses of owners whose primary residence is in the facility to the extent that these costs were included in the facility's costs.

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

D. Laundry and linen costs, and ~~administrative~~ any other costs not specifically identified in items A to C, for items such as telephones and vehicles, must be allocated based on a reasonable estimate of actual use.

Subp. 3. [See repealer.]

Subp. 3a. Assignment and allocation of costs including central, affiliated, or corporate office costs. Cost allocation shall be governed by items A to G.

A. All costs which can be directly assigned to a specific site must be classified to that site except for general time, as defined in item B and compensation of central, affiliated, or corporate office staff, as defined and assigned in item F. Direct assignment of consultant and employee compensation is permitted only for the time work is performed at a specific site for the benefit of only that site, except as provided in subitems (1) to (3):

(1) direct assignment includes time away from the site when accompanying clients solely from that site;

(2) direct assignment includes time away from the site for shopping or errands if the shopping or errands benefit solely that site; or

(3) direct assignment can ignore infrequent, brief telephone calls.

B. General time is not eligible for direct assignment. General time includes:

(1) work performed at a central, affiliated, or corporate office;

(2) travel time, except as permitted in item A, subitems (1) and (2);

(3) compensated leave time;

(4) training time, except for on-site orientation and on-the-job training at the site;

(5) time spent performing services that benefit more than one site;

(6) time spent at one site performing services which benefit another site; and

(7) the total time of a consultant or employee whose directly assigned time is less than 15 percent of the total time the consultant or employee worked for the facility or provider group. This subitem does not apply, however, to employees or consultants who work in laundry or dietary services.

C. For consultant and employee compensation associated with general time and whose general time is equal to or less than the threshold in subitem (1) or (2), the costs associated with the general time must be assigned in the same proportion to the same sites.

(1) For licensed medical professionals such as psychologists, psychiatrists, RNs, LPNs, and physical therapists, who perform clinical services consistent with their professions, general time must be 40 percent or less of total compensated hours.

(2) For all others, general time must be 25 percent or less of total compensated hours.

D. For consultant and employee compensation associated with general time except for item B, subitem (7), but not assigned in item C, the general time must be assigned to the sites benefiting from an individual's work based on the ratio of operating expenses of each site benefited. For purposes of allocating these costs, the allocation ratios must be determined according to subitems (1) to (3).

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## Proposed Rules

(1) For each site, the numerator of the allocation ratio shall be equal to the sum of total operating expenses incurred by that site, including costs assigned under this subpart, plus the real estate taxes and special assessments incurred by that site.

(2) The denominator for the allocation ratio is the sum of the numerators in subitem (1).

(3) Except for Minnesota ICF/MR sites, total operating expenses must include nonallowable salary costs when such costs are nonallowable due to failure to maintain time records required by subpart 3b.

E. When adequate documentation has been maintained, costs of centrally purchased goods must be assigned to the sites where distributed and consumed. When the records are not maintained, the costs must be allocated using the formula described in item E.

E. After the costs identified according to items A to E have been assigned, the remaining costs must be treated as shared costs and must be allocated among all sites based on the ratio of expenses. One allocation pool must be used for all remaining shared costs. If a central, affiliated, corporate office or a facility provides services to an unrelated organization, and the operating costs, real estate taxes, and special assessments costs are not known or provided to the commissioner, the revenue received for providing services to any unrelated organizations must be subtracted from the shared costs. For purposes of allocating these remaining costs, the allocation ratios must be determined according to item D without regard to the sites benefited. For purposes of this item, a central, affiliated, or corporate office is not a site regardless of its location.

Consultant and employee compensation of central, affiliated, or corporate offices must be allocated according to this item. For purposes of this item, central, affiliated, or corporate office staff includes the following employees:

(1) owners;

(2) chief operating officers, including such positions as chief executive officer, executive director, chief administrator, president, vice president, or other corporate officers;

(3) fiscal employees, including such positions as chief financial officer, financial director, controller, accountant, book-keeper, account clerk, or data entry operator;

(4) human resource employees, including such positions as personnel director, human resources director, personnel administrator, or employee benefits personnel, including the director, coordinator, and clerks; and

(5) clerical employees who support the classes of employees in subitems (1) to (4) including positions such as secretary, clerk typist, data entry operator, receptionist, executive assistant, or administrative assistant.

G. A governmental or nonprofit organization with a federal approved cost allocation plan that meets the requirements of subitems (1) to (5) may allocate central, affiliated, or corporate office costs based on the federal cost allocation plan. The provider must document that the federal government has approved the allocation plan and that the plan meets the requirements of subitems (1) to (5).

(1) The allocation plan must not be based on an estimated or predetermined rate.

(2) The allocation plan has been audited for compliance with Office of Management and Budget (OMB) circular A-122 or A-133 in accordance with Governmental Auditing Standards.

(3) A copy of the audit report in subitem (2) is submitted, and access to the audit workpapers is provided.

(4) The costs being assigned to the federal grant programs by the allocation plan must exceed the costs being assigned to Minnesota ICFs/MR.

(5) If the costs allocated by the plan include costs that are nonallowable under this rule, these costs must be reduced proportionately.

Subp. 3b. Required time records. Time records are required as established in items A to E.

A. Time and attendance records are required for all employees under Minnesota Statutes, section 256B.432, subdivision 8.

B. Except for the positions identified in subpart 3a, item F, the records must identify the employee or consultant who performed the work, the site at which work was performed, and the amount of time spent performing work that benefited only that site.

C. In order to claim compensation under parts 9553.0010 to 9553.0080, all employees or consultants who are officed outside Minnesota must keep a record showing each date work was performed that benefited Minnesota facilities, the hours spent completing that work, and a description of the work performed during that date and time. To be eligible for compensation under parts 9553.0010 to 9553.0080, this record must document at least 240 hours of service to Minnesota clients each reporting year. After the 240-hour requirement has been met, the employee's total compensation or fee will be eligible for allocation according to subpart 3a, item D, and the employee is no longer required to maintain these additional records for the remainder of the reporting year.

D. Records required under items A to C must be maintained in a format specified by the commissioner unless an alternate format is approved in advance by the commissioner.

E. Failure to maintain the documentation in items A to C will result in the disallowance of the compensation.

Subp. 4. [See repealer.]

Subp. 5. [See repealer.]

Subp. 6. [See repealer.]

**9553.0035 DETERMINATION OF ALLOWABLE COSTS.**

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

Subp. 2. **Licensure and certification costs.** The costs of meeting the applicable licensure and certification standards listed in items A to E are allowable costs for the purpose of setting the facility's total payment rate unless otherwise provided in parts 9553.0010 to 9553.0080. The standards are:

A. ~~federal regulations for ICF/MR services provided by Code of Federal Regulations, title 42, sections 442.400 et seq.;~~

~~B. requirements established by the commissioner for meeting program standards under parts 9525.0210 to 9525.0430 9525.0215 to 9525.0355 and standards for aversive and deprivation procedures established according to Minnesota Statutes, section 245.825;~~

~~C. B.~~ requirements established by the Department of Health for meeting health standards as set out by state rules and federal regulations;

~~D. C.~~ requirements to comply with changes in federal or state laws and regulations; and

~~E. D.~~ other requirements for licensing under federal or state law, state rules, federal regulations, or local standards that must be met to provide ICF/MR services.

Subp. 3. **Service costs.** The costs of services including ~~program, maintenance, administrative, payroll taxes and fringe benefits~~ general operating, special operating, and property-related costs as defined in part 9553.0040, are allowable costs for the purpose of setting the facility's total payment rate unless otherwise provided in parts 9553.0010 to 9553.0080.

Subp. 4. **Applicable credits.** Applicable credits must be used to offset or reduce the expenses of the facility to the extent that the cost to which the credits apply was claimed as a facility cost. This cost principle does not apply to items A and B:

A. payments made by the commissioner to the provider for approved services for very dependent persons with special needs pursuant to *Minnesota Statutes*, section 256B.501, subdivision 8, and parts 9510.1020 to 9510.1140; and

B. gifts and donations from nongovernmental sources.

Subp. 5. **Adequate documentation.** A facility shall keep adequate documentation.

A. In order to be considered adequate, documentation must:

(1) be maintained in orderly, well-organized files;

(2) not include documentation of more than one facility in one set of files unless transactions may be traced by the department to the facility's annual cost report;

(3) include a paid invoice or copy of a paid invoice with date of purchase, vendor name and address, purchaser name and delivery address, listing of items or services purchased, cost of items purchased, account number to which the cost is posted, and a breakdown of any ~~allocation assignment~~ of costs between accounts or ~~facilities sites~~. If any of the listed information ~~to be listed on the invoice~~ is not available, the ~~providers shall~~ provider must document their a good faith attempt to obtain the information and maintain the information in another manner that enables the expense to be audited;

(4) include copies of all written agreements and debt instruments to which the facility is a party and any related mortgages, financing statements, and amortization schedules to explain the facility's costs and revenues;

(5) if a cost or revenue item is not documented under subitem (3) or (4), the facility must document the amount, source, and purpose of the item in its books and ledgers following generally accepted accounting principles and in a manner providing an audit trail; and

(6) be retained by the facility to support the five most recent annual cost reports submitted to the commissioner. The

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## Proposed Rules

commissioner may extend the period of retention if the field audit was postponed because of inadequate record keeping or accounting practice as in part 9553.0041, subpart 12, or if the records are necessary to resolve a pending appeal.

B. Providers must document all consultant, professional, or purchased service contracts. They must maintain copies of all contracts and invoices relating to consultant, professional, or purchased services. These documents must include the name and address of the vendor or contractor, the name of the person who actually performed the services, the dates of service, a description of the services provided, the unit cost, and the total cost of the service.

C. Payroll records must be maintained by a facility and must show the amount of compensation paid to each employee and the days and hours worked. Complete and orderly cost allocation records must be maintained for cost allocations made among ~~cost categories or facilities sites~~ as specified in part 9553.0030.

D. ~~Documentation of mileage must be maintained in a motor vehicle log. Except for motor vehicles exclusively used for facility business, the facility or related organization must maintain a motor vehicle log for each vehicle used by the facility that shows personal and facility mileage for the reporting year. Mileage paid for the use of a private vehicle must be documented. Vehicle costs shall be documented and reimbursed according to subitems (1) to (4).~~

(1) Mileage log documentation which shows trip miles and dates, is required for personal use of vehicles that are used principally for client transportation. A vehicle's total annual mileage for the reporting year must also be documented. Personal use of the vehicle will be disallowed through a proration of the vehicle's property and operating costs. The computation shall be based on the ratio of personal usage mileage divided by total vehicle mileage for the reporting year times that vehicle's property and operating costs such as vehicle depreciation, interest, lease expense, insurance expense, license cost, repair and maintenance expenses, gas, or oil.

(2) Mileage logs documenting trip miles, dates, and reason for the trip, are required for all business miles for vehicles owned by a provider group that are assigned principally to an individual or used principally by corporate or facility staff for purposes other than client transportation. Reimbursement will be limited to business mileage only, at the current rate in effect for Internal Revenue Service mileage reimbursement.

(3) An expense report documenting trip miles, dates, and reason for the trip, must be maintained for all business miles for vehicles that are owned by employees and used for facility business. Reimbursement will be limited to business mileage only, based on the current Internal Revenue Service mileage limit.

(4) For purposes of this item, personal use of a vehicle includes travel between work and personal residence and other travel that is not of direct benefit to clients or facility business.

Subp. 6. **Compensation for services performed by individuals.** Compensation for services performed by individuals includes all the remuneration paid currently, accrued or deferred, for services rendered by the provider or employees of the facility. Only compensation costs for the reporting period are allowable.

A. Compensation includes:

(1) salaries, wages, bonuses, vested vacation, vested sick leave, and employee benefits paid for managerial, administrative, professional, and other services;

(2) amounts paid by the provider for the personal benefit of the provider or employees;

(3) deferred compensation and individual retirement accounts (IRA's);

(4) the costs of capital assets, supplies, services, or any other in kind benefits the provider or employees receive from the facility or related organization, except the cost of capital assets, supplies, services, or other in kind benefits incurred as a necessary cost for an employee who is required to supervise ~~resident client~~ activities or to reside in the facility as a condition of employment; and

(5) payments to organizations of nonpaid workers that have arrangements with the facility for the performance of services by the nonpaid workers.

For purposes of this item, in kind benefit means benefit received in a medium other than cash as identified in parts 3315.0200 to 3315.0220 for personal services performed.

B. The facility must have a written policy for payment of compensation for services performed by individuals. ~~The policy must:~~

(1) The policy must relate the individual's compensation to the performance of specified duties and to the number of hours worked by the individual. Only the compensation of persons employed by the hour must be stated in terms of an hourly wage. The number of hours worked by salaried employees may be stated in terms of the average annual hours worked for each facility.

(2) The policy must result in compensation payable under the policy which is consistent with the compensation paid to

persons performing similar duties in the ICF/MR industry. Employees covered by collective bargaining agreements are not required to be covered by the policy if the collective bargaining agreement otherwise meets the essentials of the policy required by this item.

(3) The policy must specify the nature and cost to the provider or provider group of any in kind benefits included in the compensation.

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

[For text of subp 7, see M.R.]

Subp. 8. **Capitalization.** For rate years after September 30, 1986, the cost of purchasing or repairing capital assets shall be capitalized under items A to D, subject to part 9553.0060, subpart 1.

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

B. Repairs that cost \$500 or less may be treated as an expense. Repairs that cost more than \$500 and that extend the estimated useful life of the asset by at least two years must be capitalized. Improvements made solely for the purpose of making an asset useful for purposes other than those for which it was originally used or more useful for the same purposes must also be capitalized if the cost exceeds \$500. ~~Except for repairs necessitated solely as a result of destructive resident behavior, repairs treated as an expense must be classified in the maintenance operating cost category. Repairs necessitated solely as a result of destructive resident behavior and treated as an expense must be classified as a program operating cost.~~

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

Subp. 9. **Working capital interest expense.** Working capital interest expense is allowed subject to the requirements of items A and B.

A. Working capital interest expense on working capital debt incurred prior to January 1, 1986, is allowed under 12 MCAR SS 2.05301-2.05315 [Temporary].

B. Working capital interest expense for facilities constructed or established after January 1, 1986, must be limited under subitems (1) and (2).

(1) For the interim and settle-up payment rates the total amount of working capital interest expense allowed must not exceed 2.5 percent of the facility's allowable historical general operating costs during the interim reporting period.

(2) For the rate year which follows the settle-up, the total amount of working capital interest expense allowed must not exceed 80 percent of the allowable working capital interest expense as determined in the settle-up cost report.

Subp. 10. **Retirement contributions.** Retirement contributions for each employee must be limited to either a qualified pension plan or a qualified profit sharing plan submitted to, and approved by, the Internal Revenue Service. In addition, plans under section 403(b) or 408(k) of the Internal Revenue Code are permitted.

[For text of subp 10, see M.R.]

Subp. 11. **Therapeutic overnight trips, camping, and vacations for residents clients.** The provider may use facility staff, supplies, equipment, and vehicles ordinarily provided as part of the facility program for therapeutic overnight trips, camping, and vacations for residents clients. In addition, up to \$300 per year per resident client may be allowed for fees, tickets, travel, lodging, and meals while residents clients are away from the facility. Other costs may be paid from other funding sources such as voluntary contributions from residents clients, relatives, and fund raisers.

Subp. 12. **Preopening costs.** Preopening costs of newly established facilities shall be allowable as in items A to C.

A. Preopening operating costs of newly established facilities which are incurred within 30 days prior to admission of residents clients must be included in the facility's interim and settle-up cost reports.

B. Preopening costs of newly established facilities which are incurred more than 30 days prior to admission of residents clients must be capitalized as deferred charges and amortized over a period of not less than 60 consecutive months beginning with the month in which the first resident client is admitted for care.

C. Preopening costs do not include property-related costs.

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## Proposed Rules

Subp. 13. **Respite Temporary care.** The provider must report the costs associated with providing respite temporary care as an allowable cost in the cost report and count respite temporary care days as resident client days.

Subp. 14. **Top management Individual compensation limit.** For establishment of the allowable historical operating cost, rate years beginning after September 30, 1996, allowable annual compensation for top management personnel who perform necessary services shall be limited according to items A to F within a facility or provider group shall be limited on an individual basis according to items A to H for each employee and for any consultant who is related, as defined in part 9553.0020, subpart 39. Documentation of all necessary service performed must be maintained according to subparts 5 and 6.

A. In no case shall the total compensation reimbursed according to parts 9553.0010 to 9553.0080 to an individual, any portion of whose compensation is reimbursed as top management compensation, exceed \$53,820. A person who is included in top management personnel who performs necessary services for the facility or provider group on less than a full-time basis, may receive as allowable compensation no more than a prorated portion of \$53,820 based on time worked.

B. If a person compensated for top management functions in a facility or organization is compensated for providing consultant services to that facility or organization, the compensation for consultant services however designated shall be subject to the top management compensation limitation.

C. Top management compensation shall not include, within the limits of items A and B, the benefits of group health or dental insurance, group life insurance, pensions or profit sharing plans, and governmentally required retirement plans.

D. If the fringe benefits paid to top management personnel are not provided to all or substantially all of the facility's employees at the same benefit level, that portion of the fringe benefits paid to top management personnel which is not provided to all or substantially all of the facility's employees, shall be disallowed.

E. An individual compensated for top management services on a less than full-time basis for a facility or provider group may be compensated for performing other necessary services which the individual is qualified to perform. Compensation for another necessary service must be at the pay rate for that service except that the total compensation paid to an individual cannot exceed the limit in item A.

F. The percentage difference between the previous two Januarys prior to the beginning of the rate year, the all urban consumer price index (CPI-U) for Minneapolis-Saint Paul, as published by the Bureau of Labor Statistics, new series index (1967=100) shall be used to increase the top management compensation limitation in item A. The consumer price index is incorporated by reference. It is available through the Minitex Interlibrary Loan System. It is subject to frequent change. The adjustment required by this formula shall be effective for the reporting year beginning on January 1, 1986, and each January 1 thereafter.

A. The individual compensation limit does not apply to compensation for clinical services by employees or related consultants who are licensed psychiatrists, psychologists, and physical therapists.

B. The individual compensation limit shall vary based on the number of client equivalents. Client equivalents must be calculated for the clients served by a facility or provider group and must be used in the table in this item to determine the individual compensation limit for individuals compensated by a facility or provider group. Client equivalents must be calculated as follows:

(1) A client equivalent of 1.0 shall be assigned to each client who receives from the facility or provider group:

(a) 24-hour supervised waived services in a setting licensed under parts 9555.5105 to 9555.6265 to provide foster care to adults or under parts 9545.0010 to 9545.0260 to provide foster care to children; or

(b) 24-hour ICF/MR services in a facility licensed under parts 9525.0215 to 9525.0355.

(2) A client equivalent of 0.2 shall be assigned to each client who receives from the facility or provider group, semi-independent living services, under Minnesota Statutes, section 252.275, or non-24-hour supervised waived services, under Minnesota Statutes, section 256B.092.

(3) A client equivalent of 0.2 shall be assigned to each client who receives from the facility or provider group, licensed day training and habilitation services, under Minnesota Statutes, sections 252.40 to 252.46.

(4) Client equivalents shall be summed for a client who receives more than one type of service from a provider group.

(5) Client equivalents shall be counted on the last day of the reporting year.

(6) Facilities or provider groups that provide services in another state comparable to the services listed in subitems (1) to (3) shall be assigned the same client equivalents.

<u>Number of Client Equivalents</u>	<u>Individual Compensation Limits</u>
<u>1-12</u>	<u>\$44,000</u>
<u>13</u>	<u>45,000</u>
<u>14</u>	<u>46,000</u>
<u>15</u>	<u>47,000</u>
<u>16</u>	<u>48,000</u>
<u>17</u>	<u>49,000</u>
<u>18</u>	<u>49,500</u>
<u>19</u>	<u>50,000</u>
<u>20</u>	<u>50,500</u>
<u>21</u>	<u>51,000</u>
<u>22</u>	<u>51,500</u>
<u>23</u>	<u>52,000</u>
<u>24</u>	<u>52,500</u>
<u>25</u>	<u>53,000</u>
<u>26</u>	<u>53,500</u>
<u>27</u>	<u>54,000</u>
<u>28</u>	<u>54,500</u>
<u>29</u>	<u>55,000</u>
<u>30</u>	<u>55,500</u>
<u>31</u>	<u>56,000</u>
<u>32</u>	<u>56,500</u>
<u>33</u>	<u>57,000</u>
<u>34</u>	<u>57,500</u>
<u>35</u>	<u>58,000</u>
<u>36</u>	<u>58,500</u>
<u>37</u>	<u>59,000</u>
<u>38</u>	<u>59,500</u>
<u>39</u>	<u>60,000</u>
<u>40</u>	<u>60,500</u>
<u>41</u>	<u>61,000</u>
<u>42</u>	<u>61,500</u>
<u>43</u>	<u>62,000</u>
<u>44</u>	<u>62,500</u>
<u>45</u>	<u>63,000</u>
<u>46</u>	<u>63,500</u>
<u>47</u>	<u>64,000</u>
<u>48</u>	<u>64,500</u>
<u>49</u>	<u>65,000</u>
<u>50</u>	<u>65,500</u>
<u>51</u>	<u>66,000</u>
<u>52</u>	<u>66,500</u>
<u>53</u>	<u>67,000</u>
<u>54</u>	<u>67,500</u>
<u>55</u>	<u>68,000</u>
<u>56</u>	<u>68,500</u>
<u>57</u>	<u>69,000</u>
<u>58</u>	<u>69,500</u>
<u>59</u>	<u>70,000</u>

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## Proposed Rules

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<u>60</u>	<u>70,500</u>
<u>61</u>	<u>71,000</u>
<u>62</u>	<u>71,500</u>
<u>63</u>	<u>72,000</u>
<u>64</u>	<u>72,500</u>
<u>65</u>	<u>73,000</u>
<u>66</u>	<u>73,500</u>
<u>67</u>	<u>74,000</u>
<u>68</u>	<u>74,500</u>
<u>69</u>	<u>75,000</u>
<u>70</u>	<u>75,500</u>
<u>71</u>	<u>76,000</u>
<u>72</u>	<u>76,500</u>
<u>73</u>	<u>77,000</u>
<u>74</u>	<u>77,500</u>
<u>75</u>	<u>78,000</u>
<u>76</u>	<u>78,500</u>
<u>77</u>	<u>79,000</u>
<u>78</u>	<u>79,500</u>
<u>79</u>	<u>80,000</u>
<u>80 or more</u>	<u>80,500</u>

C. The individual compensation limit in item B must be prorated for any individual who works for the facility or provider group on less than a full-time basis.

D. Within the context of this subpart, individual compensation shall not include fringe benefits unless they are not provided to all or substantially all of the employees of a facility or provider group at the same benefit level, in which case they shall be included as compensation subject to the limit in items B and C.

E. The allowance of compensation for employees who are owners, administrators, or executives such as president, vice-president, treasurer, comptroller, chief executive officer, or chief financial officer, and were compensated during the reporting year ending December 31, 1995, at less than the limit in items B and C for the facility or provider group shall be subject to the following adjustments:

(1) Allowable increases in compensation shall be no more than the forecasted indices in part 9553.0050, subpart 2, item C, subitem (2), for reporting years subsequent to the reporting year ending December 31, 1995, applied to the compensation for 1995. But, if the individual's compensation is less than the limit in items B and C, and less than the limit for a 40-bed facility or provider group, the allowable increase in compensation shall be no more than the amount determined in item H.

(2) Compensation increases, not to exceed the limit in items B and C for the facility or provider group, that are proportional to increases in client equivalents for the facility or provider group shall be allowable notwithstanding subitem (1).

E. When individual compensation exceeds the limit in items B and C before cost allocation under part 9553.0030, subpart 3a, that amount shall be recognized as the carryforward individual compensation amount to the extent the same compensation amount was allowed in the calculation of payment rates for the rate year beginning October 1, 1995, provided the requirements in subitems (1) to (5) are met.

(1) The carryforward individual compensation amount does not exceed the highest limit shown on the table in item B without the adjustment in item H.

(2) The carryforward individual compensation amount is based on full-time employment and shall be adjusted proportionately downward if the individual no longer works full-time hours annually.

(3) If an individual increases the number of hours worked annually, up to full-time hours, the carryforward individual compensation amount, as adjusted pursuant to subitem (2), shall be adjusted proportionately upward to the lesser of the limit in items B and C for the facility or provider group or the actual amount of compensation.

(4) The carryforward individual compensation amount, as adjusted by subitem (2) or (3), shall serve as the compensation limit for the individual until the applicable individual compensation limit from the table in item B as adjusted by item H equals or exceeds the carryforward amount except:

(a) it must not be increased for annual inflation changes; and

(b) it must not be increased for proportional changes in client equivalents of the facility or provider group.

(5) The carryforward individual compensation amount must be subject to downward proportional adjustments for decreases in client equivalents.

G. The allowable compensation for an individual shall be the lesser of total compensation as adjusted in items D and E or the individual compensation limit in items B and C, except as provided in item F. The allowable compensation for an individual shall be allocated as provided in part 9553.0030, subpart 3a.

H. The individual compensation limits in item B shall be indexed for inflation annually beginning with the reporting year ending December 31, 1996, by applying the forecasted index in part 9553.0050, subpart 2, item C, subitem (2), to the limit for a 40-bed facility or provider group and increasing each per-bed limit by that amount.

Subp. 15. **General cost principles.** The commissioner shall use the cost principles in this subpart to determine allowable costs:

A. the cost is ordinary, necessary, and related to ~~resident~~ client care;

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

[For text of subp 16, see M.R.]

Subp. 17. Out-of-state, overnight travel costs. The maximum amount of out-of-state, overnight travel costs per reporting year shall be subject to a cumulative limit based on the facility licensed beds of the provider group as follows:

A. one to 15 beds, 50 cents per bed per day;

B. the next 16 to 24 beds, 30 cents per bed per day; and

C. if more than 24 beds, ten cents per bed per day for each bed in excess of 24 beds.

The limit applies to all travel expenses including transportation, lodging, and meals costs except staff travel incurred in conjunction with activities specified in subpart 11.

The purpose of the travel by any employee must be related to client care.

Subp. 18. Limit of membership fees and trade association dues. The cost of facility memberships is allowed in one Minnesota and one national ICF/MR provider trade association. In addition, the cost of membership for the facility or an employee is allowed in one community service or business organization whose activities are of programmatic benefit to clients.

**9553.0036 NONALLOWABLE COSTS.**

The costs listed in this part are not allowable for purposes of establishing total payment rates. If any of the costs in this part are included in any account of the provider or provider group, they must be identified on the facility's cost report.

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

D. Advertising designed to encourage potential ~~residents~~ clients to select a particular facility. This item does not apply to a total expenditure of \$2,000 or less for all notices placed in the telephone yellow pages for the purpose of stating the facility's name, location, telephone number, and general information about services in the facility.

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

F. Purchases or activities not related to ~~resident~~ client care such as flowers or gifts for employees or providers, employee parties, and business meals except as in part ~~9553.0040~~ 9553.0035, subpart ~~3, item 17.~~

[For text of items G and H, see M.R.]

I. Costs of sponsoring ~~nonresident~~ nonclient activities such as athletic teams and beauty contests.

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

M. Training programs for anyone except ~~residents~~ clients, facility employees, volunteers in the facility, or a ~~resident's~~ client's family or legal guardians.

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

Q. Costs of personal need items, such as personal clothing, normally paid for by ~~residents~~ clients.

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

T. Telephones, televisions, and radios provided in a ~~resident's~~ client's room.

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U. Costs of agreements not to compete.

V. Costs of services provided to a resident client by a licensed medical, therapeutic, or rehabilitation practitioner or any other vendor of medical care which are billed separately on a fee for service basis, including:

[For text of subitems (1) to (3), see M.R.]

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

X. Costs of therapeutic overnight trips, camping, or vacations for residents clients except as in part 9553.0035, subpart 11.

[For text of items Y and Z, see M.R.]

AA. Costs incurred in providing approved services supported by a rate exception for very dependent persons with special needs, up to the amount approved and authorized for payment, under parts 9510.1020 to 9510.1140.

[For text of items BB to GG, see M.R.]

HH. Travel outside the continental United States or Canada.

### 9553.0040 REPORTING BY COST CATEGORY.

Subpart 1. [See repealer.]

Subp. 1a. General operating cost category. Effective for the reporting year ending on or after December 31, 1995, the direct costs of program, administrative, and maintenance functions shall be reported in the general operating cost category. These costs include:

A. salaries of all facility employees. Employees include the administrator, program director, unit coordinator, and unit supervisor, other nonprofessional program staff, staff psychologist, registered nurse, licensed practical nurse, and employees who perform dietary, laundry, housekeeping, plant maintenance, accounting, clerical, data processing, receptionist, security, and personnel functions;

B. supplies;

C. fees for dietary consultants, psychologists, psychiatrists, therapists, and other consultants;

D. staff training including the cost of lodging and meals, to meet the requirements of laws, rules, or regulations for keeping an employee's salary, status, or position, or to maintain or update skills needed in performing the employee's present duties;

E. purchased services;

F. membership or other fees for client participation and staff supervision in social, sports, health, or similar organizations;

G. food;

H. linen and bedding;

I. utilities and fuel;

J. nondepreciable equipment and repairs not subject to capitalization under part 9553.0035, subpart 8;

K. licensing and permit fees, except as in subpart 6, item B;

L. travel expenses in Minnesota and outside of Minnesota;

M. motor vehicle operating costs;

N. telephone and communication charges;

O. insurance, including real estate and professional liability;

P. professional fees for services such as legal, accounting, and data processing services;

Q. business meetings and seminars;

R. postage;

S. membership fees for associations and professional organizations that are directly related to the operation of the facility and not reported in item F;

T. subscriptions to periodicals that are directly related to the operation of the facility;

U. advertising and personnel recruitment costs including help wanted advertising;

V. management fees of a nonrelated organization;

W. working capital interest expense;

X. central, affiliated, or corporate office costs excluding the property-related costs of capital assets used exclusively by individual facilities in the provider group. Central, affiliated, or corporate office costs shall be allocated in accordance with part 9553.0030, subpart 3a:

Y. payroll taxes and fringe benefits. These taxes and benefits are:

- (1) the employer's share of the social security withholding tax;
- (2) state and federal unemployment compensation taxes or costs;
- (3) group life insurance and disability insurance;
- (4) group health and dental insurance;

(5) workers' compensation insurance including self-insurance as specified in Minnesota Statutes, section 256B.501, subdivision 5a, paragraph (e);

(6) either a pension plan or profit sharing plan as in part 9553.0035, subpart 10, including sections 403(b) and 408(k) of the Internal Revenue Code; and

(7) governmentally required retirement contributions.

Subp. 2. [See repealer.]

Subp. 3. [See repealer.]

Subp. 4. [See repealer.]

Subp. 5. **Property-related costs.** The facility costs listed in this subpart are included in the property-related cost category:

- A. allowance for depreciation of capital assets, except land;
- B. capital debt interest expenses;
- C. rental and lease payments; and

D. payments permitted under part 9553.0036, item BB central, affiliated, or corporate office capital assets used exclusively by the facility.

Subp. 6. **Special operating costs.** The facility costs listed in this subpart are included in the special operating cost category:

- A. special assessments and real estate taxes;
- B. license fees required by the Minnesota Department of Human Services and the Minnesota Department of Health;
- C. real estate insurance;
- ~~D. professional liability insurance;~~
- ~~E. the portion of preopening costs amortized as in part 9553.0035, subpart 12, item B;~~
- ~~F. D. training and habilitation services costs; and~~
- ~~G. E. physical plant modifications or additional depreciable equipment costs allowed under part 9553.0061; and~~
- E. payments permitted under part 9553.0036, item BB.

**9553.0041 GENERAL REPORTING REQUIREMENTS.**

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

Subp. 2. **Required information.** A complete annual cost report must contain the following items:

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

K. Charts showing staff assignments classified according to ~~the cost categories in~~ part 9553.0040, subpart 1a, items A and C. The charts must contain the information specified in the cost report form.

L. Documentation of costs included in the payment rate for approved services for very dependent persons with special needs under parts 9510.1020 to 9510.1140. These costs must be reported on an individual ~~resident client~~ basis unless the special needs payment rate was approved for more than one ~~resident client~~.

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M. An explanation of all adjustments made by the provider to the cost report and the applicable rule citations.

N. A breakdown of all costs included in the related organization's management fees or central, affiliated, or corporate office costs charged to the provider and the related organization's costs allocable to the facility in accordance with part 9553.0030. The breakdown must contain all costs of items as listed in part 9553.0040, ~~subpart 3~~ except that related organizations that have a federally approved cost allocation plan which has been documented by the provider, may break down the management fee or central office costs according to the approved plan. The supporting schedules must include the related organization's or the central, affiliated, or corporate office income statement; the cost allocated to each facility, related organization, or nonrelated organization; and an explanation of the method of allocation used.

[For text of subs 3 to 12, see M.R.]

Subp. 13. **Adjustments.** Adjustments to the total payment rate may be made as a result of desk or field audit findings or subject to part 9553.0050, ~~subpart 3~~. Desk or field audit adjustments are made according to items A to G.

A. Field audit adjustments must be made only if the adjustment would result in at least a five cent per resident client day or \$2,000 cost change, whichever is less.

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

Subp. 14. **Amended reports.** Amendments to previously filed annual cost reports are governed by items A to E.

A. Facilities may file amendments to previously filed cost reports when errors or omissions in the annual cost report are discovered which would result in at least a five cent per resident client day or \$2,000 adjustment, whichever is less for each reporting year.

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

[For text of subp 15, see M.R.]

Subp. 16. **Reporting real estate taxes, and special assessments, and insurance.** The facility shall submit a copy of its statement of real estate taxes payable for the calendar year in which the rate year begins and a copy of the invoices for the real estate insurance and professional liability insurance for coverage during the rate year by June 30 each year. Except as provided in this subpart, the commissioner shall disallow the costs of real estate taxes, and special assessments, real estate insurance, and professional liability insurance, if the documentation is not submitted by July 31. The disallowance shall remain in effect until the facility provides the documentation and amends the cost report under subpart 14. The historical operating cost for the special operating costs during the reporting year must be shown on the cost report.

### 9553.0050 DETERMINATION OF TOTAL GENERAL OPERATING COST PAYMENT RATE.

Subpart 1. **Establishment of allowable historical general operating cost per diem.** The commissioner shall annually review and adjust the general operating costs incurred by the facility during the reporting year preceding the rate year to determine the facility's allowable historical general operating costs. The review and adjustment must comply with parts 9553.0010 to 9553.0080. Each facility's allowable historical general operating cost per diem shall be established according to items A to ~~F~~ E.

~~A. The total allowable historical operating cost per diem shall be limited according to subitems (1) to (5).~~

~~(1) For the rate years beginning on or after October 1, 1986, the administrative allowable historical operating costs shall be limited as in units (a) to (g).~~

~~(a) The commissioner shall classify each facility into one of two groups based on the number of licensed beds reported on the facility's cost report. Group one shall include those facilities with more than 20 licensed beds. Group two shall include those facilities with 20 or fewer licensed beds.~~

~~(b) The commissioner shall determine the administrative allowable historical operating cost per licensed bed for each facility within the two groups in unit (a) by dividing the administrative allowable historical operating cost in each facility by the number of licensed beds in each facility.~~

~~(c) The commissioner shall establish the administrative cost per licensed bed limit by multiplying the median of the array for each group of administrative allowable historical operating costs per licensed bed by 105 percent.~~

~~(d) For the rate year beginning October 1, 1986, the cost of a certified audit must not be included in the computation of the administrative allowable historical operating cost or its limit. The facility shall report to the commissioner by July 31, 1986, the greater of the cost incurred for a certified audit for either the reporting year ended December 31, 1985, or a fiscal year ending during the 1985 calendar year.~~

The commissioner shall determine the average cost of a certified audit per licensed bed by totaling the cost of each certified audit submitted to the commissioner by July 31, 1986, and dividing the sum by the total number of licensed beds in facilities which have

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submitted costs for a certified audit. The maximum allowable cost for a certified audit shall be the lesser of the facility's reported cost or 115 percent of the average cost of a certified audit per licensed bed multiplied by the number of licensed beds in the facility.

(e) For the rate years beginning on October 1, 1986, and October 1, 1987, the maximum administrative allowable historical operating cost shall be the lesser of the facility's administrative allowable historical operating cost or the amount in unit (e) multiplied by the facility's licensed beds.

(f) For rate years beginning on or after October 1, 1988, the commissioner shall increase the administrative cost per licensed bed limit in unit (e) by multiplying the limit established for the rate year beginning October 1, 1987, by the percent moving average of the index of average hourly earnings in nursing and personal care facilities for the fourth quarter of the rate year following the reporting year, forecast by Data Resources, Inc. in the second quarter of the calendar year following the reporting year. The forecast appears in Health Care Costs, published by Data Resources, Inc., and is incorporated by reference. Health Care Costs is available through the Minitex interlibrary loan system. It is published monthly. The maximum administrative allowable historical operating cost shall be the lesser of the facility's administrative allowable historical operating cost or the amount determined in this unit multiplied by the facility's licensed beds.

(g) The administrative cost per licensed bed limit and the average cost of a certified audit determined in this subitem must not be adjusted as a result of field audits, appeals, and amendments.

(2) For the rate years beginning on or after October 1, 1986, the allowable historical operating costs in the maintenance operating cost category must not exceed the operating cost payment rate for the maintenance operating cost category in effect during the reporting year times the prorated resident days which correspond to those operating cost payment rates paid during the reporting year. For the period January 1, 1988 to September 30, 1988, the allowable historical operating costs in the maintenance operating cost category must not exceed 125 percent of the operating cost payment rate for the maintenance operating cost category in effect during the reporting year times the prorated resident days which correspond to those operating cost payment rates paid during the reporting year. For rate years beginning on or after October 1, 1988, the allowable historical operating costs in the maintenance operating cost category must not exceed the amount determined for the period January 1, 1988 to September 30, 1988, increased annually by the index in subitem (1), unit (f).

(3) For the rate year beginning October 1, 1986, the allowable historical operating costs in the administrative operating cost category must not exceed the operating cost payment rate for the administrative operating cost category in effect during the reporting year times the prorated resident days that correspond to those operating cost payment rates paid during the reporting year. Except for the purpose of calculating the efficiency incentive under subpart 2, item E, this limit on administrative operating costs shall not be in effect for rate years beginning on or after October 1, 1987.

(4) For the rate year beginning October 1, 1986, and October 1, 1987, the facility's total operating cost payment rate in effect during the reporting year must be adjusted for reclassifications in accordance with part 9553.0040 and be separated into program, maintenance, special, and administrative operating cost payment rates according to units (a) to (e):

(a) The allowable historical operating costs for each of the program, maintenance, special, and administrative operating cost categories including the portion of payroll taxes and fringe benefits in unit (b) incurred during the reporting year must be divided by the total allowable historical operating costs incurred during the reporting year.

(b) The allowable historical operating costs for payroll taxes and fringe benefits shall be allocated to the program, maintenance, and administrative operating cost categories in accordance with part 9553.0030, subpart 6.

(c) The program, maintenance, special, and administrative operating cost payment rates shall be determined by multiplying each total operating cost payment rate in effect during the reporting year by the program, maintenance, special, and administrative ratios determined in unit (a).

For rate years beginning on or after October 1, 1988, the program operating cost payment rate in effect during the reporting year times the prorated resident days that correspond to those operating cost payment rates paid during the reporting year must be used in computing the total of the limits in the computation of the efficiency incentive under subpart 2, item E.

(5) The limits in subitems (2), (3), and (4) shall not apply to a facility with a payment rate established according to part 9553.0075, subparts 1 to 3.

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B. The program allowable historical operating cost per diem shall be computed by dividing the program allowable historical operating costs in that cost category incurred during the reporting year by the greater of resident days or 85 percent of capacity days.

C. The maintenance allowable historical operating cost per diem shall be computed by dividing the maintenance allowable historical operating costs in that cost category incurred during the reporting year as limited according to item A, by the greater of resident days or 85 percent of capacity days.

D. The administrative allowable historical operating cost per diem shall be computed by dividing the administrative allowable historical operating cost in that cost category incurred during the reporting year as limited according to item A, by the greater of resident days or 85 percent of capacity days.

E. For the rate year beginning October 1, 1986, the allowable certified audit cost per diem shall be computed by dividing the allowable certified audit cost as determined in item A, subitem (1), unit (d) by the greater of resident days or 85 percent of capacity days.

A. For rate years beginning on or after October 1, 1996, the administrative operating cost limit carryforward must be deducted from the facility's allowable historical general operating costs. The commissioner shall compute the base reporting year amount of each facility's administrative operating cost limit carryforward by determining the amount the facility exceeded its administrative operating cost limit during the base reporting year ending December 31, 1994. Annually, beginning with the reporting year ending December 31, 1995, the amount of this deduction shall be adjusted as indicated in subitems (1) to (5).

(1) If the facility's allowable historical general operating cost per diem for the current reporting year is less than its allowable historical general operating cost per diem for the prior reporting year indexed for inflation by the forecasted index in subpart 2, item C, subitem (2), the per diem amount of the difference shall be multiplied by the facility's client days for the current reporting year, and subtracted from its administrative operating cost limit carryforward.

(2) If the facility's allowable historical general operating cost per diem for a subsequent reporting year is more than its allowable historical general operating cost per diem for the prior reporting year indexed for inflation by the forecasted index in subpart 2, item C, subitem (2), the per diem amount of the difference shall be multiplied by the facility's resident days for the current reporting year, and added to its administrative operating cost limit carryforward. The administrative operating cost limit carryforward must not be increased beyond the facility's base reporting year amount.

(3) If the facility's administrative operating cost limit carryforward has been reduced to zero, subitem (2) will not apply in subsequent reporting years.

(4) If a facility with an administrative operating cost limit carryforward in the base reporting year later ceases operations as an ICF/MR or enters into a voluntary closure agreement as part of a community conversion project under *Minnesota Statutes*, section 252.292, that facility's administrative operating cost limit carryforward must reduce the economical facility incentive dollars available in subpart 2, item B, for that and all subsequent reporting years.

(5) If a facility has received a one-time operating cost adjustment and that adjustment has been reviewed under subpart 3, item F, the commissioner shall adjust the computations in subitems (1) and (2) to assure the one-time operating costs allowed are included in both reporting years reviewed. If the facility payment rate is subject to the interim/settle-up provisions of part 9553.0075 as a result of a community conversion project under *Minnesota Statutes*, section 252.292, the computations in subitems (1) to (3) shall not apply. If the facility is downsizing its licensed capacity during the reporting year according to a downsizing project specifically authorized under *Laws 1993, First Special Session chapter 1, article 4, section 13, or Laws 1995, chapter 207, article 3, section 20*; the computations in subitems (1) and (2) shall not apply until the facility completes the second full reporting year following its downsizing project.

B. The allowable historical general operating cost per diem shall be determined by dividing the facility's allowable historical general operating costs by the greater of the facility's client days or 85 percent of capacity days for the reporting year.

C. The commissioner shall sum the maintenance operating cost limit disallowances as of September 1, 1996, for all facilities for the reporting year ending December 31, 1995. The total maintenance operating cost limit disallowances shall be deducted from the aggregate of all economical facility incentive payments as provided in subpart 2, item B, for that and all subsequent reporting years.

F. D. If a facility's total allowable historical general operating cost per diem or allowable historical operating cost per diems in any of the operating cost categories is greater than the respective allowable historical general operating cost payment rate established for the corresponding rate year, there must be no retroactive cost settlement, unless the difference is due to:

(1) a field audit adjustment as in part 9553.0041, subpart 13; or

(2) a settle-up payment rate computed as in part 9553.0075.

E. If item A is invalidated, the total administrative operating cost limit carryforward amounts for all facilities must reduce the economical facility incentive dollars available in subpart 2, item B, for that and for all subsequent reporting years.

Subp. 2. **Establishment of total general operating cost payment rate.** The total general operating cost payment rate shall be established according to items A to F D.

A. For the rate year beginning October 1, 1986, and for the first three months of the rate year beginning October 1, 1987, the allowable historical operating cost per diems determined according to subpart 1, items B to D, shall be adjusted by the annualized percentage change in the all urban consumer price index (CPI-U) for Minneapolis-Saint Paul as published by the Bureau of Labor Statistics, United States Department of Labor, between the two most recent Decembers before the beginning of the rate year. The year 1967 is the standard reference base period. For the rate year beginning October 1, 1986, the allowable certified audit cost per diem in subpart 1, item E, shall not be adjusted by the CPI-U. Beginning January 1, 1988, and for rate years beginning on or after October 1, 1988, the allowable historical operating cost per diems determined according to subpart 1, items B to D, shall be adjusted by the annualized percent moving average of the index specified in subpart 1, item A, subitem (1), unit (f). For the period January 1, 1988 to September 30, 1988, the program allowable historical operating cost per diem determined according to subpart 1, item B, shall be adjusted by adding 2.46 to the annualized percent moving average of the index specified in subpart 1, item A, subitem (1), unit (f).

B. The program operating cost payment rate shall be the adjusted program operating cost per diem computed in item A except as provided in subpart 3.

C. The maintenance operating cost payment rate shall be the adjusted maintenance operating cost per diem computed in item A.

D. The administrative operating cost payment rate shall be the adjusted administrative operating cost per diem computed in item A.

E. If the reporting year's total operating cost excluding special operating costs, is less than the sum of the limits computed in subpart 1, item A, subitems (2), (3), and (4), the facility shall receive the difference divided by the greater of resident days or 85 percent of capacity days as an efficiency incentive, up to a maximum of \$2 per resident per day. Beginning January 1, 1988, and for rate years beginning on or after October 1, 1988, if the reporting year's total allowable operating cost after all limits excluding special operating costs, is less than the sum of the limits computed in subpart 1, item A, subitems (2), (3), and (4), the facility shall receive the difference divided by the greater of resident days or 85 percent of capacity days as an efficiency incentive, up to a maximum of \$2 per resident per day. A facility whose program allowable historical operating cost incurred during the reporting year is below the program historical operating cost limit established in subpart 1, item A, subitems (2), (3), and (4) is not eligible to receive the efficiency incentive. The efficiency incentive must not be adjusted as a result of a field audit.

A. A facility's allowable historical general operating cost payment rate shall be equal to its allowable historical general operating cost per diem in subpart 1 multiplied by the forecasted index in item C, subitem (1), subject to the following:

For rate years beginning on or after October 1, 1996, the commissioner shall establish maximum overall general operating cost per service unit limits for facilities according to subitems (1) to (10). Each facility's allowable historical general operating costs and client assessment information for that reporting year shall be used for establishing the overall limits. If a facility's proportion of temporary care client days to total client days exceeds 80 percent, the commissioner must exempt that facility from the overall general operating cost per service unit limits in subitems (1) to (10). The commissioner shall limit a temporary care facility's payment rate to not more than its prior year's payment rate plus the inflation factor as established in item C, subitem (2), plus three percent.

(1) The commissioner shall determine each facility's weighted service units for the reporting year by multiplying its client days in each client classification level as established in Laws 1995, article 7, section 36, paragraph (i), by the corresponding weights for that classification level, and summing the results.

(2) The facility's service unit score is equal to its weighted service units as computed in subitem (1) divided by the facility's total client days for the reporting year.

(3) For each facility, the commissioner shall determine the facility's cost per service unit by dividing its allowable historical general operating costs for the reporting year by the facility's service unit score in subitem (2) multiplied by its total client days, or 85 percent of the facility's capacity days times its service unit score in subitem (2), if the facility's occupancy is less than 85

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percent of licensed capacity. If a facility reports temporary care client days, the temporary care client days shall be multiplied by the service unit score in subitem (2), and the resulting weighted client days shall be added to the facility's weighted service units in subitem (1) prior to computing the facility's cost per service unit in this subitem.

(4) The commissioner shall group facilities based on class A or B licensure designation, number of licensed beds, and geographic location. For purposes of this grouping, facilities with six beds or less shall be designated as small and facilities with more than six beds shall be designated as large. If a facility has both class A and class B licensed beds, the facility shall be considered a class A facility for this purpose if the number of class A beds is more than half its total number of ICF/MR beds, otherwise the facility shall be considered a class B facility. The metropolitan geographic group shall include Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington counties. All other Minnesota counties shall be designated as the nonmetropolitan geographic group. These characteristics result in the following eight groupings:

- (a) small class A metropolitan;
- (b) large class A metropolitan;
- (c) small class B metropolitan;
- (d) large class B metropolitan;
- (e) small class A nonmetropolitan;
- (f) large class A nonmetropolitan;
- (g) small class B nonmetropolitan; and
- (h) large class B nonmetropolitan.

(5) The commissioner shall array facilities within each grouping in subitem (4) by each facility's cost per service unit as determined in subitem (3).

(6) In each array established under subitem (5), facilities with a cost per service unit at or above the median shall be limited to the lesser of:

(a) the current reporting year's cost per service unit; or

(b) the prior reporting year's allowable historical general operating cost per service unit plus the inflation factor as established in item C, subitem (2), increased by three percentage points.

(7) The overall operating cost per service unit limit for each group shall be established as follows:

(a) each array established under subitem (5) shall be arrayed again after the application of subitem (6);

(b) in each array established in subitem (5), two general operating cost limits shall be determined. The first cost per service unit limit shall be established at 0.5 and less than or equal to 1.0 standard deviation above the median of that array. The second cost per service unit limit shall be established at 1.0 standard deviation above the median of the array; and

(c) the overall operating cost per service unit limits shall be indexed for inflation annually beginning with the reporting year ending December 31, 1996, using the forecasted inflation index in item C, subitem (2).

(8) Annually, facilities shall be arrayed using the method described in subitems (5) and (7). Each facility with a cost per service unit at or above its group's first cost per service unit limit, but less than the second cost per service unit limit for that group, shall be limited to 98 percent of its total general operating cost per diems plus the forecasted inflation index in item C, subitem (1). Each facility with a cost per service unit at or above the second cost per service unit limit will be limited to 97 percent of its total general operating cost per diems, plus the forecasted inflation index in item C, subitem (1).

(9) The commissioner may rebase these overall limits, using the method described in this item, but no more frequently than once every three years.

(10) A facility shall be exempt from the limitation in subitem (6), if the facility during the reporting year preceding the rate year:

(a) has had a settle-up payment rate established under part 9553.0075;

(b) has had a one-time adjustment settle-up determined under subpart 3;

(c) has a payment rate established under *Minnesota Statutes*, section 252.292;

(d) has a payment rate established under *Minnesota Statutes*, section 245A.12 or 245A.13;

(e) is involved in a bed relocation project where a portion of more than 25 percent of the facility's beds is transferred to another facility; or

(f) is a facility downsizing project authorized under Laws 1993, First Special Session chapter 1, article 4, section 13; or Laws 1995, chapter 207, article 3, section 20.

B. For rate years beginning on or after October 1, 1996, the economical facility incentive shall be determined and distributed according to subitems (1) to (3). If a facility's proportion of temporary care client days to total client days exceeds 80 percent, the commissioner must exempt that facility from the economical facility incentive in subitems (1) to (3). The efficiency incentive per diems in effect on September 1, 1996, for the rate year beginning October 1, 1995, shall be the basis for determining a facility's economical facility incentive.

(1) The total amount available for distribution as an economical facility incentive shall be determined for each rate year by:

(a) summing the product of each facility's efficiency incentive per diem multiplied by the corresponding facility's client days for the reporting year ending December 31, 1994;

(b) subtracting the aggregate amount of maintenance operating cost limit disallowances as determined in subpart 1, item C; and

(c) multiplying the amount in unit (b) by factors in the following schedule:

i. for the rate year beginning October 1, 1996, the factor is 0.25;

ii. for the rate year beginning October 1, 1997, the factor is 0.5;

iii. for the rate year beginning October 1, 1998, the factor is 0.75; and

iv. for the rate year beginning on or after October 1, 1999, the factor is 1.0.

(2) Each rate year, the commissioner shall distribute the economical facility incentive dollars in subitem (1) using two separate methodologies. Up to \$40,000 shall be distributed as in subitem (4). The remainder of the available economical efficiency incentive dollars shall be distributed as established in units (a) and (b).

(a) Facilities shall be grouped as in item A, subitem (4). For the purposes of item B, the commissioner shall establish the economical facility threshold for each grouping at 105 percent of the median of each array in item A, subitem (5). The commissioner shall use the following table to compute a facility's economical facility incentive payment. Each increment or partial increment of the facility's cost per service unit per diem below its economical facility threshold shall be multiplied by the corresponding percentage for that per diem increment. The sum of each of those computations shall be the facility's economical facility incentive.

<u>Cost Per Service Unit Per Diem Increment Below Facility Limit</u>	<u>Percentage Applied to Each Per Diem Increment</u>
<u>less than \$5</u>	<u>seven percent</u>
<u>\$5 to less than \$10</u>	<u>15 percent</u>
<u>\$10 or more</u>	<u>five percent</u>

(b) The maximum economical facility incentive payment is \$2. Annually, when the payment rates are established, the commissioner must adjust the maximum economical facility incentive payment to ensure that the aggregate economical facility incentive dollar amount in subitem (2) as adjusted by subitem (1), is spent but not exceeded.

(3) Each facility that had an efficiency incentive that was used in the computations in subitem (1) shall receive an efficiency incentive for rate years beginning on or after October 1, 1996, equal to the efficiency incentive used in subitem (1) reduced by: (a) the percentage established by dividing the maintenance operating cost limit disallowances in subpart 1, item C, by the total amount available as determined in subitem (1), units (a) and (b); and (b) the factors in subitem (1), unit (c), for the respective rate years identified.

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(4) Up to \$40,000 of the economical facility incentive dollars shall be distributed to those facilities identified by a panel of experts as providing exemplary services. This panel shall consist of no more than ten members chosen from among representatives of trade associations, client advocacy groups, consumers and their family members, the University Affiliated Program, the Governor's Council on Developmental Disabilities, staff from the Minnesota Departments of Health and Human Services, and providers. The commissioner shall choose from people who volunteer or from persons known to the department from the above groups. The panel shall be formed in May each year and shall meet during the months of May to July, as often as necessary. If a provider serves on the panel, that provider's facility and any related facility as defined in part 9553.0020, subpart 39, shall not be eligible for an award that year. The first panel shall be formed in May 1997.

Each year the following shall occur:

(a) The commissioner shall select up to five areas of activity in which nominees will be evaluated. The commissioner shall consider criteria such as the domains set forth in Outcome-Based Performance Measures published by the Accreditation Council on Services for People with Disabilities. The focus shall be on quality, innovation, and cost-effectiveness.

(b) Annually, the department shall issue a bulletin that lists the criteria chosen for the year and includes a format for making nominations. Criteria to be addressed, in no more than five written pages, shall include explanations and examples of how the facility has demonstrated quality, innovation, cost effectiveness, and has developed initiatives to retain staff and improve staff's expertise through training, continuous quality improvement, or other innovative efforts, in the criteria chosen for the year. The bulletin shall be distributed to all facilities, trade associations, and consumer and advocacy groups for dissemination. Anyone may make a nomination, including self nominations.

(c) The nominations shall be submitted to the department for forwarding to the panel by April 15.

(d) The awards shall be made by August 15. The award winners shall be published by the department in cooperation with the trade associations. The panel will rely primarily on the written forms, but the panel is not restricted to use of the form and may seek more written information, conduct interviews, or visit facilities, at its discretion.

(e) The panel shall make no more than ten awards. The total dollar amount awarded must not exceed the amount in subitem (2), and shall be paid to each facility as a lump sum payment in the month following the month of the award. The panel's decision shall not be appealable.

(f) Dollars not awarded from the \$40,000 of economical facility incentive dollars shall be part of the amount available for facilities eligible under subitem (2).

(5) For rate years beginning after September 30, 1996, an economical facility incentive shall not be given to a facility which:

(a) reduces wages paid per hour to any employee for which any portion of time is directly assigned to the facility by part 9553.0030, subpart 3a, item A; or

(b) reduces standardized hours of care per client. Comparisons under this subitem will be made between the two most recent reporting years prior to the beginning of the rate year for which a rate is being set.

C. The commissioner shall use the Consumer Price Index-All Items (United States city average) (CPI-U) as forecasted by Data Resources, Inc., to take into account economic trends and conditions for changes in facility allowable historical general operating costs and limits. The forecasted index shall be established for allowable historical general operating costs as provided in subitem (1), and for operating limits as provided in subitem (2).

(1) The CPI-U forecasted index for allowable historical general operating costs shall be determined in the first quarter of the calendar year in which the rate year begins, and shall be based on the 21-month period from the midpoint of the facility's reporting year to the midpoint of the rate year following the reporting year.

(2) For rate years beginning on or after October 1, 1996, the CPI-U forecasted index for the overall operating cost limits and for the individual compensation limit shall be determined in the first quarter of the calendar year in which the rate year begins, and shall be based on the 12-month period between the midpoints of the two reporting years preceding the rate year.

F. D. The total operating cost payment rate shall be the sum of items B to E. For the rate year beginning October 1, 1986, the total operating cost payment rate shall be the sum of items B to E and the allowable certified audit cost per diem as determined in subpart 1, item E A and B.

Subp. 3. One time adjustment to program allowable historical general operating cost payment rate. For the purposes of this subpart, "additional program staff" means direct service staff required to implement the changes in the provider's program to correct the finding of deficiency or need in excess of the number included in the facility's total payment rate during the rate year covering the date of the finding of deficiency or need. The one time adjustment shall be determined according to items A to H.

## Proposed Rules

A. A facility is eligible for a one time adjustment to the facility's ~~program allowable historical general~~ operating cost payment rate when the facility meets one of the conditions in subitems (1) to (4) and the conditions in item B.

(1) The commissioner or the commissioner of health has issued a correction order to the facility under chapter 4665 and parts 9525.0210 to 9525.0430 or 4665.0100 to 4665.9900 9525.0215 to 9525.0355.

(2) The federal government has issued a deficiency order under *Code of Federal Regulations*, title 42, section 442, as amended through October 1, 1991, requiring the facility to correct a deficiency in the number or type of program staff necessary to implement the residents' clients' individual habilitation program plans.

(3) The commissioner has determined a need exists based on a determination or redetermination of need plan approved under *Minnesota Statutes*, section 252.28 and ~~parts 9525.0015 to 9525.0145~~ part 9525.0036.

(4) The commissioner has approved, under *Minnesota Statutes*, section 252.28 and ~~parts 9525.0015 to 9525.0145~~ part 9525.0036, a Class A facility's plan to substantially modify the facility to serve persons who require a facility that meets the standards for impractical evacuation capability as provided in the *Code of Federal Regulations*, title 42, section 483.470(j), as amended through October 1, 1991. For purposes of this subitem, "substantially modify" means to modify the facility so that at least 50 percent of the licensed beds may be used to serve persons who meet the criteria in part 9510.1050, subpart 2, items C and D.

B. To qualify for a one time adjustment the facility must document that:

(1) the deficiency or need cannot be corrected or met by reallocating facility staff and costs including amounts reimbursed for a change in ownership or reorganization of provider entities between related organizations, and any ~~efficiency~~ economic facility incentive in subpart 2, item B, or other allowance;

(2) the deficiency or need cannot be corrected or met through a special needs rate exception as provided in parts 9510.1020 to 9510.1140 and Minnesota Statutes, section 256B.501, subdivision 8; and

(3) the provisions in items C to H are met.

C. The facility must submit to the commissioner a written request for the one time adjustment to the ~~program allowable historical general~~ operating cost payment rate. The request must include:

(1) documentation which indicates that the deficiency or need could not be corrected or met through a special needs rate as provided in parts 9510.1020 to 9510.1140 and Minnesota Statutes, section 256B.501, subdivision 8;

(2) a copy of the order or determination which cites the deficiency or need in the number and type of program staff required to correct the deficiency or meet the need;

(3) a list of all staff positions ~~during the rate year covering the date of the deficiency order or need determination,~~ annual salaries and hours, related fringe benefits and payroll taxes;

(4) a description of the facility's plan to correct the deficiency or meet the need including the projected cost of the salary and related fringe benefits and payroll taxes for required additional ~~program~~ staff; and

(5) an explanation of the reasons the facility was unable to meet staff ratios necessary to implement individual ~~resident habilitation client program~~ plans under payment rates established by current or prior reimbursement rules; and

(6) for the rate year covering the deficiency order or need determination, the client assessment scores of all clients in the facility and assessments completed according to item D, subitem (7).

D. The commissioner shall evaluate the documents submitted in item C and other information available to the commissioner using the criteria in items A and B. If the request meets the criteria in items A and B, the commissioner shall compute the one time adjustment to the ~~program allowable historical general~~ operating cost payment rate in accordance with subitems (1) to ~~(5)~~ (7).

(1) The necessary and reasonable costs of units (a) to (f) shall be determined by the commissioner:

(a) the salary and related fringe benefits and payroll taxes for required additional ~~program~~ staff; If the provider has experienced a decrease in direct service staff hours between the rate year during which the one time rate adjustment would become effective and the prior two reporting years, the amount of staff hours equal to that decrease shall be subtracted from the total number of staff hours granted under the one time rate adjustment. The total dollars authorized under the one time rate adjustment shall be

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adjusted accordingly. If the facility's occupancy has declined during this period, the direct service staff hour review must be on an hours per resident day basis:

(b) program supplies required to correct the deficiency or implement determination of need;

(c) up to \$1,500 of equipment needed to implement the program. The commissioner may approve an amount which exceeds the \$1,500 equipment limit if the commissioner determines that the cost of the equipment and the payment schedule for the equipment are reasonable and the equipment is necessary to implement the change in the program services. The commissioner's determination shall be final;

(d) program consultants consultant services required to implement the deficiency corrections or determination of need;

(e) repairs to property damaged by the residents clients; and

(f) employee training needed to meet the needs of the persons identified in the plan approved by the commissioner.

(2) The amount determined in subitem (1) shall be divided by the greater of resident client days or 85 percent of capacity days.

(3) Any efficiency economical facility incentive under subpart 2, item B, subitem (2), or portion of the capital debt reduction allowance not used for capital debt reduction, included in the facility's total payment rate in effect on the date of the written request in item C shall be subtracted from the amount computed in subitem (2).

(4) For one time adjustments approved after September 30, 1992, the subtraction described in subitem (3) shall in no event extend beyond one year.

(5) Any further reduction which would be possible by reallocating the facility's staff and costs shall be subtracted from the amount computed in subitem (2).

(6) The commissioner shall evaluate all facilities seeking a one-time rate adjustment using the groupings established in subpart 2, item A, subitem (4), and the client assessment scores determined according to Minnesota Statutes, section 256B.501, subdivision 3g, and submitted by the facility. If the facility's one-time rate adjustment plus its allowable historical general operating cost per diem, when adjusted by the facility's most recent service unit score, exceeds the average cost per service unit of those four facilities with the most similar service unit scores, the facility must document to the commissioner's satisfaction the reasons why the facility's one-time adjustment should exceed that amount. The comparison of the average service unit score of four facilities shall include two facilities with scores at or directly above the requesting facility's score and two facilities with scores at or directly below the requesting facility's score. If there are not two facilities in the array at or above and two facilities at or below the facility seeking the one-time adjustment, the four facilities with the closest service unit scores to the facility seeking the rate adjustment shall be used to determine the average. Based on the results of the commissioner's review of the facility's rationale, the commissioner shall establish the amount of the facility's one-time adjustment.

(7) If the facility is requesting a one-time rate adjustment to serve new clients with higher needs, and these new clients have not been assessed by the facility OMRP to establish client classifications, the commissioner shall evaluate the facility using the method in subitem (6), but shall use each client's most recent classification. If a client classification is not available or the facility OMRP believes the classification would be different in that facility, the OMRP shall assess the client based on services that the OMRP anticipates will be provided in the facility and submit the form to the commissioner. The commissioner shall determine the client's classification and use this classification for the evaluation in subitem (6).

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

F. The one time adjustment to the facility's total payment rate shall remain in effect for at least a 21-month period. At the end of the first full reporting year which occurs during the one time adjustment period, the commissioner shall conduct a fiscal and program review. Based on the results of the fiscal and program review, the commissioner shall implement either subitem (1), (2), or (3).

(1) If the facility fails to implement the plan specified in item C, subitem (4), the commissioner shall recover the total amount paid under this subpart in accordance with part 9553.0041, subpart 13, and shall disallow any costs incurred by the facility in establishing future payment rates.

(2) If the facility implements the plan specified in item C, subitem (4), and the actual costs incurred during the one time adjustment period ending with the 12-month period which includes a full reporting year are below the payments made under this subpart, the commissioner shall reduce the adjustment to the facility's total payment rate accordingly and recover any overpayments in accordance with part 9553.0041, subpart 13. The reduced adjustment to the facility's total payment rate shall continue to be paid to the facility until the September 30 following the end of the reporting year which includes 12 months of the additional program staff salaries and related fringe benefits and payroll taxes.

(3) If the actual costs of implementing the plan specified in item C, subitem (4), incurred during the period exceed the payments made under this subpart, there shall be no retroactive cost settle up. The one time adjustment to the facility's total

payment rate shall continue to be paid to the facility at the same level until the September 30 following the end of the reporting year which includes 12 months of the additional ~~program~~ staff salaries and related fringe benefits and payroll taxes.

G. The facility must record the costs associated with this subpart separately from other facility costs until the commissioner's fiscal and program review establishes that the facility has implemented the plan specified in item C, subitem (4). To prevent duplicate payment, the ~~program~~ costs associated with this subpart are nonallowable until after the commissioner has reviewed and approved these costs in accordance with item F. If the commissioner approves these costs, the costs incurred during the reporting year which includes 12 months of the additional costs identified in item D, subitem (1), shall be allowable.

H. The commissioner shall authorize payments under this subpart only once in a three year period for a facility.

#### **9553.0051 DETERMINATION OF ~~THE~~ SPECIAL OPERATING COST PAYMENT RATE.**

The total allowable special operating costs in part 9553.0040, subpart 6, as adjusted by part 9553.0041, subpart 16, must be divided by the greater of ~~resident~~ client days or 85 percent of licensed capacity days to compute the special operating cost payment rate.

#### **9553.0060 DETERMINATION OF PROPERTY RELATED PAYMENT RATE.**

Subpart 1. **Depreciation.** Allowable depreciation expense must be determined according to items A to E.

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

B. The straight line method of depreciation must be used to compute the facility's depreciation for each capital asset. The useful life of a capital asset must be determined in accordance with subitems (1) to (3); ~~except as provided in part 9553.0030, subpart 4, item E.~~

[For text of subitems (1) to (3), see M.R.]

C. The facility's historical capital costs shall be limited by subitems (1) to (5).

(1) The facility's total historical capital costs of capital assets, as determined in item A must not exceed the maximum limits established annually per bed for licensed Class A beds and for licensed Class B beds, as follows:

Calendar Year Limits	Class A	Class B
Prior to 1974	\$11,000	
1974	13,000	
1975	14,820	
1976	15,413	
1977	16,406	
1978	18,109	
1979	20,010	
1980	25,194	\$29,452
1981	28,016	32,751
1982	29,165	34,094
1983	29,952	35,015
1984	30,012	35,085
1985	31,723	37,085
<u>1986</u>	<u>32,357</u>	<u>37,827</u>
<u>1987</u>	<u>33,263</u>	<u>38,886</u>
<u>1988</u>	<u>34,527</u>	<u>40,364</u>
<u>1989</u>	<u>34,700</u>	<u>40,566</u>
<u>1990</u>	<u>36,262</u>	<u>42,392</u>
<u>1991</u>	<u>36,987</u>	<u>43,240</u>
<u>1992</u>	<u>37,542</u>	<u>43,889</u>
<u>1993</u>	<u>38,180</u>	<u>44,635</u>
<u>1994</u>	<u>39,173</u>	<u>45,796</u>

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## Proposed Rules

1995	40,779	47,674		
<u>Facilities newly established or constructed after May 1, 1990:</u>			<u>B residential</u>	<u>B institutional</u>
44,800	45,200		1991	1990
46,104		1992	46,381	45,696
1993	47,169	47,592		46,796
48,395	48,829		1995	1994
50,831				50,379

[For text of subitems (2) to (4), see M.R.]

(5) Central, affiliated, or corporate office property-related costs of capital assets used exclusively by a facility in the provision of ICF/MR services must be classified to the property-related cost category of the facility that uses the capital asset. For purposes of this item, the facility's total historical capital cost of capital assets must not include the facility's allowable portion of capital assets of the central, affiliated, or corporate office whose costs are allocated to the facility's administrative general operating cost category in accordance with part 9553.0030, subpart 4, item D 3a.

D. Gains and losses on the disposal of capital assets must be included in the computation of allowable costs. A gain on the sale or abandonment of a facility's capital assets must be offset against the property related cost category to the extent that the gain resulted from depreciation expense claimed for reimbursement under parts 9553.0010 to 9553.0080, 12 MCAR SS 2.05301-2.05315 [Temporary], or parts 9510.0500 to 9510.0890. Gains or losses on trade-ins shall be reflected in the historical capital cost of the acquired capital asset. Claims for losses are limited to a total of ten cents per resident client day per reporting year. Any excess loss not claimed during the reporting year may be carried forward to future years.

E. Except as provided in subpart 7, facilities must fund depreciation according to subitems (1) to (8).

[For text of subitems (1) to (7), see M.R.]

(8) Funds deposited to meet the required Depreciation Reserve of the Minnesota Housing Finance Agency (MHFA) fulfill the requirements of this item. Amounts deposited in a Development Cost Escrow Account required by the Minnesota Housing Finance Agency MHFA or other similar accounts are not considered funded depreciation. Facilities financed by the Minnesota Housing Finance Agency MHFA must submit a copy of a statement breaking out the interest income according to the type of deposit.

(9) Funds deposited to meet the reserve requirements of mortgagors similar to those of MHFA depreciation reserve account fulfill the requirements of this item when:

(a) they are at least equal to the amount specified in subitem (1) or the provider agreed in writing before the beginning of the next rate year that when a mortgagor's required depreciation reserve is less than the amount specified in subitem (1), the difference between that amount and the amount specified in subitem (1), must be funded by the provider as otherwise required under this item; and

(b) the provider has notified the department of the name and requirements of the mortgagee.

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

Subp. 3. **Allowable interest expense.** Allowable capital debt interest expense shall be determined in accordance with items A to J.

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

F. Interest expense for capital debts on capital assets acquired, leased, constructed, or established after December 31, 1983, shall be allowable only for the portion of the capital debt which does not exceed 80 percent of the historical capital cost of the capital asset including points, financing charges, and bond premiums or discounts subject to the limitations in item H and subpart 1, item C. The difference between the historical cost of the capital asset and 80 percent of the historical cost of the capital asset can be:

(1) paid in cash by the provider when the asset is purchased;

(2) the market value of a facility asset the provider trades in when the asset is purchased;

(3) unclaimed for reimbursement as a capital debt by the provider; or

(4) an adjustment to a capital debt made by the commissioner during a desk or field audit of a cost report.

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

Subp. 4. **Computation of property related payment rate.** The commissioner shall determine the property related payment rate according to items A to C.

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

B. The commissioner shall compute the allowable property related costs by reviewing and adjusting the facility's property related costs incurred during the reporting year by applying parts 9553.0010 to 9553.0080. The facility's property related per diem shall be determined by dividing its allowable property related costs by 96 percent of the capacity days. For facilities with 15 or fewer licensed beds, the commissioner shall use the lesser of 96 percent of licensed capacity days or resident client days, except that in no case shall resident client days be less than 85 percent of licensed capacity days.

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

Subp. 5. **Capital debt reduction allowance.** A provider whose facility is not leased or a facility which is leased from a related organization shall receive a capital debt reduction allowance. The amount of the capital debt reduction allowance and the reduction of capital debt required must be determined according to items A to G.

A. The total amount of the capital debt reduction allowance and the portion of that amount which must be applied to reduce the provider's capital debt shall be determined according to the following table:

Percentage Of Equity In Capital Assets Used By The Facility	Total Capital Debt Reduction Allowance Per <u>Resident Client</u> Day (In Dollars)	Amount Which Must Be Applied To Reduce Capital Debt (In Dollars)
Less than 20.01	.50	.40
20.01 to 40.00	.50	0
40.01 to 60.00	.70	0
60.01 to 80.00	.90	0
80.01 to 100.00	1.10	0

B. Except as provided in subpart 7, item F, the provider's percentage of equity in the facility shall be determined by dividing equity by total allowable historical capital cost of capital assets.

C. Each reporting year, the provider shall reduce the capital debt at the end of the reporting year by an amount equal to the portion of the capital debt reduction allowances paid during the reporting year which must be applied to reduce capital debt multiplied by the prorated resident client days corresponding to each capital debt reduction allowance paid during the reporting year.

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

Subp. 6. **Energy conservation incentive.** The commissioner shall approve requests for exceptions to subpart 3, item F, and part 9553.0035, subpart 8, for initiatives designed to reduce the energy usage of the facility. The requests must be accompanied by an energy audit prepared by a professional engineer or architect registered in Minnesota, or by an auditor certified under part ~~7635.0130~~ 7635.0610 to do energy audits. The cost of the energy audit is an allowable general operating cost ~~and must be classified in the plant operations and maintenance cost category.~~ Energy conservation measures identified in the energy audit that:

A. have a payback period equal to or less than 36 months and a total cost not exceeding \$1 per resident client day shall be exempt from subpart 3, item F and part 9553.0035, subpart 8; or

B. have a payback period greater than 36 months or have a total cost in excess of \$1 per resident client day shall be exempt from subpart 3, item F.

[For text of subp 7, see M.R.]

**9553.0061 LIFE SAFETY CODE ADJUSTMENT.**

[For text of subps 1 to 5, see M.R.]

Subp. 6. **Computation of life safety code adjustment.** If the request meets the criteria in subparts 2 to 5, the commissioner shall compute the life safety code adjustment to the special operating cost payment rate under items A to E.

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

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D. If the amount determined in item B is less than \$500 per licensed bed, the amount must be divided by the resident client days from the cost report that was used to set the facility's total payment rate in effect on the date the statement of deficiencies was issued.

E. If the amount determined in item B is equal to or greater than \$500 per licensed bed, the amount in excess of \$500 per licensed bed must be reimbursed during the rate year following the rate year in which the statement of deficiencies was issued. The amount in excess of \$500 per licensed bed must be divided by the resident client days from the cost report that was used to set the facility's total payment rate for the rate year following the rate year in which the statement of deficiencies was issued.

[For text of subs 7 to 9, see M.R.]

### 9553.0070 DETERMINATION OF TOTAL PAYMENT RATE.

Subpart 1. **Total payment rate.** The total payment rate must be the sum of the total general operating cost payment rate, the special operating cost payment rate, and the property related payment rate.

Subp. 2. **Limitations to total payment rate.** The total payment rate must not exceed the rate paid by private paying residents clients for similar services for the same period. This limit does not apply to payments made by the commissioner for approved services for very dependent persons with special needs under parts 9510.1020 to 9510.1140.

Subp. 3. **Respite Temporary care payment rate.** Rates charged for respite temporary care must be identified separately. The respite temporary care payment rate may be different more than the total payment rate established by the commissioner if the services provided to the respite temporary care resident client are not similar to services provided to other facility residents clients for the same period.

Subp. 4. [See repealer.]

### 9553.0075 RATE SETTING PROCEDURES FOR NEWLY CONSTRUCTED OR NEWLY ESTABLISHED FACILITIES OR APPROVED CLASS A TO CLASS B CONVERSIONS.

Subpart 1. **Interim payment rate.** A provider may request an interim payment rate for a newly constructed or newly established facility or for a facility converting more than 50 percent of its licensed beds from Class A beds to Class B beds provided that the conversion is approved by the commissioner. To receive an interim payment rate, the provider must submit a projected cost report in compliance with parts 9553.0010 to 9553.0080 to the extent applicable, for the year in which the provider plans to begin operation or plans to convert beds. ~~Parts The limits and incentives in part 9553.0050, subpart 1, item A, subitems (2), (3), and (4); subpart 2, item E; subpart 2, items A and B; and subpart 3; and part 9553.0060, subpart 6, shall not apply to interim payment rates except that the limitation in part 9553.0050, subpart 2, item A, subitem (8), must apply.~~ The interim property related payment rate must be determined using projected resident client days but not less than 80 percent of licensed capacity days. The effective date of the interim payment rate for a newly constructed or newly established facility must be the later of the first day a medical assistance recipient resides in the newly constructed or established bed or the date of medical assistance program certification. The effective date of the interim payment rate for a facility converting more than 50 percent of its licensed beds from Class A beds to Class B beds must be the later of the date on which 60 percent of the converted beds are occupied by residents clients requiring a Class B bed as determined by the commissioner or the date on which the beds are licensed as Class B beds by the Minnesota Department of Health. Prior to the effective date of the interim payment rate, the provider may submit a request to update the interim rate. After the effective date of the interim payment rate, no adjustments shall be made in the interim payment rate until settle up.

Subp. 2. **Interim payment rate settle up.** The interim payment rate must not be in effect more than 17 months. When the interim payment rate begins between August 1 and December 31, the facility shall file settle up cost reports for the period from the beginning of the interim payment rate through December 31 of the following year. When the interim payment rate begins between January 1 and July 31, the facility shall file settle up cost reports for the period from the beginning of the interim payment rate to the first December 31 following the beginning of the interim payment rate.

~~A. An interim payment rate established on or before December 31, 1985, is subject to retroactive upward or downward adjustment based on the settle up cost report and according to rules in effect when the interim rate was established.~~

~~B. An interim payment rate established on or after January 1, 1986 1994, is subject to retroactive upward or downward adjustment based on the settle up cost report and in accordance with parts 9553.0010 to 9553.0080 except that:~~

~~(1) the limits and incentives in part 9553.0050, subpart 1, item A, subitems (2), (3), and (4); subpart 2, item E; items A and B, and subpart 3; and part 9553.0060, subpart 6, do not apply, except that the limitations in part 9553.0050, subpart 2, item A, subitem (8), must apply;~~

~~(2) the settle up property related payment rate must be calculated using the lesser of resident client days or 96 percent of licensed capacity days but not less than 80 percent of licensed capacity days;~~

(3) the settle up operating cost payment rates must be determined by dividing the allowable historical general operating costs by the greater of resident client days or 80 percent of licensed capacity days;

(4) the settle up special operating cost payment rate must be determined by dividing the allowable historical special operating costs by the greater of resident client days or 80 percent of licensed capacity days; and

(5) the settle-up total payment rate must not exceed the interim payment rate by more than 0.4166 percent for each full month between the effective date of the interim payment rate period and the end of the first fiscal period.

Subp. 3. **Total payment rate for nine-month period following settle up period.** For the nine-month period following the settle up reporting period, the total payment rate must be determined according to items A to C.

A. The allowable historical operating cost per diems must be determined in accordance with parts 9553.0010 to 9553.0080 except that:

(1) the limits and incentives in part 9553.0050, subpart 1, item A, subitems (2), (3), and (4); subpart 2, item B items A and B; and subpart 3; and part 9553.0060, subpart 6, do not apply, except that the limitation in part 9553.0050, subpart 2, item A, subitem (8), must apply;

(2) the resident client days must be the greater of an annualization of the resident client days in the last three months of the interim reporting period or the resident days in the interim reporting period but not less than 85 percent of licensed capacity days; and

(3) the allowable historical general operating cost per diems must be adjusted by multiplying those per diems by 9/12 of the percentage change in the all urban consumer price index (CPI-U) of Minneapolis/Saint Paul as published by the Bureau of Labor Statistics between the two most recent Decembers before the beginning of the rate year, new series index (1967=100) inflation index in part 9553.0050, subpart 2, item C, subitem (2).

B. The special operating cost payment rate must be determined by dividing the allowable historical special operating costs by the greater of resident client days or 85 percent of licensed capacity days.

C. The property related payment rate must be determined according to parts 9553.0010 to 9553.0080.

Subp. 4. **Payment rate during the first rate year following the interim rate period.** The first total payment rate for the first rate year after the end of the interim rate period must be based on the settle-up cost report and must be calculated as in subpart 3, except that the allowable historical operating cost per diems shall be adjusted in accordance with part 9553.0050, subpart 2, item A C, subitem (1).

#### **9553.0080 APPEAL PROCEDURES.**

Subpart 1. **Scope of appeals.** A decision by the commissioner may be appealed by the provider, provider group, or a county welfare or human services board if the following conditions are met: A provider may appeal from a determination of a payment rate if a decision could result in a change to the provider's payment rate.

A. the appeal, if successful, would result in a change to the facility's total payment rate;

B. the appeal arises from application of parts 9553.0010 to 9553.0080, 12 MCAR SS 2.05301-2.05315 [Temporary] or parts 9510.0500 to 9510.0890; and

C. the dispute over the decision is not resolved informally between the commissioner and the appealing party within 30 days of filing the written notice of intent to appeal under subpart 2, item A.

Subp. 2. **Filing of appeals an appeal.** To be effective, an appeal must meet the following criteria: appeal, a provider must file with the commissioner a written notice of appeal.

A. The provider, provider group, or county welfare or human services board must notify the commissioner in writing of its intent to appeal within 30 days of receiving the total payment rate determination or decision which is being appealed. A written appeal must be filed with the commissioner within 60 days after receiving the total payment rate determination or decision which is being appealed. The appeal must be postmarked or received by the commissioner within 60 days of the date the determination of the payment rate was mailed or personally received by a provider, whichever is earlier.

B. The appeal must specify:

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## Proposed Rules

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- (1) each disputed item and the reason for the dispute;
- (2) ~~the computation and the amount that the provider believes to be correct~~ the total dollar amount in dispute for each separate disallowance, allocation, or adjustment of each cost item or part of a cost item;
- (3) ~~an estimate of the dollar amount involved in each disputed item~~ the computation that the provider believes is correct;
- (4) the authority in statute or rule upon which the provider is ~~relying~~ relies in each disputed item; and
- (5) the name and address of the person or firm with whom contacts may be made regarding the appeal.

Subp. 3. **Resolution of appeal.** ~~The appeal shall be heard under the contested case provisions in Minnesota Statutes, sections 14.57 to 14.62 and parts 1400.5100 to 1400.8300. Upon agreement of both parties, the dispute may be resolved informally through any informal dispute resolution method such as settlement, mediation, or modified appeal procedures established by agreement between the commissioner and the chief administrative law judge. The commissioner shall review the appeal and issue a written determination on each appealed item within one year of the due date of the appeal as set forth in subpart 2, item A.~~

A. Upon mutual agreement, the commissioner and the provider may extend the time for issuing a determination for a specified period.

B. The commissioner shall notify the provider by first class mail of the determination.

C. The determination takes effect 30 days following the date of issuance specified in the determination.

D. The provider has the right to present information by telephone or in person prior to the issuance of the determination, if a conference is requested within six months of the date the commissioner received the appeal. If a provider requests a conference within six months of the date the commissioner received the appeal, information received from the provider by telephone or in person prior to the issuance of the determination shall be considered in formulating the determination.

E. The commissioner may propose the resolution of an appeal or appeal item through an agreement in the place of issuing a determination if a provider has requested such a proposal in writing filed separately from the notice of appeal. A proposed resolution is final upon written acceptance by the provider within 30 days of the date the proposed resolution was mailed to or personally received by the provider, whichever is earlier.

F. The commissioner may issue a determination pursuant to this subpart to resolve appeals filed before the effective date of this subpart.

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

**Subp. 4a. Demand for contested case hearing.** ~~After the determination has been issued, the provider may file with the commissioner a written demand for a contested case hearing to determine the proper resolution of specified appeal items.~~

A. The demand must be postmarked or received by the commissioner within 30 days of the date of issuance specified in the determination.

B. The filing of a demand nullifies the commissioner's determination with respect to appeal items for which a hearing is demanded.

C. The contested case hearing will be heard by an administrative law judge according to Minnesota Statutes, sections 14.48 to 14.56. The provider must demonstrate by a preponderance of the evidence that appealed disallowances, allocations, or adjustments are incorrect.

[For text of subps 5 and 6, see M.R.]

**REPEALER.** Minnesota Rules, parts 9553.0020, subparts 25, 43, and 45; 9553.0030, subparts 3, 4, 5, and 6; 9553.0040, subparts 1, 2, 3, and 4; and 9553.0070, subpart 4, are repealed.

## Department of Human Services

### Proposed Permanent Rules Relating to Child Protection

#### Notice of Hearing

**NOTICE IS HEREBY GIVEN** that a public hearing on the above-entitled matter will be held on Monday, February 12, 1996, in the main floor auditorium of the Minnesota State Lottery Building, 2645 Long Lake Rd., Roseville, MN 55113. The hearing will begin at 9:00 a.m. and will continue until all interested or affected persons have an opportunity to participate. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the rule hearing process. A copy of the proposed amendments is attached to this notice.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time before the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing which is to be included in the hearing record may be mailed to Barbara L. Neilson, Administrative Law Judge, Office of Administrative Hearings, 100 Washington Square #1700, Minneapolis, Minnesota 55401-2138; telephone (612) 341-7604, either before the hearing or within five working days after the public hearing ends. The Administrative Law Judge may, at the hearing, order the record be kept open for a longer period not to exceed 20 calendar days. Any written material or responses must be received at the office no later than 4:30 p.m. on the final day. The comments received during the comment period shall be available for review at the Office of Administrative Hearings.

The proposed rule can be modified if the modifications are supported by the information and comments submitted and if they do not make the proposed rule substantially different.

Following the close of the comment period the agency and all interested persons have five business days to respond in writing to any new information submitted during the comment period. During the five-day period, the agency may indicate in writing whether there are amendments suggested by other persons which the agency is willing to adopt. No additional evidence may be submitted during the five-day period. Any written material or responses must be received at the office no later than 4:30 p.m. on the final day. The written responses shall be added to the rulemaking record.

Upon the close of the record the Administrative Law Judge will write a report as provided for in *Minnesota Statutes*, section 14.50. The rule hearing is governed by *Minnesota Statutes*, section 14.14 to 14.20 and by chapter 14 of *Minnesota Rules* governing hearings on administrative rulemaking. Questions about procedure may be directed to the Administrative Law Judge.

*Minnesota Rules*, proposed part 9560.0221, will govern standards for removal of children from their homes for placement in foster care. Amendments to *Minnesota Rules*, parts 9560.0500 to 9560.0670, govern the administration of foster care for children. New provisions include standards for searching for relatives of children going into foster care and standards for sending notices and handling appeals regarding payments for foster care.

The agency's authority to amend the rules is contained in *Minnesota Statutes*, sections 257.071, subdivision 8, and 257.072, subdivision 9.

Amendment of these rules will result in additional spending by local public bodies in the excess of \$100,000 per year for the first two years following amendment under the requirements of *Minnesota Statutes*, section 14.11. The estimated total cost of implementing the rule amendments for all local public bodies is \$521,208 for the first year, and \$539,896 for the second year. The fiscal note prepared according to the requirements of *Minnesota Statutes*, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available upon request from Asha Sharma, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155-3816.

Copies of the proposed amendments are now available and at least one free copy may be obtained by writing to Asha Sharma at the above address. A copy of the amendments may also be viewed at any of the 87 county welfare agencies in the State of Minnesota.

Additional copies will be available at the hearing. If you have any questions on the content of the rule, contact Asha Sharma at the above address or telephone her at (612) 282-9850.

**NOTICE:** Any person may register with the agency for the purpose of receiving notice of rule proceedings and notice that a rule has been amended. To register contact Asha Sharma at the above address or telephone number.

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## Proposed Rules

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Persons may request notification 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 desire to be 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. Any person may request notification of the date on which the rules were amended and filed with the secretary of state. The notice must be mailed on the same day 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 the agency at any time prior to the filing of the rules with the secretary of state.

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

In compliance with the requirements of *Minnesota Statutes*, section 16A.128, subdivision 2A, the agency has submitted a copy of this notice and the proposed rules to the chairs of the House Appropriations Committee and Senate Finance Committee prior to publishing the notice of intent to amend rules in the *State Register*.

Lobbyists must register with the State Ethical Practices Board. Questions should be directed to the Ethical Practices Board, 1st Floor, Centennial Office Building, 658 Cedar Street, St. Paul, Minnesota 55155, (612) 296-5148.

Dated: 22 November 1995

Maria R. Gomez  
Commissioner

### Rules as Proposed (all new material)

#### 9560.0221 CRITERIA FOR SEEKING CHILD'S REMOVAL FROM HOME.

Subpart 1. **Agency evaluation before seeking removal.** Before seeking removal of a child from the child's home, the local agency must evaluate whether:

A. the child is an Indian child as defined in *Minnesota Statutes*, section 257.351, subdivision 5; and if so, the agency must follow the process in subpart 3;

B. the agency has made reasonable efforts to provide services that are:

- (1) relevant to the safety and protection of the child;
- (2) adequate to meet the needs of the child and family;
- (3) culturally appropriate;
- (4) available and accessible;
- (5) consistent and timely; and
- (6) realistic under the circumstances;

C. in the case of child maltreatment, the alleged perpetrator can be removed from the child's home;

D. a caregiver is willing and able to protect the child if the alleged perpetrator cannot be removed from the child's home; or

E. the child and child's caregiver are informed of the services and accept the services the agency offers.

#### Subp. 2. **Removal of non-Indian child from home.**

A. If the local agency determines that a child is in imminent danger of maltreatment and that the actions in subpart 1 would not ensure the child's safety, then an emergency exists and the agency must seek removal of the child from the home according to part 9560.0220, subpart 9, or obtain an appropriate protective court order.

B. The local agency may seek legal authority to place the child in foster care in nonemergency circumstances when:

- (1) a parent voluntarily requests placement of the child; or
- (2) when the local agency believes the child is in need of protection and services as defined in *Minnesota Statutes*, section 260.015, subdivision 2a.

#### Subp. 3. **Removal of Indian child.**

A. The agency may seek emergency removal of any Indian child who is temporarily or permanently located off the reservation to prevent imminent physical damage or harm to the child. The agency must expeditiously initiate a child custody proceeding subject to the Indian Child Welfare Act, *United States Code*, title 25, chapter 21, subchapter I, section 1915, transfer the child to the

jurisdiction of the appropriate tribe, or restore the child to the parent. The emergency placement must terminate immediately when it is no longer necessary to prevent imminent physical damage or harm to the child.

B. If the agency believes it will be involved with an Indian child for more than 30 days, it must notify the child's tribe of the potential for foster care placement within seven days of determining that the child might be placed out of the home.

C. If the Indian child resides on a reservation with jurisdiction over child welfare matters or is a ward of a tribal court, the agency may not seek nonemergency removal of the child even when the maltreatment occurs off the reservation. In nonemergency cases, the agency must refer the Indian child to tribal social services.

D. In cases involving an Indian child who is not a resident of or domiciled on a reservation, the agency may seek removal of the child only if clear and convincing evidence can show that the child is likely to suffer serious emotional or physical damage in the care of the parent or Indian custodian.

E. Removal of an Indian child requires testimony by a qualified expert witness as to the likelihood of harm from continued residence with the parent or Indian custodian.

F. A "qualified expert witness" means:

(1) a member of an Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs of family organization and child rearing;

(2) a lay expert witness having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and child rearing practices within the Indian child's tribe; or

(3) a professional person having substantial education and experience in the area of the professional person's specialty.

## Department of Human Services

### Proposed Permanent Rules Relating to Foster Care for Children

#### Rules as Proposed

##### 9560.0500 SCOPE.

Parts 9560.0500 to 9560.0670 govern the administration and provision of foster care ~~services~~ to children and their families by the local ~~social service~~ agency ~~when the agency that~~ has placement and supervisory responsibilities.

##### 9560.0510 PURPOSE OF FOSTER CARE SERVICES.

The purpose of foster care ~~services to children~~ is to provide substitute family or group care for a child while an intensive effort is made to correct or improve the ~~condition necessitating~~ conditions causing placement ~~in order and~~ to reunite the family or, ~~in if the failure of this child cannot be returned home,~~ to provide some other permanent plan.

Foster care ~~services shall~~ may be provided only after services ~~aimed at preventing to prevent~~ the need for placement of a child in foster care have been considered, provided, or refused by the child's family.

##### 9560.0521 DEFINITIONS.

Subpart 1. Scope. The terms used in parts 9560.0500 to 9560.0670 have the meanings given them in this part.

Subp. 2. Administrative review. "Administrative review" means a review open to participation of the parents or guardian and conducted by a panel of appropriate persons, at least one of whom is not responsible for the case management of or the delivery of services to the child, parents, or guardian.

Subp. 3. Child. "Child" means a person under the age of 18.

Subp. 4. Commissioner. "Commissioner" means the commissioner of human services or the commissioner's designated representative.

Subp. 5. Custodian. "Custodian" means a person who is under a legal obligation to provide care and support for a child or who

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## Proposed Rules

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is in fact providing care and support for a child. For an Indian child, custodian means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control have been transferred by the parent of the child, as provided in *Minnesota Statutes*, section 257.351, subdivision 8.

**Subp. 6. Department.** "Department" means the Minnesota Department of Human Services.

**Subp. 7. Difficulty of care payment.** "Difficulty of care payment" means a supplemental maintenance payment determined by the local agency and based upon an assessment of the child's special needs due to existing physical, mental, or emotional handicaps. A difficulty of care payment does not include payment for services rendered by a licensed foster parent.

**Subp. 8. Dispositional hearing.** "Dispositional hearing" means a hearing held by a family or juvenile court, a tribal court, or another court of competent jurisdiction, or by an administrative body appointed or approved by the court, to determine the future status of the child, including whether the child should be placed for adoption or kept in foster care temporarily or on a long-term basis.

**Subp. 9. Foster care.** "Foster care" means the 24-hour-a-day care of a child following placement by the commissioner or a licensed child-placing agency with legal placement responsibility pursuant to a court order or voluntary placement agreement, in any facility that regularly provides one or more children, when unaccompanied by their parent or guardian, with a substitute for the care, food, lodging, training, education, supervision, or treatment they need but for which any reason cannot be furnished by their parent or guardian in their homes.

**Subp. 10. Foster care maintenance payments.** "Foster care maintenance payments" means payments to cover the cost of a child's food, clothing, shelter, daily supervision, school supplies, and personal incidentals, and reasonable travel to the child's home for visitation. In the case of institutional care, the term includes the reasonable costs of administration and operation of the institution.

**Subp. 11. Foster care provider.** "Foster care provider" means a person or entity licensed to provide foster care.

**Subp. 12. Foster family home.** "Foster family home" means a family licensed under parts 9545.0010 to 9545.0260 to provide foster care in their home for children.

**Subp. 13. Guardian or legal guardian.** "Guardian" or "legal guardian" means a person appointed by a parent's will or by the court to have the powers and responsibilities of a parent.

**Subp. 14. Indian child.** "Indian child" means an unmarried person under the age of 18 who is either a member of or eligible for membership in an Indian tribe.

**Subp. 15. Legal custody.** "Legal custody" means the right to the care, custody, and control of a child as defined in *Minnesota Statutes*, section 260.015, subdivision 8.

**Subp. 16. Local social service agency or local agency.** "Local social service agency" or "local agency" means the social services agency authorized by the county board to provide social services and financial assistance under *Minnesota Statutes*, section 393.07.

**Subp. 17. Parent.** "Parent" means a child's parent by birth or adoption. For an Indian child, parent includes any Indian person who has adopted a child by tribal law or custom, as provided in *Minnesota Statutes*, section 257.351, subdivision 11.

**Subp. 18. Placement plan.** "Placement plan" means the written plan as specified in part 9560.0603 for a child in placement.

**Subp. 19. Relative.** "Relative" means an individual who is related to the child and also includes members of the child's extended family and important friends as noted in *Minnesota Statutes*, section 260.181, subdivision 3.

**Subp. 20. Residential facility.** "Residential facility" means any group home, family foster home, or other publicly supported out-of-home residential facility, including any out-of-home residential facility licensed by the state, county, or other political subdivision, or any agency thereof, to provide foster care.

**Subp. 21. Voluntary placement.** "Voluntary placement" means an out-of-home placement of a child by or with participation of the local agency, after the child's parent or guardian has requested the assistance of the agency and signed a voluntary placement agreement.

**Subp. 22. Voluntary placement agreement.** "Voluntary placement agreement" means a written agreement between the local agency and the parent or guardian of a child, which specifies the legal status of the child and the rights and obligations of the parent or guardian, the child, and the local agency.

### **9560.0523 AUTHORITY FOR CHILD'S PLACEMENT BY LOCAL AGENCY.**

A local agency obtains authority to place a child in foster care:

A. through a voluntary placement agreement;

B. by a court order granting legal custody; or

C. if the child is in imminent danger of harm, pursuant to *Minnesota Statutes*, section 260.165.

**9560.0525 LOCAL AGENCY GIVEN LEGAL CUSTODY BY COURT.**

When a court has given legal custody of a child to a local agency, the local agency must:

A. place the child according to the court order;

B. before expiration of the court order, send written reports to the court giving information, evaluations, and recommendations to help the court make decisions about the child and the child's family;

C. notify the court and the child's parent or guardian if the child is placed out of the jurisdiction of the court;

D. inform the foster care providers of court hearings that pertain to any foster child in their care;

E. request the court's permission for any special treatment and care if the child's parent or guardian fails to provide it;

F. obtain the consent of the court before terminating foster care and returning the child to the family; and

G. obtain the written consent of the child's parent or guardian and the court if a child is to be placed in a facility outside the state. If the child's parent or guardian refuses consent, the court's written consent is sufficient authorization for placement outside the state.

**9560.0527 LOCAL AGENCY PLACING CHILD UNDER VOLUNTARY AGREEMENT.**

When a local agency places a child in foster care under a voluntary placement agreement, the local agency must:

A. before placement, obtain the written consent of both parents, or the legal guardian, unless placement is in the child's best interest and the other parent's signature is unobtainable;

B. if only one parent signs the agreement, the agency must document why the other parent did not sign the agreement;

C. obtain the agreement of the child's parent or guardian to notify the local agency, preferably in writing, if the parent or guardian wishes the child returned from placement before the date specified in the voluntary placement agreement;

D. obtain the agreement of the Indian child's parent or guardian to notify the local agency in a written and notarized statement; and

E. return the child to the child's parent or guardian within 24 hours of receipt of notice, preferably in writing, unless a longer response time is specified in the voluntary placement agreement or the notice; for Indian children, the notice must be a written and notarized statement.

**9560.0529 PLACEMENT IN LICENSED FACILITY.**

A local agency authorized to place a child in foster care must place the child in a licensed residential facility, in the home of a relative undergoing evaluation for an emergency license, or in some other facility as permitted by the licensing statute, *Minnesota Statutes*, chapter 245A.

**9560.0532 REMOVAL OF CHILDREN.**

An agency may seek removal of children from the child's home pursuant to procedures specified in parts 9560.0210 to 9560.0485 and *Minnesota Statutes*, sections 260.015, 260.165, and 260.181.

**9560.0535 LOCAL AGENCY SEARCH FOR RELATIVES.**

Subpart 1. Search for relatives required. The local agency must search for relatives with whom to place a child, unless the child's parent specifically objects.

Subp. 2. Parental objection to relative search. If a child's parent specifically objects to the search for relatives, the local agency must, without contacting relatives, evaluate and address the parent's concerns by considering:

A. the child's and the parent's or guardian's preferences about relatives and the reasons for those preferences;

B. if there are specific relatives the parent does not want contacted, whether there are other relatives who may be contacted;

C. whether any relatives have offered to care for the child;

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D. whether placement with relatives would interfere with the parent's ability to follow a placement plan; and

E. in the case of an Indian child, the tribe's position on contacting the relatives.

If a parent still objects to the relative search, the agency must notify the juvenile court of the parents' reasons for objecting. The agency must tell parents of the notification to the court. The local agency may not contact the child's relatives unless ordered to do so by the court.

In the case of an Indian child, the agency must seek a relative placement unless the court has determined that there is good cause under the Indian Child Welfare Act, United States Code, title 25, chapter 21, subchapter I, section 1915, not to do so. The preference of the Indian child, parent, or guardian must be considered in accordance with the Indian Child Welfare Act.

Subp. 3. Initiation of search for relatives. For at least six months following the child's first placement, the agency must search for the child's relatives, even if the first placement is with a relative, and may continue the search thereafter as necessary or if the court orders it to do so. The agency must thoroughly document the search efforts. If a subsequent placement becomes necessary and other relatives might be available as foster care providers, the local agency must renew the search for those relatives. Pursuant to Minnesota Statutes, section 260.191, subdivision 3a, the court will review the agency's efforts to search for relatives and may order the agency to continue recruitment of relatives if the agency has not performed the search properly.

Subp. 4. Special efforts for relative search. As required by Minnesota Statutes, section 257.072, subdivision 1, a local agency must make special efforts to recruit a relative custodian or foster care provider. To make special efforts, the local agency must:

A. question the child, the child's parents or guardians, and the child's guardian ad litem, if any, about the child's relatives and their preferences about the relatives;

B. in the case of an Indian child, request the child's tribe to provide the names of the child's extended family in accordance with the Indian Child Welfare Act, United States Code, title 25, chapter 21, subchapter I, section 1915. The local agency must defer to tribal judgment as to suitability of a relative's home when the tribe has intervened pursuant to the Indian Child Welfare Act;

C. contact relatives and divulge only that information necessary for them to consider possible placement. Request names of other relatives if necessary; and

D. with the written consent of the parent or guardian for release of information about the child, or by order of the court, consult with:

(1) persons, other than those in the local agency, providing services to the child or the child's family; and

(2) other persons who know the child's family.

Subp. 5. Other sources of information. With the written consent of the parent or guardian for release of information about the child, the agency may contact the Office of the Ombudsperson for Families, the state ethnic council related to the child's ethnicity, and other potential sources of information about the child's relatives.

### **9560.0542 DOCUMENTATION OF PLACEMENT EFFORTS.**

Subpart 1. General requirements. The local agency must document in the child's case record:

A. the date the agency began its search for relatives;

B. the effort made to place the child with a relative and the results of the effort;

C. the effort to place the child in the least restrictive or most family-like setting, as required under title IV-E of the Social Security Act, United States Code, title 42, sections 470 to 476;

D. whether it has been determined that consideration of race, color, or national origin is necessary to advance the best interests of the child and, if so, the factors supporting the determination; and

E. in the case of an Indian child, the actions taken to conduct a diligent search pursuant to the Indian Child Welfare Act, United States Code, title 25, chapter 21, subchapter I, section 1915.

Subp. 2. Requirements for court-ordered placement. For court-ordered placements, the local agency must place in the child's record copies of the court's findings, decisions, disposition of the case, and any other information that may aid the local agency in providing services to the child.

### **9560.0545 CONSIDERATION OF THE CHILD'S HERITAGE.**

Consideration of the race, color, or national origin of the child or foster care provider in making a placement is permissible only when a narrowly tailored, individualized determination has been made that the facts and circumstances require consideration of race, color, or national origin to advance the best interests of the child. The agency must not delay placement of the child solely to search for a same-race family.

A. In selecting the foster care provider most suitable for the child, the agency may consider the child's:

- (1) current functioning and behavior;
- (2) medical, educational, and developmental needs;
- (3) history and past experience;
- (4) cultural and racial identity needs;
- (5) interests and talents; and
- (6) other needs and characteristics.

B. The agency may also consider a foster care provider's ability to:

- (1) form a relationship with the child;
- (2) help the child integrate with the family;
- (3) accept the child's background and help the child cope with the child's past;
- (4) accept the behavior and personality of the child;
- (5) validate the child's cultural, racial, and ethnic background;
- (6) meet the child's educational, developmental, or psychological needs; and
- (7) meet any other needs of the child.

**9560.0552 DECISIONS ABOUT CHILD IN FOSTER CARE.**

Subpart 1. Written agreement. The placement plan or the voluntary placement agreement must specify the decisions that the local agency will make and the decisions that require consent of the court, parent, or guardian.

Subp. 2. Request to court for authorization. If the child's parent or guardian refuses to consent to decisions essential to the child's well-being, the local agency must seek a court order authorizing the local agency to act for the child. If there is a question about whether a decision requires parental or judicial consent, the agency must consult the court.

**9560.0560 RELATIONSHIP TO SCHOOLS AND OTHER AGENCIES AND INSTITUTIONS.**

Subpart 1. [See repealer.]

Subp. 2. Contact with the child's schools. Prior to foster care placement, The local social service agency shall involve in the placement planning the child's must notify the present school of a child in foster care of any change in the child's address and custodian and the date on which the change occurred or will occur. The local agency must notify the present school and the one which school the child may attend in order to assure that the child's social, educational, and extracurricular needs will be met. The agency shall initiate contact with the schools. If a child is to remain in the same school, the local social service agency shall notify the school at such time as the child is to be placed in foster care or when the child is to be moved to another facility if there is to be a change in the child's enrollment.

Subp. 3. Other social service agencies Contact with the local agency of another county. The local social service agency shall not place a child in another county without the approval of the other county local social service agency. When a local social service agency requests services of another agency in effecting a placement, or receives such a request for service from another agency, there shall be a written agreement defining A local agency that wants to place a child in another county must request the approval of that county's local agency before making the placement. If the local agency receiving the request agrees to the placement, both local agencies must agree in writing about the responsibilities for services to be delivered to the child, methods for evaluation and progress reports, procedures for handling foster care payments, and other matters they deem important.

**9560.0580 SERVICE REQUIREMENTS.**

All A local social service agencies, in delivering foster care services, shall agency that places a child in foster care must:

A. provide at least one preplacement visit for the child to the foster or group home. This requirement is waived for newborn infants being placed from a hospital into a foster home: unless the child is placed because of an emergency or is under six months old;

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## Proposed Rules

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B. Provide help to the child in the initial adjustment to the foster home through the placement worker's visit to the home within four days of the placement.

C. Plan with the parent(s) for a parent visit with the child within a week of the placement.

D. Provide casework to the child on a planned regular basis, at least twice a month for the first three months and as frequently as necessary thereafter.

E. Provide or arrange for casework and other indicated services to the child's family on a planned regular basis, and at least twice a month, to help them:

(1) fulfill their roles and responsibilities as parents to the placed child;

(2) remedy the conditions which necessitated placement;

(3) prepare for the child's return home or, if this return home is not possible, involve them in making an alternative plan;

and

(4) develop and maintain a constructive relationship with their child through a carefully planned and executed program of communication and visitation.

F. Provide assistance to the foster parents or group home operators with their responsibilities of incorporating the child into their family or facility. The foster parents and group home operators shall be provided a telephone number and an additional backup number to call during the hours the agency is closed.

G. Provide follow-up services to the family and child when the child returns home to assist with the adjustment and to prevent recurrence of the circumstances which led to placement.

H. Evaluate, in conjunction with the foster parents or group home operators, the placement experience when a child leaves the facility to ascertain the facility's potential for future placements.

B. provide social services to the child as necessary to meet the child's needs;

C. provide social services to the child's family as necessary to:

(1) remedy the conditions that caused placement; and

(2) prepare for the child's return home or, if return home is not possible, involve the family in making an alternative plan;

D. assist the foster care providers in meeting the needs of the child; and

E. provide follow-up services to the family and child when the child returns home.

### 9560.0590 WAIVER.

The local agency may disregard those requirements listed under part 9560.0580 which may not be that are not applicable for children under state guardianship as dependent/neglected or for placements of children in emergency facilities in crisis situations may be waived. The agency may also waive disregard those requirements under part 9560.0580 which may be contrary to the child's best interests but must document the rationale behind such waivers.

### 9560.0600 PROVISION FOR MEETING HEALTH NEEDS.

The local social service agency shall must meet the health and dental needs of every child by:

A. assuring that each child has had a health examination prior to placement or, in emergency situations, within two weeks thereafter in the 12 months before initial placement or has an examination within 30 days after placement;

B. assuring that a child's ongoing health and dental needs are met and that the child has at least one health examination per year while in placement;

C. assuring that the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services are a Child and Teen Checkup is offered and/or provided pursuant to parts 9505.1500 to 9505.1690 9505.1693 to 9505.1748 to all children a child eligible for the medical assistance program;

D. providing giving the foster or group home with care provider information about the child's immunizations and other pertinent health data with instructions for the record to be kept up to date; and

E. providing to giving the foster or group home care provider a written authorization for obtaining routine health care for the child with clear instructions as to who is to provide the care and how the billing is to be handled which health care provider is to treat the child and who is responsible for payment.

**9560.0603 PLACEMENT PLAN.**

**Subpart 1. Placement plan required.** A local agency must prepare a written placement plan for the child within 30 days of placement.

**Subp. 2. Preparation of plan.** Placement plans must comply with *Minnesota Statutes*, section 257.071, subdivision 1. Plans for court-ordered placements must also comply with *Minnesota Statutes*, section 260.191, subdivision 1e.

**Subp. 3. Signing of plan.** The plan must be signed by the agency, the parents, the foster care provider, and, if able to understand the meaning of the agreement, the child.

**Subp. 4. Components of placement plan; general.** A child's placement plan must set forth:

A. the reasons for placement of the child, including a description of the problems or conditions in the home that caused placement of the child, and services provided to prevent placement;

B. placement options that were considered, the reasons the specific foster care provider was chosen for the child, with comments on the search for the child's relatives, and the child's racial or ethnic heritage. If applicable, the plan must address why the child was placed in an institution or group home rather than in a family foster home. If the child was placed in another county or state, the plan must address why the child was not placed in the child's local county;

C. the specific actions to be taken by the child, the child's parent or guardian, or foster care provider to correct the problems or conditions identified in item A and the period in which the actions are to be taken;

D. the financial responsibilities and obligations, if any, of the parent or guardian for the support of the child in placement;

E. the need of the child and the child's family for care, treatment, or rehabilitation;

F. the services requested or needed by the child, the child's parent or guardian, and foster care provider, the services to be provided and who will provide them, or the reasons for denying the services;

G. the visitation rights and obligations of the parents, guardians, and other relatives if the visitation is consistent with the best interest of the child;

H. the specific efforts the local agency will make to reunite the family;

I. the decisions about the child that the local agency will make and the decisions requiring consent of the parents or guardian;

J. the authority and responsibility of the foster care provider to arrange for the education of the child and to meet with teachers regarding the child's progress;

K. the notice required under subpart 7; and

L. the date on which the child is expected to return home.

**Subp. 5. Information to foster care provider.** The local agency must fully inform the foster care provider of the provisions in the plan.

**Subp. 6. Assistance from social services, legal counsel, or guardian ad litem.** The local agency must advise the child and the parent or guardian that they may consult any person or social services agency in preparation of the placement plan; that the parent and child each has the right to legal counsel in the preparation of the placement plan; and that the child has the right to a guardian ad litem as set forth in *Minnesota Statutes*, section 260.155, subdivision 4.

**Subp. 7. Notice to parents.** The local agency must inform the child's parent or guardian:

A. about the conditions that must be corrected to assure the child's return home;

B. that the inability or unwillingness of the parent, guardian, or child to correct the conditions leading to the child's placement may result in a petition to the court to terminate parental or custodial rights;

C. the right of the parents or guardians to receive notice if the local agency petitions the court for a termination of parental rights in accordance with *Minnesota Statutes*, sections 260.221 to 260.241. In this event, the local agency must document in the child's case record that it gave the required notice to the child and the child's parents or guardians.

**Subp. 8. Notice to child.** The local agency must explain the placement plan and any subsequent changes in the plan to the child in a manner appropriate to the child's age.

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## Proposed Rules

### 9560.0606 AGENCY REVIEW.

**Subpart 1. Change in placement.** The local agency must not change a child's placement unless it determines that another placement is in the best interest of the child. If the local agency changes the placement, it must notify the child's parent or guardian and document the reasons for the change. If placement with a specific foster care provider was ordered by the court, the local agency must request the court's permission before changing that placement, except in emergencies. In emergency changes of court-ordered placement, the agency must, as soon as possible, notify the court of the change and bring the matter before the court for its approval of the change.

**Subp. 2. Administrative review.** All cases must be reviewed by an administrative panel at least once every six months. The review must be open to the parent or guardian, the child, and the foster care provider. The review must determine:

- A. whether the placement remains necessary and appropriate;
- B. the extent of compliance with the placement plan;
- C. the extent of progress which has been made toward mitigating the causes for placement in foster care; and
- D. the date by which the child may be returned to the home or a permanent placement may be made.

As an alternative, the local agency may bring a petition for review of a voluntary placement pursuant to *Minnesota Statutes*, section 260.131. A dispositional hearing may substitute for the administrative review as long as administrative review requirements are met, but an administrative review cannot substitute for a dispositional hearing.

### 9560.0609 COURT REVIEW OF VOLUNTARY PLACEMENTS.

**Subpart 1. Definitions.** For purposes of this part, "developmentally disabled" and "emotional handicap" have the meanings given them in *Minnesota Statutes*, section 257.071, subdivision 4.

**Subp. 2. Initial court review of voluntary placements.** If a child has been in voluntary placement for 18 months because of a developmental disability or for six months because of an emotional handicap, the local agency must either return the child home or petition the court under *Minnesota Statutes*, section 260.131, for review of the placement. For all other voluntary placements, the local agency must return the child home or file a petition for review within six months of the child's placement pursuant to either *Minnesota Statutes*, section 260.131, or a petition to terminate parental rights under *Minnesota Statutes*, section 260.231.

**Subp. 3. Subsequent reviews.** If the court approves the voluntary placement of a child because of either a developmental disability or emotional handicap, the local agency must petition the court under *Minnesota Statutes*, section 260.131, for further review within two years of the initial review. In all other voluntary placements which the court has approved, the local agency must petition the court for further review six months after the initial review.

**Subp. 4. Update of child's placement plan.** The local agency must update the child's placement plan and prepare a specific plan for permanency when filing a petition for review.

### 9560.0613 COURT REVIEW OF COURT-ORDERED PLACEMENTS.

**Subpart 1. Petition for court review of court-ordered placement.** For a child in court-ordered placement, the local agency must petition the court for review six months after the initial placement. The agency must ensure that further reviews take place within each six-month period thereafter during the continuation of placement to determine whether continued out-of-home placement is necessary or whether the child should be returned home.

**Subp. 2. Filing for permanent placement determination by court.** No later than 11 months after a child is placed under a court order, the local agency must request the county attorney to file a pleading to establish the basis for a permanent placement determination, containing the following information:

- A. the local agency's recommendations about the child's permanent placement and the reasons for those recommendations;
- B. the local agency's efforts to reunify the family and prevent placement or, in the case of an Indian child, active efforts to reunite the child with the child's parent or custodian;
- C. whether there is a substantial probability of the child being able to return home in the next six months;
- D. a recommendation for a permanent plan;
- E. a recommendation whether to delay the permanent placement determination for six months because of a circumstance specified in *Minnesota Statutes*, section 260.191, subdivision 3b, paragraph (b); and
- E. if a termination of parental rights petition is filed before the permanency planning determination, a permanent hearing is not required.

**Subp. 3. Dispositional hearing required; child in long-term foster care.** When a child is placed in long-term foster care through a dispositional hearing and the order specifically states the name of the foster parent or parents, no further dispositional

hearings are required unless the placement is terminated. Administrative reviews pursuant to Minnesota Statutes, section 257.071, subdivision 2, must continue while the child remains in the specific placement named in the court order.

Subp. 4. Dispositional hearing required; child under guardianship. Except as set forth in subpart 5, dispositional hearings for a child under the guardianship of the commissioner or a licensed child-placing agency must occur every two years following the establishment of the guardianship. The dispositional hearing shall meet the requirements of Minnesota Statutes, section 260.242, subdivision 2, paragraph (d).

Subp. 5. Dispositional hearing not required. A dispositional hearing is not required for a child under the guardianship of the commissioner or a licensed child-placing agency and in court-ordered long-term foster care or in an adoptive placement during the continuation of that specific long-term foster care or adoptive placement. The court order establishing long-term foster care must state the name of the long-term foster parent or parents.

Subp. 6. Administrative review required. Administrative review pursuant to United States Code, title 42, section 675(5)(B), and Minnesota Statutes, section 257.071, subdivision 2, must continue in the case of a child placed in court-ordered long-term foster care or a child under the guardianship of the commissioner or licensed child-placing agency. Additionally, administrative review must continue for a child in an adoptive placement until the court grants a decree of adoption. Court review may substitute for an administrative review as long as the administrative review requirements are met.

#### **9560.0615 CRITERIA FOR RETURN OF CHILD TO HOME.**

##### **Subpart 1. Return or release of non-Indian child.**

A. For a child removed from the home of a parent or guardian and placed in foster care pursuant to court order, the local agency must seek a court order to end its custody and return the child to the parent or guardian under the following circumstances:

(1) if the child was removed because of an emergency as described in part 9560.0221, subpart 2, item A, and the conditions that resulted in the need for foster care have been corrected sufficiently to ensure the child's safety with the parent or guardian; or

(2) if the child was removed because of a nonemergency situation as described in part 9560.0221, subpart 2, item B, and the conditions that caused the child's need for protection and services have been mitigated.

B. For a child in foster care pursuant to a voluntary placement agreement, the local agency must return the child to the parent or guardian within 24 hours of a request from the parent or guardian unless, because of child protection concerns, the local agency secures legal authority to continue placement outside the home of the parent or guardian.

C. A local agency may seek a court order to end its custody of a child so that the child can be released into the care of a relative if the child could be safely maintained in the relative's home without formal legal authority and the relative is willing to care for the child without formal legal authority. Before releasing the child into the relative's care, the local agency must give the relative information about the rights and responsibilities of a relative and child in various formal and informal legally sanctioned relationships.

##### **Subp. 2. Return of Indian child.**

A. An Indian child in foster care who was removed because of an emergency must be returned to the parent or custodian when the placement is no longer necessary to prevent imminent physical damage or harm.

B. An Indian child who was removed because of a nonemergency circumstance must be returned to the parent or guardian when the agency determines that restoring custody to the parent or guardian is not likely to result in serious emotional or physical harm to the child.

C. An Indian child in voluntary placement must be returned to the parent or guardian within 24 hours of receipt of a written, notarized statement.

#### **9560.0620 CHILD'S OR FOSTER PARENTS' CARE PROVIDER'S ABSENCE FROM FOSTER HOME RESIDENTIAL FACILITY.**

The local social service agency's permission must be obtained any time the foster family and/or care provider or child are to be away from the licensed foster care residential facility within the state for a period exceeding more than three nights or, if the child

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leaves the state, for any period of time. However, The local agency may provide give specifically defined blanket permission for departures from the state where if a family provider or child regularly departs leaves the state for an identified routine purpose.

### 9560.0665 NOTICE AND APPEAL PROCEDURES.

**Subpart 1. Request for foster care payments.** If a relative who is caring for a child contacts the county and requests foster care services or payments, the county must give the relative a written notice explaining:

A. that if the relative believes the child in the relative's care needs child protective services, the relative may contact the county to make a child protection report, how the contact can be made, and that the county will determine if child protective services are required and, if so, what those services shall be; and

B. that if the relative believes the county has placed the child in the relative's home pursuant to a court order or a voluntary placement agreement and the relative is not receiving foster care payments on the child's behalf, the relative may request payments. The county must enclose a "Request for Foster Care Payment Based on Placement" form for that purpose. The form must include a statement that the county will approve or deny the request within 30 days.

**Subp. 2. Response to request for foster care payments.** Within 30 days of receiving a request for foster care payments on the form provided under subpart 1, item B, the county must evaluate the request and provide a written notice to the relative. The notice must include:

A. a statement of the county's decision of approval or denial and an explanation for the decision;

B. a statement of the legal authority for the decision;

C. a statement that the relative has a right to a fair hearing review by the department;

D. the procedure for seeking review;

E. a statement that the issue on appeal will be based on whether the county had or has legal responsibility for the child's placement in the relative's home and therefore should have made or should make foster care payments; and

F. a name and telephone number of a contact person at the county.

**Subp. 3. Review of claims of erroneous benefits.** Before or at the time of mailing the first foster care payment to a foster care provider, the county must give the foster care provider a written notice that includes:

A. a statement of and explanation for the starting date of the payments;

B. the amount of room and board;

C. the amount of any difficulty-of-care payment, if any, and an explanation of the manner in which the difficulty-of-care payment was calculated;

D. an explanation of any offset for public assistance paid;

E. a statement of legal authority;

F. a statement that the foster care provider has a right to a fair hearing review by the department;

G. a statement describing the scope of the appeal; and

H. a name and telephone number of a contact person at the county.

**Subp. 4. Notice of initial assessment of difficulty of care.** As soon as reasonably practicable following the initiation of foster care placement of a child, the county must perform the difficulty-of-care (DOC) assessment required under part 9560.0653. Upon completion of the assessment, the county must give the child's foster care provider a written notice that includes:

A. a statement of the DOC rating assigned by the county and the dollar value of the rating assigned;

B. the method of assessment, and this requirement may be satisfied by the provision of the DOC assessment instrument completed for the child by the county;

C. a statement of the legal authority for the rating;

D. a statement of the circumstances under which the agency must reassess a child as required by part 9560.0650, subpart 6;

E. the procedure for seeking a reassessment; and

F. a statement that, following reassessment, a foster care provider has a right to a fair hearing review of the reassessment by the department.

**Subp. 5. Review of reassessment of difficulty-of-care (DOC) rating.** Upon reassessment of a child's difficulty-of-care (DOC) rating, the county must give written notice to the foster care provider. The notice must include:

- A. the prior DOC rating;
- B. the new DOC rating;
- C. the effective date of the rating which may precede the request for reassessment when supported by evidence;
- D. the reason for the new rating, a provision of the completed DOC assessment instrument will be sufficient;
- E. the reason for the effective date;
- F. a statement of the legal authority for the assessment;
- G. a statement that the foster care provider has the right to a fair hearing review by the department;
- H. the procedure for seeking review;
- I. the scope of review; and

I. a statement that if the foster care provider requests review of the proposed change in the DOC rating within ten days of the date of the notice, the foster care provider may request that foster care payments continue at the provider's current level pending fair hearing review, but if the county's proposed action is sustained upon review, the agency may recover any overpayment paid.

Subp. 6. Notice and review of reduction of days covered. When the county issues a check for foster care payments for fewer days than the foster care provider requested, the county must provide a written notice to the provider. The notice must include:

- A. a statement of the number of days for which a check is being issued;
- B. an explanation of the reason for the number of days;
- C. a statement of the legal authority for the decision;
- D. a statement that the foster care provider has a right to a fair hearing review by the department;
- E. the procedure for seeking review;
- F. a statement describing the scope of the appeal; and
- G. a name and telephone number of a contact person at the county.

Subp. 7. Notice of termination. When the county terminates foster care payments to a foster care provider, the county must send written notice to the foster care provider. The notice must be provided with the final voucher the county sends to the foster care provider if possible, but in all cases, at least ten days before the first month in which no payment will be made. The written notice must include:

- A. the date after which foster care payments will not be made;
- B. the reason why the county will terminate payments, and the event on which the county bases its determination that the placement ended;
- C. a statement of the legal authority for the decision;
- D. a statement that the foster care provider has a right to a fair hearing review by the department;
- E. the procedures for seeking review;
- F. a statement describing the scope of the appeal;
- G. a statement that a foster care provider who appeals within ten days of the date of the notice may request that the foster care payments on the child's behalf continue pending fair hearing review, but if the county's action to terminate the benefits is sustained upon review, the agency may recover from the foster care provider any amounts paid pending review; and
- H. a name and telephone number of a contact person at the county.

Subp. 8. Requesting a hearing. After receiving notice under subparts 2 to 7, foster care providers or relative custodians who want a fair hearing review of a decision by the county must submit a written request for a hearing to the department within 30 days of receiving the notice, or within 90 days of receiving the notice if good cause can be shown why the request was not made within 30 days. Foster care providers may also seek fair hearing review of a request for foster care payments or reassessment of DOC if they do not receive written notice of the county's decision on their request within a reasonable time.

Subp. 9. Scope of review. The scope of hearings involving claims to foster care payments shall be limited to the issue of

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whether the county is legally responsible for a child's placement under court order or voluntary placement agreement, and, if so, the correct amount of foster care payment to be made on the child's behalf. The hearing shall not include review of the propriety of the county's child protection determination or child placement decision.

### **9560.0670 FOSTER HOME RECRUITMENT AND DEVELOPMENT OF FOSTER CARE PROVIDERS.**

Subpart 1. **Recruitment; general.** The local social service agency shall attempt to must recruit and license a sufficient number and variety of family foster homes in order to be able to meet the particular needs of each child needing placement from as wide a variety of backgrounds as possible.

**Subp. 1a. Recruitment plan.** The local agency must develop and implement a plan for diligent recruitment of foster care providers who reflect the ethnic and racial diversity of children in the state for whom foster homes are needed. A local agency may develop the plan directly or through a contract with another county or authorized child-placing agency.

**Subp. 1b. Outreach for recruitment.** The local agency must work with community and religious organizations and other individuals and groups to increase the number of families of color available as foster care providers. The agency may contact the Ombudsperson for Families and the state ethnic councils for assistance.

**Subp. 1c. Documentation of compliance with plan.** The local agency must keep a record of its actions to comply with the requirements of this part.

Subp. 2. **Development of foster parents Assistance to foster care providers.** The local social service agency shall provide for the development of must train and assist foster parents by:

- A. provision of training on an ongoing basis;
- B. provision of opportunities to attend educational workshops and conferences; and
- C. provision of opportunities for recognition care providers as necessary to assure the well-being of the child in foster care.

Subp. 3. **Foster parents care providers as advisers.** The local social service agency shall involve the must consult with foster parents on an advisory basis care providers in the development of policies and procedures pertaining to foster care.

Subp. 4. **Relicensure.** Before recommending relicensure, the local social service agency shall must evaluate with the foster parents factors in the home pertinent to continued utilization of the home as a foster care resource. These factors shall include care providers the services provided furnished by both the foster family care provider and the local agency and an evaluation of the year's placement experiences. The local agency must give a copy of the evaluation shall be given to the foster family care provider.

Subp. 5. **Racism Racial bias.** The local social service agency shall assess the foster care applicant's or foster care provider's capacity for accepting children of another race, religion, color, or national origin. If the family's reason for refusing to accept such children is based upon racism or bigotry, that is, negative attitudes toward people of a particular race, religion, color, or national origin, the agency shall, in the case of a new applicant, refuse to recommend the home for licensure. If the agency ascertains the existence of racism or bigotry in a licensed foster family home, the agency shall, at time of relicensure, establish a plan for phasing the home out of the foster care program and no additional children shall be placed in the home. The local agency must work to eliminate racial, ethnic, and national origin discrimination and bias in adoption and foster care recruitment, selection, and placement procedures. The local agency must assess the foster care applicant's or foster care provider's capacity for accepting children of diverse backgrounds. If the agency concludes that the applicant or provider lacks the capacity for accepting children of diverse backgrounds, the agency must refuse licensure or relicensure and not place additional children with that provider.

**REPEALER.** Minnesota Rules, parts 9560.0520; 9560.0530; 9560.0540; 9560.0550; 9560.0560, subpart 1; 9560.0570; 9560.0610; and 9560.0630, are repealed.

## Department of Natural Resources

### Proposed Permanent Rules Relating to Floodplain Management

#### Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Department of Natural Resources intends to adopt amendments to 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:

Bret Anderson  
Department of Natural Resources  
500 Lafayette Road  
St. Paul, Minnesota 55155-4032  
Telephone: (612) 296-4800

**Subject of Rules and Statutory Authority.** Specifically, the proposed rule amendments on floodplain management will expand the scope of supplemental standards and criteria for flood control structures from strictly urban areas to any area protected by such a structure; make the current rule requirements for the height and design of proposed structural works less restrictive by generally bringing them into conformity with the current federal rules; and defining the criteria by which the Commissioner of Natural Resources may determine that a higher standard of protection may be required.

The adoption of these rules is authorized by *Minnesota Statutes*, sections 103F.141, 103F.135 and 103F.155.

A copy of the proposed rules is published in the *State Register* and a free copy of the rules is available upon request from the agency contact person.

**Comments.** You have until 4:30 p.m., January 25, 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 25, 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 Department 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 Department 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 from the agency contact person. The 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 the agency contact person at the address and telephone number listed above.

**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 amendments should have little diverse impacts on small business. The new rule will actually benefit small businesses by making it easier for flood control works to be constructed for protection of businesses behind levees, thereby reducing site development and insurance costs.

The Department's evaluation of the applicability of the methods contained in *Minnesota Statutes*, section 14.115, subdivision 2, for reducing the impact of the proposed rules is addressed further in the Statement of Need and Reasonableness.

**Expenditures 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 Agricultural Lands.** *Minnesota Statutes*, section 14.11, subdivision 2, does not apply because adoption of these rules will not have a direct and substantial adverse impact on agricultural land.

**Departmental Charges.** *Minnesota Statutes*, section 16A.1285, subdivisions 4 and 5, do not apply because the rules do not establish or adjust departmental charges.

**Adoption and Review of Rules.** If no hearing is required, after the end of the comment period the Department may adopt the

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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 you wish to receive a copy of the adopted rules, submit your request to the agency contact person listed above.

Dated: 11 December 1995

Rodney W. Sando  
Commissioner of Natural Resources

By  
Gail Lewellan, Assistant Commissioner of  
Human Resources and Legal Affairs

### Rules as Proposed

#### 6120.5900 SUPPLEMENTAL STANDARDS AND CRITERIA FOR FLOODPLAIN MANAGEMENT.

[For text of subs 1 to 5, see M.R.]

Subp. 6. **Measures for flood control.** When local floodplain management plans provide for structural works for flood control, such as levees, floodwalls, channel improvements, and reservoirs, all structural works or land treatment practices shall be consistent with the following statewide standards and criteria for floodplain management practices:

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

B. The minimum height and structural design of any dikes, levees, floodwalls, or similar structural works in place, or proposed to be placed in the floodplain shall be based on the flood profile of the regional flood confined between the structures subject to the following:

(1) ~~For urban areas~~ The minimum authorized height and design of proposed structural works shall be at least three feet above the elevation of the regional flood, as confined by the structures, or shall be at the elevation of the standard project flood, whichever provides the greater protection from flooding. to remove an area from the regulatory floodplain shall meet or exceed the design, operation, and maintenance standards contained in Federal Emergency Management Agency Regulations, Code of Federal Regulations, title 44, section 65.10. If at that elevation, the commissioner determines that there is still a high risk of loss of life or property damage, then the commissioner, in accordance with subpart 7, may require a higher elevation, not to exceed the elevation of the standard project flood, as the commissioner determines is economically feasible and reasonable in cost for the extra protection provided.

[For text of subitems (2) and (3), see M.R.]

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

Subp. 7. **Criteria for commissioner's determination.** The criteria for the commissioner's determination of potential for high loss of life or property damage and requirement for higher levee elevation is as follows:

A. when the elevation of the standard project flood is more than three feet above the elevation of the 100-year flood;

B. when it is not possible to provide sufficient flood warning to evacuate the structures below the 100-year flood elevation during a flood predicted to be at or above the 100-year flood elevation; or

C. for Army Corps of Engineers flood control projects, the plan providing a higher level of flood protection is the recommended plan.

## Department of Natural Resources

### Bureau of Real Estate Management

#### Proposed Permanent Rules Governing Lakeshore Lease Rules

**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 Natural Resources intends to adopt permanent rules 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 25, 1996, a public hearing will be held beginning on March

5, 1996 in St. Paul and reconvening on March 7, 1996 in Grand Rapids. To find out whether the rule will be adopted without a hearing or if the hearing will be held, you should contact the agency contact person after January 25, 1996 and before March 5, 1996.

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

Patricia Kandakai  
Department of Natural Resources  
500 Lafayette Road  
St. Paul, Minnesota 55155-4030  
Telephone: (612) 296-4496

**Subject of Rules and Statutory Authority.** The proposed rules are about the state leasing of lakeshore lots. The rules provide methods for appraising state lands adjacent to public waters that are leased under *Minnesota Statutes*, section 92.46, and procedures for a lessee to challenge the appraised value of the lands. Since *Minnesota Statutes*, section 92.46, subdivision 1, paragraph (b), provides that the annual lease fee shall be five percent of the appraised value of the leased lands, a successful challenge to the appraised value of leased lands will affect the annual rent.

The statutory authority to adopt these rules is *Minnesota Statutes*, sections 92.46, subdivision 1 (c). A copy of the proposed rules is published in the *State Register* and a free copy of the rules is available upon request from the agency contact person.

**Comments.** You have until 4:30 p.m., January 25, 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 25, 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 rule as 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 March 5, 1996 and March 7, 1996, will be canceled if the agency does not receive requests from 25 or more persons that a hearing be held on the rule. 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 after January 25, 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 rule, a hearing will be held following the procedures in *Minnesota Statutes*, sections 14.14 to 14.20. The hearing will be held beginning on March 5, 1996 in the Kelly Inn, located at 161 St. Anthony, St. Paul, Minnesota, commencing at 9:00 a.m.; and reconvening on March 7, 1996 in the Sawmill Inn, located at 2301 South Pokegama, Grand Rapids, Minnesota, commencing 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 Steve M. Mihalchick. Judge Mihalchick can be reached at the Office of Administrative Hearings, 1700 100 Washington Square, Minneapolis, Minnesota 55401, (612) 349-2544.

**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

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## Proposed Rules

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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 agency may respond in writing within five business days after the submission period ends to any new information submitted. 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. No additional evidence may be submitted during the five-day period. This rule hearing procedure is governed by *Minnesota Rules*, parts 1400.0200 to 1400.1200 and *Minnesota Statutes*, sections 14.14 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 from the agency contact person. The 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 agency anticipates presenting at the hearing, if one is held. 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 directly affect small businesses.

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

**Departmental Charges.** 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.

**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 100 Centennial Office Building, 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 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 wish to be so notified, or you wish to receive a copy of the adopted rules, submit your request to the agency contact person listed above.

**Adoption Procedure After the 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 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. You may also request notification of the date on which the rules are 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: 11 December 1995

Rodney W. Sando  
Commissioner of Natural Resources

By  
Gail Lewellan, Assistant Commissioner of  
Human Resources and Legal Affairs

### Rules as Proposed (all new material)

#### 6122.0100 SCOPE.

Parts 6122.0100 to 6122.0400 provide methods for appraising state lands adjacent to public waters that are leased under *Minnesota Statutes*, section 92.46, and procedures for a lessee to challenge the appraised value of the lands. Since *Minnesota Statutes*, section 92.46, subdivision 1, paragraph (b), provides that the annual lease fee shall be five percent of the appraised value of

the leased lands, a successful challenge to the appraised value of leased lands will affect the annual rent. Over 90 percent of the leases issued under *Minnesota Statutes*, section 92.46, are on lands granted to the state by the United States for public purposes, commonly known as "school trust lands," which must be managed in recognition of the requirements of Minnesota Constitution, article II, section 1, and article XI, section 8, and *Minnesota Statutes*, section 124.079.

**6122.0200 DEFINITIONS.**

Subpart 1. **Scope.** The terms used in parts 6122.0100 to 6122.0400 have the meanings given them in this part.

Subp. 2. **Appraised value.** "Appraised value" means the market value, as defined in subpart 11.

Subp. 3. **Commissioner.** "Commissioner" means the commissioner of natural resources of the state of Minnesota or the commissioner's designated representative.

Subp. 4. **Department.** "Department" means the Minnesota Department of Natural Resources.

Subp. 5. **Fee simple estate.** "Fee simple estate" means absolute ownership unencumbered by any other interest or estate subject only to the four powers of government (eminent domain, escheat, police power, and taxation).

Subp. 6. **Highest and best use.** "Highest and best use" means the reasonably probable and legal use of vacant land or an improved property. Criteria the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum profitability.

Subp. 7. **Improvements on a leased lot.** "Improvements on a leased lot" means any structures or things erected or constructed on a lot for its utilization including, but not limited to, buildings, fences, driveways, retaining walls, wells, and septic systems.

Subp. 8. **Improvements to a leased lot.** "Improvements to a leased lot" means additions to the property to make it usable, including, but not limited to, curbs, drains, excavations, and fills.

Subp. 9. **Lease.** "Lease" means a written document between a property owner as lessor and a lessee, by which the specified rights of use and occupancy of land are transferred by the owner to the lessee for a defined period of time in return for the lessee's payment of the lease fee and promise to abide by the terms and conditions of the lease. Lessor, for purpose of these rules, is the state of Minnesota acting by and through its commissioner of natural resources.

Subp. 10. **Lease fee.** "Lease fee" means the annual rental charge the lessee must pay the lessor under the terms specified in the lease.

Subp. 11. **Market value.** "Market value" also referred to as "appraised value" means the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, between a prudent and knowledgeable buyer and seller, and assuming the price is not affected by undue stimulus. Market value is shown by the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

A. buyer and seller are typically motivated;

B. both parties are well informed or well advised, and acting in what they consider their best interests;

C. a reasonable time is allowed for exposure in the open market;

D. payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and

E. the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Subp. 12. **Mass appraisal.** "Mass appraisal" means the process of valuing a universe of leased lots as of a given date utilizing standard methodology, employing common data, and allowing for statistical testing.

Subp. 13. **Minnesota Department of Revenue annual assessment data.** "Minnesota Department of Revenue annual assessment data" means the State Board of Equalization Summary of Board Orders (1994 Edition and subsequent editions) compiled by the Department of Revenue and issued through the property tax division of the department, containing data collected on sales of various land classifications from each county in the state. The annual assessment data are incorporated by reference. The annual assessment data are subject to frequent change, and are available through the Minitex interlibrary loan system.

Subp. 14. **Subject lot.** "Subject lot" means the leased lot whose appraised value is being determined.

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## Proposed Rules

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Subp. 15. **Uniform Standards.** "Uniform Standards" means the Uniform Standards of Professional Appraisal Practice (1993 Edition and subsequent amendments) adopted by the Appraisal Standards Board of the Appraisal Foundation, which provide guidelines for the development of appraisal reports. The Uniform Standards are incorporated by reference. The Uniform Standards are subject to frequent change, and are available through the Minitex interlibrary loan system.

### 6122.0300 METHOD OF DETERMINING A LOT'S APPRAISED VALUE.

Subpart 1. **Estimated market value.** As the basis for a lease fee the commissioner shall determine an estimate of market value of the fee simple estate, subject to encumbrances of record, for each leased lot. Market value estimates will not include improvements on the leased lot, but will include improvements to a leased lot.

Subp. 2. **Appraiser and reviewer appraisers standards.** All appraisals and appraisal reviews of leased lots shall be conducted by appraisers licensed under *Minnesota Statutes*, chapter 82B, or successor statutes. An appraiser must have obtained at least a classification 2 appraisal license. A review appraiser must have obtained at least a classification 3 appraisal license. Appraisers and review appraisers shall follow the standards contained in the most current edition of the Uniform Standards.

Subp. 3. **Frequency of adjustments.** The commissioner shall determine the appraised value for each leased lot as of January 1, 1991. The lease fees shall be based on the appraised value of leased land as determined by the commissioner, and shall be adjusted by the commissioner at the fifth, tenth, and 15th anniversary of the lease if the appraised value has increased or decreased.

Subp. 4. **Adjustment of appraised value of leased lots.** Without reappraisal, the commissioner may determine a subject lot's appraised value by adjusting the last appraised value of the subject lot for time. This adjustment shall be:

A. based upon the Minnesota Department of Revenue annual assessment data for property of the same highest and best use within the same or adjacent county as the subject lot; and

B. made in an amount equal to the percentage change in assessed value between the dates of the last appraisal or adjustment and the current adjustment, based on the most recent Minnesota Department of Revenue annual assessment data available.

Subp. 5. **Appraisal of leased lots.** The commissioner shall determine when the appraised value of the leased lots shall be based on new appraisals. The commissioner's decision to appraise will depend on staffing, the degree of fluctuation in real estate values in certain areas of the state, and fiscal constraints.

Subp. 6. **Method of appraisal.** The commissioner shall determine the appropriate method to use to appraise the leased lots.

Subp. 7. **Mass appraisal of leased lots.** The commissioner shall use mass appraisal of leased lots rather than individual leased lot appraisals, whenever practicable. Mass appraisals will be developed and reported by an appraiser in compliance with the Uniform Standards.

Subp. 8. **Single leased lot appraisal.** Any leased lot may be appraised individually when the commissioner has sufficient reason to believe the expense of single leased lot appraisals are warranted, or the mass appraisal method is not applicable. All single leased lot appraisals shall be developed and reported by an appraiser in compliance with the Uniform Standards.

Subp. 9. **Lots previously appraised.** The commissioner may rely on the appraised value of leased lots appraised pursuant to *Minnesota Statutes*, section 92.67, for the lakeshore sales program, during the years 1988 through 1993. Whenever feasible, the commissioner may assign the appraised value of a sale lot to similar leased lots located in the same plat, or on the same lake as the sale lot.

Subp. 10. **Minimum appraised value.** The minimum appraised value of leased lots must be substantially equal to the county assessor's estimated market value of similar land adjusted by the assessment/sales ratio as determined by the Minnesota Department of Revenue.

### 6122.0400 APPEALS.

Subpart 1. **Right to appeal.** A lessee may appeal the appraised value of a leased lot when the lessee has good cause to believe the value is in error. Requests for appeal must be signed by all parties to the lease and all parties having a property interest in the improvement on the lease, including contract vendors and vendees. Any appeal must follow the applicable steps stated in this part. A lessee must pay the annual lease fee while the appeal is being decided. If the appeal results in a lower lease fee than paid, the department shall issue a credit to the lessee's account.

The lessee shall have 45 calendar days from the date of mailing of notification of a lease fee adjustment to appeal the valuation. Appeals of the decisions made under Steps 1 or 2 must be made within 45 days following mailing of notification of the decisions under Steps 1 or 2. Failure on the part of the lessee to notify the commissioner in writing of the intent to appeal each decision within the referenced time frames shall be deemed consent for the commissioner to proceed with that decision.

Subp. 2. **Step 1 of appeal.** If the lessee does not agree with the commissioner's appraised value of the leased lot, the lessee shall submit a written appeal to the Department of Natural Resources, Bureau of Real Estate Management, Box 30, 500 Lafayette Road, St. Paul, MN 55155-4030, for a review of the appraised value of a leased lot. The lessee must submit factual documentation to

support a request for a review of the appraised value of the leased lot. Documentation to support the lessee's appeal may consist of recent comparable sales data, an appraisal report performed by an appraiser licensed by Minnesota, who has obtained at least a classification 2 appraisal license, or other market evidence. If a lessee will be submitting an appraisal in Step 1, the lessee shall have 45 calendar days from the date of notification of a lease fee adjustment to submit an appraisal. The lessee will be responsible for payment of the appraiser. The commissioner may request assistance from sources outside the department, such as state agencies, county officials, or real estate professionals, to review and recommend action. The commissioner shall recommend resolution for each appeal on the basis of information made available by the lessee, department staff, and any other sources. The commissioner must review a lessee's appeal and send a decision to the lessee within 60 calendar days of receiving the lessee's appeal or send notice of a delay which provides an estimate of when the decision will be mailed.

If, in the opinion of the commissioner, sufficient evidence is provided by the lessee to adjust the appraised value, the commissioner shall set the amount of the adjustment based on the lessee's information. If insufficient evidence is provided by the lessee, the commissioner must deny the appeal and provide an explanation of the denial. If the lessee does not agree with the commissioner's decision in Step 1, the lessee may go to Step 2 of the appeal. If the lessee provided an appraisal in Step 1, the commissioner denied the appeal, and the lessee does not agree with the decision in Step 1, the lessee may proceed directly to Step 3. The commissioner shall return a lessee's appraisal subsequent to each decision.

**Subp. 3. Step 2 of appeal.** If the lessee does not agree with the decision in Step 1, the lessee must submit a written appeal within the time period described in subpart 1 to the commissioner stating the reason for disagreement or objection to the appraised value. The lessee shall have 45 calendar days from the date of the commissioner's decision in Step 1 to provide an appraisal of the leased lot to the commissioner, supporting the lessee's appeal. The appraisal must be prepared by an appraiser licensed in Minnesota, who has obtained at least a classification 2 appraisal license. The lessee will be responsible for payment of the appraiser. The commissioner may request assistance from sources outside the department, such as state agencies, county officials, or real estate professionals, to review and recommend action. The commissioner shall recommend resolution on the basis of information made available by the lessee, department staff, and any other sources. Within 60 calendar days of the commissioner receiving the lessee's appeal appraisal, the lessee must be notified of the commissioner's decision or be given a notice of delay which provides an estimate of when the decision will be mailed.

**Subp. 4. Step 3 of appeal.** If the lessee does not agree with the decision in Step 2, or Step 1 if an appraisal was previously submitted, the lessee must submit a written appeal to the commissioner stating a desire to go to binding arbitration. The commissioner must receive the lessee's written appeal within 30 calendar days of the lessee receiving the commissioner's decision in Step 2, or Step 1 if an appraisal was previously submitted. Once the commissioner receives the lessee's written appeal, the commissioner and the lessee shall have 15 days to discuss whether or not to hold an arbitration hearing. If the lessee does not express a preference, the arbitration will proceed without a hearing.

A. The lessee shall be responsible for paying 50 percent of the cost of arbitration. The lessee must submit \$500 with the appeal in a cashier's check or certified check as a down payment to pay for the lessee's share of the cost of arbitration. Any part of the down payment not used shall be refunded. Any cost in excess of the down payment will be billed and the lessee shall be liable for paying that bill within 30 calendar days of receipt. If the amount due remains unpaid beyond 30 days, it shall accrue interest at the maximum rate permitted by *Minnesota Statutes*, section 334.01, subdivision 1, from the date of billing and shall be added to the lease fee. If the amount due remains unpaid when the next lease payment is due, it shall be grounds for canceling the lease.

B. The commissioner and the lessee must mutually agree on an arbitrator who shall be selected from a list of professional appraisers provided to the lessee by the commissioner within 15 days of the commissioner and the lessee deciding whether to waive or hold an arbitration hearing. An arbitrator shall be a professional appraiser licensed in Minnesota, who has obtained at least a classification 3 appraisal license. If the lessee fails to select an arbitrator within the specified time, the commissioner shall select an arbitrator. Within 15 days of selecting the arbitrator, the commissioner shall give written notice to the arbitrator of intent of the commissioner and the lessee to resolve the dispute by binding arbitration. The notice shall set forth the nature of the dispute and the remedy sought. If the arbitrator selected is unable to serve, the process will be repeated.

C. If the commissioner and the lessee agree to waive an arbitration hearing, the commissioner and the lessee must each submit an appraisal to the arbitrator within 15 calendar days after the commissioner's notice to the arbitrator. The arbitrator shall reach a decision based on a review of the commissioner's and the lessee's appraisals. The arbitrator shall have 30 calendar days to review both appraisals and issue findings. The commissioner and the lessee must mutually agree upon an extension of time if requested by the arbitrator, at which time the arbitrator will be given no more than five working days to reach a decision and submit the findings

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to the commissioner and the lessee. The arbitrator's decision is final and binding on the commissioner and the lessee and there shall be no further appeals. The arbitrator shall return the commissioner's and the lessee's appraisals with the final decision.

D. If the commissioner and the lessee agree to hold an arbitration hearing, the commissioner, after consulting with the lessee and the arbitrator, shall set a date, time, and place for the hearing and send notice of the hearing to the lessee and the arbitrator. The commissioner and the lessee must each submit an appraisal to the arbitrator 30 days prior to the hearing. The hearing shall be limited to three hours, unless the parties agree on an extension of time. The hearing procedures are as outlined in subitems (1) to (9).

(1) The commissioner and the lessee may be represented by counsel or other authorized representative. A party intending to be so represented shall notify the other party and the arbitrator of the name and address of the representative at least ten days prior to the date set for the hearing at which that person is to appear.

(2) Stenographic records, recordings, videotapes, transcriptions, and all other forms of record keeping will not be allowed at the hearing. The arbitrator's findings shall be the official record of the hearing.

(3) The arbitrator shall maintain the privacy of the hearing. Any person having a direct interest in the arbitration is entitled to attend the hearing. The arbitrator shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any other person.

(4) The arbitrator shall have the power to cross-examine any witness submitting evidence at the hearing.

(5) The arbitrator for good cause shown may postpone any hearing upon the request of the commissioner or the lessee.

(6) The hearing procedure shall be established at the discretion of the arbitrator, but the arbitrator shall afford a full and equal opportunity to the commissioner and the lessee for the presentation of any material and relevant evidence.

(7) The arbitrator may proceed in the absence of the commissioner or the lessee or any representative who, after due notice, fails to be present or fails to obtain a postponement.

(8) Any expenses of witnesses for either side shall be paid by the party producing such witnesses. Any party wishing an interpreter shall make all arrangements directly with an interpreter and shall assume the costs of the service. All other reasonable expenses of the arbitrator including required travel shall be borne equally by the commissioner and the lessee, unless they agree otherwise.

(9) The arbitrator's findings must be submitted in writing to the commissioner and the lessee within 15 calendar days of the closing of the hearing. The arbitrator's decision shall be final and binding on the commissioner and the lessee.

## Department of Natural Resources

### Proposed Permanent Rules Relating to Endangered and Threatened Species

#### 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 Natural Resources intends to adopt amendments to permanent rules 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 25, 1996, a public hearing will be held beginning on March 13, 1996 and will continue until all interested persons have been heard. To find out whether the rule will be adopted without a hearing or if the hearing will be held, you should contact the agency contact person after January 25, 1996 and before March 13, 1996.

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

Richard J. Baker  
Department of Natural Resources  
500 Lafayette Road  
St. Paul, Minnesota 55155-4007  
Telephone: (612) 297-3764

**Subject of Rules and Statutory Authority.** The proposed rules will amend *Minnesota Rules*, chapter 6124, which is the state's list of species designated as endangered, threatened or of special concern. Rules parts being revised are animal species, vascular

plants, and lichens, mosses and fungi. In each part, species are being added to a designation, removed from any designation, or moved from one designation to another. Changes are proposed to the status of 299 species.

The statutory authority to adopt these rules is *Minnesota Statutes*, sections 84.0895, subd. 3, which requires the agency to designate species of wild animal or plant as endangered, threatened or of special concern.

A copy of the proposed rules is published in the *State Register* and a free copy of the rules is available upon request from the agency contact person.

**Comments.** You have until 4:30 p.m., January 25, 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 25, 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 rule as 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 March 13, 1996, will be canceled if the agency does not receive requests from 25 or more persons that a hearing be held on the rule. 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 after January 25, 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 rule, a hearing will be held following the procedures in *Minnesota Statutes*, sections 14.14 to 14.20. The hearing will begin on March 13, 1996, in the Board Room on the lower level of the Pollution Control Agency Building, located at 520 Lafayette Road, St. Paul, Minnesota, commencing at 9:00 a.m., and will continue until all interested persons have been heard. March 14 and 15, 1996, are being made available if additional days of hearing are needed. 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 Phyllis Reha. Judge Reha can be reached at the Office of Administrative Hearings, 1700 100 Washington Square, Minneapolis, Minnesota 55401, (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. 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 agency may respond in writing within five business days after the submission period ends to any new information submitted. 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. No additional evidence may be submitted during the five-day period. This rule hearing procedure is governed by *Minnesota Rules*, parts 1400.0200 to 1400.1200 and *Minnesota Statutes*, sections 14.14 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 from the agency contact person. The 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 agency anticipates presenting at the hearing, if one is held. 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 proposed amendments will only

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impact small businesses engaging in the prohibited acts of taking, import, transport, sale, purchase, disposal, or possession of any portion of an endangered or threatened species. Such businesses may be asked to enter into consultation with the DNR to modify their activities to avoid the taking of an endangered or threatened species, may be required to apply for a permit to continue these activities, and may be prohibited from conducting these activities. The Department's evaluation of the applicability of the methods contained in *Minnesota Statutes*, section 14.115, subdivision 2, for reducing the impact of the proposed rules, is addressed further in the Statement of Need and Reasonableness.

**Expenditures 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 Agricultural Lands.** *Minnesota Statutes*, section 14.11, subdivision 2, does not apply because adoption of these rules will not have a direct and substantial adverse impact on agricultural land.

**Departmental Charges.** *Minnesota Statutes*, section 16A.1285, subdivision 4 and 5, do not apply because the rules do not establish or adjust departmental charges.

**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 100 Centennial Office Building, 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 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 wish to be so notified, or you wish to receive a copy of the adopted rules, submit your request to the agency contact person listed above.

**Adoption Procedure After the 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 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. You may also request notification of the date on which the rules are 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: 11 December 1995

Rodney W. Sando  
Commissioner of Natural Resources

By  
Gail Lewellan, Assistant Commissioner of  
Human Resources and Legal Affairs

### Rules as Proposed

#### 6134.0200 ANIMAL SPECIES.

Subpart 1. **Mammals.** The scientific names and the common names in this subpart are according to the Revised Checklist of North American Mammals North of Mexico, J. K. Jones, et al., 1982 1992. The following species of mammals are designated as:

- A. Endangered: none.
- B. Threatened: ~~Canis lupus~~, gray wolf Spilogale putorius, eastern spotted skunk.
- C. Of special concern:
  - (1) ~~Canis lupus~~, gray wolf;
  - (2) ~~Cervus elaphus~~, American elk;
  - (2) (3) ~~Cryptotis parva~~, least shrew;
  - (3) (4) ~~Felis concolor~~, mountain lion;
  - (4) ~~Gulo gulo~~, wolverine;
  - (5) ~~Martes americana~~, marten;
  - (6) ~~Microtus chrotorrhinus~~, rock vole;

- (7) (5) *Microtus ochrogaster*, prairie vole;
- (8) (6) *Microtus pinetorum*, woodland vole;
- (7) *Mustela nivalis*, least weasel;
- (9) (8) *Myotis keenii*, ~~Keens'~~ Keen's myotis;
- (10) ~~*Odocoileus hemionus*, mule deer;~~
- (11) (9) *Perognathus flavescens*, plain pocket mouse;
- (10) *Phenacomys intermedius*, heather vole;
- (12) (11) *Pipistrellus subflavus*, eastern pipistrelle;
- (13) ~~*Rangifer tarandus*, caribou;~~
- (14) *Spilogale putorius*, spotted skunk;
- (15) (12) *Sorex fumeus*, smokey shrew;
- (13) *Synaptomys borealis*, northern bog lemming; and
- (16) (14) *Thomomys talpoides*, northern pocket gopher.

Subp. 2. **Birds.** The scientific names and the common names in this subpart are according to the American Ornithologists Union Checklist, 1983, and Supplements (1985, 1987, 1989, 1991, and 1993). The following species of birds are designated as:

A. Endangered:

- (1) *Ammodramus bairdii*, Baird's sparrow;
- (2) *Ammodramus henslowii*, Henslow's sparrow;
- (3) *Anthus spragueii*, Sprague's pipit;
- (3) (4) *Athene cunicularia*, burrowing owl;
- (4) (5) *Calcarius ornatus*, chestnut-collared longspur;
- (5) (6) *Charadrius melodus*, piping plover; and
- (6) ~~*Falco peregrinus*, peregrine falcon~~
- (7) *Rallus elegans*, king rail.

B. Threatened:

- (1) ~~*Haliaeetus leucocephalus*, bald eagle~~ *Cygnus buccinator*, trumpeter swan;
- (2) ~~*Falco peregrinus*, peregrine falcon;~~
- (3) *Lanius ludovicianus*, loggerhead shrike;
- (4) *Phalaropus tricolor*, Wilson's phalarope;
- (5) *Podiceps auritus*, horned grebe; and
- (6) *Sterna hirundo*, common tern.

C. Of special concern:

- (1) ~~*Ammodramus henslowii*, Henslow's sparrow;~~
- (2) ~~*Ammospiza*~~ *Ammodramus caudacutus*, sharp-tailed sparrow;
- (3) (2) *Asio flammeus*, short-eared owl;
- (4) ~~*Bartramia longicauda*, upland sandpiper;~~
- (5) ~~*Botaurus lentiginosus*, American bittern;~~
- (6) (3) *Buteo lineatus*, red-shouldered hawk;

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- (7) (4) *Coturnicops noveboracensis*, yellow rail;
- (5) *Dendroica cerulea*, cerulean warbler;
- (6) *Empidonax virescens*, acadian flycatcher;
- (8) (7) *Gallinula chloropus*, common moorhen;
- (9) *Grus canadensis*, sandhill crane
- (8) *Haliaeetus leucocephalus*, bald eagle;
- (40) (9) *Larus pipixcan*, Franklin's gull;
- (10) *Limosa fedoa*, marbled godwit;
- (11) *Pandion haliaetus*, osprey;
- (12) (11) *Pelecanus erythrorhynchos*, American white pelican;
- (13) *Phalaropus tricolor*, Wilson's phalarope;
- (14) *Podiceps auritus*, horned grebe;
- (15) *Rallus elegans*, king rail;
- (16) (12) *Seiurus motacilla*, Louisiana waterthrush;
- (17) (13) *Sterna forsteri*, Forster's tern;
- (18) *Sterna hirundo*, common tern;
- (19) (14) *Tympanuchus cupido*, greater prairie chicken; and
- (16) *Wilsonia citrina*, hooded warbler.

Subp. 3. **Amphibians and reptiles.** The scientific names and the common names in this subpart are according to Standard Common and Current Scientific Names for North American Amphibians and Reptiles, second third edition, J.T. Collins, et al., 1982 1990. The following species of amphibians and reptiles are designated as:

A. Endangered: *Eumeces fasciatus*, five-lined skink:

- (1) *Acris crepitans*, northern cricket frog; and
- (2) *Sistrurus catenatus*, massasauga.

B. Threatened:

- (1) *Clemmys insculpta*, wood turtle;
- (2) *Crotalus horridus*, timber rattlesnake; and
- (3) *Emydoidea blandingi*; *blandingii*, Blanding's turtle.

C. Of special concern:

- (1) *Apalone mutica*, smooth softshell;
- (2) *Chelydra serpentina*, snapping turtle;
- (2) (3) *Coluber constrictor*, racer (blue racer);
- (3) *Crotalus horridus*, timber rattlesnake;
- (4) *Elaphe obsoleta*, rat snake (black rat snake);
- (5) *Elaphe vulpina*, fox snake *Eumeces fasciatus*, five-lined skink;
- (6) *Hemidactylium scutatum*, four-toed salamander;
- (7) *Heterodon nasicus*, western hognose snake;
- (7) *Heterodon platyrhinos*, eastern hognose snake;
- (8) *Lampropeltis triangulum*, milk snake;
- (9) *Pituophis melanoleucus catenifer*, gopher snake (bull snake); and
- (10) *Sistrurus catenatus*, massasauga;
- (11) (9) *Tropidoclonion lineatum*, lined snake;

- (12) ~~*Acris crepitans*~~, northern cricket frog (~~Blanchard's cricket frog~~);
- (13) ~~*Rana catesbeiana*~~, bullfrog;
- (14) ~~*Rana palustris*~~, pickerel frog.

Subp. 4. **Fish.** The scientific names and the common names in this subpart are according to A List of Common and Scientific Names of Fishes from the United States and Canada, ~~third~~ fifth edition, American Fisheries Society, ~~1979~~ 1991. The following species of fish are designated as:

- A. Endangered: none.
- B. Threatened: ~~none~~ *Polyodon spathula* (Walbaum), paddlefish.
- C. Of special concern:
  - (1) *Acipenser fulvescens* (Rafinesque), lake sturgeon;
  - (2) *Alosa chrysochloris* (Rafinesque), skipjack herring;
  - (3) *Ammocrypta asprella* (Jordan), crystal darter;
  - (4) *Aphredoderus sayanus* (Gilliams), pirate perch;
  - (5) *Coregonus kiyi* (Koelz), kiyi;
  - (6) *Coregonus zenithicus* (Jordan & Evermann), shortjaw cisco;
  - (7) ~~(7)~~ *Cycleptus elongatus* (Le Sueur Lesueur), blue sucker;
  - (4) ~~(4)~~ *Etheostoma chlorosomum* (Hay), bluntnose darter;
  - (8) *Etheostoma microperca* Jordan & Gilbert, least darter;
  - (9) *Erimystax x-punctata* (Hubbs & Crowe), gravel chub;
  - (5) ~~(10)~~ *Fundulus sciadicus* (Cope), plains topminnow;
  - (6) ~~(6)~~ *Hybopsis x-punctata* (Hubbs and Crowe), gravel chub;
  - (7) ~~(7)~~ *Ictalurus furcatus* (Le Sueur), blue catfish;
  - (8) ~~(8)~~ *Lampetra appendix* (DeKay), American brook lamprey;
  - (11) *Ichthyomyzon fossor* Reighard & Cummins, northern brook lamprey;
  - (12) *Ichthyomyzon gagei* Hubbs & Trautman, southern brook lamprey;
  - (13) *Ictiobus niger* (Rafinesque), black buffalo;
  - (9) ~~(14)~~ *Morone mississippiensis* (Jordan and Evermann) Eigenmann, yellow bass;
  - (10) ~~(10)~~ *Moxostoma duquesnei* (Le Sueur), black redbhorse;
  - (11) ~~(15)~~ *Notropis amnis* (Hubbs and Greene), pallid shiner;
  - (12) ~~(12)~~ *Notropis emilae* (Hay), pugnose minnow;
  - (16) *Notropis anogenus* Forbes, pugnose shiner;
  - (17) *Notropis nubilus* (Forbes), Ozark minnow;
  - (13) ~~(18)~~ *Notropis topeka* (Gilbert), Topeka shiner;
  - (14) ~~(19)~~ *Noturus exilis* (Nelson), slender madtom; and
  - (15) ~~(15)~~ *Polyodon spathula* (Walbaum), paddlefish;
  - (16) ~~(16)~~ *Scaphirhynchus platyrhynchus* (Rafinesque), shovelnose sturgeon
  - (20) *Percina evides* (Jordan & Copeland), gilt darter.

Subp. 5. [See repealer.]

Subp. 6. **Freshwater Mollusks.** The common and scientific names in this subpart are according to Freshwater Mollusca of

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Wisconsin Part H: Peleceypoda, F.C. Collins, 1982 Common and Scientific Names of Aquatic Invertebrates from the United States and Canada: Mollusks, American Fisheries Society, 1988 and Summary Status Reports on Eight Species of Candidate Land Snails from the Driftless Area (Paleozoic Plateau), Upper Midwest (Report to USFWS), T.J. Frest, 1991. The following species of freshwater mollusks are designated as:

### A. Endangered:

- (1) *Arcidens confragosus* (Say), rock pocketbook;
- (2) *Elliptio crassidens* (Lamarck), elephant-ear;
- (3) *Fusconaia ebena* (L. Lea), ebonyshell;
- (4) *Lampsilis higginsi* (L. Lea), Higgins' Higgins eye;
- (2) *Proptera (Potamilus) capax* (Green), fat pocketbook;
- (5) *Lampsilis teres* (Rafinesque), yellow sandshell;
- (6) *Novasuccinea* n. sp. Minnesota B Hoagland & Davis, Iowa pleistocene ambersnail;
- (7) *Plethobasus cyphus* (Rafinesque), sheepnose;
- (8) *Quadrula fragosa* (Conrad), winged mapleleaf;
- (9) *Quadrula nodulata* (Rafinesque), wartyback; and
- (10) *Vertigo hubrichti hubrichti* (Pilsbry), midwest pleistocene vertigo.

### B. Threatened: none.

- (1) *Actinonaias ligamentina* (Lamarck), mucket;
- (2) *Alasmidonta marginata* Say, elktoe;
- (3) *Cumberlandia monodonta* (Say), spectaclecase;
- (4) *Cyclonaias tuberculata* (Rafinesque), purple wartyback;
- (5) *Ellipsaria lineolata* (Rafinesque), butterfly;
- (6) *Epioblasma triquetra* (Rafinesque), snuffbox;
- (7) *Megalonaias nervosa* (Rafinesque), washboard;
- (8) *Novasuccinea* n. sp. Minnesota A Hoagland & Davis, Minnesota pleistocene ambersnail;
- (9) *Pleurobema coccineum* (Conrad), round pigtoe;
- (10) *Quadrula metanevra* (Rafinesque), monkeyface;
- (11) *Simpsonaias ambigua* (Say), salamander mussel;
- (12) *Tritogonia verrucosa* (Rafinesque), pistolgrip;
- (13) *Venustaconcha ellipsiformis* (Conrad), ellipse;
- (14) *Vertigo hubrichti variabilis* n. subsp., variable pleistocene vertigo; and
- (15) *Vertigo meramecensis* Van Devender, bluff vertigo.

### C. Of special concern:

- (1) *Elliptio crassidens* (Lamarck), elephant ear;
- (2) *Fusconaia ebena* (Lea), ebony shell;
- Elliptio dilatata* (Rafinesque), spike;
- (2) *Lasmigona compressa* (L. Lea), creek heelsplitter;
- (3) *Lasmigona costata* (Rafinesque), fluted-shell;
- (4) *Ligumia recta* (Lamarck), black sandshell; and
- (5) *Obovaria olivaria* (Rafinesque), hickorynut.

Subp. 7. Jumping spiders. The following species of jumping spiders are designated as:

A. Endangered: none.

B. Threatened: none.

**C. Of special concern:**

- (1) Habronattus texanus Griswold;
- (2) Marpissa grata (Gertsch);
- (3) Metaphidippus arizonensis (Peckham & Peckham);
- (4) Paradamoetas fontana (Levi);
- (5) Phidippus apacheanus Chamberlin & Gertsch;
- (6) Phidippus pius Scheffer;
- (7) Sassacus papenhoei Peckham & Peckham; and
- (8) Tutelina formicaria (Emerton).

**Subp. 8. Butterflies and moths. The following species of butterflies and moths are designated as:****A. Endangered:**

- (1) Erynnis persius (Scudder), persius dusky wing;
- (2) Hesperia comma assiniboia (Lyman), assiniboia skipper;
- (3) Hesperia uncas W.H. Edwards, uncas skipper;
- (4) Lycaeides melissa samuelis Nabokov, Karner blue; and
- (5) Oeneis uhleri varuna, (W.H. Edwards), Uhler's arctic.

**B. Threatened:**

- (1) Hesperia dacotae (Skinner), Dakota skipper;
- (2) Hesperia ottoe W.H. Edwards, ottoe skipper; and
- (3) Oarisma garita (Reakirt), garita skipper.

**C. Of special concern:**

- (1) Atrytone arogos (Boisduval & Leconte), arogos skipper;
- (2) Erebia disa mancinus Doubleday & Hewitson, disa alpine;
- (3) Hesperia leonardus Harris, leonardus skipper;
- (4) Hesperia pawnee Dodge, pawnee skipper;
- (5) Lycaeides idas nabokovi Masters, Nabokov's blue;
- (6) Oarisma poweshiek (Parker), poweshiek skipper;
- (7) Pyrgus centaureae freija (Warren), grizzled skipper;
- (8) Schinia indiana (J.B. Smith), phlox moth; and
- (9) Speyeria idalia (Drury), regal fritillary.

**Subp. 9. Caddisflies. The following species of caddisflies are designated as:****A. Endangered:** Chilostigma itasca Wiggins.**B. Threatened:** none.**C. Of special concern:**

- (1) Agapetus tomus Ross;
- (2) Asynarchus rossi Leonard & Leonard;
- (3) Ceraclea brevis (Etnier);
- (4) Ceraclea vertreesi (Denning);

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- (5) *Hydroptila metoeca* Blickle & Morse;
- (6) *Hydroptila novicola* Blickle & Morse;
- (7) *Hydroptila tortosa* Ross;
- (8) *Oxyethira ecornuta* Morton;
- (9) *Oxyethira itascaae* Monson & Holzenthal;
- (10) *Polycentropus milaca* Etnier;
- (11) *Protoptila talola* Denning; and
- (12) *Setodes guttatus* (Banks).

Subp. 10. Tiger beetles. The following species of tiger beetles are designated as:

A. Endangered:

- (1) *Cicindela fulgida fulgida* Say; and
- (2) *Cicindela limbata nympha* Casey.

B. Threatened:

- (1) *Cicindela denikei* W.J. Brown;
- (2) *Cicindela fulgida westbournei* Calder; and
- (3) *Cicindela lepida* Dejean, <II> C. Of special concern:
  - (1) *Cicindela hirticollis rhodensis* Calder;
  - (2) *Cicindela macra macra* Leconte;
  - (3) *Cicindela patruela patruela* Dejean; and
  - (4) *Cicindela splendida cyanocephalata* Eckhoff.

Subp. 11. Leafhoppers. The following species of leafhoppers are designated as:

A. Endangered: none.

B. Threatened: none.

C. Of special concern: *Aflexia rubranura* (DeLong).

Subp. 12. Dragonflies. The following species of dragonflies are designated as:

A. Endangered: none.

B. Threatened: none.

C. Of special concern:

- (1) *Ophiogomphus anomalis* Harvey; and
- (2) *Ophiogomphus susbehcha* Vogt & Smith.

### 6134.0300 VASCULAR PLANTS.

The scientific names in items A, B, and C are according to Gray's Manual of Botany, eighth edition, M.L. Fernald, 1950, and include family designation following species of vascular plants are designated as:

A. Endangered: The following species are designated as endangered:

- (1) *Agalinis auriculata* (Michx.) Blake, Scrophulariaceae;
- (2) *Agalinis gattingeri* (Sm.) Sm. ex Britt., Scrophulariaceae;
- (3) *Asclepias stenophylla* Gray, Asclepiadaceae;
- (4) *Besseyia bullii* (Eaton) Rydb., Scrophulariaceae;
- (5) *Astragalus alpinus* L., Fabaceae;
- (6) *Bartonia virginica* (L.) B.S.P., Gentianaceae;
- (7) *Botrychium gallicomontanum* Farrar & Johnson-Groh, Ophioglossaceae;
- (8) *Botrychium oneidense* (Gilbert) House, Ophioglossaceae;

- (8) Botrychium pallidum W.H. Wagner, Ophioglossaceae;
- (9) ~~(9)~~ Cacalia suaveolens L., Asteraceae;
- (10) Caltha natans Pallas ~~ex Georgi~~, Ranunculaceae;
- (11) Carex formosa Dewey, Cyperaceae;
- (12) Carex pallescens L., Cyperaceae;
- (13) Carex plantaginea Lam., Cyperaceae;
- (14) Castilleja septentrionalis Lindl., Scrophulariaceae;
- (15) Cheilanthes lanosa (Michaux) D.C. Eaton, Pteridaceae;
- (4) ~~(16)~~ Chrysosplenium iowense Rydb., Saxifragaceae;
- (5) ~~(17)~~ Cristatella jamesii T. & G., Capparidaceae;
- (6) Cypripedium arietinum R. Br., Orchidaceae;
- (7) ~~(18)~~ Dodecatheon meadia L., Primulaceae;
- (19) Draba norvegica Gunn., Brassicaceae;
- (8) ~~(20)~~ Eleocharis wolfii Gray, Cyperaceae;
- (9) ~~(21)~~ Empetrum atropurpureum eamesii Fern. & Wieg., Empetraceae;
- (22) Empetrum nigrum L., Empetraceae;
- (40) ~~(23)~~ Erythronium propullans Gray, Liliaceae;
- (41) Gerardia auriculata Michx., Scrophulariaceae;
- (24) Escobaria vivipara (Nutt.) Buxbaum, Cactaceae;
- (25) Fimbristylis puberula (Michx.) Vahl var. interior (Britt.) Kral, Cyperaceae;
- (26) Glaux maritima L., Primulaceae;
- (42) ~~(27)~~ Hydrastis canadensis L., Ranunculaceae;
- (28) Iodanthus pinnatifidus (Michx.) Steud., Brassicaceae;
- (43) ~~(29)~~ Isoetes melanopoda Gay & Dur., Isoetaceae;
- (44) Lespedeza leptostachya Engelm., Fabaceae;
- (30) Lechea tenuifolia Michx., Cistaceae;
- (45) ~~(31)~~ Lesquerella ludoviciana (Nutt.) S. Wats., Brassicaceae;
- (46) Littorella americana Fern., Plantaginaceae;
- (32) Listera auriculata Wieg., Orchidaceae;
- (47) ~~(33)~~ Malaxis paludosa (L.) Sw., Orchidaceae;
- (48) Montia chamissoi (Ledeb.) Durand & Jackson, Portulacaceae;
- (49) Napaea dioica L., Malvaceae;
- (20) ~~(34)~~ Marsilea vestita, Hooker & Greville, Marsileaceae;
- (35) Montia chamissoi (Ledeb. ex Spreng.) Greene, Portulacaceae;
- (36) Oryzopsis hymenoides (R. & S.) Ricker ~~ex Piper~~, Poaceae;
- (24) ~~(37)~~ Osmorhiza ehilensis berteroi H. & A., Apiaceae;
- (38) Oxytropis viscida Nutt., Fabaceae;

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## Proposed Rules

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- (39) *Paronychia fastigiata* (Raf.) Fern., Caryophyllaceae;
- (22) ~~(40)~~ *Parthenium integrifolium* L., Asteraceae;
- (23) ~~(41)~~ *Platanthera flava* (L.) Lindl. var. *herbiola* (R. Br.) Ames & Correll, Orchidaceae;
- (24) ~~(42)~~ *Platanthera leucophaea* (Nutt.) Lindl. *praeclara* Sheviak & Bowles, Orchidaceae;
- (25) *Poa paludigena* Fern. & Wieg., Poaceae;
- (26) ~~(43)~~ *Polemonium occidentale* Greene ssp. *lacustre* Wherry, Polemoniaceae;
- (44) *Polygala cruciata* L., Polygalaceae;
- (27) ~~(45)~~ *Polystichum braunii* (Spenner) Fee var. *purshii* Fern., Polypodiaceae, Dryopteridaceae;
- (28) *Potamogeton lateralis* Morong, Potamogetonaceae;
- (29) *Ruellia humilis* Nutt., Acanthaceae;
- (30) ~~(46)~~ *Potamogeton bicupulatus* Fern., Potamogetonaceae;
- (47) *Potamogeton diversifolius* Raf., Potamogetonaceae;
- (48) *Psoralidium tenuiflora* (Pursch) Rydb., Fabaceae;
- (49) *Sagina nodosa* (L.) fenzl ssp. *borealis* Crow, Caryophyllaceae;
- (31) ~~(50)~~ *Saxifraga cernua* L. var. *latibraeteata* Fern., Saxifragaceae;
- (32) ~~(51)~~ *Scleria triglomerata* Michx., Cyperaceae;
- (33) *Sedum rosea* (L.) Seop. var. *leedyi* Rosend. & Moore, Crassulaceae;
- (34) *Subularia aquatica* L., Brassicaceae;
- (35) *Sparganium glomeratum* Laest., Sparganiaceae;
- (36) *Sullivantia renifolia* Rosend., Saxifragaceae;
- (37) ~~(52)~~ *Sedum integrifolium* (Raf.) A. Nels. ssp. *leedyi* (Rosend. & Moore) Clausen, Crassulaceae;
- (53) *Selaginella selaginoides* (L.) Link, Selaginellaceae;
- (54) *Senecio canus* Hook., Asteraceae;
- (55) *Talinum rugospermum* Holzinger, Portulacaceae; and
- (38) ~~(56)~~ *Tofieldia pusilla* (Michx. Michx.) Pers., Liliaceae; and
- (57) *Xyris torta* Sm., Xyridaceae.

B. Threatened- The following species are designated as threatened:

- (1) *Achillea sibirica* Ledeb., Asteraceae;
- (2) *Allium cernuum* Roth, Liliaceae;
- (3) *Allium schoenoprasum* L. var. *sibiricum* (L.) Hartm., Liliaceae;
- (2) (4) *Ammophila breviligulata* Fern., Poaceae;
- (3) *Androsace septentrionalis* L. var. *pulverulenta* (Rydb.) Knuth, Primulaceae;
- (4) (5) *Arabis holboellii* Hornem. var. *retrofracta* (Graham) Rydb., Brassicaceae;
- (5) *Arenaria macrophylla* Hook., Caryophyllaceae;
- (6) *Arnica ehionopappa* Fern. *lonchophylla* Greene, Asteraceae;
- (7) *Arnoglossum plantagineum* Raf., Asteraceae;
- (8) *Asclepias hirtella* (Pennell) Woodson, Asclepiadaceae;
- (8) (9) *Asclepias sullivantii* Engelm., Asclepiadaceae;
- (9) (10) *Asplenium trichomanes* L., Polypodiaceae Aspleniaceae;
- (10) *Cacalia tuberosa* Nutt., Asteraceae;
- (11) *Aster shortii* Lindl., Asteraceae;
- (12) *Aureolaria pedicularia* (L.) Raf., Scrophulariaceae;

- (13) Besseyia bullii (Eaton) Rydb., Scrophulariaceae;  
 (14) Botrychium lanceolatum (S.G. Gmelin) Angstr., Ophioglossaceae;  
 (15) Botrychium lunaria (L.) Sw., Ophioglossaceae;  
 (16) Botrychium rugulosum W.H. Wagner, Ophioglossaceae;  
 (17) Carex careyana Torr. ex Dewey, Cyperaceae;  
 (18) Carex conjuncta Boott, Cyperaceae;  
 (12) (19) Carex davisii Schwein. & Torr., Cyperaceae;  
 (13) Carex hallii Olney, Cyperaceae;  
 (14) Carex praticola Rydb., Cyperaceae;  
 (15) (20) Carex festucacea Schkuhr ex Willd., Cyperaceae;  
 (21) Carex garberi Fern., Cyperaceae;  
 (22) Carex jamesii Schwein., Cyperaceae;  
 (23) Carex katahdinensis Fern., Cyperaceae;  
 (24) Carex laevivaginata (Kukenth.) Mackenzie, Cyperaceae;  
 (25) Carex laxiculmis Schwein., Cyperaceae;  
 (26) Carex sterilis Willd., Cyperaceae;  
 (16) Desmodium illinoense Gray, Fabaceae;  
 (17) Drosera anglica Huds., Droseraceae;  
 (18) Drosera linearis Goldie, Droseraceae;  
 (19) (27) Crassula aquatica (L.) Schoenl., Crassulaceae;  
 (28) Crataegus douglasii Lindl., Rosaceae;  
 (29) Cyperus acuminatus Torr. & Hook., Cyperaceae;  
 (30) Cypripedium arietinum R. Br., Orchidaceae;  
 (31) Dryopteris marginalis (L.) Gray, Polypodiaceae Dryopteridaceae;  
 (32) Diplazium pycnocarpon (Spreng.) M. Broun, Dryopteridaceae;  
 (33) Eleocharis nitida Fern., Cyperaceae;  
 (20) (34) Eleocharis olivaceae Torr., Cyperaceae;  
 (24) (35) Eleocharis rostellata Torr., Cyperaceae;  
 (22) Gerardia gattingeri Sm., Scrophulariaceae;  
 (23) Jeffersonia diphylla (L.) Pers., Berberidaceae;  
 (24) Lycopodium porophyllum Lloyd & Underwood, Lycopodiaceae;  
 (25) Lygodesmia rostrata Gray, Asteraceae;  
 (26) Mamillaria vivipara (Nutt.) Haw., Caetaceae;  
 (27) (36) Eupatorium sessilifolium L., Asteraceae;  
 (37) Floerkea proserpinacoides Willd., Limnanthaceae;  
 (38) Heteranthera limosa (Sw.) Willd., Pontederiaceae;  
 (39) Huperzia porophila (Lloyd & Underwood) Holub, Lycopodiaceae;  
 (40) Lepedeza leptostachya Engelm., Fabaceae;

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## Proposed Rules

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- (41) *Melica nitens* (Scribn.) Nutt. *ex* Piper, Poaceae;
- (42) *Moehringia macrophylla* (Hook.) Fenzl, Caryophyllaceae;
- (43) *Napaea dioica* L., Malvaceae;
- ~~(28)~~ (44) *Nymphaea tetragona* Georgi *leibergii* (Morong) Boivin, Nymphaeaceae;
- ~~(29)~~ *Pellaea atropurpurea* (L.) Link, Polypodiaceae;
- ~~(30)~~ (45) *Paronychia canadensis* (L.) Wood, Caryophyllaceae;
- (46) *Phegopteris hexagonoptera* (Michx.) Fee, Thelypteridaceae;
- (47) *Plantago elongata* Pursh, Plantaginaceae;
- (48) *Poa paludigena* Fern. & Wieg., Poaceae;
- (49) *Polystichum acrostichoides* (Michx.) Schott, Dryopteridaceae;
- ~~(31)~~ (50) *Rhynchospora capillacea* Torr., Cyperaceae;
- (51) *Rotala ramosior* (L.) Koehne, Lythraceae;
- ~~(32)~~ (52) *Rubus chamaemorus* L., Rosaceae;
- ~~(33)~~ (53) *Salicornia rubra* Nelson, Chenopodiaceae;
- ~~(34)~~ (54) *Saxifraga aizoon* Jacq. var. *neogaea* Butters *paniculata* P. Mill., Saxifragaceae;
- ~~(35)~~ (55) *Scleria verticillata* Muhl., Cyperaceae;
- (56) *Scutellaria ovata* Hill, Lamiaceae;
- (57) *Shinnersoseris rostrata* (Gray) S. Tomb, Asteraceae;
- (58) *Silene nivea* (Nutt.) Muhl. *ex* Oth., Caryophyllaceae;
- (59) *Subularia aquatica* L., Brassicaceae;
- (60) *Sullivantia sullivantii* (Torr. & Gray) Britt., Saxifragaceae;
- ~~(36)~~ (61) *Vaccinium uliginosum* L. var. *alpinum* Bigel, Ericaceae;
- ~~(37)~~ (62) *Valeriana edulis* Nutt. ssp. var. *ciliata* (T. & G.) Meyer Cronq., Valerianaceae;
- ~~(38)~~ *Woodsia glabella* R. Br., Polypodiaceae;
- ~~(39)~~ (63) *Viola lanceolata* L., Violaceae;
- (64) *Viola nuttallii* Pursh, Violaceae;
- (65) *Woodsia glabella* R. Br., Dryopteridaceae; and
- (66) *Woodsia scopulina* D.C. Eat., Polypodiaceae; and
- ~~(40)~~ *Xyris torta* Sm., Xyridaceae Dryopteridaceae.

C. Of special concern: The following species are designated as of special concern:

- (1) *Adoxa moschatellina* L., Adoxaceae;
- (2) *Agrostis geminata* Trin., Poaceae;
- (3) *Allium schoenoprasum* L. var. *sibiricum* (L.) Hartm., Liliaceae *Androsace septentrionalis* L. ssp. *puberulenta* (Rydb.)

G.T. Robbins, Primulaceae;

- (4) *Antennaria aprica* Greene *parvifolia* Nutt., Asteraceae;
- (5) *Arenaria dawsonensis* Britt., Caryophyllaceae;
- (6) *Arethusa bulbosa* L., Orchidaceae;
- ~~(7)~~ (7) *Aristida purpurea* Nutt. var. *longiseta* (Steud.) Vasey, Poaceae;
- ~~(8)~~ (6) *Aristida tuberculosa* Nutt., Poaceae;
- ~~(9)~~ (7) *Asclepias amplexicaulis* Sm., Asclepiadaceae;
- (8) *Asplenium platyneuron* (L.) Britt., Aspleniaceae;
- ~~(10)~~ (9) *Astragalus flexuosus* (Hook.) Dougl., Fabaceae;

- (11) *Astragalus missouriensis* Nutt., Fabaceae;
- (12) *Astragalus neglectus* (T. & G.) Sheld., Fabaceae;
- (13) *Athyrium pyenocarpon* (Spreng.) Tides, Polypodiaceae;
- (14) (11) *Bacopa rotundifolia* (Michx.) Wettst., Scrophulariaceae;
- (15) *Baptisia leucophaea* Nutt., Fabaceae;
- (16) *Botrychium lunaria* (L.) Sw., Ophioglossaceae;
- (17) (12) *Baptisia alba* (L.) Bent., Fabaceae;
- (13) *Baptisia bracteata* Muhl. ex Ell. var. *leucophaea* (Nutt.) Kartesz & Gandhi, Fabaceae;
- (14) *Botrychium campestre* W.H. Wagner & Farrar, Ophioglossaceae;
- (15) *Botrychium minganense* Victorin, Ophioglossaceae;
- (16) *Botrychium mormo* W.H. Wagner, Ophioglossaceae;
- (17) *Botrychium simplex* E. Hitchc., Ophioglossaceae;
- (18) *Buchloe dactyloides* (Nutt.) Engelm., Poaceae;
- (19) *Calamagrostis lacustris* (Kearney) Nash, Poaceae;
- (20) *Calamagrostis montanensis* Scribn. ex Vasey, Poaceae;
- (21) *Calamagrostis purpurascens* R. Br., Poaceae;
- (22) *Callitriche heterophylla* Pursh, Callitrichaceae;
- (19) (23) *Carex annectens* Bickn., Cyperaceae;
- (24) *Carex crus-corvi* Shuttlw. ex Kunze, Cyperaceae;
- (20) (25) *Carex exilis* Dew., Cyperaceae;
- (21) *Carex laxiculmis* Schwein., Cyperaceae;
- (22) (26) *Carex flava* L., Cyperaceae;
- (27) *Carex hallii* Olney, Cyperaceae;
- (28) *Carex michauxiana*, Boeckl., Cyperaceae;
- (29) *Carex obtusata* Lilj., Cyperaceae;
- (30) *Carex praticola* Rydb., Cyperaceae;
- (23) (31) *Carex scirpiformis* Maek. *scirpoidea* Michx., Cyperaceae;
- (32) *Carex supina* Willd. ex Wahlenb. var. *spaniocarpa* (Steud.) Boivin, Cyperaceae;
- (33) *Carex typhina* Michx., Cyperaceae;
- (24) (34) *Carex woodii* Dew., Cyperaceae;
- (25) *Cephalanthus occidentalis* L., Rubiaceae;
- (26) *Chamaerhodos nuttallii* Piek., Rosaceae;
- (27) (35) *Carex xerantica* Bailey, Cyperaceae;
- (36) *Chamaesyce missurica* (Raf.) Shinnery, Euphorbiaceae;
- (37) *Cirsium hillii* (Canby) Fern., Asteraceae;
- (28) (38) *Cladium mariscoides* (Muhl.) Torr., Cyperaceae;
- (29) (39) *Claytonia caroliniana* Michx., Portulacaceae;

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## Proposed Rules

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- (30) *Cyperus acuminatus* Torr. & Hook., Cyperaceae;  
(31) (40) *Cymopterus acaulis* (Pursh) Raf., Apiaceae;  
(41) *Cypripedium candidum* Muhl., Orchidaceae;  
(42) *Dalea candida* Willd., var. *oligophylla* (Torr.) Shinn., Fabaceae;  
(32) (43) *Decodon verticillatus* (L.) Ell., Lythraceae;  
(33) (44) *Deschampsia flexuosa* (L.) Trin., Poaceae;  
(34) (45) *Desmanthus illinoense* (Michx.) MacM., Fabaceae;  
(46) *Desmodium cuspidatum* (Muhl. ex Willd.) DC. ex Loud. var. *longifolium* (Torr. & Gray) Schub., Fabaceae;  
(47) *Desmodium nudiflorum* (L.) DC., Fabaceae;  
(48) *Diarrhena americana* var. *obovata* (Gleason) Brandenburg, Poaceae;  
(35) (49) *Dicentra canadensis* (Goldie) Walp., Fumariaceae;  
(36) *Dodecatheon meadia* L., Primulaceae;  
(37) (50) *Draba arabisans* Michx., Brassicaceae;  
(51) *Drosera anglica* Huds., Droseraceae;  
(52) *Drosera linearis* Goldie, Droseraceae;  
(38) (53) *Dryopteris goldiana* (Hook.) Gray, Polypodiaceae Dryopteridaceae;  
(39) *Echinochloa walteri* (Pursh.) Nash, Poaceae;  
(40) *Eleocharis pauciflora* (Lightf.) Link var. *fernaldii* Svenson, Cyperaceae;  
(41) (54) *Eleocharis parvula* (Roemer & J.A. Schultes) Link ex Bluff, Nees & Schauer, Cyperaceae;  
(55) *Eleocharis quinqueflora* (F.X. Hartmann) Schwarz, Cyperaceae;  
(56) *Eryngium yuccifolium* Michx., Apiaceae;  
(42) (57) *Euphrasia hudsoniana* Fern. & Wieg., Scrophulariaceae;  
(43) *Floerkea proserpinacoides* Willd., Limnanthaceae;  
(44) (58) *Fimbristylis autumnalis* (L.) Roemer & J.A. Schultes, Cyperaceae;  
(59) *Gaillardia aristata* Pursh, Asteraceae;  
(60) *Gentiana affinis* Griseb., Gentianaceae;  
(45) (61) *Gentianella amarella* (L.) Borner ssp. *acuta* (Michx.) Gillett, Gentianaceae;  
(46) *Geocaulon lividum* (Richards.) Fern., Santalaceae;  
(47) *Glaux maritima* L., Primulaceae;  
(48) (62) *Hamamelis virginiana* L., Hamamelidaceae;  
(49) *Haplopappus spinulosus* (Pursh) DC., Asteraceae;  
(50) (63) *Helianthus nuttallii* T. & G. ssp. *rydbergii* (Br.) Long, Asteraceae;  
(64) *Helictotrichon hookeri* (Scribn.) Henr., Poaceae;  
(65) *Hudsonia tomentosa* Nutt., Cistaceae;  
(51) (66) *Hydrocotyle americana* L., Apiaceae;  
(67) *Jeffersonia diphylla* (L.) Pers., Berberidaceae;  
(68) *Juglans cinerea* L., Juglandaceae;  
(69) *Juncus marginatus* Rostk., Juncaceae;  
(52) (70) *Juncus stygius* L. var. *americanus* Buchenau (Buch.) Hulten, Juncaceae;  
(71) *Juniperus horizontalis* Moench, Cupressaceae;  
(53) (72) *Leersia lenticularis* Michx., Poaceae;  
(54) (73) *Limosella aquatica* L., Scrophulariaceae;

- (55) *Myosurus minimus* L., Ranunculaceae;  
 (56) ~~(74)~~ *Listera convallarioides* (Sw.) Nutt. ex Ell., Orchidaceae;  
 (75) *Littorella uniflora* (L.) Aschers., Plantaginaceae;  
 (76) *Luzula parviflora* (Ehrh.) Desv. ssp. *melanocarpa* (Michx.) Hamet-Ahti, Juncaceae;  
 (77) *Lysimachia quadrifolia* L., Primulaceae;  
 (78) *Machaeranthera pinnatifida* (Hook.) Shinnery, Asteraceae;  
 (79) *Malaxis monophyllos* (L.) Sw. var. *brachypoda* (Gray) Morris & Eames, Orchidaceae;  
 (80) *Minuartia dawsonensis* (Britt.) House, Caryophyllaceae;  
 (81) *Muhlenbergia uniflora* (Muhl.) Fern., Poaceae;  
 (82) *Najas gracillima* (A. Braun ex Engelm.) Magnus, Najadaceae;  
 (83) *Najas marina* L., Najadaceae;  
 (84) *Oenothera rhombipetala* Nutt. ex T. & G., Onagraceae;  
 (57) ~~(85)~~ *Opuntia humifusa* Raf. *macrorhiza* Engelm., Cactaceae;  
 (58) ~~(86)~~ *Orobanche fasciculata* Nutt., Orobanchaceae;  
 (59) ~~(87)~~ *Orobanche ludoviciana* Nutt., Orobanchaceae;  
 (60) ~~(88)~~ *Orobanche uniflora* L., Orobanchaceae;  
 (89) *Osmorhiza depauperata* Phil., Apiaceae;  
 (61) ~~(90)~~ *Panax quinquefolium quinquefolius* L., Apiaceae Araliaceae;  
 (62) *Paronychia fastigiata* Fern., Caryophyllaceae;  
 (63) ~~(91)~~ *Pellaea atropurpurea* (L.) Link, Adiantaceae;  
 (92) *Phacelia franklinii* (R.Br.) Gray, Hydrophyllaceae;  
 (93) *Pinguicula vulgaris* L., Lentibulariaceae;  
 (64) ~~(94)~~ *Platanthera clavellata* (Michx.) Luer, Orchidaceae;  
 (65) ~~(95)~~ *Poa wolfii* Scribn., Poaceae;  
 (66) ~~(96)~~ *Polygonum arifolium* L. *careyi* (Olney), Polygonaceae;  
 (67) ~~(97)~~ *Polygonum viviparum* L., Polygonaceae;  
 (68) *Polystichum acrostichoides* (Michx.) Schott., Polypodiaceae;  
 (69) ~~(98)~~ *Polytaenia nuttallii* DC., Apiaceae;  
 (99) *Potamogeton vaginatus* Turcz., Potamogetonaceae;  
 (100) *Potamogeton vaseyi* Robbins, Potamogetonaceae;  
 (101) *Prenanthes crepidinea* Michx., Asteraceae;  
 (102) *Pyrola minor* L., Pyrolaceae;  
 (70) ~~(103)~~ *Ranunculus lapponicus* L., Ranunculaceae;  
 (71) ~~(104)~~ *Rhynchospora fusca* (L.) Ait. f., Cyperaceae;  
 (105) *Rorippa sessiliflora* (Nutt.) A.S. Hitchc., Brassicaceae;  
 (72) ~~(106)~~ *Rudbeckia triloba* L., Asteraceae;  
 (73) *Sanicula canadensis* L., Apiaceae;

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## Proposed Rules

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- (74) (107) *Ruppia maritima* L., Ruppiales;
- (108) *Salix maccalliana* Rowlee, Salicaceae;
- (109) *Salix pellita* (Anderss.) Anderss. ex Schneid., Salicaceae;
- (110) *Sanicula trifoliata* Bickn., Apiaceae;
- (75) (111) *Schedonnardus paniculatus* (Nutt.) Trel., Poaceae;
- (76) *Scutellaria ovata* Hill var. *versicolor* (Nutt.) Fern., Lamiales;
- (77) (112) *Scirpus clintonii* Gray, Cyperaceae;
- (113) *Senecio indecorus* Greene, Asteraceae;
- (114) *Silene drummondii* Hook., Caryophyllaceae;
- (115) *Solidago mollis* Bartl., Asteraceae;
- (78) (116) *Solidago sciaphila* Steele, Asteraceae;
- (79) *Spartina gracilis* Trin., Poaceae;
- (80) (117) *Sparganium glomeratum* Laest., Sparganiaceae;
- (118) *Stellaria longipes* Goldie, Caryophyllaceae;
- (81) (119) *Symphoricarpos orbiculatus* Moench, Caprifoliaceae;
- (82) (120) *Tephrosia virginiana* (L.) Pers., Fabaceae;
- (83) *Thelypteris hexagonoptera* (Michx.) Weatherby, Filices;
- (84) *Tofieldia glutinosa* (Michx.) Pers., Liliaceae;
- (85) *Tradescantia ohioensis* Raf., Commelinaceae;
- (86) *Triglochin palustris* L., Juncaceae;
- (87) (121) *Torreochloa pallida* (Torr.) Church, Poaceae;
- (122) *Trillium nivale* Riddell, Liliaceae;
- (123) *Trimorpha acris* (L.) Nesom var. *asteroides* (Anderz. ex Bess.) Nesom, Asteraceae;
- (124) *Trimorpha lonchophylla* (Hook.) Nesom, Asteraceae;
- (88) (125) *Triplasis purpurea* (Walt.) Champm., Poaceae;
- (89) (126) *Tsuga canadensis* (L.) Carr., Pinaceae;
- (90) (127) *Utricularia gibba* L. var. *purpurea* Walt., Lentibulariaceae;
- (128) *Utricularia resupinata* B.D. Greene ex Bigelow, Lentibulariaceae;
- (91) (129) *Verbena simplex* Lehm., Verbenaceae;
- (92) *Viola lanceolata* L., Violaceae;
- (93) *Viola novae-angliae* House, Violaceae;
- (94) *Viola nuttallii* Pursh, Violaceae;
- (95) (130) *Vitis aestivalis* Michx., Vitaceae;
- (131) *Waldesteinia fragarioides* (Michx.) Tratt., Rosaceae; and
- (96) (132) *Woodsia alpina* (Bolton) Gray, Dryopteridaceae; and
- (133) *Xyris montana* Ries., Xyridaceae.

### 6134.0400 LICHENS; MOSESSES; FUNGI.

Subpart 1. Lichens. The scientific names in this subpart are according to A Fourth Checklist of the Lichens of the Continental United States and Canada, M.E. Hale and W.L. Culberson, 1970. The following species of lichens are designated as:

#### A. Endangered:

- (1) *Buellia nigra* (Fink) Sheard (~~*Rinodina nigra* Fink~~);
- (2) *Caloplaca parvula* Wetm.;

- (3) *Dermatocarpon moulinsii* (Mont.) Zahlbr.;
- ~~(4)~~ (4) *Leptogium apalachense* (Tuck.) Nyl.;
- ~~(5)~~ (5) *Lobaria scrobiculata* (Scop.) DC;
- ~~(6)~~ (6) *Parmelia stictica* (Del.) Nyl.;
- ~~(7)~~ (7) *Pseudocyphellaria crocata* (L.) Vain; and
- (8) *Umbilicaria torrefacta* (Lightf.) Schrad.

B. Threatened: ~~*Lobaria quercizans* Michx.~~

- (1) *Cetraria oakesiana* Tuck.;
- (2) *Coccocarpia palmicola* (Sprengel) Arvid. & Galloway; and
- (3) *Parmelia stuppea* Tayl.

C. Of special concern:

- (1) *Anaptychia setifera* Ras;
- (2) *Cetraria aurescens* Tuck.;
- ~~(2)~~ *Cetraria oakesiana* Tuck.;
- (3) *Cladonia pseudorangiformis* Asah.;
- (4) ~~*Coccocarpia eronia* (Tuck.) Vain.~~ *Lobaria quercizans* Michx.;
- (5) *Parmelia stuppea* Tayl. *Peltigera venosa* (L.) Hoffm.; and
- (6) *Sticta fuliginosa* (Dicks.) Ach.;
- ~~(7)~~ *Umbilicaria torrefacta* (Lightf.) Schrad.

Subp. 2. Mosses. The scientific names in this subpart are according to A New List of Mosses of North America North of Mexico, H.A. Crum, et al., 1973. The following species of mosses are designated as:

- A. Endangered: *Schistostegia pennata* (Hedw.) Web. & Mohr.
- B. Threatened: none.
- C. Of special concern:
  - (1) *Bryoxiphium norvegicum* (Brid.) Mitt.; and
  - (2) *Tomenthypnum falcifolium* (Ren ex. Nich.) Tuom.

Subp. 3. Fungi. The following species of fungi are designated as:

- A. Endangered:
  - (1) *Fuscoboletinus weaverae* A.H. Smith & Shaffer;
  - (2) *Psathyrella cystidiosa* (Peck) A.H. Smith; and
  - (3) *Psathyrella rhodospora* Weaver & A.H. Smith.
- B. Threatened: none.
- C. Of special concern:
  - (1) *Laccaria trullisata* (Ellis) Peck;
  - (2) *Lactarius fuliginellus* A.H. Smith & Hesler; and
  - (3) *Lysurus cruciatus* (Lepr. & Mont.) Lloyd.

REPEALER. Minnesota Rules, part 6134.0200, subpart 5, is repealed.

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

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### Department of Natural Resources

#### Proposed Permanent Rules Relating to Ecologically Harmful Exotic Species

##### Notice of Intent to Adopt Rules Without a Public Hearing

**NOTICE IS HEREBY GIVEN** that the Minnesota Department of Natural Resources 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. 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:

Jay Rendall  
Department of Natural Resources  
500 Lafayette Road  
St. Paul, Minnesota 55155-4020  
Telephone: (612) 297-1464

**Subject of Rules and Statutory Authority.** Specifically, the proposed rules will cover: identification of infested waters and notice; designation of undesirable exotic species; identification of limited infestations of Eurasian water milfoil and notice; delineation and markers for limited infestations of Eurasian watermilfoil; prohibition on taking bait from infested waters; prohibition of sport gill netting for whitefish and ciscoe in infested waters; commercial fishing restrictions in infested waters; prohibition on entry into delineated areas marked for limited infestation of Eurasian watermilfoil; transporting water and live fish from infested waters; disposition of water used to transport fish from infested waters; persons leaving select infested waters; diversion, appropriation, and transportation of infested waters; fish hatchery or aquatic farm operation in infested waters; infested waters diversion or transportation permits; violations; and confiscations.

The adoption of these rules is authorized by *Minnesota Statutes*, sections 84.9691, as amended by *Laws of Minnesota 1995*, First Special Session, Chapter 1, which allows the commissioner of natural resources to adopt rules restricting the introduction, propagation, use, possession, and spread of ecologically harmful exotic aquatic plants and wild animals.

A copy of the proposed rules is published in the *State Register* and a free copy of the rules is available upon request from the agency contact person.

**Comments.** You have until 4:30 p.m., January 25, 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 25, 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 Department 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 Department 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 from the agency contact person. The 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 the agency contact person at the address and telephone number listed above.

**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 rules may have an impact on small businesses dealing with private aquaculture, minnow dealers, commercial fishing operations, and businesses transporting water away from riparian property on infested waters.

Aquaculture operators may be impacted because the rules would prohibit the licensing of natural lakes or wetlands for private

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## Proposed Rules

fish hatcheries if the waters have been identified as having select ecologically harmful exotic species. This should have little impact on current aquaculture operators because there are no facilities using infested waters and no infested ponds licensed at this time.

Commercial bait harvesters and minnow dealers may be impacted because the rules would prohibit the harvest of wild animals for bait from waters having select ecologically harmful exotic species. There are currently 72 waterbodies in the state that are identified as infested where bait harvesting would be prohibited.

Commercial fishing operations may be affected by these rules because of changes requiring the removal or all aquatic vegetation from nets, drying or freezing of nets, inspection of equipment before reuse, and notification of the department, when nets are transferred from waters infested with ecologically harmful exotic species to non-infested waters. Commercial harvesting of fish from infested waters would be affected because fish would not be allowed to be transported in water from waterbodies having select ecologically harmful exotic species. Water from a noninfested source would need to be supplied to transport fish from infested waters. Also, a permit would be required to dispose of water used to transport fish from infested waters. The permit would specify appropriate locations to dispose of the water used to transport fish from infested waters. There are 72 waterbodies that are infested with select ecologically harmful exotic species where these regulations would apply. Commercial operators harvest fish from five infested waterbodies: Lake Superior, Mississippi River, St. Louis River, Rush Lake, Sauk Lake. Nets are not normally transferred from Lake Superior to inland waters.

Businesses that transport water away from riparian property on infested waters, or divert water from infested waters to other waters, for industrial or other purposes will be affected. Businesses that desire to transport or divert water from infested waters will be required to obtain permits to ensure that infested water is not introduced into noninfested waters.

These proposed rules are consistent with other state laws that prohibit the transport of zebra mussels and Eurasian watermilfoil.

The Department's evaluation of the applicability of the methods contained in *Minnesota Statutes*, section 14.115, subdivision 2, for reducing the impact of the proposed rules is addressed further in the Statement of Need and Reasonableness.

**Expenditures 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 Agricultural Lands.** *Minnesota Statutes*, section 14.11, subdivision 2, does not apply because adoption of these rules will not have a direct and substantial adverse impact on agricultural land.

**Departmental Charges.** *Minnesota Statutes*, section 16A.1285, subdivision 4 and 5, do not apply because the rules do not establish or adjust departmental charges.

**Adoption and Review of Rules.** 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 wish to be so notified, or you wish to receive a copy of the adopted rules, submit your request to the agency contact person listed above.

Dated: 11 December 1995

Rodney W. Sando  
Commissioner of Natural Resources

By  
Gail Lewellan, Assistant Commissioner of  
Human Resources and Legal Affairs

### Rules as Proposed (all new material)

#### 6216.0100 PURPOSE.

The purpose of parts 6216.0100 to 6216.0600 is to prevent the spread of ecologically harmful exotic species, and undesirable exotic aquatic plants and wild animals, into and within the state as authorized by *Minnesota Statutes*, sections 17.457, 18.316, 18.317, and 84.967 to 84.9692.

**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

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### 6216.0200 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 6216.0100 to 6216.0600, the terms used have the meanings given to them in *Minnesota Statutes*, sections 17.457, 17.4984, 17.4985, 18.316, 18.317, 84.967 to 84.9692, and 97A.015, unless otherwise noted in this part.

Subp. 2. **Commissioner.** "Commissioner" means the commissioner of natural resources of Minnesota or the commissioner's designated representative.

Subp. 3. **Department.** "Department" means the Minnesota Department of Natural Resources.

Subp. 4. **Infested waters.** "Infested waters" means water and water bodies identified by the commissioner as having populations of select ecologically harmful exotic species such as zebra mussel, Eurasian water milfoil, ruffe, spiny water flea, or white perch.

Subp. 5. **Littoral area.** "Littoral area" means those areas of a water body 15 feet or less in depth.

### 6216.0250 UNDESIRABLE EXOTIC SPECIES.

Subpart 1. **Designation.** The species in subparts 2 to 6 are undesirable exotic species because they pose a substantial threat to native species in the state.

#### Subp. 2. Aquatic plants.

- A. Eurasian water milfoil (*Myriophyllum spicatum*);
- B. hydrilla (*Hydrilla verticillata*);
- C. European frog-bit (*Hydrocharis morsus-ranae*);
- D. flowering rush (*Butomus umbellatus*);
- E. any variety, hybrid, or cultivar of purple loosestrife (*Lythrum salicaria*, *Lythrum virgatum*, or combinations thereof); and
- F. water chestnut (*Trapa natans*).

#### Subp. 3. Birds. Mute swan (*Cygnus olor*.)

#### Subp. 4. Fish.

- A. Grass carp (*Ctenopharyngodon idella*);
- B. rudd (*Scardinius erythrophthalmus*);
- C. round goby (*Neogobius melanostomus*);
- D. ruffe (*Gymnocephalus cernua*);
- E. sea lamprey (*Petromyzon marinus*); and
- F. white perch (*Morone americana*).

#### Subp. 5. Invertebrates.

- A. Rusty crayfish (*Orconectes rusticus*); and
- B. zebra mussel species (all species of the genus *Dreissena*).

#### Subp. 6. Mammals.

- A. Asian raccoon dog, also known as finnraccoon (*Nyctereutes procyonoides*);
- B. European rabbit (*Oryctolagus cuniculus*); and
- C. any strain of nutria (*Mycocastor coypu*).

### 6216.0300 IDENTIFICATION, NOTICE, AND MARKING OF INFESTED WATERS AND LIMITED INFESTATIONS OF EURASIAN WATER MILFOIL.

Subpart 1. **Identification of infested waters and notice.** The commissioner shall identify infested waters. The commissioner shall publish the names of identified water bodies in the *State Register* before May 1 of each year and provide notice through other available means where practical. The department shall post signs describing the infestation at all public accesses to identified water bodies. At any time the commissioner may identify additional water bodies or identify those water bodies which no longer are infested waters.

Subp. 2. **Identification of limited infestations of Eurasian water milfoil and notice.** The commissioner shall identify water bodies having limited infestations of Eurasian water milfoil as defined in *Minnesota Statutes*, section 84.967, subdivision 3. The commissioner shall publish the names of identified water bodies in the *State Register* before May 1 of each year and provide notice

through other available means where practical. The department shall post signs describing the infestation at all public accesses to identified water bodies. At any time the commissioner may identify additional water bodies or identify those water bodies which no longer have limited infestations.

Subp. 3. **Delineation and markers for limited infestations of Eurasian water milfoil.** Areas of infestation of Eurasian water milfoil where control is planned in water bodies identified as having limited infestations shall be marked by the commissioner, or other persons authorized by the commissioner, using buoys or signs as specified in part 6110.1500, subpart 7. A minimum of three buoys or signs must be used to delineate an infested area, and placed at intervals of not more than 300 feet apart. In addition, at least two buoys or signs shall be placed at or near the shoreline to delineate an infested area if adjacent to shore. Buoys or signs shall be removed after control actions are completed.

#### **6216.0400 RESTRICTED ACTIVITIES ON INFESTED WATERS AND WATERS WITH LIMITED INFESTATIONS OF EURASIAN WATER MILFOIL.**

Subpart 1. **Prohibition of taking bait from infested waters.** The taking of wild animals from infested waters for bait purposes is prohibited.

Subp. 2. **Prohibition of sport gill netting for whitefish and ciscoe in infested waters.** If the commissioner identifies waters that are open to sport gill netting for whitefish and ciscoe as infested waters, the commissioner may close the gill netting season for the identified water body or require that gill nets used in the infested waters not be used in other water bodies. The commissioner shall publish the names of identified water bodies and new requirements or closures in the *State Register* and provide notice through media releases and other available means where practical. In addition, the commissioner shall post notice of the restrictions at public access points to identified water bodies.

Subp. 3. **Commercial fishing restrictions in infested waters.** Nets, traps, buoys, anchors, stakes, and lines used for commercial fishing purposes that are used in infested waters must be dried for a minimum of ten days or frozen for a minimum of two days before they are used in noninfested waters. All aquatic vegetation must be removed from nets and other equipment when they are removed from infested waters. Commercial operators must notify the department's regional or area fisheries office or a conservation officer when removing nets from infested waters and before resetting those nets in noninfested waters.

Subp. 4. **Prohibition on entry into delineated areas marked for limited infestation of Eurasian water milfoil.**

A. Entry by boaters, anglers, or other water users and their equipment into marked areas of a water body where limited infestations of Eurasian water milfoil have been delineated in accordance with part 6126.0300 is prohibited, except in emergency situations where property or human life is endangered.

B. Enforcement, emergency, resource management, and other government personnel or their agents may enter into waters where limited infestations of Eurasian water milfoil have been delineated in accordance with part 6216.0300 when performing official duties. Owners or lessees of land adjacent to delineated areas who do not have water access to their land other than through the delineated area may use the shortest and most direct route through the delineated area for such access.

#### **6216.0500 TRANSPORTATION AND APPROPRIATION OF WATER FROM INFESTED WATERS.**

Subpart 1. **Transporting water and live fish from infested waters.** Water from infested waters may not be used to transport fish. Live fish taken under a commercial fishing license may be transported from infested waters to other waters or holding facilities from May 1 to October 31 with a transportation permit issued by the department pursuant to *Minnesota Statutes*, section 17.4985.

Subp. 2. **Disposition of water used to transport fish from infested waters.** Water used to transport live fish from infested waters pursuant to subpart 1, including water from waters or facilities permitted to hold fish from infested waters, may be disposed of only at sites approved in writing by the commissioner.

Subp. 3. **Persons leaving select infested waters.** A person leaving infested waters identified as having populations of zebra mussel or spiny water flea including, but not limited to, Minnesota waters of the the Mississippi River downstream of St. Anthony Falls; Minnesota waters of Lake Superior including waters of the St. Louis River downstream of the mouth of the Cloquet River; waters of the Minnesota River downstream of Shakopee; Island Lake Reservoir in St. Louis County; and the Cloquet River downstream from Island Lake Reservoir, must drain bait containers, other boating-related equipment holding water, and livewells and bilges by removing the drain plug before transporting the watercraft and associated equipment on public roads.

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## Proposed Rules

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Subp. 4. **Diversion, appropriation, and transportation of infested waters.** Infested waters may not be transported on a public road or off property riparian to infested waters except:

- A. in emergencies, such as fire emergencies;
- B. as specified in a water appropriation or public works permit issued by the commissioner pursuant to *Minnesota Statutes*, chapter 103G; or
- C. under a permit issued pursuant to this part.

Infested waters may not be diverted to other waters without a permit issued pursuant to this part, or as authorized in a public waters work permit or water appropriation permit issued by the commissioner pursuant to *Minnesota Statutes*, chapter 103G.

Subp. 5. **Fish hatchery or aquatic farm operations in infested waters.**

A. Natural lakes or wetland basins that are identified as infested waters will not be licensed by the department pursuant to *Minnesota Statutes*, section 17.4984, for aquatic farms or pursuant to *Minnesota Statutes*, section 97C.211, as private fish hatcheries.

B. Artificial water basins that have populations of undesirable exotic species may be used for aquatic farm or private hatcheries under license by the department. Nets, traps, buoys, stakes, and lines that have been used in such artificial water basins must be dried for a minimum of ten days, or frozen for a minimum of two days, before they are used in noninfested waters. All aquatic plants must be removed from nets and other equipment that are removed from the artificial water basins.

C. The commissioner may license aquatic farm or private fish hatchery facilities to use infested waters as a source for the facilities' water. The commissioner may require that the waters be treated to eliminate undesirable exotic species.

D. Fish raised in artificial water basins that have populations of undesirable exotic species, or in any facility using infested water as a source, must be sold directly to a wholesale buyer for processing, or for stocking in other waters containing populations of undesirable exotic species, provided it contains the same undesirable exotic species as the source waters.

Subp. 6. **Infested waters diversion or transportation permits.** Applications for permits issued pursuant to this part, to divert or transport water from infested waters, shall be made on forms obtained from the commissioner and shall contain information as the commissioner may prescribe. The department shall act upon the application within 90 days of receipt. Failure on the part of the department to act upon the permit within the required time shall not be construed as approval of the application. Permits shall state all the conditions and limitations upon which they are based. A permit may be modified at any time by the department.

### 6216.0600 VIOLATIONS; CONFISCATIONS.

Unless a different penalty is prescribed, a violation of parts 6216.0100 to 6216.0500 is a misdemeanor as set forth in *Minnesota Statutes*, sections 18.317 and 84.9691. Where a violation has occurred, the department may confiscate the exotic species immediately upon discovery wherever found and, at the department's discretion, destroy it. Where infested water is being appropriated, or diverted or transported without a permit, or otherwise contrary to the provisions of parts 6216.0100 to 6216.0600, the department may order that the activities cease. Any expense or loss in connection with enforcement of the order shall be borne by the permittee or responsible person.

## Department of Natural Resources

### Proposed Permanent Rules Relating to Wildlife Rehabilitation Permits

#### Notice of Intent to Adopt Rules Without a Public Hearing

**NOTICE IS HEREBY GIVEN** that the Minnesota Department of Natural Resources 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. 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:

Blair Joselyn  
Department of Natural Resources  
500 Lafayette Road  
St. Paul, Minnesota 55155-4007  
Telephone: (612) 296-0706

**Subject of Rules and Statutory Authority.** The rules concern the permits issued to individuals, and to individuals in the name of institutions, who provide for the care, treatment and release of orphaned and debilitated wild animals. Specifically, the proposed rules will cover: qualifications for a wildlife rehabilitation permit and types of permits; role of veterinarians; record keeping and reporting requirements; examination and continuing education; general provisions governing wildlife rehabilitation activities; facilities and operating standards; husbandry and health care of animals undergoing rehabilitation; initial testing at time of rule adoption; permit issuance, renewal, revocation and denial; variances; and penalties.

The adoption of these rules is authorized by *Minnesota Statutes*, sections 97A.401 and 97A.418.

A copy of the proposed rules is published in the *State Register* and a free copy of the rules is available upon request from the agency contact person.

**Comments.** You have until 4:30 p.m., January 25, 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 25, 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 Department 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 Department 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 from the agency contact person. The 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 the agency contact person at the address and telephone number listed above.

**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 rules may have a minimal impact on small businesses; only a limited number of practicing veterinarians would be affected. Veterinarians will be able to consult with permit holders regarding treatment and provide treatment of wild animals without a permit and with no record keeping. Veterinarians will be able to hold wild animals up to 48 hours without a permit and without record keeping.

Either notification to the Department or a permit will be required if animals are held by veterinarians for more than 48 hours. There will be no fee to obtain a permit, but a written test will be required. For veterinarians, the test should require only a minimum of preparation time and pose little challenge. While all permit holders will be required to keep records of animals treated, forms are provided by the Department and only a small amount of information need be submitted. Some form of broadly defined continuing education pertaining to rehabilitation of wild animals will be needed for permit renewal; veterinarians should be able to qualify with a minimum effort or inconvenience. The rules will delineate some general standards for facilities, animals health, and husbandry; these should not be encumbering on veterinarians since they already have facilities and established standards of care for domestic animals.

The rules will require that permit holders (other than veterinarians) identify a licensed veterinarian who has agreed to assist and advise them on the treatment and care of animals being rehabilitated. Any relationship between a rehabilitation permit holder and a veterinarian will be completely voluntary on the part of the veterinarian.

The Department's evaluation of the applicability of the methods contained in *Minnesota Statutes*, section 14.115, subdivision 2, for reducing the impact of the proposed rules is addressed further in the Statement of Need and Reasonableness.

**Expenditures of Public Money by Local Public Bodies.** *Minnesota Statutes*, section 14.11, subdivision 1, does not apply

<p><b>KEY: PROPOSED RULES SECTION</b> — <u>Underlining</u> indicates additions to existing rule language. <del>Strike outs</del> indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." <b>ADOPTED RULES SECTION</b> — <u>Underlining</u> indicates additions to proposed rule language. <del>Strike outs</del> indicate deletions from proposed rule language.</p>
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## Proposed Rules

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

**Departmental Charges.** *Minnesota Statutes*, section 16A.1285, subdivisions 4 and 5, do not apply because the rules do not establish or adjust departmental charges.

**Adoption and Review of Rules.** 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 wish to be so notified, or you wish to receive a copy of the adopted rules, submit your request to the agency contact person listed above.

Dated: 11 December 1995

Rodney W. Sando  
Commissioner of Natural Resources

By  
Gail Lewellan, Assistant Commissioner of  
Human Resources and Legal Affairs

### Rules as Proposed (all new material)

#### GENERAL PROVISIONS

##### 6244.0100 PURPOSE.

The purpose of this chapter is to establish reasonable standards for the rehabilitation of orphaned, sick, and injured wild animals, and to establish a permit system and other criteria for such rehabilitation pursuant to *Minnesota Statutes*, sections 97A.401 and 97A.418. This chapter establishes criteria for issuing permits to individuals and to individuals in the name of institutions, to provide for the care, treatment, and release of orphaned and debilitated wild animals obtained by those individuals or received from other parties. The permit process is designed to provide for the participation of selected volunteers to the maximum extent possible consistent with *Minnesota Statutes*. The intent of this chapter is to help ensure that all persons engaged in rehabilitation of wild animals are qualified, undergo periodic training, house animals under proper conditions, provide a high level of humane care for animals, and are protected as much as is possible from injury caused by animals or from contracting disease that may be carried by animals. Nothing in this chapter is intended to authorize ownership or possession of wild animals for purposes other than rehabilitation and release.

Nothing in this chapter authorizes, or is intended to authorize any person with a wildlife rehabilitation permit to practice veterinary medicine in violation of *Minnesota Statutes*, chapter 156.

##### 6244.0200 SCOPE.

This chapter applies to rehabilitation of any orphaned, sick, or injured wild animal carried out by individuals or individuals in the name of institutions, except that the portions of this chapter pertaining to qualification testing and continuing education and training requirements shall not apply to the Raptor Center and the Wildlife Rehabilitation Clinic at the University of Minnesota, Saint Paul.

##### 6244.0300 DEFINITIONS.

Subpart 1. **Scope.** The terms used in this chapter have the meanings given them in this part.

Subp. 2. **Advisor.** "Advisor" means a master class permit holder who has volunteered to provide counsel and to serve as a mentor for novice class permit holders.

Subp. 3. **Applicant.** "Applicant" means a person who applies for a Minnesota Department of Natural Resources wildlife rehabilitation permit pursuant to part 6244.0430.

Subp. 4. **Big game.** "Big game" means deer, moose, elk, bear, antelope, and caribou.

Subp. 5. **Commissioner.** "Commissioner" means the commissioner of natural resources or the commissioner's designated employees or other agents.

Subp. 6. **Continuing education and training.** "Continuing education and training" means instruction, courses of instruction, study guides, or other materials determined by the commissioner to be acceptable for use by wildlife rehabilitation permit holders to satisfy the requirements for renewal of permits upon expiration.

Subp. 7. **Department.** "Department" means the Minnesota Department of Natural Resources.

Subp. 8. **Endangered species or threatened species.** "Endangered species" or "threatened species" means species of animals officially listed pursuant to *Minnesota Statutes*, section 84.0895, as endangered or threatened.

Subp. 9. **Facilities.** "Facilities" means equipment, housing, or other shelter used in, or necessary for, the rehabilitation of wildlife.

Subp. 10. **Federal permit.** "Federal permit" means a permit for the rehabilitation of migratory birds issued by the United States Fish and Wildlife Service.

Subp. 11. **In-shelter assistant.** "In-shelter assistant" means a person designated by novice, general, or master permit holders to assist permittees with basic care and feeding of animals undergoing rehabilitation in the facility of the permittee.

Subp. 12. **Nonreleasable wildlife.** "Nonreleasable wildlife" means an animal that cannot be released because of a permanent injury, degenerative physical condition as a result of illness, or habituation to humans that would significantly reduce the chance of the animal surviving in the wild.

Subp. 13. **Outshelter permit.** "Outshelter permit" means a form of wildlife rehabilitation permit issued to an individual affiliated with an institution allowing that person to receive animals for short-term, temporary care only from the named institution with the stipulation that the animals are returned to the institution.

Subp. 14. **Permit.** "Permit" means a wildlife rehabilitation permit issued by the commissioner under parts 6244.0400 to 6244.0450, unless otherwise specified.

Subp. 15. **Permit holder or permittee.** "Permit holder" or "permittee" means a person who possesses a valid novice, general, or master wildlife rehabilitation permit issued by the commissioner under parts 6244.0410 to 6244.0450.

Subp. 16. **Public exhibition.** "Public exhibition" means a display to the general public of wild animals undergoing rehabilitation, either on the permittee's premises or elsewhere.

Subp. 17. **Rehabilitation.** "Rehabilitation" means providing care for orphaned, injured, or sick wild animals.

Subp. 18. **Resident.** "Resident" means:

A. an individual who is a citizen of the United States or a resident alien, and has maintained a legal residence in the state for at least the immediately preceding 60 days;

B. a nonresident under the age of 21 who is the child of a resident;

C. a domestic corporation; or

D. a foreign corporation, authorized to do business in the state, that has conducted a licensed business at a location within the state for at least ten years.

Subp. 19. **Transport.** "Transport" means the act by a permittee of causing or attempting to cause wild animals to be carried or moved other than within the premises of a permittee.

Subp. 20. **Veterinarian.** "Veterinarian" means a person licensed to practice veterinary medicine as defined in *Minnesota Statutes*, chapter 156.

Subp. 21. **Volunteers.** "Volunteers" means persons who are experienced with wildlife rehabilitation and are designated by the commissioner to assist with the process of issuing wildlife rehabilitation permits to individuals.

Subp. 22. **Wild animals.** "Wild animals" means all living creatures, not human, wild by nature, endowed with sensation and power of voluntary motion, and includes mammals, birds, fish, amphibians, reptiles, crustaceans, and mollusks.

Subp. 23. **Wildlife rehabilitator.** "Wildlife rehabilitator" means a person who has a valid Department of Natural Resources novice, general, or master class wildlife rehabilitation permit issued under parts 6244.0400 to 6244.0440.

Subp. 24. **Wildlife section.** "Wildlife section" means the section of wildlife of the Department of Natural Resources.

#### PERMIT REQUIREMENTS

#### 6244.0400 WILDLIFE REHABILITATION PERMITS.

Subpart 1. **Requirement.** No person shall rehabilitate a wild animal without a permit from the commissioner issued under this chapter. A person with a rehabilitation permit may capture, receive, possess, transport, or transfer an orphaned, sick, or injured wild

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animal for purposes of rehabilitation according to conditions in the permit and this chapter. Permits shall only be issued to residents of Minnesota except when the commissioner determines that there are special circumstances where the interests of wildlife rehabilitation in Minnesota are served by issuing permits to nonresidents. Nonresidents must meet the same requirements as residents.

Subp. 2. **Limit on number of permits.** The commissioner may limit the number of wildlife rehabilitation permits in total or in certain geographic areas of the state, as needed, when limitations are determined to be in the best interest of the wildlife resource or to provide for the most efficient management of the permitting process by the department.

Subp. 3. **Restrictions on species.** The commissioner may restrict the rehabilitation of certain species of animals, either statewide or in certain geographic areas, as needed due to disease, overpopulation, or other limiting factors. The permit may be limited to certain species if deemed to be in the best interest of the wildlife resource, or upon request of the applicant.

Subp. 4. **Restriction on having both a game farm license and rehabilitation permit.** No person shall be authorized to have both a game farm license and a wildlife rehabilitation permit at the same time except under circumstances deemed by the commissioner to be in the best interest of the wildlife resource.

### 6244.0410 PERMIT CLASSES.

Subpart 1. **Scope.** There are three classes of wildlife rehabilitation permits, as outlined in subparts 2 to 4.

#### Subp. 2. **Novice class.**

##### A. Requirements:

- (1) must be at least 18 years of age;
- (2) must have experience at handling and caring for animals according to criteria established by the commissioner in part 6244.0420, subpart 3;
- (3) must pass a written test for the novice class with a score of at least 80 percent;
- (4) must maintain satisfactory applicable facility requirements as described in parts 6244.0440 and 6244.0900;
- (5) must identify a licensed veterinarian who has agreed to assist and consult with the applicant on the treatment and care of animals being rehabilitated; and
- (6) must have at all times a master level permit holder who has agreed to act as an advisor/mentor for the applicant.

##### B. Privileges:

- (1) may possess an orphaned, sick, or injured bird or mammal up to 48 hours for transport to a general or master class permittee or licensed veterinarian;
- (2) may provide emergency care for a sick or injured bird or mammal designated on the permit and transport within 48 hours to a general or master class permittee or licensed veterinarian;
- (3) may possess for rehabilitation only healthy orphaned birds and mammals subject to the following restrictions:
  - (a) no possession for rehabilitation is allowed of any species of endangered or threatened bird or mammal other than for transport or emergency care as described in subitems (1) and (2);
  - (b) no possession for rehabilitation is allowed of any species of bird belonging to the orders *Falconiformes* (hawks, eagles, harriers, osprey, and falcons) and *Strigiformes* (owls); and
  - (c) the only mammals that may be possessed for rehabilitation are those belonging to the orders *Lagomorpha* (rabbits and hares) and *Rodentia* (squirrels, pocket gophers, rats, mice, voles, lemmings, beaver, and porcupine); and
- (4) may designate no more than five persons as in-shelter assistants who may work in the facility of the permittee to assist with care and feeding of animals being rehabilitated. The permittee is responsible to notify the wildlife section, in writing, of the names, addresses, and telephone numbers of in-shelter assistants.

#### Subp. 3. **General class.**

##### A. Requirements:

- (1) must be at least 18 years of age;
- (2) must have been a novice class permit holder for at least two years;
- (3) as a novice class permit holder, must demonstrate ongoing animal rehabilitation activities;
- (4) as a novice class permit holder, must have successfully completed continuing education and training as defined in parts 6244.0700 and 6244.1600;
- (5) must pass a written test for the general class with a score of at least 80 percent;

(6) must maintain satisfactory applicable facility requirements based on criteria as described in parts 6244.0440 and 6244.0900;

(7) must identify a licensed veterinarian who has agreed to assist and consult with the applicant on the treatment and care of animals being rehabilitated; and

(8) must have a letter from the applicant's advisor at the novice class recommending the applicant for a general class permit.

**B. Privileges:**

(1) may possess an orphaned, sick, or injured bird or mammal up to 48 hours for transport to another general or to a master class permittee or licensed veterinarian;

(2) may provide emergency care for a sick or injured bird or mammal designated on the permit and transport within 48 hours to another general or to a master class permittee or licensed veterinarian;

(3) may possess for rehabilitation healthy orphaned, sick, or injured birds and mammals, subject to the following restrictions:

(a) no possession is allowed of any species of endangered or threatened bird or mammal other than for transport or emergency care as described in this subitem and subitem (2);

(b) except for American kestrels, no bird belonging to the order *Falconiformes* may be possessed for rehabilitation;

(c) except for saw-whet and screech owls, no bird belonging to the order *Strigiformes* may be possessed for rehabilitation; and

(d) except for deer as specifically authorized in the permit, no species of big game may be possessed for rehabilitation; and

(4) may designate no more than ten persons as in-shelter assistants who may work in the facility of the permittee to assist with care and feeding of animals being rehabilitated. The permittee is responsible to notify the wildlife section, in writing, of the names, addresses, and telephone numbers of in-shelter assistants.

**Subp. 4. Master class.**

**A. Requirements:**

(1) must be at least 18 years of age;

(2) must have been a general class permit holder for at least four years;

(3) as a general class permit holder, must have demonstrated ongoing animal rehabilitation activities;

(4) as a general class permit holder, must have successfully completed continuing education and training as defined in parts 6244.0700 and 6244.1600;

(5) must pass a written test for the master class with a score of at least 80 percent;

(6) must maintain satisfactory applicable facility requirements as described in parts 6244.0440 and 6244.0900; and

(7) must identify a licensed veterinarian who has agreed to assist and consult with the applicant on the treatment and care of animals being rehabilitated.

**B. Privileges:**

(1) may possess an orphaned, sick, or injured bird or mammal up to 48 hours for transport to a general or master class permittee or licensed veterinarian;

(2) may provide emergency care for a sick or injured bird or mammal and transport within 48 hours to a general or master class permittee authorized to possess for rehabilitation the particular bird or mammal, or to a licensed veterinarian;

(3) may possess for rehabilitation healthy orphaned, sick, or injured birds and mammals, subject to the following restrictions:

(a) except as may be specifically authorized in the permit, no possession is allowed of any species of endangered or threatened bird or mammal other than for transport or emergency care as described in subitems (1) and (2); and

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(b) except for deer as specifically authorized in the permit, no species of big game may be possessed for rehabilitation;

(4) may serve voluntarily as an advisor of novice permit holders. Master class permit holders who desire to serve as advisors to novice class permittees must:

(a) submit a written request to the commissioner requesting designation as a novice advisor; and

(b) have experience rehabilitating the species of animals that novice class permit holders are allowed to possess as described in subpart 2, item B, subitem (3), units (b) and (c); and

(5) may designate no more than 15 persons as in-shelter assistants who may work in the facility of the permittee to assist with care and feeding of animals being rehabilitated. The permittee is responsible to notify the wildlife section, in writing, of the names, addresses, and telephone numbers of in-shelter assistants.

### 6244.0420 PERMIT REQUIREMENTS.

Subpart 1. **Qualifications.** In order to be issued a permit, applicants must satisfy the requirements in subparts 2 to 7.

Subp. 2. **Minimum age.** The applicant must be at least 18 years of age at the time the application is received by the department.

Subp. 3. **Experience at handling and caring for animals.** Applicants for novice level permits must be able to demonstrate reasonable experience and skills at handling and caring for animals. This may include:

A. a degree in veterinary medicine, veterinary technology, or animal science;

B. experience working with a practicing veterinarian or at a publicly owned or operated zoo, university animal clinic, animal shelter, or wildlife rehabilitation clinic;

C. experience working with an individual licensed as a wildlife rehabilitator, including hands-on experience with animals; or

D. other experience in caring for animals.

Subp. 4. **Examination for permit.** The applicant must obtain a score of at least 80 percent on a supervised examination provided by the commissioner. An applicant who fails the examination must wait a minimum of six months before retaking the examination.

Subp. 5. **Adequate facilities.** The applicant must have on the premises adequate facilities to carry out wildlife rehabilitation activities. This includes types of cages, cage sizes, and other facility criteria as described in part 6244.0900, or as otherwise prescribed by the commissioner.

Subp. 6. **Veterinarian consultant.** All classes of wildlife rehabilitation permit holders, except licensed veterinarians, must have and identify to the commissioner a licensed veterinarian consultant to advise and assist permittees in the care and treatment of animals.

Subp. 7. **Advisor.** Novice class wildlife rehabilitation permit holders must have a master class wildlife permit holder as an advisor.

### 6244.0430 PERMIT APPLICATION.

Written application for wildlife rehabilitation permits shall be made on the form provided by the commissioner and contain the following information:

A. the name, address, telephone number, and date of birth of the applicant;

B. the address of the proposed wildlife rehabilitation activity or facility;

C. a detailed description of the applicant's facilities, including numbers and sizes of cages and other pertinent information as requested by the commissioner;

D. a description of educational background related to animal biology, veterinary medicine, and wildlife rehabilitation;

E. a description of experience and training related to wildlife rehabilitation, including a compilation of the types of department wildlife rehabilitation permits possessed in the past and the duration of the permit;

F. certification from the commissioner that the applicant has obtained a score of at least 80 percent on a supervised examination provided by the commissioner for the class of rehabilitation permit requested;

G. the name, address, and telephone number of the licensed veterinarian who has agreed to assist and consult with the permittee on the treatment and care of animals being rehabilitated;

H. for applicants for novice level wildlife rehabilitation permits, the name, address, telephone number, and department rehabilitation permit number of the master class permit holder who has agreed to serve as an advisor for the applicant;

I. the types of wildlife the applicant desires to rehabilitate (mammals, passerine birds, or all species) allowed by the permit level applied for; and

J. an agreement to comply with the requirements of this chapter.

#### **6244.0440 INSPECTION AND ISSUANCE.**

After receipt of the application for a rehabilitation permit, and a determination by the commissioner that the applicant has satisfied all requirements for a permit as described in parts 6244.0420 and 6244.0430, the commissioner may inspect the applicant's facility.

#### **6244.0450 NONTRANSFERABILITY.**

No permit issued under parts 6244.0400 to 6244.0450 shall be transferable.

#### **6244.0500 ROLE OF VETERINARIANS.**

Subpart 1. **Voluntary consultants.** Licensed veterinarians may serve as voluntary consultants to novice, general, or master class permittees as described in parts 6244.0410 and 6244.0420.

Subp. 2. **Consultation.** Veterinarians are not required to have a department wildlife rehabilitation permit to consult with department rehabilitation permit holders nor to advise the permittees on care and treatment of animals undergoing rehabilitation.

Subp. 3. **Treatment.** Veterinarians may treat wild animals, protected birds, and protected mammals in their office or clinic without possessing a department wildlife rehabilitation permit, provided the animals are not kept at the veterinary office or clinic longer than 48 hours.

Subp. 4. **Longer term.** Veterinarians who have in their possession a wild animal longer than 48 hours are required to either have a novice, general, or master level permit or notify a conservation officer of the possession of an injured or orphaned wild animal.

Subp. 5. **Permit requirements.** Veterinarians may obtain a general class permit by meeting the written test requirements for these permits described in this chapter, and by maintaining satisfactory applicable facilities requirements.

Subp. 6. **Possession of animals.** Veterinarians who have a general or master class rehabilitation permit may possess a sick or injured wild animal, for purposes of treatment. The commissioner shall be notified within 24 hours of receipt of a state or federal endangered or threatened animal.

#### **6244.0600 RECORDKEEPING AND REPORTING REQUIREMENTS.**

All permittees shall retain complete and up to date records on forms provided by the commissioner. Rehabilitation records must be updated within 24 hours of the event. A copy of each year's record shall be submitted to the department by January 31 of the following year. Permit holders are required to retain records for three calendar years and make the records available for inspection by the commissioner at any reasonable hour.

#### **6244.0700 EXAMINATION; CONTINUING EDUCATION AND TRAINING; ROLE OF VOLUNTEERS.**

The commissioner shall establish examinations for initial issuance of each class of permit, and requirements for continuing education and training needed for renewal of permits. These requirements must be fully met before permits are renewed.

The department wildlife rehabilitation permit process has been designed to make maximum use of volunteers. Persons experienced with wildlife rehabilitation may be designated by the commissioner to assist in the development of examinations and continuing education and training materials under direction of the commissioner, to assist in the administration of examinations for various levels of permits under direction of the commissioner, to conduct continuing education under direction of the commissioner, and to consult with the commissioner regarding the wildlife rehabilitation permit process.

#### **REHABILITATION STANDARDS**

#### **6244.0800 GENERAL PROVISIONS GOVERNING WILDLIFE REHABILITATION.**

Subpart 1. **Receipt of animals.** The receipt of animals shall be according to items A to C.

A. Permittees may capture orphaned, sick, or injured animals themselves or receive animals from others for purposes of rehabilitation.

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B. Permittees may not import or accept animals for rehabilitation from outside Minnesota, except as allowed by the commissioner.

C. The commissioner shall be notified immediately of the receipt of a threatened or endangered species by a permittee.

### Subp. 2. Rehabilitation care.

A. Animals being rehabilitated shall have contact with the permittee or designated in-shelter assistants only to the extent necessary for adequate care and treatment. Under no circumstances shall animals be habituated to humans, tamed, used as pets, or used in inappropriate ways. The separation of facilities from humans is contained in parts 6244.0300 and 6244.0900, subpart 1.

B. Animals being rehabilitated may be housed only with others of the same species.

C. Public exhibition of animals being rehabilitated is prohibited, except as provided in subpart 4, item B.

D. Transfers of animals being rehabilitated may be made to the same level or to higher level permit holders and, in the case of master permit holders, to lower level permit holders, when:

(1) in the judgment of the permittee after discussion with the permittee's veterinarian consultant, it is determined that a transfer would result in improved care of the animal; and

(2) it is determined by the permittee that the permit holder to whom the transfer is being made is authorized to possess the animals being transferred.

E. Costs incurred by the permittee for rehabilitation activities shall be the responsibility of the permittee only. Permittees may not charge a fee for rehabilitating animals. The provisions of this item do not apply to licensed veterinarians.

F. Permittees may not delegate to others the authority granted by their permit except that permittees may designate others as in-shelter assistants as described in parts 6244.0300, subpart 11, and 6244.0410 to assist with the care and feeding of animals on the premises of the permittee and under the direct supervision of the permittee. Treatment of injured and sick animals may not be delegated to other persons.

### Subp. 3. Release of animals.

A. When, in the judgment of the permittee, after discussion with the permittee's veterinarian consultant, an injured or sick animal has sufficiently recovered, or an orphaned animal is matured to the point where it has a reasonable chance to survive in the wild, the animal shall be released immediately in suitable habitat as near to the point where the animal was captured as practical.

B. Rehabilitated animals are not to be transported across state lines for release or for any other purposes unless expressly authorized by the commissioner.

C. When authorized by the commissioner, animals that are not sufficiently recovered from injuries or illnesses, or are not otherwise ready for release prior to the onset of cold weather in the fall, may be kept over winter and released in the spring.

### Subp. 4. Disposition of nonreleasable animals.

A. When, in the judgment of the permittee, and on advice of the permittee's veterinarian consultant, an injured, sick, or orphaned animal is incapable of surviving if released to the wild, the animal must be:

(1) humanely euthanized under the direction of the veterinarian consultant as described in item C;

(2) turned over to the commissioner; or

(3) transferred as directed by the commissioner.

B. Use of nonreleasable animals for scientific, educational, or exhibition purposes is allowed only under separate permit from the commissioner.

C. Euthanizing shall be done by the most humane means possible by either the permittee or veterinarian consultant and only by methods specifically prescribed by the veterinarian consultant according to criteria established by the American Veterinarian Medicine Association or the National Wildlife Rehabilitation Association.

D. Except where it is necessary to relieve immediate pain, and in cases where recovery is highly unlikely, threatened or endangered species may be euthanized only on express approval of the commissioner.

E. Animals that die of natural causes or that are euthanized must be buried, incinerated, rendered, or turned over to a person or institution that possesses a valid salvage permit from the department and, in the case of migratory birds, a valid federal salvage permit. Threatened or endangered species or any parts thereof shall be disposed of only at the direction of the commissioner.

F. Live or dead animals or any parts thereof shall not be sold, bartered, or given away.

**6244.0900 FACILITIES AND OPERATING STANDARDS.**

Subpart 1. **Separation of animal facilities from humans.** Except as required for the care provider to feed, water, and exercise animals, indoor and outdoor facilities, cages, pens, enclosures, or other areas must be sufficiently separate and protected from pets and from human living or work space to prevent human contact with animals. Animals must be kept in separate facilities at all times except when removal is necessary for veterinary care, transfer to another licensed rehabilitator, or release to the wild.

Subp. 2. **Size; construction.** The facility must be constructed of a material and strength that is appropriate for the animals involved. The housing facilities shall be structurally sound and shall be maintained in good repair to protect the animals from injury and to contain the animals.

Enclosures shall be constructed and maintained to provide sufficient space to allow each animal to make normal postural and social adjustments with adequate freedom of movement. Inadequate space may be indicated by evidence of malnutrition, poor condition, debility, stress, or abnormal behavior patterns. Guidelines for space requirements for various species shall be provided by the commissioner.

Adequate potable water shall be available on the premises with reliable and adequate electric power if required to comply with other provisions of the permit.

Subp. 3. **Sanitation.** Provisions shall be made for the removal and disposal of animal and food wastes, bedding, dead animals, trash, and debris. Disposal facilities shall be provided and operated to minimize vermin infestation, odors, and disease hazards. Permittees shall comply with all applicable laws pertaining to disposal. A suitable sanitary method shall be provided to rapidly eliminate excess water from indoor housing facilities. If drains are used, they shall be properly constructed and installed to prevent any backup of sewage and kept in good repair to avoid foul odors.

Subp. 4. **Indoor facilities.** Temperature in indoor housing facilities shall be sufficiently regulated by heating or cooling to protect the animals from the extremes of temperature, to provide for their health, and to prevent their discomfort. The ambient temperature shall not be allowed to fall below nor rise above temperatures compatible with the health and comfort of the animal.

Indoor housing facilities shall be adequately ventilated by natural or mechanical means to provide for the health and to prevent discomfort of the animals at all times. The facilities shall be provided with fresh air either by means of windows, doors, vents, fans, or air conditioning, and shall be ventilated to minimize drafts, odors, and moisture condensation.

Indoor housing facilities shall have ample lighting, by natural or artificial means, or both, of good quality, distribution, and duration as appropriate for the species involved. The lighting shall be uniformly distributed and of sufficient intensity to permit routine inspection and cleaning. Lighting of primary enclosures shall be designed to protect the animals from excessive illumination.

Subp. 5. **Outdoor facilities.** When sunlight is likely to cause overheating or discomfort of the animals, sufficient shade by natural or artificial means shall be provided to allow all animals kept outdoors to protect themselves from direct sunlight.

Natural or artificial shelter appropriate to local climatic conditions for the species concerned shall be provided for all animals kept outdoors to afford them protection and to prevent discomfort to the animals. Individual animals shall be acclimated before they are exposed to the extremes of weather.

**6244.1000 ANIMAL HEALTH AND HUSBANDRY.**

Subpart 1. **Feeding.** Dietary guidelines for various species shall be provided by the commissioner. The food shall be wholesome, palatable, and free from contamination and of sufficient quantity and nutritive value to maintain all animals in good health. The diet shall be prepared with consideration of the age, species, condition, size, and type of the animal. Animals shall be fed at least once a day except as dictated by hibernation, veterinary treatment, normal fasts, or other professionally accepted practices.

Food and food receptacles, if used, shall be sufficient in quantity, accessible to all animals in the enclosure, and placed to minimize contamination. Food receptacles shall be kept clean and sanitary at all times. If self-feeders are used, adequate measures shall be taken to prevent molding, contamination, and deterioration or caking of food.

Subp. 2. **Watering.** If potable water is not accessible to the animals at all times, it must be provided as often as necessary for the health and comfort of the animal. Frequency of watering shall depend upon age, species condition, size, and type of the animal. Water receptacles shall be kept clean and sanitary.

Subp. 3. **Sanitation.** Excreta shall be removed from primary enclosures as often as necessary to prevent contamination of the animals contained in the enclosures, to minimize disease hazards, and to reduce odors. When enclosures are cleaned by hosing or

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flushing, adequate measures shall be taken to protect the animals confined in the enclosures from being directly sprayed with the stream of water or wetted involuntarily.

Subsequent to the presence of an animal with an infectious or transmissible disease, cages, rooms, and hard-surfaced pens or runs shall be sanitized either by washing them with hot water, 180 degrees Fahrenheit at source, and soap or detergent, as in a mechanical washer, or by washing all soiled surfaces with a detergent solution followed by a safe and effective disinfectant, or by cleaning all soiled surfaces with saturated live steam under pressure. Pens or runs using gravel, sand, or dirt shall be sanitized when necessary as directed by the attending veterinarian.

Areas in which animals are kept shall be kept clean and in good repair to protect the animals from injury and to facilitate the prescribed husbandry practices in this subpart. Accumulations of trash shall be placed in designated areas and cleared as necessary to protect the health of the animals.

A safe and effective program for the control of insects; ectoparasites, such as flies, ticks, and fleas; and avian and mammalian pests shall be established and maintained.

**Subp. 4. Veterinary care.** Programs of disease prevention and parasite control, euthanasia, and adequate veterinary care shall be established and maintained under the supervision of the permittee's veterinarian consultant. The pest control program shall be reviewed by the veterinarian adviser for the safe use of materials and methods.

Animals shall be observed at least once every day by the person in charge of the care of the animals or by a designated in-shelter assistant working under the permittee's direct supervision. Sick, diseased, stressed, injured, or lame animals that are determined to be nonreleasable shall be dealt with according to part 6244.0800, subpart 4.

**Subp. 5. Handling.** Handling of animals shall be kept to a minimum, but when necessary shall be done expeditiously and carefully in a way that does not cause unnecessary discomfort, behavioral stress, or physical harm to the animal or harm to the handler. Human contact with animals being rehabilitated shall be kept to an absolute minimum.

### ADMINISTRATIVE PROCEDURES

#### 6244.1100 TRANSITION FROM PREVIOUS RULES.

This chapter applies to permits issued or renewed after the effective date of this chapter. Any permit issued or renewed after the effective date of this chapter is subject to the requirements of this chapter.

#### 6244.1110 INITIAL TESTING AT TIME OF RULES ADOPTION.

At the time this chapter becomes effective, the commissioner may allow a person who has or previously had a valid wildlife rehabilitation permit, other than an outshelter permit, to test at either the novice, general, or master level based on the following criteria:

A. a person who has had a wildlife rehabilitation permit for less than two years during the past five years may test at the novice level only;

B. a person who has had a wildlife rehabilitation permit for more than two years but less than six years of the past ten years may test at the novice or general level only; and

C. a person who has had a wildlife rehabilitation permit for six years or more during the past ten years may test at the novice, general, or master level.

A person holding a valid wildlife rehabilitation permit on the effective date of this chapter who initially tests at the general or master level, and fails either the general or master level test may immediately test at the novice level without waiting six months as stipulated in part 6244.0420, subpart 4.

#### 6244.1200 CREATION OF MASTER CLASS PERMITTEES.

To provide for a group of master class permit holders to serve as sponsors for novice level permittees at the time this chapter becomes effective, and before a group of master class permittees would evolve through the process described in part 6244.0410, subparts 2, 3, and 4, the commissioner may issue provisional master class permits to individuals who are otherwise qualified and who have demonstrated special ability, knowledge, training, and experience in wildlife rehabilitation, provided that such provisional permittees must pass the master class test within one year after issuance of the provisional permit.

#### 6244.1300 NEW MINNESOTA RESIDENTS.

A person moving to Minnesota on a permanent basis, who is at the time of relocation to Minnesota a licensed wildlife rehabilitator in the state of previous residence, may be allowed to test at either the general or master level based on the criteria in part 6244.1110.

#### 6244.1400 FEDERAL PERMITS; LOCAL LAWS; PRACTICING VETERINARY MEDICINE.

**Subpart 1. Federal permits.** A permittee authorized to rehabilitate migratory birds under a department permit must also possess

a valid United States Fish and Wildlife Service special purpose rehabilitation permit. Other rehabilitation activities may also require a federal permit. Issuance of a permit by the department shall not exempt the permittee from the permit requirements of federal law.

Subp. 2. **Local laws.** No rehabilitation permit nor any provisions of this chapter shall be construed to exempt the permittee from any local laws, ordinances, or regulations that apply to the activities authorized by the permit.

Subp. 3. **Practicing veterinary medicine.** A permittee may not practice veterinary medicine as defined by *Minnesota Statutes*, chapter 156, unless licensed as a veterinarian.

#### **6244.1500 REVIEW OF PERMIT DECISIONS.**

If a rehabilitation permit is granted with conditions, or is denied, the applicant may file with the commissioner a request for a contested case hearing under *Minnesota Statutes*, chapter 14, within 30 days after mailed notice.

#### **6244.1600 PERMIT DURATION AND RENEWAL.**

Subpart 1. **Duration of permits.** Wildlife rehabilitation permits shall be issued for a period of up to two years.

Subp. 2. **Renewal of permits.** Novice, general, and master wildlife rehabilitation permits are renewable. Conditions for renewal of all classes of permits include the following:

- A. compliance with parts 6244.0410, 6244.0420, 6244.0600, and 6244.0800 to 6244.1000;
- B. adequate recordkeeping as defined in part 6244.0600;
- C. ongoing rehabilitation activity;
- D. successful completion of continuing education and training as defined in parts 6244.0300, subpart 5, and 6244.0700;
- E. for novice class permits, having a master class permittee to serve as an advisor as described in part 6244.0410;
- F. identification of the veterinarian consultant as described in parts 6244.0410, subpart 2, and 6244.0500, subpart 1; and

G. maintain satisfactory applicable facility requirements as determined by an inspection that may be conducted at least once during every other permit renewal period, or once every four years, or if the permittee's place of animal care is moved to a new address, or upon application for a higher level rehabilitation permit.

Subp. 3. **Expired permits.** Expired permits may be renewed within one year of the expiration date upon fulfillment of all conditions established in part 6244.1500 for the renewal. Permits which have been expired for more than one year shall not be renewed, and the person wishing to be reinstated must apply and go through the process described in parts 6244.0410 and 6244.0420 to obtain an initial permit. Persons who have had a rehabilitation permit previously, but whose permit has been expired for more than one year but less than five years, may apply for and be allowed to take the test for the permit class previously held after meeting all other conditions for permit renewal described in parts 6244.0410 and 6244.0420.

#### **6244.1700 PERMIT REVOCATION.**

The commissioner may at any time revoke all or part of a permit issued under this chapter under the conditions in this part whenever the commissioner has determined that a permittee has failed to comply with provisions of this chapter, when it is necessary to protect the interests of the public; or to protect the wildlife covered by the permits. Except in an emergency, at least 14 days prior to the effective date of the revocation the permit holder must be informed in writing of the nature of the revocation and of the conditions which, in the commissioner's opinion, require the revocation. Within 30 days of mailed notice of revocation, the permit holder may apply for an amendment to the permit or to request a hearing by the commissioner to contest the revocation, support the permit holder's proposed amendment, or both. The permit shall be revoked on the date stated in the revocation notice.

#### **6244.1800 DISCLAIMER OF LIABILITY.**

Any rehabilitation permit issued under this chapter is permissive only and no liability shall be incurred by the state or any of its officers, agents, or employees by reason of the issuance of a rehabilitation permit or by reason of any acts or operations of the permittee or any wildlife in possession of the permittee. A rehabilitation permittee shall be solely responsible for damage or injury to persons, domestic or wild animals, and real or personal property of any kind, resulting from any activities undertaken pursuant to the permit.

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## Proposed Rules

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### 6244.1900 VARIANCES.

Subpart 1. **Parts subject to variance provisions.** Individuals and individuals in the name of institutions that are subject to parts 6244.0100 to 6244.1800 may request that the commissioner grant a variance from the following parts:

- A. resident requirements, as specified in part 6244.0400, subpart 1;
- B. restrictions on having both a game farm license and a rehabilitation permit, as specified in part 6244.0400, subpart 4;
- C. qualifications testing and continuing education and training requirements, as specified in parts 6244.0410 to 6244.0450 and 6244.0700;
- D. the maximum number of in-shelter assistants that may be designated to work in a facility of the permittee, as specified in part 6244.0410, subparts 3, item L; and 4, item L;
- E. the minimum age requirement, as specified in part 6244.0420, subpart 2;
- F. the restriction on accepting animals for rehabilitation from outside of Minnesota, as specified in part 6244.0800, subpart 1, item B; and
- G. the restriction on transport of animals across state boundaries for release, as specified in part 6244.0800, subpart 3, item B.

Subp. 2. **Application for variance.** A proceeding for requesting a variance begins when the permit applicant or permittee files an application for a variance with the commissioner. The application must include information necessary for the commissioner to determine that the proposed variance is directed toward the attainment of the goals of parts 6244.0100 to 6244.1800, and is consistent with the general public interest and animal welfare including, but not limited to:

- A. how the alternative measure proposed is equivalent to or superior to that prescribed in this chapter; and
- B. how strict compliance with this chapter will impose an undue burden on the applicant.

Under no circumstance shall a variance be granted that varies a statutory standard.

Subp. 3. **Determination by commissioner.** Within 30 days after receipt of the application, the commissioner shall determine whether the proposed variance constitutes a substantial change from the requirements of the provision from which a variance is requested.

A. If the commissioner determines that a substantial change would result, the decision of whether or not to grant the variance shall be based on a determination by the commissioner that the proposed variance is directed toward the attainment of the goals of the provision from which a variance is requested and is consistent with the general public interest and animal welfare.

B. If the commissioner determines that there would be no substantial change, and that the variance is consistent with the public interest and animal welfare and meets the goals and intent of the provision from which a variance is requested, a variance shall be granted.

Subp. 4. **Simultaneous filing of applications.** Applications for variance from this chapter may be filed simultaneously with an application for a permit to conduct animal rehabilitation, provided that the application contains all information required for applications for a permit to conduct animal rehabilitation.

### 6244.2000 PENALTY.

Subpart 1. **Misdemeanor.** A person who violates this chapter is guilty of a misdemeanor.

Subp. 2. **Administrative penalty.** The commissioner may amend, revoke, or refuse to renew the permit of a person who violates this chapter or any provision of a permit issued under this chapter.

**REPEALER.** *Minnesota Rules*, parts 6212.1600 and 6212.1900, are repealed one year after the effective date of this chapter.

**EFFECTIVE DATE.** Parts 6244.0100 to 6244.2000 are effective July 1, 1996.

## Department of Natural Resources

### Proposed Permanent Rules Governing Aquatic Nuisance Control

#### Notice of Intent to Adopt Rules Without a Public Hearing

**NOTICE IS HEREBY GIVEN** that the Minnesota Department of Natural Resources intends to adopt amendments to 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:

Steven Enger  
Department of Natural Resources  
500 Lafayette Road  
St. Paul, Minnesota 55155-4025  
Telephone: (612) 296-0782

**Subject of Rules and Statutory Authority.** The rules concern the issuance of permits for the control of aquatic vegetation and aquatic nuisance organisms. Specifically, the proposed amendments will cover: modifications in definitions and new definitions; modifications in the standards for issuance of aquatic management control permits, including identification of those actions requiring a permit, those actions not requiring a permit, and actions that are prohibited; modifications in aquatic plant management control practices, including inspection, mechanical control, and pesticide control of aquatic macrophytes; modifications in the application process for a permit; modification of permit fees to bring the rules into conformance with *Minnesota Statutes*; modifications in the approval of pesticides and methods used for aquatic plant management in Minnesota waters; allowing amendments of permits upon request; and adopting penalties for non-compliance.

The adoption of these rules is authorized by *Minnesota Statutes*, section 103G.615.

A copy of the proposed rules is published in the *State Register* and a free copy of the rules is available upon request from the agency contact person.

**Comments.** You have until 4:30 p.m., January 25, 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 25, 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 Department 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 Department 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 from the agency contact person. The 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 the agency contact person at the address and telephone number listed above.

**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 rules may have a minimal impact on small businesses dealing with the commercial application of pesticides to public waters and the mechanical removal of vegetation from public waters. Amendments to the rules would require Department approval of some aquatic plant management practices that previously were allowable without a permit; other amendments have relaxed permit conditions. Any adopted amendments will not eliminate aquatic nuisance control work nor is it anticipated that the number of permits issued annually will decline.

The Department's evaluation of the applicability of the methods contained in *Minnesota Statutes*, section 14.115, subdivision 2, for reducing the impact of the proposed rules is addressed further in the Statement of Need and Reasonableness.

**Expenditures 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.

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

**Departmental Charges.** The review and recommendation of the commissioner of the Department of Finance concerning any departmental charges contained in the rules is attached to the Statement of Need and Reasonableness pursuant to *Minnesota Statutes*, section 16A.1285, subdivisions 4 and 5.

**Adoption and Review of Rules.** 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 wish to be so notified, or you wish to receive a copy of the adopted rules, submit your request to the agency contact person listed above.

Dated: 6 December 1995

Rodney W. Sando  
Commissioner of Natural Resources

By  
Gail Lewellan, Assistant Commissioner of  
Human Resources and Legal Affairs

### Rules as Proposed

#### AQUATIC PLANT MANAGEMENT AND AQUATIC NUISANCE CONTROL

##### 6280.0100 DEFINITIONS.

Subpart 1. **Scope.** The terms used in this chapter have the meanings given them in this part.

Subp. 2. **Aquatic macrophytes.** "Aquatic macrophytes" means rooted nonwoody plants, either submerged, floating leafed, floating, or emergent; and floating or floating leaf plants growing in public waters water.

Subp. 2a. **Aquatic plant management.** "Aquatic plant management" means activities which are intended to alter aquatic plant populations (either reduce or enhance) by means of herbicides, biological agents, mechanical devices, or physical alteration. This includes the transplanting or seeding of aquatic macrophytes.

Subp. 2b. **Aquatic plant management permit or APM permit.** "Aquatic plant management permit" or "APM permit" means a permit issued by the commissioner authorizing aquatic plant management or aquatic nuisance control activities.

Subp. 3. **Aquatic nuisance.** "Aquatic nuisance" means the presence of leeches, snails that carry swimmer's itch, or any growth of aquatic vegetation or algae in such numbers or such abundance as to interfere with boating, swimming, or other aquatic recreation or beneficial water use.

Subp. 3a. **Automated untended aquatic plant control device.** "Automated untended aquatic plant control device" means a device for destroying aquatic macrophytes that may be remotely operated or placed on a timer and is capable of being operated without the assistance of an operator.

Subp. 4. **Bog.** "Bog" means a an aquatic mat, either attached to or resting on the bottom or floating, that is normally made up of dead organic matter held together by various types of living plants.

[For text of subps 5 to 7, see M.R.]

Subp. 8. **Label registration and labeling.** "Label registration and labeling" means the application rate and site where a pesticide can be applied, vegetation it will control, and other important information that is contained on a pesticide's label. To use a pesticide in a manner inconsistent with its label is a violation of state and federal law has the meaning given in Minnesota Statutes, section 18B.01, subdivisions 13 and 14.

[For text of subps 9 and 10, see M.R.]

Subp. 11. **Ordinary high water level.** "Ordinary high water level" has the meaning given in *Minnesota Statutes*, section 103G.005, subdivision 14.

Subp. 12. **Pesticide.** "Pesticide" means a substance or mixture of substances intended to prevent, destroy, repel, or mitigate a pest, and a substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant has the meaning given by Minnesota Statutes, section 18B.01, subdivision 18.

Subp. 13. **Public waters.** "Public waters" means those waters of the state identified defined as public waters or wetlands under by Minnesota Statutes, section 103G.005, subdivision 15, and inventoried pursuant to Laws 1979, chapter 199, and Minnesota Statutes, section 103G.201.

## Proposed Rules

Subp. 14. **Storm water retention ponds.** "Storm water retention ponds" means those bodies of public water, usually less than ten acres in size, lying within home rule charter or statutory cities or towns and ~~that have as a principal public value the retention of~~ are specifically managed for the primary public value of retaining storm water.

Subp. 15. [See repealer.]

### **6280.0250 STANDARDS FOR AQUATIC PLANT MANAGEMENT PERMIT ISSUANCE.**

**Subpart 1. Actions not requiring permit.** ~~Unless otherwise required in subpart 2, an APM permit is not required for items A to E:~~

A. cutting or pulling aquatic macrophytes for the purpose of constructing shooting and observation blinds in amounts sufficient for that purpose;

B. gathering aquatic macrophytes or plant parts, other than wild rice and American lotus, for personal use only and not for resale;

C. cutting or pulling submerged aquatic macrophytes in order to maintain a site for swimming or boat docking not to extend along more than 50 feet of the owner's shoreline or one-half the length of the owner's total shoreline, whichever is less, and that does not exceed 2,500 square feet in area, except that a boat channel extending to open water, not to exceed 15 feet in width, may be maintained. The boating channel is included in the maximum shoreline feet allowed. Cutting or pulling may only be done under the following conditions:

(1) with power-operated cutters, rakes, or similar equipment that does not significantly alter the course, current, or cross-section of the lake bottom. Draglines, bulldozers, hydraulic jets, suction dredges, or other power-operated earth-moving equipment may not be used;

(2) cutting or pulling takes place in the same location each year unless an APM permit has been obtained authorizing a change in location; and

(3) aquatic macrophytes that have been cut or pulled must immediately and permanently be removed from the water;

D. destroying aquatic macrophytes incidental to activities authorized by a department permit for work in public waters as provided by *Minnesota Statutes*, section 103G.245, or by a license permitting the passage of utilities over public lands and waters as provided by parts 6135.0100 to 6135.1800 and *Minnesota Statutes*, section 84.415;

E. cutting or pulling purple loosestrife (*Lythrum salicaria*); and

E. cutting or pulling water lilies and water shield or submerged vegetation to obtain a channel extending to open water, provided that:

(1) the channel is no more than 15 feet wide and takes the most direct route to open water;

(2) the channel is maintained by cutting or pulling; and

(3) the channel remains in the same location from year to year.

**Subp. 2. Actions requiring a permit.** ~~Except as provided in subpart 1, an APM permit is required to:~~

A. apply pesticides below the ordinary high water level of public waters to control:

(1) snails that carry swimmer's itch, or leeches;

(2) dense growths of aquatic macrophytes that interfere with watercraft use, swimming, or other traditional recreational uses;

(3) excessive filamentous algae;

(4) excessive plankton algae blooms; and

(5) purple loosestrife (*Lythrum salicaria*);

B. physically remove from or transplant into public waters any aquatic plants or a bog of any size whether free-floating or lodged in an area other than its original location;

C. destroy emergent aquatic vegetation in public waters;

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D. destroy water lilies and water shield in public waters except as provided in subpart 1, item E;

E. install and operate an automated untended aquatic plant control device for each property where the device is intended for operation; or

E. create a channel extending to open water through emergent vegetation by cutting or pulling. The permit shall be of continuing duration provided that:

- (1) the channel is no more than 15 feet wide and takes the most direct route to open water;
- (2) the channel is maintained by cutting or pulling;
- (3) the channel remains in the same location from year to year; and
- (4) the permit is not transferable.

Subp. 3. Justification required for issuance of permits. Permits for the destruction of emergent and floating-leaf aquatic macrophytes including wild rice, bulrush, cattail, water lilies, and similar vegetation will not be issued unless the commissioner determines sufficient justification exists. The commissioner will balance the reasonable needs of riparian owners to gain access and use public water against the need to protect emergent and floating-leaf aquatic macrophytes so that the integrity and value of the aquatic macrophyte community is maintained.

Subp. 4. Prohibitions. An APM permit will not be issued for the following purposes:

A. to place plastic mats, plastic sheets, filter fabric, or similar materials on the bed of public waters to destroy or prevent the growth of aquatic macrophytes;

B. to improve the appearance of undeveloped shoreline;

C. for esthetic purposes alone on developed shoreline;

D. for the control of aquatic macrophytes in areas posted or designated by the commissioner as scientific and natural areas or for the protection of lotus (*Nelumbo lutea*) or other kinds of aquatic macrophytes and animals;

E. for pesticide control of aquatic macrophytes in natural environment lakes established pursuant to part 6120.3000;

E. for pesticide control of aquatic macrophytes in watercourses or portions of watercourses classified as wild as defined under either the Minnesota or federal Wild and Scenic Rivers Acts as provided in *Minnesota Statutes*, section 103F.325, and *Public Law Number 90-542 (1968)*, *United States Code*, title 16, sections 1271 to 1287, as amended;

G. to destroy aquatic macrophytes within a posted fish spawning area; or

H. to destroy or prevent the growth of aquatic plants or invertebrate life in public waters by means not authorized under parts 6280.0100 to 6280.1100.

Subp. 5. Pesticide treatment of drinking water. The commissioner shall not issue an APM permit for pesticide treatment of waters used by humans for drinking unless approval is obtained from the Minnesota Department of Health.

### **6280.0350 AQUATIC PLANT MANAGEMENT PRACTICES.**

Subpart 1. Inspection, supervision, and monitoring. Items A and B apply to the inspection, supervision, and monitoring of permitted aquatic plant management activities.

A. Supervision by a department employee will be required, unless waived, for initial lakewide treatment of excessive algae blooms and may be periodically required for treatments by experienced groups.

B. Field inspection will be made at the discretion of the commissioner in cases of new applications for pesticide treatment or mechanical control. Field inspection of other previously permitted areas will also be required at intervals to evaluate conditions and the need for continued control measures.

Subp. 2. Lake vegetation management plan (LVMP). When a lake vegetation management plan approved by the commissioner has been developed, APM permits will be issued according to the guidelines of the plan.

Subp. 3. Mechanical control. Items A to C apply to conditions for mechanical control of aquatic macrophytes.

A. A person who cuts or pulls aquatic macrophytes must immediately and permanently remove the vegetation from the water and dispose of it above the ordinary high water level of any public water.

B. Organized lakewide cutting and removal programs are restricted to a maximum area not to exceed 50 percent of the total littoral area as determined by the commissioner.

C. Applications for lakewide or baywide mechanical control of aquatic macrophytes must include a written statement of the plan and a map showing proposed areas to be controlled. The commissioner may reduce the littoral area proposed for harvest. An

## Proposed Rules

application for mechanical control of aquatic macrophytes must include the name, address, signature, and location on the lake of all property owners whose shoreline will be controlled.

Subp. 4. Pesticide control of aquatic macrophytes. Except as otherwise specified in this part, items A and B apply to pesticide control of aquatic macrophytes.

A. On all public waters and watercourses, the lesser of 15 percent of the littoral area or a maximum of 100 feet of shoreline per site belonging to an individual riparian property owner may be treated for control of submerged vegetation. These limitations do not apply in the circumstances described in subitems (1) to (3).

(1) For resorts, apartments, condominium complexes, public swimming beaches, and marinas, the commissioner must make an individual determination, taking into consideration the total impact on the protected water.

(2) Larger percentages of the littoral area shall be treated at the discretion of the commissioner when authorized by permits issued prior to 1976.

(3) On stormwater retention ponds, treatment may occur on up to five acres or one-half the surface area of the pond, whichever is less.

B. Applications from riparian property owners' associations for large area or baywide treatment must include a written statement of the plan and a map showing areas proposed to be treated. The commissioner may reduce the amount of littoral area which the applicant proposes to control. Any application for treatment must include the names, addresses, location on lake, and signatures of all property owners whose shorelines will be treated. Signatures must be obtained every three years or when there is a change of property ownership.

Subp. 5. Control of algae. An application for proposed lakewide control of algae must be accompanied by dated signatures from a majority of the riparian property owners stating that they are in favor of the proposed treatment. Signatures must be obtained every three years or when there is a change in property ownership.

Subp. 6. Treatment notice. The holder of an APM permit or the holder's agent must give notice of the proposed date of treatment to all persons specified on the permit. The notification must be received prior to beginning any work under the permit. Failure to give notice is grounds for revocation of any existing permit or refusal to issue future permits.

### **6280.0450 PERMIT APPLICATION, FEES, AND ANNUAL REPORT.**

Subpart 1. Application process. Application for an APM permit for any body of public waters may be made by a riparian owner, a lessee, an easement holder, or by owners of a fee, leasehold, or interest to riparian lands to that body of water or by the representative of a group of riparian owners. Application for an APM permit must be made on forms provided by the commissioner and must be submitted to the address specified in the instructions. All information requested on the application form must be provided.

Subp. 2. Deadline for permit application. Applications for permits to control submerged or floating aquatic macrophytes with pesticides will not be accepted after August 1 annually, unless the commissioner determines that sufficient justification exists for late season pesticide treatment.

Subp. 3. Duration of permits. Unless otherwise noted, an APM permit is only valid for one growing season and expires on September 1 of the year it was issued.

Subp. 4. APM permit application fees. Items A to C apply to APM permit fees.

A. When application is made to control two or more nuisance conditions, only the larger fee applies. A permit application fee, in the form of a check or money order payable to the Minnesota Department of Natural Resources, must accompany each permit application when required by the following fee schedule:

(1) to control aquatic macrophytes by pesticide means: \$20 for each contiguous parcel of shoreline owned by an owner;

(2) to control emergent aquatic macrophytes, or to control submerged or floating-leaf aquatic macrophytes in an area larger than 2,500 square feet, by mechanical means: \$20 for the first acre or portion of an acre and \$2 for each additional acre or portion of an acre to be controlled, up to a maximum of \$200;

(3) to gather or harvest aquatic macrophytes or plant parts, other than wild rice, for sale purposes: no charge;

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(4) to transplant aquatic macrophytes or bog into public waters: no charge;

(5) to control chara, filamentous algae, snails that carry swimmer's itch, or leeches, singly or in combination: \$4 per 100 shoreline fee or portion proposed to be treated, up to a maximum of \$200;

(6) to control algae by lakewide application of copper sulfate or other approved algicide: \$20 plus 40 cents per acre to be treated, up to a maximum of \$200; and

(7) to control purple loosestrife (*Lythrum salicaria*) by chemical means: no charge.

B. If the fee does not accompany the application, the applicant will be notified and no action will be taken on the application until the fee is received.

C. The fee is refundable only when the application is withdrawn, prior to issuance of the permit, or the commissioner determines that the activity does not require a permit.

Subp. 5. Fees for state and federal agencies. The fees set forth in this part will not be required of any state agency as defined in *Minnesota Statutes*, section 15.01, or of any federal agency.

Subp. 6. Annual report. The holder of a commercial aquatic plant harvester's permit, commercial aquatic pest control license, or APM permit must, no later than December 31 of each year, report to the commissioner, on the forms provided, information on permitted operations requested. Failure to report will be grounds for refusing to issue such permits in the future.

Subp. 7. Regulations of other programs apply. APM permits issued as provided by this part may not be construed to supersede the requirements of shoreland conservation ordinances, flood plain management ordinances, lake management plans and programs, wild and scenic river plans and programs, or other pertinent ordinances and regulations.

### 6280.0600 APPROVAL OF PESTICIDES AND METHODS USED FOR AQUATIC PLANT MANAGEMENT OR AQUATIC NUISANCE CONTROL.

Subpart 1. **Chemicals** Pesticides must be registered as labeled for use in aquatic herbicides or algaecides sites. Only chemicals Pesticides used to control aquatic macrophytes or algae in public waters must be registered with by the United States Environmental Protection Agency (EPA) as aquatic herbicides or algaecides and registered with the Minnesota Department of Agriculture (MDA), including pesticides registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), *United States Code*, title 7, sections 136c (experimental use permit), 136p (emergency exemption), and 136v (special local need), and must be approved for use in public waters by the commissioner, may be used for chemical control of aquatic vegetation or algae in public waters. Permits may be granted for experimental use of unregistered chemicals and methods in a bona fide experimental program under an experimental use permit from aquatic sites by the EPA, the Minnesota Department of Agriculture, and by the commissioner in consultation with the MDA.

Subp. 2. **Instructions and precautions of pesticides must be followed.** Pesticides must be applied according to the label registration rates and labeling provided by the manufacturer and other water use restrictions imposed by the department or the MDA. Pesticide-treated areas must be posted with signs provided by the department bearing the permit number; the name of pesticide used; the date of treatment; and dates on which water from the treated area may be safely used for swimming, fishing, and other uses, as specified on the product label or by the department. When differences in instructions exist, The department recommendations must be followed, in consultation with the MDA, may require water use restrictions in addition to those on the product label. The permittee or agent is responsible for the placement and removal of required signs. The treatment area must be posted in such a way that people entering from any direction can see the signs, or as otherwise prescribed in the permit.

Subp. 3. **Pesticide control of aquatic macrophytes in watercourses.** Pesticides may be used to control aquatic macrophytes in flowing waters, provided that the vegetation is present to such a degree that it impedes the flow of water and that the flow rate will not carry the pesticide beyond the treatment area during the period of water use restriction specified on the pesticide label. The pesticide to be used must be labeled for use in flowing water.

### 6280.0700 COMMERCIAL APPLICATORS AND OPERATORS.

Subpart 1. **Pesticide applicators.** A person or firm may not apply pesticides of any kind for hire for aquatic plant management or aquatic nuisance control on protected public waters unless a commercial pesticide applicator's aquatic pest control license has been obtained from the Minnesota Department of Agriculture. A pesticide applicator's license must be endorsed by the department before pesticides may be applied under an aquatic nuisance control permit.

Subp. 2. **Nonchemical operators Commercial aquatic plant harvesters.** A person or firm may not cut, pull, or remove harvest aquatic vegetation by nonchemical methods macrophytes on public waters for hire without first obtaining an a commercial aquatic operator's plant harvester's permit issued by the department. Issuance of an a commercial aquatic operator's plant harvester's permit is contingent upon determination by the commissioner that the applicant has adequate equipment and knowledge to properly

~~control harvest aquatic vegetation macrophytes~~ in public waters. This subpart does not apply to persons or firms using power-operated earth-moving equipment in public waters under terms of permits issued by the department for work in the bed of public waters as provided by *Minnesota Statutes*, section 103G.245, or by a license permitting the passage of utilities over public lands and waters as provided by *Minnesota Statutes*, section 84.415. Persons or firms that use aquatic vegetation cutting and harvesting equipment must thoroughly inspect, remove, and properly dispose of all ~~viable residual plants and viable plant parts~~ from the equipment before transporting it to another body of water.

#### **6280.0900 AMENDMENTS AND REVOCATION.**

**Subpart 1. Amendments and revocation.** The commissioner may amend or revoke any commercial aquatic operator's plant harvester's permit; aquatic endorsement of a commercial pesticide applicator's license, or aquatic nuisance control or APM permit without prior notice whenever it has been determined that it is necessary to protect the interests of the public, to protect human life, or to protect fish ~~and~~, wildlife, and native plants or for violation of the terms and conditions of APM permits, this chapter, or other applicable laws or rules.

**Subp. 2. Amendments by request.** The commissioner may amend a commercial aquatic plant harvester permit or an APM permit upon request from the permittee if the amendment maintains adequate protection for interests of the public, human life, and fish, wildlife, and native plants.

#### **6280.1000 VARIANCE.**

**Subpart 1. Variance.** Provisions of this chapter may be waived under special circumstances when deemed necessary by the commissioner for the protection and preservation of the natural resources of the state.

**Subp. 2. Lake vegetation management plan (LVMP).** This chapter may be modified or waived in accordance with a lake vegetation management plan approved by the commissioner.

#### **6280.1100 REVIEW AND APPEAL OF PERMIT DETERMINATION DECISION.**

~~The terms, conditions, or denial of a permit application may, within 30 days of receipt of written notice, be appealed to the commissioner by filing a written request for review.~~ **Subpart 1. Commissioner's review.** If an APM permit is granted with conditions or is denied, the applicant may file with the commissioner, within 30 days of the date of permit issuance or denial, a written request for review. The commissioner shall review the permit application and render a decision within 15 days of the request for review. If written request for review is not submitted within 30 days, the permit decision becomes final and no further appeal is allowed.

**Subp. 2. Contested case hearing.** If the applicant wishes to appeal the decision of the commissioner after review under subpart 1, the applicant may file with the commissioner, within 30 days of the commissioner's decision, a written request for a contested case hearing under *Minnesota Statutes*, chapter 14. If written request for a contested case hearing is not submitted within 30 days, the permit decision becomes final.

#### **6280.1200 PENALTY.**

The destruction of aquatic macrophytes in public waters without an APM permit issued pursuant to parts 6280.0100 to 6280.1100 or in violation of the terms of such a permit is a misdemeanor.

**REPEALER.** *Minnesota Rules*, parts 6280.0100, subpart 15; 6280.0200; 6280.0300; 6280.0400; and 6280.0500, are repealed.

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## Proposed Rules

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### Board of Nursing

#### Proposed Permanent Rules Relating to Experimental Nursing Programs

##### Notice of Intent to Adopt Rules Without a Public Hearing

The Minnesota Board of Nursing intends to adopt a permanent rule without a public hearing following the procedures set forth in the Administrative Procedure Act, *Minnesota Statutes*, section 14.22 to 14.28. You have 30 days to submit written comments on the proposed rule. You may also submit a written request that a hearing be held on the proposed rules relating to nursing program approval. Pursuant to *Minnesota Statute* 214.06, subd. 3 no public hearing will be held on the fee changes.

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

Joyce M. Schowalter, Executive Director  
Minnesota Board of Nursing  
2700 University Avenue West, Suite 108  
St. Paul, MN 55114

(612) 642-0567 or MN Relay Service for Hearing and Speech Impaired at (612) 297-5353 or (800) 627-3529.

**Subject of Rule and Statutory Authority.** The proposed rules govern exemption from certain program approval rules by currently approved professional and practical nursing programs, license fees for interstate endorsement of registered nurses and licensed practical nurses, registration renewal fees and the service charge for a dishonored check. (*Minnesota Rules*, Chapter 6301, parts 6305.0500, subpart 3 and 6310.3600 subpart 1.A., B. and H.) The statutory authority to adopt these rules is contained in *Minnesota Statutes*, sections 148.191 subdivision 2, 214.06, subdivisions 1 and 2 and 332.50 subd. 2(d). A copy of the proposed rules is published in the *State Register* and attached to this notice as mailed.

**Comments.** You have until 4:30 P.M., January 25, 1996, to submit written comment in support of or in opposition to the proposed rules and 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 a hearing be held on the rules relating to nursing program approval. 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 25, 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 request in writing. If a public hearing is required, the agency 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 Board and may not result in a substantial change in the proposed rules as attached and 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 available by calling the Board office at (612) 642-0567 or MN Relay Service for Hearing and Speech Impaired at (612) 297-5353 or (800) 627-3529. 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.

**Small Business Considerations.** The Board has determined that *Minnesota Statutes* section 14.115 does not apply to these rules. If it is determined that *Minnesota Statutes* section 14.115 does apply to these rules, then it is the Board's position that it would not be feasible to implement any of the methods for reducing the impact of the rules on small businesses because doing so would be contrary to the statutory mandates which are the basis for the proposed fee changes and amendments to nursing program approval rules.

A more in-depth explanation of the Board's exemption from *Minnesota Statutes* section 14.115, the Board's consideration and rejection of methods for reducing the impact on small businesses, and the notice provided to small businesses may be found in the Board's statement of need and reasonableness.

**Expenditure of Public Money by Local Public Bodies.** The adoption of these rules will not require the expenditure of public money by local public bodies, and therefore the Board need not prepare a fiscal note pursuant to *Minnesota Statutes*, section 14.11, subdivision 1.

**Impact on Agricultural Lands.** These rules will not have a direct and substantial adverse impact on agricultural land in the state, and therefore the Board need not comply with the requirements of *Minnesota Statutes*, sections 17.80 to 17.84, pursuant to *Minnesota Statutes* section 14.11, subdivision 2.

**Adoption and Review of Rules.** If no hearing is required, after the end of the comment period the 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 the agency contact person listed above.

Dated: 8 December 1995

Joyce M. Schowalter  
Executive Director

## Rules as Proposed

### **6301.0810 EXPERIMENTAL PROGRAMS; EXEMPTION FROM CERTAIN RULES.**

**Subpart 1. Eligibility for exemption.** A professional or practical nursing program approved by the board and desiring to experiment within the program is eligible to seek an exemption from the rules identified in subpart 2. To be eligible for the exemption, the program of theory and practice must evidence one or more of the following: development of a multidisciplinary or interdisciplinary educational program, major change in the focus of the curriculum, major change in the focus of student-client interactions, or another revision of a similar magnitude. The program shall continue to prepare graduates to practice safely, competently, and ethically within the full scope of practice as defined in *Minnesota Statutes*, section 148.171, paragraph (3), for professional nursing, or paragraph (5) for practical nursing. The program shall be prepared to implement the experimental program within 18 months after the exemption is granted by the board.

**Subp. 2. Exemption.** Following the board's approval of the application for exemption pursuant to subparts 1 and 3, the board shall exempt eligible nursing programs from compliance with all of the following rules: parts 6301.0800; 6301.1300, subparts 1 and 2, item B; 6301.1500; 6301.1600; 6301.1700; 6301.1800; 6301.1900; 6301.2000; 6301.2100; and 6301.2200. Partial exemptions shall not be granted.

**Subp. 3. Application for exemption.** A program seeking the exemption described in subpart 2 must provide the following, in writing, at least 30 calendar days prior to a board meeting:

- A. a description of the revised program and how it differs from the current program;
- B. a description of how the revised program will provide a program of theory and practice in professional or in practical nursing;
- C. a timeline for implementation of the revised program and its effects on current students;
- D. a plan for an evaluation of the revised program including how nursing competency will be evaluated and how feedback from employers of the graduates of the program will be obtained and utilized;
- E. the length of time for which the exemption is requested; and
- F. other relevant information necessary to the board's review.

**Subp. 4. Granting exemption; duration.** The board shall grant to a program that is eligible for exemption as described in subpart 1 and has submitted the required application materials, the exemption for the period requested which shall be not less than one year nor more than eight years.

**Subp. 5. Board monitoring of programs.** The director of an approved program granted the exemption described in subpart 2 shall submit a written report annually to the board by October 1 of each year on the status of the revised program. The report shall address the stage of implementation, revisions made since the previous annual report, results of evaluations of the revised program and how the results were utilized, changes planned for the next year, and other related information as requested by the board. The program director shall attest to compliance with remaining applicable rules in this chapter.

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## Proposed Rules

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### 6305.0500 REQUIREMENTS FOR LICENSURE WITHOUT EXAMINATION.

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

Subp. 3. **Fee.** The fee for licensure is ~~\$55~~ \$80. This fee must be paid to the board and must be received before evaluation of an applicant's qualifications for licensure. Personal checks are not accepted. Remittance must be in the form of United States currency, cashier's check, or money order. If for any reason a license is not issued, the fee is not refundable.

[For text of subs 4 to 14, see M.R.]

### 6310.3600 REGISTRATION FEES.

Subpart 1. **Amount.** The amount of fees shall be as follows:

- A. registration renewal, ~~\$50~~ \$55 per registration period;
- B. late application, ~~\$20~~ \$30;
- C. replacement license, \$20;
- D. replacement registration certificate, \$5;
- E. verification of licensure status, \$20;
- F. verification of examination scores, \$20;
- G. a copy of licensure application materials, \$20; and
- H. service charge for a dishonored check, ~~\$15~~ \$20.

Subp. 2. **Nonrefundable.** All fees are nonrefundable.

## Pollution Control Agency

### Proposed Permanent Rules Relating to Air Quality; Incorporation of Federal National Emission Standards for Hazardous Air Pollutants

#### Notice of Intent to Adopt Rules 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:

Sherryl Livingston  
Air Quality Division  
Minnesota Pollution Control Agency  
520 Lafayette Road North  
St. Paul, Minnesota 55155-4194  
Telephone: (612) 296-7832

**Subject of Rule and Statutory Authority.** The MPCA is proposing to adopt rules governing National Emission Standards for Hazardous Air Pollutants (NESHAPs) for Source Categories. Section 112 of the federal Clean Air Act mandates that the U.S. Environmental Protection Agency (EPA) develop technology based standards for major industrial sources that emit any of a list of 189 hazardous air pollutants. The technology based standards, referred to as maximum achievable control technology standards, will be embodied in the NESHAPs for Source Categories. EPA intends to write regulations for 174 source categories. As of September 15, 1995, there are 14 NESHAPs for Source Categories and General Provisions governing NESHAPs for Source Categories that are final and are now in effect. The statutory authority to adopt these rules is contained in *Minnesota Statutes* § 116.07, subd. 4 (1994). A copy of the proposed rules is published immediately after this notice.

**Comments.** You have until 4:30 p.m., January 29, 1996, to submit written comment in support of or in opposition to the proposed rule and any part or subpart of 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 29, 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 rules 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 its 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 29, 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 rules may affect small businesses as 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). However, since the rules that are being incorporated by reference are already in force and apply to specific air pollution sources in the state of Minnesota as a matter of federal law, the MPCA cannot change the applicable federal requirements through this state rulemaking. Additionally, the MPCA must show its ability to administer and enforce the applicable federal standards in order to maintain its delegation to administer these programs from EPA.

To the extent that a NESHAP may apply to small businesses in Minnesota, it also applies to small businesses in every state in the nation including Minnesota. Since the incorporation of federal standards by reference does not change the federal standards, this rulemaking does not impose any additional requirements on small businesses that are not already present as a matter of federal regulation. The incorporation of these federal rules into *Minnesota Rules* will make it easier for small businesses to find out what requirements apply to their emission facilities.

**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 to incorporate the federal NESHAPs by reference into *Minnesota Rules*, the MPCA has considered the economic impacts the proposed rules would have. Since the MPCA is incorporating existing federal rules into state rules for purposes of its delegations from EPA, the state rule amendments proposed in this rulemaking do not impose any additional costs on Minnesota businesses that are not already imposed as a matter of federal law upon Minnesota businesses by the federal regulations that are being incorporated by reference. This rule, therefore, does not have any economic impact on its own.

**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. Since the MPCA is incorporating existing federal rules into state rules for purposes of delegations from EPA, the state rule amendments proposed in this rulemaking do not impose any additional costs on local public bodies that are not already imposed as a matter of federal law upon local public bodies by the federal regulations that are being incorporated by reference. This rule, therefore, does not impose any costs on local public bodies on its own.

**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,

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## Proposed Rules

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 rules 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 Sherryl Livingston.

Charles W. Williams  
Commissioner

### Rules as Proposed

#### 7005.0100 DEFINITIONS.

[For text of subs 1 to 25, see M.R.]

Subp. 25a. **National Emission Standard for Hazardous Air Pollutants.** "National Emission Standard for Hazardous Air Pollutants" means a standard promulgated by the administrator of the United States Environmental Protection Agency under the Clean Air Act, *United States Code*, title 42, section 7412, ~~prior to November 15, 1990, that is as amended, including standards~~ still in effect pursuant to the savings clause that was enacted by the 1990 Clean Air Act amendments and codified at *United States Code*, title 42, section 7412(q).

[For text of subs 25b to 45, see M.R.]

#### **7011.7000 GENERAL PROVISIONS OF FEDERAL NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES INCORPORATED BY REFERENCE.**

For purposes of interpreting, applying, and enforcing National Emission Standards for Hazardous Air Pollutants for Source Categories that are incorporated by reference into this chapter, Code of Federal Regulations, title 40, sections 63.1, 63.2, 63.3, 63.4, 63.5, 63.6, 63.11, and 63.14, as amended, are adopted and incorporated by reference.

All requests, reports, applications, submittals, and other communications to the administrator pursuant to National Emission Standards for Hazardous Air Pollutants for Source Categories that are incorporated by reference into this chapter must be submitted to the commissioner.

#### **7011.7040 ORGANIC HAZARDOUS AIR POLLUTANTS FROM SYNTHETIC ORGANIC CHEMICAL MANUFACTURING INDUSTRY.**

A. Code of Federal Regulations, title 40, part 63, subpart F, as amended, entitled "National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry," is adopted and incorporated by reference, except that decisions made by the administrator under Code of Federal Regulations, title 40, section 63.102(b), are not delegated to the commissioner and must be made by the administrator.

B. Code of Federal Regulations, title 40, part 63, subpart G, as amended, entitled "National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations and Wastewater," is adopted and incorporated by reference, except that decisions made by the administrator under Code of Federal Regulations, title 40, section 63.150(i)(1) to (i)(4), are not delegated to the commissioner and must be made by the administrator.

#### **7011.7060 ORGANIC HAZARDOUS AIR POLLUTANTS FROM EQUIPMENT LEAKS.**

A. Code of Federal Regulations, title 40, part 63, subpart H, as amended, entitled "National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks," is adopted and incorporated by reference, except that decisions made by the administrator under Code of Federal Regulations, title 40, section 63.177, are not delegated to the commissioner and must be made by the administrator.

B. Code of Federal Regulations, title 40, part 63, subpart I, as amended, entitled "National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks," is adopted and incorporated by reference.

**7011.7080 COKE OVEN BATTERIES.**

Code of Federal Regulations, title 40, part 63, subpart L, as amended, entitled "National Emission Standards for Coke Oven Batteries," is adopted and incorporated by reference, except that decisions made by the administrator under Code of Federal Regulations, title 40, sections 63.302(d), 63.304(b)(6), 63.305(b), (d), and (e), 63.307(d), and section 2 of Method 303 in Appendix A of Part 63, are not delegated to the commissioner and must be made by the administrator.

**7011.7100 PERCHLOROETHYLENE DRY CLEANING FACILITIES.**

Code of Federal Regulations, title 40, part 63, subpart M, as amended, entitled "National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities," is adopted and incorporated by reference.

**7011.7120 CHROMIUM EMISSIONS FROM HARD AND DECORATIVE CHROMIUM ELECTROPLATING AND CHROMIUM ANODIZING TANKS.**

Code of Federal Regulations, title 40, part 63, subpart N, as amended, entitled "National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks," is adopted and incorporated by reference.

**7011.7140 ETHYLENE OXIDE EMISSIONS STANDARDS FOR STERILIZATION FACILITIES.**

Code of Federal Regulations, title 40, part 63, subpart O, as amended, entitled "Ethylene Oxide Emissions Standards for Sterilization Facilities," is adopted and incorporated by reference.

**7011.7160 INDUSTRIAL PROCESS COOLING TOWERS.**

Code of Federal Regulations, title 40, part 63, subpart O, as amended, entitled "National Emission Standards for Hazardous Air Pollutants Industrial Process Cooling Towers," is adopted and incorporated by reference.

**7011.7180 GASOLINE DISTRIBUTION.**

Code of Federal Regulations, title 40, part 63, subpart R, as amended, entitled "National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations)," is adopted and incorporated by reference, except that decisions made by the administrator under Code of Federal Regulations, title 40, sections 63.426 and 63.427(a)(5), are not delegated to the commissioner and must be made by the administrator.

**7011.7200 HALOGENATED SOLVENT CLEANING.**

Code of Federal Regulations, title 40, part 63, subpart T, as amended, entitled "National Emission Standards for Halogenated Solvent Cleaning," is adopted and incorporated by reference.

**7011.7220 EPOXY RESINS PRODUCTION AND NON-NYLON POLYAMIDES PRODUCTION.**

Code of Federal Regulations, title 40, part 63, subpart W, as amended, entitled "National Emission Standards for Hazardous Air Pollutants from Epoxy Resins Production and Non-Nylon Polyamides Production," is adopted and incorporated by reference.

**7011.7240 SECONDARY LEAD SMELTING.**

Code of Federal Regulations, title 40, part 63, subpart X, as amended, entitled "National Emission Standards for Hazardous Air Pollutants from Secondary Lead Smelting," is adopted and incorporated by reference.

**7011.7260 MARINE TANK VESSEL LOADING OPERATIONS.**

Code of Federal Regulations, title 40, part 63, subpart Y, as amended, entitled "National Emission Standards for Marine Tank Vessel Loading Operations," is adopted and incorporated by reference.

**7011.7280 PETROLEUM REFINERIES.**

Code of Federal Regulations, title 40, part 63, subpart CC, as amended, entitled "National Emission Standards for Petroleum Refineries," is adopted and incorporated by reference.

**7011.7300 MAGNETIC TAPE MANUFACTURING OPERATIONS.**

Code of Federal Regulations, title 40, part 63, subpart EE, as amended, entitled "National Emission Standards for Magnetic Tape Manufacturing Operations," is adopted and incorporated by reference.

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## Proposed Rules

### **7011.7320 AEROSPACE MANUFACTURING AND REWORK FACILITIES.**

Code of Federal Regulations, title 40, part 63, subpart GG, as amended, entitled "National Emission Standards for Aerospace Manufacturing and Rework Facilities," is adopted and incorporated by reference.

### **7017.1010 INCORPORATION OF MONITORING REQUIREMENTS BY REFERENCE.**

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

#### **Subp. 2. National Emissions Standards for Hazardous Air Pollutants.**

A. Code of Federal Regulations, title 40, section 63.8, as amended, entitled "Monitoring Requirements," is adopted and incorporated by reference.

B. Code of Federal Regulations, title 40, ~~part~~ section 61.14, as amended, entitled "Monitoring Requirements," is adopted and incorporated by reference.

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

### **7017.2010 INCORPORATION OF TEST METHODS BY REFERENCE.**

For the purpose of parts 7017.2020 to 7017.2060, the documents in items A to ~~C~~ D are incorporated by reference. These documents are subject to frequent change.

A. Code of Federal Regulations, title 40, part 60, Appendix A, as amended, entitled "Appendix A - Test Methods."

B. Code of Federal Regulations, title 40, part 63, Appendix A, as amended, entitled "Appendix A to Part 63 - Test Methods."

C. Code of Federal Regulations, title 40, part 61, Appendix B, as amended, entitled "Appendix B - Test Methods."

~~C~~ D. Code of Federal Regulations, title 40, part 51, Appendix M, as amended, entitled "Appendix M to Part 51 - Recommended Test Methods for State Implementation Plans."

### **7017.2015 INCORPORATION OF FEDERAL TESTING REQUIREMENTS BY REFERENCE.**

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

#### **Subp. 2. New Source Performance Standards.** The following are adopted and incorporated by reference:

A. Code of Federal Regulations, title 40, ~~part~~ section 60.8, as amended, entitled "Performance Tests," except that decisions made by the administrator under Code of Federal Regulations, title 40, ~~parts~~ sections 60.8(b)(2) and 60.8(b)(3), are not delegated to the commissioner and must be made by the administrator.

B. Code of Federal Regulations, title 40, ~~part~~ section 60.11, as amended, entitled "Compliance with Standards and Maintenance Requirements," except that decisions made under Code of Federal Regulations, title 40, ~~part~~ section 60.11(e), are not delegated to the commissioner and must be made by the administrator.

#### **Subp. 3. National Emission Standards for Hazardous Air Pollutants.** The following ~~is~~ are adopted and incorporated by reference:

A. Code of Federal Regulations, title 40, section 63.7, as amended, entitled "Performance Testing Requirements."

B. Code of Federal Regulations, title 40, ~~part~~ section 61.13, as amended, entitled "Emission Tests and Waiver of Emission Tests," except that decisions made by the administrator under Code of Federal Regulations, title 40, ~~part~~ section 61.13(h)(1)(ii), are not delegated to the commissioner and must be made by the administrator.

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

### **7019.0100 INCORPORATION OF NOTIFICATION AND RECORDKEEPING REQUIREMENTS BY REFERENCE.**

Subpart 1. **New Source Performance Standards.** Code of Federal Regulations, title 40, ~~part~~ section 60.7, as amended, entitled "Notification and Recordkeeping," is adopted and incorporated by reference.

#### **Subp. 2. National Emission Standards for Hazardous Air Pollutants.** The following are adopted and incorporated by reference:

A. Code of Federal Regulations, title 40, section 63.9, as amended, entitled "Notification Requirements."

B. Code of Federal Regulations, title 40, section 63.10, as amended, entitled "Recordkeeping and Reporting Requirements."

C. Code of Federal Regulations, title 40, ~~part~~ section 61.09, as amended, entitled "Notification of Startup."

~~B~~ D. Code of Federal Regulations, title 40, ~~part~~ section 61.10, as amended, entitled "Source Reporting and Waiver Request."

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

## Pollution Control Agency

### Proposed Permanent Rules Relating to Odorous Emissions

#### 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 29, 1996, a public hearing will be held at the date and location as follows:

DATE	PLACE	TIME
March 21, 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 Stuart Arkley at the address below after January 29, 1996, and before March 21, 1996.

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

Stuart Arkley  
Minnesota Pollution Control Agency  
Air Quality Division  
520 Lafayette Road North  
St. Paul, Minnesota 55155  
Telephone: (612) 296-7774  
Fax: (612) 297-8701

**Subject of Rule and Statutory Authority:** The MPCA is proposing to repeal its existing rules governing odorous emissions, *Minnesota Rules* 7011.0300 - 7011.0330, and replace those rules with new rules to be codified at *Minnesota Rules* ch. 7029. The existing odor rule is more than 20 years old and has become outdated in both its concepts and in its incorporated test methodology. It relies on stack emission limits and ambient air concentration limits, expressed in terms of 'odor units,' as the basis of a compliance standard and it incorporates a test method for measuring odor concentration. MPCA staff, the regulated community and the consultants that perform odor testing are well aware of the major deficiencies of the existing rules, which have become increasingly difficult to enforce. A technical advisory committee (TAC) including representatives of the regulated community, consultants and local government staff has assisted the MPCA in identifying problems with the existing rules and in drafting a new rule that would address those problems.

Feedlot odors are not regulated under the proposed rule. There has been considerable discussion on this issue both within the MPCA and with individuals and groups outside the MPCA and it has been decided that feedlot issues should not be resolved in this odor rule but should instead be addressed through rulemaking directed specifically at feedlot issues within the Water Quality Division.

The Air Quality Division (AQD) has drafted a rule that incorporates a new odor test method and limits the use of odor testing to that of a monitoring tool. There are no numerical limits in the proposed rule so testing is used only to assess the effectiveness of an odor reduction plan when the MPCA requires a facility to mitigate odorous emissions. The new rule uses community annoyance as the trigger for corrective action and defines community annoyance as a minimum number of complaints received in a specified time period. Additionally, the new rule clearly defines which types of sources are subject to various sections of the rule. This has been a

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## Proposed Rules

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problem in the past as the existing rules had an agribusiness exemption that was not clearly worded and the limitations of testing effectively limited the scope of the rule to less than the stated range of sources. 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 repeal rules concerning air pollution. The term air pollution is defined in *Minnesota Statutes* § 116.06, subd. 4 (1994). The definition includes odorous emissions, since odorous emissions are air contaminants that may interfere unreasonably with the enjoyment of life or property. 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 29, 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 Stuart Arkley 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 Stuart Arkley by 4:30 p.m. on January 29, 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 affect you in any way, you are encouraged to participate in the rulemaking process.

**Cancellation of Hearing:** The hearing scheduled for March 21, 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 Stuart Arkley after January 29, 1996, and before March 21, 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
March 21, 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.

This 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 Allen E. Giles. Judge Giles can be reached at:

Minnesota Office of Administrative Hearings  
Suite 1700  
100 Washington Square Building  
Minneapolis, Minnesota 55401-2138  
Phone: (612) 349-2543

**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. It is likely that some small businesses will be affected by the proposed new odor rules, but these same businesses are already affected by the existing odor rules. The MPCA does not believe that the requirements of the proposed new rules place any higher burden on small or larger business than do the requirements of the existing rules. For additional information regarding small business considerations, please refer to SONAR for this rule.

**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 anticipates that the proposed new odor rules will provide little or no change in the overall costs to Minnesota business when compared with the existing odor rules. Assuming that the old and new panel test requirements are of approximately equal cost, the requirements of an affected facility to test, mitigate and retest are similar to the approach under the existing rules, which was to test and retest if the first test exceeded the emission limits. By not requiring testing until a community annoyance is established, the MPCA has duly considered when it is reasonable to require testing expenditures for odors. The opportunity given under the proposed new rules to owners and operators of an odor source to reduce the odors before they become a community annoyance gives the owners and operators some control over MPCA involvement in resolving odor problems, and the attendant costs that come with MPCA involvement.

The MPCA understands that there may be some perception that costs will increase as a result of the odor mitigation and control requirements in the proposed new rules or as a result of the requirements that local units of government take an active role in documenting violations. The MPCA does not believe these perceptions are fully correct. First, if there is such an increase in mitigation and control requirements, it is only because of the difficulty in enforcing the existing rules and not due to a change in public opinion or MPCA analysis of the need to control particularly offensive sources of odor pollution. Second, the proposed new rules simply require local governments to document problems that are primarily local in nature.

**Impacts 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. The MPCA does not believe it is subject to these additional requirements because it has specifically exempted agricultural area sources, which are the major type of odor source within the agricultural sector, from this rule. Agricultural emission point sources are potentially affected by this rule but these type of sources are unlikely to be significant odor sources. Therefore, the overall effect of implementing this rule will be minimal for agricultural lands. MPCA staff expects that the new rules will have no more impact on agricultural sources than the existing rules, and the overall impact may be reduced due to expansion of the agribusiness exemption language.

The MPCA does recognize, however, that odors from some types of agricultural operations are a significant source of odor complaints. These sources are primarily area sources such as feedlots. The MPCA is continuing to consider appropriate means of addressing agricultural odors. In addition, the Feedlot and Manure Management Advisory Committee, a body mandated by the Minnesota Legislature, is investigating this problem through its own task force and the University of Minnesota has had state money allocated to it for research into feedlot odors. While the MPCA realizes that the number of citizen complaints regarding agricultural sources has increased in the last two years, primarily as the result of an increasing number of large scale hog farms, it does not believe the proposed odor rules (which historically have been directed to generic sources of odor) are well-suited to addressing agricultural odor problems. Since efforts are underway to consider more appropriate regulatory approaches, the MPCA has decided to defer further regulation of odors from agricultural area sources operations until these other analyses are more complete.

**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 impact of the proposed rules on local units of government is difficult to estimate as the rule is voluntary at the local level.

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The cost can be zero or it can be significant, depending on how the local unit of government plans to use this rule. The MPCA sees the proposed rules as a tool for local units of government which provides a statewide, systematic method of handling odor complaints and getting the MPCA involved in the more troublesome cases. As odor is already likely to be an issue as a nuisance at the local level in communities with odor sources, in many cases the local unit of government may be able to follow the new procedures by modifying existing practices rather than adding to the workload.

Some cost increases are likely at the local level if a local unit of government chooses to act thoroughly on all odor complaints, but have been minimized as far as possible at the advice of the MPCA's TAC members by keeping the procedures simple and non-technical.

**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* ch. 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 Stuart Arkley 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 Stuart Arkley 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

### Rules as Proposed

#### 7007.0100 DEFINITIONS.

[For text of subs 1 to 6, see M.R.]

Subp. 7. **Applicable requirement.** "Applicable requirement" means all the following as they apply to emissions units in a stationary source (including requirements that have been promulgated or approved by the EPA or the agency through rulemaking at the time of issuance but have future effective compliance dates):

A. any standard, or other requirement provided for in Minnesota's implementation plan approved or promulgated by the EPA under title I of the act (Program and Activities), including any revisions to that plan promulgated in *Code of Federal Regulations*, title 40, part 52, as amended (Approval and Promulgation of Implementation Plans), except rules related to odor in ~~parts 7011.0300 to 7011.0330~~ chapter 7029;

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

P. any standard or other requirement pursuant to the Standards of Performance for Stationary Sources under chapter 7011, except rules related to odor in ~~parts 7011.0300 to 7011.0330~~ chapter 7029;

[For text of items Q to U, see M.R.]

[For text of subs 8 to 28, see M.R.]

**7011.2220 OTHER ODOR CONTROL MEASURES REQUIRED.**

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

Subp. 4. **Enclosure of building.** Whenever dust, fumes, gases, mist, odorous matter, vapors, or any combination thereof escape from a building used for processing of animal matter in such manner and amount as to cause a ~~violation of parts 7011.0300 to 7011.0330~~ community annoyance under chapter 7029, the commissioner may instruct that the building or buildings utilized for processing, handling, and storage be tightly closed and ventilated so that all air, gases, and air or gas-borne material are treated by incineration or other effective means before discharge into the open air.

**7017.2020 PERFORMANCE TESTS GENERAL REQUIREMENTS.**

Subpart 1. **Testing required.** The owner or operator of an emission facility shall arrange to conduct a performance test to determine the characteristics and amount of emissions of air pollutants from any emission facility at the times required by an applicable compliance document, federal regulation, or *Minnesota rule* or statute and at additional times if the commissioner requests a performance test in order to:

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

E. determine the compliance status of an emission facility following a modification to the emission facility that the commissioner determines could cause an increase in the amount of emissions of any air pollutant from that facility; ~~or~~

F. determine the relative accuracy of a continuous emissions monitoring system; or

G. determine the compliance status of an emission facility when odorous emissions from that facility indicate the release of a regulated air pollutant.

EPA may request a performance test under this part for the reasons listed in items A to ~~F~~ G. When EPA requires a performance test under this subpart, and EPA directly administers the performance test, EPA will make the decisions that the commissioner makes under parts 7017.2001 to 7017.2060 for that performance test.

[For text of subs 2 to 5, see M.R.]

**Rules as Proposed (all new material)****ODOROUS EMISSIONS****7029.0005 SCOPE.**

Subpart 1. **Effect of rules.** This chapter describes how the agency will respond to complaints of odorous emissions except for emissions in subpart 2. Nothing in this chapter is intended to limit or otherwise affect the rights of local units of government to take additional or alternative action. Nothing in this chapter is intended to operate as a defense to an action at law based upon a public or private nuisance theory.

Subp. 2. **Agribusiness exception.** This chapter does not apply to the following agricultural sources and activities:

A. growing vegetation;

B. application of domestic fertilizer as defined in part 7020.0300, subpart 11, fertilizer as defined in *Minnesota Statutes*, section 18C.005, subdivision 11, and pesticides;

C. any agricultural source or activity where odorous emissions are not vented through an emission point; and

D. any agricultural source or activity within a building where odorous gases are emitted only as a result of normal building ventilation.

Subp. 3. **Administration of rules by local units of government.** A local unit of government may administer parts 7029.0040 to 7029.0110 after submitting written notification to the commissioner of its intention to do so.

**7029.0010 DEFINITIONS.**

Subpart 1. **Scope.** The definitions in part 7005.0100 apply to the terms used in this chapter unless the terms are otherwise defined in this part.

Subp. 2. **Community.** "Community" means the affected residential or business population surrounding an emission facility.

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## Proposed Rules

Subp. 3. **Community annoyance.** "Community annoyance" means the intermittent or continuous presence of objectionable or offensive odors as documented by a local unit of government and determined by the commissioner under part 7029.0030.

Subp. 4. **Emission point.** "Emission point" means a stack, chimney, vent, or other functionally equivalent opening where emissions are exhausted to the atmosphere.

Subp. 5. **Independent complaint.** "Independent complaint" means a single complaint from any one household or place of business. A second complaint from the same location or by the same person at a different location is not an independent complaint unless it relates to a separate odor incident on a different day.

Subp. 6. **Local unit of government.** "Local unit of government" means the elected body of government with jurisdiction over the community where an odor complaint is registered.

Subp. 7. **Odor dilution factor.** "Odor dilution factor" means the best-estimate dilution to threshold ratio for an odor panel and is a unitless number, represented by the symbol Z, determined and calculated by the procedures in part 7029.0080.

Subp. 8. **Odororous emission.** "Odororous emission" means that portion or portions of an air contaminant which results in the presence of an odor in the ambient air that is detectable beyond the property line of a stationary source.

### 7029.0020 ODOROUS EMISSIONS PROHIBITED.

Subpart 1. **Community annoyance prohibited.** No owner or operator of an emission facility, as defined by *Minnesota Statutes*, section 116.06, subdivision 10, shall cause or allow the emission facility to emit air contaminants or air pollution, as defined by *Minnesota Statutes*, section 116.06, subdivisions 2 and 4, in a manner that creates or contributes to a community annoyance.

Subp. 2. **Odororous emissions during breakdown.** No person shall operate any process, process equipment, fuel-burning equipment, or refuse-burning equipment if, during a period of equipment failure or a breakdown, the process or equipment is causing or permitting an odororous emission unless:

A. the owner or operator of the source of the odororous emissions notifies the local unit of government within one working day after the occurrence of the failure or breakdown and describes a corrective action program to be implemented within seven days of the start of the failure or breakdown;

B. the local unit of government authorizes operation on a temporary basis not to exceed 30 days from the failure or breakdown; and

C. temporary operation will not create an immediate serious public health or safety hazard.

No process or equipment which has an unreasonable failure or breakdown frequency, as determined by the local unit of government based upon the frequency and nature of complaints or nonconformity with item A, B, or C, shall be operated even on a temporary basis.

### 7029.0030 DETERMINATION OF COMMUNITY ANNOYANCE.

Subpart 1. **Commissioner determination.** The commissioner shall determine that a community annoyance exists if one or more local units of government submit complete documentation of the community annoyance to the Supervisor, Compliance Determination Unit, Compliance and Enforcement Section, Air Quality Division, Minnesota Pollution Control Agency. The local unit of government must also send a copy of the documentation, but not including the name, address, or telephone number of the complainants, to the alleged sources of the odororous emissions at the same time it is sent to the agency.

Subp. 2. **Documentation of community annoyance.** The commissioner shall consider documentation of a community annoyance complete if it includes:

A. an odor complaint summary on the form in part 7029.0105;

B. at least ten independent complaints made within a 90-day period from at least five different households or places of business on the complaint form in part 7029.0100;

C. an investigator's report on the complaint form in part 7029.0100 confirming the allegations in at least five of the independent complaints described in item B;

D. a map of the local area, showing the location of the alleged source of the odororous emissions and showing the location of each complainant at the time of the complaint and marking the wind direction at the time of each complaint;

E. records showing that the local unit of government provided notice of the complaints as set out in subpart 4; and

F. all responses received by the local unit of government to the notice provided in subpart 4.

Complaints related to approved temporary operations as described in part 7029.0020 will not be considered evidence of community annoyance.

Subp. 3. **Documentation of community annoyance in communities not densely populated.** The commissioner shall determine that a community annoyance exists based on less than the minimum number of independent complaints required in subpart 2 if:

- A. the population density of the community is less than 1,000 persons;
- B. at least one-half of the independent complaints have been confirmed through an investigation by a representative or agent of the local unit of government; and
- C. the local unit of government submits records to the commissioner which meet, to the extent possible, the requirements of subpart 2, together with a reasonable explanation of the reasons the commissioner should accept a lesser number of independent complaints as documentation of community annoyance.

Subp. 4. **Notification of alleged source of odorous emissions.** For each independent complaint included in its documentation under subpart 2 or 3, the local unit of government must include records showing that it gave the owner or operator of the alleged source of the odorous emissions notice of the complaint within one working day after the local unit of government received it. This notice may be made in person or by telephone or by facsimile and must describe the approximate time and nature of the event that is the subject of the complaint. The local unit of government must also include records showing that it made written confirmation of the notice within seven working days after receiving the complaint. All information other than the name, address, and telephone number of the complainant shall be made available to the owner or operator of the alleged source. The local unit of government shall document any unsuccessful attempts to contact the owner or operator and, provided that it has sent the written confirmation of the notice to the owner or operator within seven working days, the documentation will satisfy the requirements of this subpart.

#### **7029.0040 NOTICE OF COMMUNITY ANNOYANCE.**

Upon finding the existence of a community annoyance, the commissioner shall send a written notice to the owner or operator of each emission facility that the commissioner believes to be a source of the community annoyance. The notice must inform the owner or operator of the commissioner's finding and must request a response as provided in part 7029.0050.

#### **7029.0050 REQUIRED RESPONSE TO NOTICE OF COMMUNITY ANNOYANCE.**

Subpart 1. **Applicability.** The requirements of this part apply only to the owners and operators of emission point sources that the commissioner believes to be sources of community annoyance. Sources of community annoyance that are not emission points are not subject to the requirements of this part. However, the owner or operator of an emission facility with no odor emitting emission points must submit a response which identifies all of the odor sources that are not emission points to the commissioner within 30 days of receiving a notice under part 7029.0040 in order for the commissioner to consider the emission facility exempt from this part.

Subp. 2. **Immediate odor reduction required.** An owner or operator who receives a notice under part 7029.0040 must immediately implement odor reduction measures wherever odor reduction can be achieved by minor operational or procedural changes at the emission facility.

Subp. 3. **Odor reduction plan and test plan.** Within 30 days of receiving a notice under part 7029.0040, the owner or operator must submit to the commissioner for approval a proposed odor reduction plan and a proposed test plan. The proposed odor reduction plan must include the following:

- A. a detailed description of the measures that the owner or operator has taken and will take to mitigate the community annoyance and the dates by which those measures have been or will be implemented;
- B. a detailed description of the measures that the owner or operator has taken or will take to inform the affected community of the requirements of the odor reduction plan; and
- C. a detailed description of all potential sources of the odorous emissions, including emission points and other odor sources at the emission facility, and a diagram showing the location of each source.

The proposed test plan must meet the content requirements of part 7017.2030 and must include, for each emission point reasonably expected to be causing or contributing to the community annoyance, a proposed testing program meeting the requirements of part 7029.0080 and a schedule for conducting the tests.

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### 7029.0060 COMMISSIONER REVIEW OF PROPOSED ODOR REDUCTION PLAN AND PROPOSED TEST PLAN.

The commissioner shall review the proposed odor reduction plan and the proposed test plan submitted under part 7029.0050. The commissioner shall reject the proposed odor reduction plan or propose an alternate plan if the commissioner finds that the submitted plan lacks sufficient detail, proposes technology known to be ineffective, fails to define operational procedures that will ensure continued operation at a reduced level of odorous emissions, or if the schedule for implementation appears unnecessarily long. The commissioner shall approve the proposed test plan if it meets the content criteria of part 7017.2030 and if the scope of testing and the schedule for conducting the tests is consistent with the approved odor reduction plan.

### 7029.0070 IMPLEMENTATION OF APPROVED ODOR REDUCTION PLAN AND TEST PLAN; REPORTING; RETESTS; ADDITIONAL ENFORCEMENT ACTION.

Subpart 1. **Implementation.** Upon receipt of the commissioner's written approval of the odor reduction plan and test plan, the owner or operator must implement the plans in accordance with terms and time frames in the approved plans. All performance tests conducted under the odor reduction plan and test plan must be performed by a testing company qualified to conduct odor performance tests as provided in part 7029.0080.

Subp. 2. **Reporting.** Within 30 days after all performance tests are complete, the owner or operator must submit to the commissioner a written test report showing the results of the tests and, within 90 days after the tests are complete, the owner or operator must submit to the commissioner a microfiche version of the test report.

Subp. 3. **Retests.** Within 30 days after completion of all requirements of the odor reduction plan and test plan approved under part 7029.0060, the owner or operator must conduct a retest for odor on each emission point tested under the plan. The retest shall be conducted by the same qualified testing company that conducted the initial tests and using, to the extent possible, the same odor panel members.

Subp. 4. **Additional enforcement action suspended.** The odor reduction plan and test plan shall be considered to be fulfilled and the commissioner may take no further enforcement action under this part if one or more of the following objectives are met:

A. the frequency of odor complaints is reduced to a level where no community annoyance exists;

B. the local unit of government elects, based upon its own procedures and evaluations, not to submit a further odor complaint summary to the commissioner; or

C. the commissioner has issued a notice of community annoyance under this chapter on at least two prior occasions, has required on each occasion that an odor reduction plan and test plan be implemented, has found that the odor reduction plans and test plans have been fulfilled, and has concluded that further action to resolve residual odor issues would be better addressed on a local level by private nuisance action or some other nonagency action.

Subp. 5. **Other enforcement options not limited.** Nothing in this chapter is intended to limit the enforcement options available to the Minnesota Pollution Control Agency or its commissioner to amend, revoke, or deny issuance of a permit to the owner or operator of the facility that the commissioner concludes is a source of a community annoyance or to take appropriate enforcement to remedy violations of other agency laws, rules, or permits.

### 7029.0080 ODOR TESTING PROCEDURES.

Subpart 1. **General requirements.** Performance tests for odor shall be subject to the requirements of parts 7017.2001 to 7017.2045 except for the requirements in parts 7017.2020, subpart 5, and 7017.2045, subpart 6.

Subp. 2. **Test method.** Odor testing of emission points shall conform to American Society for Testing and Materials (ASTM) method E679-91 (1991), Determination of Odor and Taste Thresholds by a Forced-Choice Ascending Concentration Series Method of Limits, using a triangle dynamic olfactometer. The sampling and any other procedures required in addition to ASTM E679-91 shall be conducted as specified in this part. ASTM E679-91 is subject to frequent change and is incorporated by reference and is available through the Minitex interlibrary loan system or from the Minnesota State Law Library, 25 Judicial Center, Saint Paul, Minnesota 55155.

Alternate test procedures may be proposed in the test plan and shall be approved by the commissioner if:

A. the commissioner determines that the test procedures required by this part are not technically feasible for the proposed test; or

B. the alternate procedures have been proven in field test conditions and accepted by ASTM or an equivalent scientific body as equally or more reliable than the required procedures.

Subp. 3. **Sampling procedure.** A performance test for odorous emissions shall consist of three test runs meeting the criteria in items A to E.

A. Each test run shall consist of an integrated gas sample taken over a period of ten to 30 minutes and consecutive runs shall be separated by a period of at least 30 minutes.

B. A sample volume of at least 15 liters shall be collected at a rate of 1.5 liters per minute through food-grade Tygon tubing, or its equivalent, using a peristaltic pump or an equivalent pump constructed of odor-free, nonreactive materials.

C. Tedlar sampling bags shall be used except that alternate materials shall be accepted if it can be demonstrated to the commissioner that the alternate meets or exceeds the properties of Tedlar for resistance to retention of odorous materials. Low density polyethylene bags shall be accepted for the results of odor testing showing an odor dilution factor of 100 or greater.

D. Each bag shall be prefilled with a sample of the gas stream to be tested and then evacuated before starting the sampling portion of the performance test. The bag shall be filled to at least 90 percent of its capacity for both the prefiling requirement and the extraction of the sample.

E. A source specific sampling protocol shall be included in the test plan if the source has a high exhaust gas temperature or high moisture content or in any other case where sample collection or storage problems can be reasonably anticipated. Stainless steel flexible tubing may be used as part of a gas cooling system, and gas samples may be diluted with a known ratio of dry, odor-free air prior to collection in the bag in order to minimize moisture condensation in the bag.

Subp. 4. **Sample analysis.** The performance test samples shall be presented to the odor panel within 24 hours of completion of sampling. An odor panel must include at least nine members that meet the screening requirements of this part. If more than nine panel members are used, the results shall be valid if at least nine meet the screening requirements.

Subp. 5. **Odor panel instructions and questionnaire.** Each panelist shall be given written instructions, prior to presentation of the samples, that explain how to prepare for the odor panel and the factors that have a negative affect on olfactory sensitivity. Each panelist must acknowledge receipt and understanding of the instructions. Each panel member must complete and sign the questionnaire set out in part 7029.0110. The results for any panel member who answers "yes" to question number 7, 8, or 9 or to two or more of any of the ten questions or who fails to sign the form shall be rejected. The results of the performance test shall be rejected if less than nine odor panelists satisfy the requirements of this subpart.

Subp. 6. **Panel selection.** Each person shall be screened using the procedure in items A to C before being accepted as an odor panelist.

A. The prospective panelist shall be presented with three liquid samples in clean, odorless containers. One sample will contain a 100 ppm by weight solution of 1-butanol in distilled water to provide a 10 ppm concentration of 1-butanol in the vapor space above the liquid solution. The other two samples will contain distilled water only. Each liquid sample shall be maintained between 68 and 78 degrees Fahrenheit during the screening process. If the prospective panelist cannot distinguish the odor of the 1-butanol solution, that person cannot be used on the odor panel. Preparation and presentation of the liquid samples shall be in accordance with the American Society for Testing and Materials (ASTM) method E544-75 (1993), Referencing Suprathreshold Odor Intensity. ASTM E544-75 is subject to frequent change and is incorporated by reference and is available through the Minitex inter-library loan system or from the Minnesota State Law Library, 25 Judicial Center, Saint Paul, Minnesota 55155.

B. Each individual's odor detection threshold shall be determined and compared to the mean value for the accepted odor panelists. This shall be done by filling a sample bag with air containing 200 ppm by volume of 1-butanol vapor and evaluating the sample using the triangle dynamic olfactometer. The individual and mean odor detection thresholds shall not be considered as a measure of precision, bias, or error in the odor test results.

C. The screening shall occur once during the 24-hour period prior to sample presentation and a period of at least one hour shall elapse between the end of the screening procedure and the start of the presentation of test samples.

Subp. 7. **Triangle dynamic olfactometer operating criteria.** The criteria in items A to H shall be observed in addition to, or as stated in, ASTM method E679-91.

A. Six odor dilution levels shall be employed.

B. The dilution factor from one dilution level to the next shall be three and the range of odor dilution to threshold ratios shall be approximately ten to 2,430, except that the panel leader may adjust the dilution levels to accommodate very strong or very weak odors.

C. The diluted odor samples shall be presented in order, starting with the least concentrated (highest dilution) sample.

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## Proposed Rules

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D. At each dilution level there shall be three sniffing ports, identical in appearance, with one port containing diluted odor sample and the other two containing nonodorous air blanks.

E. The test procedure shall be conducted in a well-ventilated room that is essentially free of background odor. The air from this room shall be used as the diluent for the odor samples and for presentation of blank samples.

F. The air flow rate from each sniffing port shall be 0.5 liters per minute and all sniffing ports at each of the six odor dilution levels shall be operating simultaneously.

G. An electrical signal panel shall be used, with lights corresponding to the three sniffing ports at each of the six dilution levels and a push-button adjacent to each sniffing port that will activate the appropriate light to indicate the panelist's choice. The panel leader shall record the panelist's choice by this method and no other form of communication shall take place between the panelist and panel leader.

H. The flow of odor sample to each of the six dilution levels shall be calibrated using a soap film flow meter, or its equivalent, mounted on the olfactometer. The flow of dilution air to each dilution level shall be calibrated using a standard rotameter, or its equivalent, mounted on the olfactometer.

**Subp. 8. Panel test procedure.** Each panelist shall follow the procedure in items A to G.

A. Start at the first odor dilution level (most dilute sample).

B. Sniff the effluent air from each of the three sniffing ports.

C. Press the push-button corresponding to the port where an odor is detected or the port that seems different from the other two, as applicable. If the three ports seem indistinguishable, a choice must still be made. The panel leader will record the response on an appropriate form.

D. Move to the next port in sequence and repeat the procedures in items A to C until all ports have been assessed.

E. The next panelist follows the same procedures without delay when the previous panelist moves away from the olfactometer. The panelist shall not be allowed to observe preceding panelists making their choices.

F. The flow calibrations described in subpart 7, item H, shall be performed immediately before and after the panel test procedure portion of the performance test.

G. For each panelist, a minimum of 30 minutes shall elapse before evaluation of the next bag sample, and each panelist shall perform a maximum of six bag sample evaluations and one screening procedure in any one day.

**Subp. 9. Calculation of panel test result.** A panelist's evaluation can be quantified when at least two consecutive correct choices have been made and the correctness of the choices is confirmed by the panel leader. The odor dilution factor Z for the panelist is the geometric mean of that dilution level at which an incorrect choice occurred and the next dilution level at which a correct choice occurred. The value of Z for the panel as a whole is the geometric mean of the best-estimate Z values of the individual panelists.

**Subp. 10. Witnessing.** Any part of the odor determination process, including field sampling and the odor panel procedure at the place of analysis, may be witnessed by the agency or an authorized employee of the agency or by a representative of the local unit of government.

### 7029.0100 COMPLAINT FORM.

(NOTE: PERSONS FILLING IN THIS FORM ON BEHALF OF ANOTHER MUST READ THE FOLLOWING PARAGRAPH BEFORE TAKING DOWN INFORMATION FOR A COMPLAINANT)

This form provides the information needed to ask the Minnesota Pollution Control Agency (MPCA) for help in resolving odor problems. In addition to basic information about the odor problem itself, this form asks you for your name, address, and telephone numbers. This information is required by MPCA's odor rules and is needed to document the number of complaints and odor incidents in our community. If the information is not provided, your complaint may not be addressed under the MPCA's odor rules. Your name, address, and telephone numbers are not public data, but will be available to government staff with responsibility for enforcing the MPCA's odor rules.

#### ODOR COMPLAINT RECORD

Complainant name (confidential): \_\_\_\_\_

Address (confidential): \_\_\_\_\_

City (confidential): \_\_\_\_\_ Zip: \_\_\_\_\_

Home Phone (confidential): \_\_\_\_\_

Work Phone (confidential): \_\_\_\_\_

Can address (nearest intersection only) be disclosed?: \_\_\_\_\_

**PART 1: COMPLAINT DETAILS**

Date Received: \_\_\_\_\_ Time: \_\_\_\_\_ am/pm Recorded by: \_\_\_\_\_

Alleged Source of odor: \_\_\_\_\_

Address: \_\_\_\_\_

Description of Complaint: (try to associate with familiar odors): \_\_\_\_\_

Where were you when you noticed the problem?: \_\_\_\_\_

What was the date and time? Date: \_\_\_\_\_ Time: \_\_\_\_\_ am/pm to \_\_\_\_\_ am/pm

Was the odor continuous, intermittent, or fleeting?: \_\_\_\_\_

What percent of the time was the odor noticeable?: \_\_\_\_\_

Have you reported this problem before?: \_\_\_\_\_

To this office?: \_\_\_\_\_ If no, then where?: \_\_\_\_\_

Other comments: \_\_\_\_\_

**PART 2: INVESTIGATOR'S REPORT:**

Investigator: \_\_\_\_\_ Field inspection conducted?: \_\_\_\_\_

Date and time of field inspection: \_\_\_\_\_

Complaint confirmed (odor detected at location of complaint)?:

Indicate wind direction at time and location of complaint: \_\_\_\_\_

Other action taken: \_\_\_\_\_

Findings: \_\_\_\_\_

Alleged source(s) contacted on: \_\_\_\_\_ Person contacted: \_\_\_\_\_

(Must be within one working day, direct or by telephone.)

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Written follow-up within seven days.)

Response by alleged source: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(attach copies of written responses)

Complaint logged by (sign): \_\_\_\_\_ Date: \_\_\_\_\_

## 7029.0105 SUMMARY FORM.

### ODOR COMPLAINT SUMMARY

Name and address of local unit of government filing complaint record:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date Filed: \_\_\_\_\_ MPCA Date Stamp:

Number of independent complaints: \_\_\_\_\_

(must be ten or more)

Number of complaints confirmed by inspection: \_\_\_\_\_

(must be five or more)

Date of first complaint: \_\_\_\_\_

Date of 10th complaint: \_\_\_\_\_

Date of most recent complaint: \_\_\_\_\_

Signature of elected official or delegated representative:

\_\_\_\_\_  
Date: \_\_\_\_\_

## 7029.0110 ODOR PANELIST QUESTIONNAIRE

### ODOR PANELIST QUESTIONNAIRE

Name of Panelist: \_\_\_\_\_ Age: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Employer: \_\_\_\_\_

Occupation: \_\_\_\_\_

A) Within the last hour have you:

- |   |        |
|---|--------|
| 1. Smoked or chewed tobacco?                        | YES NO |
| 2. Chewed gum?                                      | YES NO |
| 3. Consumed coffee, tea, or other beverages?        | YES NO |
| 4. Consumed alcohol?                                | YES NO |
| 5. Eaten?   | YES NO |
| 6. Been subjected to solvents or distinctive odors? | YES NO |

B) Other Olfactory Criteria:

- |   |        |
|---|--------|
| 7. Are you suffering from a cold or cold-like symptoms? | YES NO |
|---|--------|

- 8. Do you have allergies or olfactory disorders affecting your sense of smell? YES NO
- 9. Does your work expose you to strong odors? If "yes," explain: \_\_\_\_\_ YES NO
- 10. Are you wearing a perfumed product? YES NO

"I have read and understood the instructions given to me before participating on this odor panel and I certify that the above answers are true and accurate."

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Rules as Proposed**

**7035.2835 COMPOST FACILITIES.**

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

**Subp. 3. Operation requirements for a yard waste compost facility.**

A. Odors emitted from the facility must not exceed the limits specified in parts 7011.0100 to 7011.0115, ~~7011.0300 to 7011.0410~~, 7011.1500 to 7011.1515, 7011.1600 to 7011.1625, 7011.2200 to 7011.2220, 7011.2300, and 7023.0100 to 7023.0120, and chapter 7029.

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

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

**Subp. 6. Operation requirements for a solid waste compost facility.**

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

B. Odors emitted by the facility must not exceed the limits specified in parts ~~7011.0300 to 7011.0330~~ and 7011.2200 to 7011.2220 and chapter 7029.

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

[For text of subps 7 to 9, see M.R.]

**7035.2875 REFUSE-DERIVED FUEL PROCESSING FACILITIES.**

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

**Subp. 3. Operation and maintenance manual.** The owner or operator of a refuse-derived fuel processing facility must prepare an operation and maintenance manual and keep the manual at the facility. The manual must contain the information needed to operate the facility properly and meet the following requirements:

A. Odors emitted by the facility must ~~not exceed the limits as specified in~~ comply with the applicable provisions of parts ~~7011.0300 to 7011.0330~~ and 7011.2200 to 7011.2220 and chapter 7029.

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

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

**7040.2800 PUBLIC HEALTH AND SAFETY.**

**Subpart 1. Performance standard.** A sewage sludge landspreading facility shall be designed, constructed, operated, and maintained so that it will not adversely impact the health and safety of the public living near or passing by the facility. The facility shall comply with applicable provisions of ~~parts 7011.0300 to 7011.0330~~ chapter 7029 of the Minnesota Pollution Control Agency at the facility boundary.

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

**REPEALER.** Minnesota Rules, parts 7011.0300; 7011.0305; 7011.0310; 7011.0315; 7011.0320; 7011.0325; 7011.0330; and 7011.2215, are repealed.

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## Proposed Rules

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### Department of Public Safety

#### Driver and Vehicle Services Division

#### Proposed Permanent Rules Relating to Deputy Registrars

#### DUAL NOTICE: 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 Department of Public Safety intends to adopt a permanent rule 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 rule within 30 days or by 4:30 p.m. on January 29, 1996, a public hearing will be held on March 5, 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 29, 1996, and before March 5, 1996.

**Agency Contact Person.** Comments or questions on the rule and written requests for a public hearing on the rule must be submitted to: Larry Ollila, Department of Public Safety, Room 124 Transportation Building, 395 John Ireland Boulevard, St. Paul, MN 55155, by telephone at (612) 296-4766 or by fax at, (612) 282-6061.

**Subject Of Rule And Statutory Authority.** The Department has proposed amendments to *Minnesota Rules*, part 7406.0100 to 7406.2600 relating to deputy registrars. The deputy registrar rule provides guidelines for the establishment of a deputy registrar office, appointment of a deputy registrar, operation of a deputy registrar office, reporting and depositing requirements, and enforcement mechanisms for deputy registrar violations.

The proposed rule amendment updates the rule since the 1988 amendment. Clarification has been made to existing sections of the rule. In addition, new sections have been added to the rule which establish appointment procedures for deputy registrars and discontinuance procedures for deputy registrar appointments.

The statutory authority to adopt the rule is *Minnesota Statutes*, section 299A.01, subdivision 6, and section 14.06. A copy of the proposed rule is published in the *State Register*. A free copy of the rule is available upon request from the agency contact person.

**Comments.** You have until 4:30 p.m., January 29, 1996, to submit written comment in support of or in opposition to the proposed rule or any part or subpart of the rule. 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 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 agency contact person by 4:30 p.m. on January 29, 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 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.

**Modifications.** The proposed rule 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 rule as 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 rule affects you in any way, you are encouraged to participate in the rulemaking process.

**Cancellation Of Hearing.** The hearing scheduled for March 5, 1996, will be canceled if the Department does not receive requests from 25 or more persons that a hearing be held on the rule. 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 the agency contact person listed above at (612) 296-4766 after January 29, 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 rule, a hearing will be held following the procedures in *Minnesota Statutes*, sections 14.14 to 14.20. The hearing will be held on March 5, 1996, in Conference 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, 100 Washington Avenue South, Minneapolis, Minnesota 55401-2138, telephone (612) 341-7609.

**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 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 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 period. This rule hearing procedure is governed by *Minnesota Rules*, parts 1400.0200 to 1400.1200, and *Minnesota Statutes* sections 14.14 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 from the agency contact person. This Statement describes the need for and reasonableness of each provision of the proposed rule. 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 the agency person at the address and 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 this rule, the Department has considered the requirements of *Minnesota Statutes*, section 14.115, in regard to the impact of the proposed rule on small businesses. The adoption of the rule will directly affect small businesses. The majority of deputy registrar offices are small businesses.

In developing the rule, the department met with an advisory task force made up of several deputy registrars to obtain the deputy registrar's input on the discussion of the rule amendments. During the rule development process, the department considered and adopted alternative methods of regulation that would reduce the impact of this rule on small businesses. For example, the department has proposed several variance procedures in the rule that allows for flexibility in the: move of an existing office; meeting of certain space requirements for offices; processing of incomplete motor vehicle transactions; and of providing service to customers outside the deputy registrar's service area. More information regarding these and other methods and procedures that contain less stringent requirements for deputy registrars is found in the rule-by-rule analysis 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 this rule 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 rule.

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

**Departmental Charges.** *Minnesota Statutes*, section 16A.1285, subdivision 4 and 5, do not apply because the rule does not establish or adjust departmental charges.

**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 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 want to be so notified, or wish to receive a copy of the adopted rule, submit your request to the agency contact person 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 rule. 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 rule 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 rule is adopted and filed with the Secretary of State. The Department's Notice Of Adoption must be mailed on the same day that the rule is filed. If

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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 rule with the Secretary of State.

Dated: 7 December 1995

Michael S. Jordan, Commissioner  
Department of Public Safety

### Rules as Proposed

#### 7406.0100 DEFINITIONS.

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

Subp. 2. [See repealer.]

Subp. 3. [See repealer.]

Subp. 4. [See repealer.]

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

Subp. 6. **Municipality.** "Municipality" includes a statutory city, home rule charter city, and town, or township.

**Subp. 7. Approved office location.** "Approved office location" means a location in a municipality that has been approved by the registrar as meeting the requirements of part 7406.0300 but for which a deputy registrar appointment has not been made.

**Subp. 8. Certificate of appointment.** "Certificate of appointment" means the documents appointing the deputy registrar.

**Subp. 9. Collected or collection.** "Collected" or "collection" means the:

A. receipt of the payment of registration fees and taxes paid by the customer.

B. receipt by the deputy registrar from the customer of the completed motor vehicle and other application documents for the transaction; and

C. issuance of the required inventory for the transaction to the customer by the deputy registrar.

**Subp. 10. Corporation.** "Corporation" means a corporation governed by *Minnesota Statutes*, chapter 302A.

**Subp. 11. County auditor.** "County auditor" means the county auditor elected in accordance with *Minnesota Statutes*, chapter 384 or, if the position of county auditor has been abolished or combined with another county office under *Minnesota Statutes*, section 375A.04, the principal county officer or county office that performs the majority of the functions formerly performed by the position of county auditor.

**Subp. 12. Conviction of crime or crimes.** "Conviction of crime" or "crimes" means convictions of felonies, gross misdemeanors, and misdemeanors for which a jail sentence may be imposed.

**Subp. 13. Deputy registrar.** "Deputy registrar" means a county auditor or registrar-appointed individual, governmental entity, American Automobile Association, or corporation including its owners, officers, and five percent shareholders.

**Subp. 14. Discontinuance or discontinued.** "Discontinuance" or "discontinued" means the immediate suspension, suspension, or revocation of a deputy registrar appointment.

**Subp. 15. Existing office.** "Existing office" means a deputy registrar office for which the location has been approved and the appointment of the deputy registrar has been made by the registrar, as specified in the certificate of appointment.

**Subp. 16. Five percent shareholder.** "Five percent shareholder" means a person holding a direct or indirect financial interest of five percent or more in a corporation.

**Subp. 17. Incomplete motor vehicle transaction.** "Incomplete motor vehicle transaction" means a motor vehicle transaction that has not been collected by the deputy registrar.

**Subp. 18. Inventory.** "Inventory" means license plates, temporary registration permits, month sticker, and motor vehicle registration validation and weight stickers, including, but not limited to: passenger class validation sticker, gross vehicle weight validation sticker, fee validation sticker, and weight designation sticker.

Subps 19. and 20. [See renumbering instruction.]

**Subp. 21. Registrar.** "Registrar" means the registrar of motor vehicles of Minnesota, acting directly or through authorized agents. Under *Minnesota Statutes*, section 168.33, the commissioner of public safety is the registrar of motor vehicles.

**Subp. 22. Office.** "Office" means an existing office unless otherwise specified.

**Subp. 23. Person.** "Person" means an individual, corporation, or governmental organization.

**Subp. 24. Proposed office location.** “Proposed office location” means a location that has been submitted to the registrar for consideration as a deputy registrar existing office under part 7406.0300, or a move under part 7406.0330.

**Subp. 25. Qualified newspaper.** “Qualified newspaper” means a newspaper that meets the requirements of Minnesota Statutes, chapter 331A.

**Subp. 26. Sufficient cause to believe.** “Sufficient cause to believe” means grounds that are put forth in good faith; that are not arbitrary, irrational, unreasonable, or irrelevant; that make the proposition asserted more likely than not; and that are based on at least one of the following sources:

- A. written information from an identified person;
- B. facts or statements by the applicant or deputy registrar;
- C. court documents, state records, and police records; or
- D. facts of which the registrar or the registrar’s employees have personal knowledge.

**7406.0300 ESTABLISHING NEW OFFICE OR APPOINTING NEW LOCATION OF DEPUTY REGISTRAR OFFICE.**

**Subpart 1. Hennepin and Ramsey counties.** The following conditions listed in items A to E must be met before a new proposed deputy registrar office location is approved or a new deputy registrar is appointed in Ramsey or Hennepin county:

A. The proposed office location must not be located within a five-mile radius of an existing office.

B. The estimated number of applications for registration transactions that a new deputy registrar proposed office will process annually must be at least 35,000. The number of applications for registration transactions will be estimated as 30 percent of the applications for registration transactions processed within the preceding calendar year by existing deputy registrar offices located within a radius of the proposed new office location of over five miles and less than 9-1/2 miles.

C. The proposed office location may not be established if a the use of the percentage of applications for registration submitted to transactions processed by an existing deputy registrar office is used to establish a new deputy registrar proposed office; that percentage may not be used again to establish another office within a two-year period would reduce the number of transactions to less than:

- (1) 35,000 for an existing office located in Hennepin or Ramsey county;
- (2) 20,000 for an existing office located in an area under subpart 1a; or
- (3) 4,000 for an existing office located in an area under subpart 2.

D. If the use of a percentage of applications for registration submitted to transactions processed by an existing deputy registrar office, was used to establish a new deputy registrar office, would reduce the number of applications to below 35,000 for the existing office, the proposed new deputy registrar office may not be established that percentage may not be used again in consideration of another proposed office within a two-year period. The two-year period starts from the date the deputy registrar was appointed.

E. An application for appointment as a deputy registrar A proposed office location may not be considered within a two-year period following the establishment of a new deputy registrar office if the applicant’s office is proposed to be located office location is within ten miles a ten-mile radius of the newly established an existing office that was established within the last two years. The two-year period starts from the date the deputy registrar was appointed.

B. The proposed new office must not be located within a five-mile radius of an existing deputy registrar office.

**Subp. 1a. Other metropolitan counties; municipalities with over 50,000 population.** The following conditions listed in items A to E must be met before a new deputy registrar proposed office location is approved or a new deputy registrar is appointed in a metropolitan county, not including Hennepin and Ramsey counties, or in a municipality with a population exceeding 50,000, not including municipalities in Hennepin and Ramsey counties:

A. The proposed office location must not be located within a five-mile radius of an existing office.

B. The estimated number of applications for registration transactions that a new deputy registrar proposed office location will process annually must be at least 20,000. The number of applications for registration transactions will be estimated as the largest number computed in subitem (1), (2), or (3):

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(1) 30 percent of the applications for registration transactions processed within the preceding calendar year by existing deputy registrar offices located within a radius of the proposed new office location of over five miles but less than 6-1/2 miles;

(2) 20 percent of the applications for registration transactions processed within the preceding calendar year by existing deputy registrar offices located within a radius of the proposed new office location of at least 6-1/2 miles but less than eight miles; or

(3) ten percent of the applications for registration transactions processed within the preceding calendar year by existing deputy registrar offices located within a radius of the proposed new office location of at least eight miles but less than 9-1/2 miles.

C. The proposed office location may not be established if the use of a percentage of applications for registration submitted to transactions processed by an existing deputy registrar office is used to establish a new deputy registrar proposed office; that percentage may not be used again to establish another office within a two-year period would reduce the number of transactions to less than:

(1) 35,000 for an existing office located in an area under subpart 1;

(2) 20,000 for an existing office located in an area under this subpart; or

(3) 4,000 for an existing office located in an area under subpart 2.

D. If the use of a percentage of applications for registration submitted to transactions processed by an existing deputy registrar office, was used to establish a new deputy registrar office, would reduce the number of applications to below 20,000 for the existing office, the proposed new deputy registrar office may not be established that percentage may not be used again in consideration of another proposed office within a two-year period. The two-year period starts from the date the deputy registrar was appointed.

E. An application for appointment as a deputy registrar A proposed office location may not be considered within a two-year period following the establishment of a new deputy registrar office if the applicant's office is proposed to be located office location is within ten miles a ten-mile radius of the newly established existing office that was established within the last two years. The two-year period starts from the date the deputy registrar was appointed.

B. The proposed new office must not be located within a five-mile radius of an existing deputy registrar office.

Subp. 2. Other areas. In all other municipalities not included in subpart 1 or 1a, the following conditions listed in items A to E must be met before a new deputy registrar proposed office location is approved:

A. The estimated number of applications for registration that a new deputy registrar office will process annually must be at least 4,000. The number of applications for registration will be estimated as follows: 20 percent of the applications for registration processed within the preceding year by existing deputy registrar offices located within 20 miles of the proposed new office; or, if there is no existing deputy registrar office located within 20 miles of the proposed new office, the total number of new car sales multiplied by four, made by all new car dealers within 25 miles of the proposed new office as determined by a survey taken by the registrar, plus one-half the population of the municipalities that are closer to the new proposed office than to an existing deputy registrar office.

B. The proposed new office location must not be located within a 15-mile radius of or 25 minutes driving time from of an existing deputy registrar office, except that:

(1) in municipalities having a population of 25,000 to 50,000, a maximum of two existing offices may be established and the proposed office location must not be located within a five-mile radius of an existing office in that municipality; and

(2) the proposed new office location must not be located in a municipality of less than 25,000 population if there is an existing deputy registrar office in that municipality.

D. The proposed new office must not be located in a municipality having a population of 25,000 to 50,000 unless there are less than two existing deputy registrar offices in that municipality.

B. The estimated number of transactions that a proposed office location will process annually must be at least 4,000. The number of transactions must be estimated as follows:

(1) 20 percent of the transactions processed within the preceding year by existing offices located within a 20-mile radius of the proposed office location; or

(2) if there is no existing office located within a 20-mile radius of the proposed office location, 110 percent of the population of the municipalities that are closer to the proposed office location than to other existing offices.

C. The proposed office location may not be established if the use of the percentage of transactions processed by an existing office, to establish a proposed office, would reduce the number of transactions to less than:

(1) 35,000 for an existing office located in an area under subpart 1;

(2) 20,000 for an existing office located in an area under subpart 1a; or

(3) 4,000 for an existing office located in an area under this subpart.

D. If a percentage of transactions processed by an existing office was used to establish a new office, that percentage may not be used again in consideration of another proposed office within a two-year period. The two-year period starts from the date the deputy registrar was appointed.

E. A proposed office location may not be considered if the proposed office location is within a 30-mile radius of an existing office that was established within the last two years. The two-year period starts from the date the deputy registrar was appointed.

#### **7406.0330 MOVE OF EXISTING OFFICE LOCATION.**

**Subpart 1. In general.** A deputy registrar appointment is for the operation of an existing office in the specific location approved by the registrar and specified in the certificate of appointment. A move of an existing office must meet the requirements of part 7406.0300, be within the same county, and be approved by the registrar.

**Subp. 2. Variance.** A deputy registrar may apply to the registrar for a variance from the requirements of subpart 1, except that no existing office is allowed to move to a different county. A deputy registrar may apply for a variance by submitting a written request, on a form prescribed by the registrar, to the registrar. The registrar shall consider the following factors when reviewing the deputy registrar's request for a variance:

A. each rule part from which the waiver is requested and why the proposed office location does not meet requirements of the rule part;

B. the reasons for the request to move from the existing office location;

C. the distance of the proposed office location from the deputy registrar's existing office;

D. whether the proposed office location would service the same community or neighborhood and is in close proximity to the original location;

E. whether the proposed office location is in another county;

F. comments, opposition, and support from other existing offices of the proposed office location;

G. building considerations of the proposed office location, including, but not limited to:

(1) parking space;

(2) compliance with part 7406.0400; and

(3) whether the existing office is a publicly or privately operated office;

H. destruction or other loss of the existing office building, including loss of building lease;

I. the number of previous moves of the existing office and the reasons for the moves;

J. whether the proposed move is a result of or in connection with any misfeasance or malfeasance on the part of the deputy registrar; and

K. other information requested by the registrar or supplied by the deputy registrar.

**Subp. 3. Registrar's decision.** The registrar shall review the deputy registrar's request for a variance and grant or deny it within 60 days after its receipt or within 60 days after the date of the registrar's request for additional information, whichever is later. The registrar shall give the deputy registrar written justification for a decision to deny the variance. Failure to submit the required information under this subpart, within 30 days of the registrar's request for information, is cause to deny a deputy registrar's request for a variance.

**Subp. 4. Right to review of registrar's decision.** A deputy registrar may contest the denial of a variance of the registrar by requesting a hearing. The deputy registrar shall submit, within 15 days of the receipt of the registrar's decision, a request for a hearing. The request for a hearing must set forth in detail the reasons why the deputy registrar contends the decision of the registrar should be reversed. The hearing must follow the hearing procedures in parts 7406.1100 to 7406.2500.

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### **7406.0350 COUNTY AUDITOR APPOINTED AS DEPUTY REGISTRAR; PROCEDURE.**

**Subpart 1. In general.** Upon request by an applicant that has met the location requirements under part 7406.0300, the registrar shall begin the appointment process for an approved office location. The request for appointment must be referred first to the county auditor in the same county as the approved office location and the county auditor shall choose one of the options listed in subpart 2 regarding the appointment.

**Subp. 2. County auditor appointment.** When the registrar refers the appointment of deputy registrar to the county auditor in which the approved office location is located, the county auditor shall choose one of the options listed in items A to E:

A. if not previously appointed a deputy registrar, accept the appointment as the deputy registrar for the approved office location and operate the approved office location as county auditor;

B. if not previously appointed a deputy registrar, accept the deputy registrar appointment and agree to appoint a clerk or equivalent officer of a statutory or home rule charter city or any other person as deputy registrar for the approved office location;

C. if previously appointed as a deputy registrar, operate the approved office location as county auditor;

D. if previously appointed as a deputy registrar, agree to appoint a clerk or equivalent officer of a statutory or home rule charter city or any other person as deputy registrar for the approved office location; or

E. regardless of whether the county auditor has been previously appointed a deputy registrar, decline the deputy registrar appointment or decline to appoint a deputy registrar.

**Subp. 3. Notice to registrar required.** The county auditor shall notify the registrar, in writing, of the option that is chosen under subpart 2 regarding the appointment for the approved office location. The notification must be received by the registrar within 30 days of the offer to appoint by the registrar.

**Subp. 4. Failure to notify registrar; consequences.** If the county auditor who has not been appointed a deputy registrar fails to notify the registrar within 30 days, or declines to be appointed a deputy registrar and make the appointment, the appointment of the deputy registrar must be considered by the registrar under part 7406.0360.

If a county auditor who has been appointed as a deputy registrar fails to notify the registrar within 30 days, or declines to make the deputy registrar appointment, the appointment process for that qualifying location ends.

**Subp. 5. General authority of county auditor as deputy registrar.** Once appointed a deputy registrar, the county auditor has exclusive authority to make subsequent deputy registrar appointments in the county.

When appointing a deputy registrar, the county auditor shall follow the appointment procedures set forth in part 7406.0360 and *Minnesota Statutes*, section 168.33, subdivision 2.

**Subp. 6. Change in county auditor appointment.** A county auditor appointed as a deputy registrar shall notify the registrar, in writing, within ten days of vacating the county auditor office. If the county auditor position is vacated upon the death of a county auditor, a county official authorized by the county board must notify the registrar within ten days of that vacancy.

**Subp. 7. Transfer of county auditor appointments.** Deputy registrar appointments made by a county auditor are transferred to either the successor county auditor or to the registrar depending on the applicable circumstances set forth in item A or B.

A. If the position of county auditor is taken or assumed by another, the successor county auditor automatically assumes:

(1) the appointment, responsibility, and authority of deputy registrar for the county; and

(2) the deputy registrar appointments made during the term of any previous county auditor.

The deputy registrar appointments are automatically transferred to the successor county auditor when the successor takes or assumes the position of county auditor.

B. All deputy registrar appointments in a county are transferred to the registrar if:

(1) the county auditor's appointment as a deputy registrar in that county is discontinued by the registrar; or

(2) the county auditor for that county relinquishes the deputy registrar appointment and any deputy registrar appointments made by present or former county auditors for that county.

### **7406.0360 DEPUTY REGISTRAR APPOINTMENT PROCEDURE FOR COUNTY AUDITOR OR REGISTRAR.**

**Subpart 1. In general.** Except for appointments under part 7406.0700, a deputy registrar appointment can only be made for an approved office location that qualifies under part 7406.0300. The appointment procedures in this part apply to appointments made by the registrar and those appointments made by the county auditor, excluding the appointment of a county auditor or an appointment made by a county auditor of a county clerk or county officer under part 7406.0350.

**Subp. 2. Publication.** After approval of a location under part 7406.0300, either the county auditor or the registrar, as the

appointing authority, is responsible for publishing notice of the deputy registrar vacancy for the approved office location. The notice must be published for two successive weeks in a qualified newspaper in the county where the approved office location is located.

For an appointment being made by the county auditor, the notice must be published within 30 days after the date of notification to the registrar of the option to appoint under part 7406.0350, subpart 2. For an appointment being made by the registrar, the notice must be published within 30 days after refusal of the county auditor to appoint a deputy registrar under part 7406.0300.

The notice must be in a format prescribed by the registrar and must contain at least the following information:

- A. the geographic location of the municipality that qualifies based on a field survey conducted by the registrar;
- B. information on how to obtain an application for the appointment; and
- C. the deadline for submitting the application to the registrar.

Subp. 3. Restriction on processing proposed office locations. Once a request for a proposed office location has been submitted to the registrar for consideration, no other requests for a proposed office location may be made for that proposed office location or a location within a 15-mile radius of that proposed office location until:

- A. the registrar determines that the proposed office location does not meet the requirements of part 7406.0300; or
- B. the appointment process for the approved office location under this chapter is completed.

Subp. 4. Application for appointment. An application for a deputy registrar appointment must be submitted to the registrar on a form provided or approved by the registrar and must contain the following information:

A. the full name, address, states of residency for the last five years, date of birth, and telephone number of the applicant, who must be age 18 or older, and each person named on the application;

B. whether the applicant is an individual, public entity, or a corporation and, if a corporation:

- (1) a listing of each director, officer, and five percent shareholder;
- (2) the nature of the corporate business operations for the past five years;
- (3) a listing of all trade or business names used by the corporation; and
- (4) a copy of the Articles of Incorporation filed with the Secretary of State;

C. whether a person named on the application has or had any other license with a federal, state, or municipal government agency, the current status of that license, and an explanation of any cancellation, revocation, suspension, or other disciplinary proceeding in connection with the license;

D. whether a person named on the application owns or is a partner, officer, or five percent shareholder in a financial institution, motor vehicle dealership, or automobile insurance business;

E. the name, address, date of birth, and telephone number of the person who will be responsible for the day-to-day operation of the proposed office location, if known;

F. the address of the proposed office location;

G. a floor plan of the proposed office, including the area and dimensions of the space allocated for the processing area, public service area, and storage area;

H. information regarding work experience and training as specified on the application;

I. a history of deputy registrar appointments of each person, public entity, and corporation named on the application, including each prior deputy registrar appointment applied for or granted and the dates of the application or appointment, and, if applicable, the date and reasons why a deputy registrar appointment application was denied or an appointment was suspended, revoked, or canceled;

J. a certified copy of the criminal history of each person named on the application and, if the person is a nonresident or has resided in Minnesota for less than five years, a certified copy of a criminal records check of the national criminal records repository including the criminal justice data communications network; and

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K. the signature of each person named on the application, verifying that the information on the application is true. The signatures must be notarized.

Subp. 5. Criminal history check. The registrar may conduct a criminal history check at any time while a person is serving as a deputy registrar.

Subp. 6. Change in deputy registrar conditions. A deputy registrar shall report changes or anticipated changes of the information in subpart 4. The changes must be reported to the registrar, on a form prescribed by the registrar, within ten days of the date the change is to occur or within ten days of the date the deputy registrar learns that the changes will occur, whichever occurs first.

Changes are subject to approval by the registrar. A change may be cause for discontinuance of an appointment if the change violates this chapter or Minnesota Statutes, section 168.33.

Subp. 7. Reasons to deny deputy registrar appointment. The registrar shall deny a deputy registrar application or appointment for any of the reasons listed in items A to H:

A. The application or an item filed with the application does not meet the requirements of subpart 4.

B. A person named on the application was or is an owner, partner, officer, director, or five-percent shareholder of an office whose deputy registrar appointment is currently discontinued or who is involved in an investigation or proceeding that could result in discontinuance of an appointment.

C. A person named on the application has been convicted of a felony.

D. A person named on the application has been convicted of any crime of the following types:

(1) affecting a public officer or employee;

(2) of theft or a related crime;

(3) of forgery or a related crime; or

(4) that directly relates to the position of a deputy registrar.

Convictions include convictions of a crime in another jurisdiction that, if committed in Minnesota, would be a violation of a Minnesota statute.

E. The applicant's proposed office location does not meet the requirements under part 7406.0300 or 7406.0400.

F. The commissioner of revenue notifies the registrar, or the registrar has sufficient cause to believe, that a person named on the application owes the state delinquent taxes, penalties, or interest.

G. A person named on the application owns or is a partner, officer, or five-percent shareholder in a financial institution, motor vehicle dealership, or automobile insurance business.

H. An application for appointment is filed that is incomplete or that contains a statement that is false, misleading, fraudulent, or otherwise constitutes a misrepresentation.

### **7406.0370 APPOINTMENT OF DEPUTY REGISTRAR.**

Subpart 1. In general. An appointment must be based upon information contained in the application, interviews, an inspection of the proposed office location for compliance with this chapter, and other relevant information or documentation.

Subp. 2. Certificate of appointment. In connection with the appointment as a deputy registrar, the individual, public entity, or corporation shall execute a certificate of appointment. The certificate must include the person appointed as deputy registrar, the location of the approved office, and other information relating to the responsibility of the deputy registrar appointment. The certificate of appointment must be signed by the appropriate person as follows:

A. when an individual is appointed, by the individual appointed;

B. when a government entity is appointed, by a public official authorized to sign on behalf of the government entity; and

C. when a corporation is appointed, by an officer of the corporation.

### **7406.0400 DEPUTY REGISTRAR OFFICE REQUIREMENTS.**

Subpart 1. In general. Any new proposed, approved, or existing office or change in location must comply with subparts 2 to 7. Existing offices that are not in compliance with subparts 4 and 7 on the effective date of these amendments to this chapter, may be granted a variance by the registrar under subpart 1a.

Subp. 1a. Variance. An existing deputy registrar may apply to the registrar for a variance from complying with subparts 4 and 7 if compliance would be a substantial hardship for the deputy registrar. A deputy registrar may apply for a variance by submitting a

written request, on a form prescribed by the registrar, to the registrar within six months of the effective date of this subpart. The registrar shall consider the following factors when reviewing the deputy registrar's request for a variance:

- A. the subpart from which the variance is requested and why the office does not meet the requirements of the subpart;
- B. the options available to the deputy registrar to bring the office into compliance with the subparts;
- C. the financial cost for meeting the options listed in item B, estimated with reasonable efforts; and
- D. other information requested by the registrar or supplied by the deputy registrar.

A variance granted under this subpart expires upon the death, resignation, revocation, or retirement of the existing deputy registrar whose office does not comply with the requirements of subparts 4 and 7.

The registrar's decision and the right to review of the registrar's decision must follow the procedures in part 7406.0330, subparts 3 and 4.

Subp. 2. **Exclusive area Processing areas for complete and incomplete motor vehicle transactions.** A deputy registrar:

A. must have an office ~~must contain an~~ that contains:

(1) a separate and distinct area ~~or room~~ used exclusively for processing and storing completed motor vehicle applications; and

(2) a separate and distinct area for processing and storing incomplete motor vehicle transactions if the office takes in work that is not collected on the day it was received in the office, in which case the office must meet the requirements of part 7406.0450, subpart 2a;

B. It may not be used ~~use the processing areas~~ for living space or for transacting any other business, except that deputy registrars authorized by the registrar may process drivers' licenses, Department of Natural Resources transactions, and additional transactions as specified under *Minnesota Statutes*, section 373.33;

C. shall install a counter or divider ~~must be installed~~ within the exclusive area ~~or room~~ processing areas to separate the public from the deputy registrar and employees processing areas of the office; and

D. shall provide to the registrar a floor plan of the office, including the specific areas and dimensions of the space allocated for the processing areas, public service area, and storage area, if not previously provided with an application for appointment under part 7406.0360, subpart 4.

Subp. 3. **Inventory security.** The following security requirements must be provided:

A. The office ~~must contain~~ inventory ~~must be maintained in~~ a secured area to store plates and stickers.

B. The office ~~must contain~~ a security safe or vault that is not accessible to the public either during or after business hours.

Subp. 4. **Size of exclusive office area.** The size of the office area includes the processing areas, the public service area, and the inventory storage area of the office. The size of the exclusive office area ~~or room~~ is based on the projected estimated number of applications that will be processed annually by the deputy registrar.

A. If the projected estimated number of applications to be processed annually is between 5,000 and 8,000, the exclusive area ~~or room~~ must contain a minimum of 300 square feet.

B. If the projected estimated number of applications to be processed annually exceeds 8,000, the exclusive area ~~or room~~ must contain a minimum of 400 square feet.

If the deputy registrar office space is adjacent to another nonconflicting business, the other business may not encroach upon the office space of the deputy registrar office. The deputy registrar office space must be separate and distinct from the other business.

Subp. 5. **Accessibility.** The office must be accessible to the handicapped disabled in compliance with state and federal laws and regulations.

Subp. 6. **Identification.** An indoor or outdoor sign must be prominently displayed to identify the office.

Subp. 7. **Conflicting business interests.** A deputy registrar may not own or be a partner, officer, or five-percent shareholder in a financial institution, motor vehicle dealership, or automobile insurance business.

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A deputy registrar office may not be operated in conjunction located in the same office space with the sale of a financial institution, a motor vehicles vehicle dealership, or an automobile insurance office. A deputy registrar office that is located adjacent to a conflicting business must be separated from the conflicting business by floor-to-ceiling walls. The deputy registrar must have an entrance that is separate from the conflicting business and must have a door that can be shut and locked to close off the entire entrance.

### 7406.0450 REPORTING AND DEPOSITING PRACTICES.

Subpart 1. **Definition.** For purposes of this part, the words "next working day" mean the ~~twenty-four~~ 24-hour period following the daily close of the deputy registrar's records. A working day does not include Saturdays, Sundays, or legal holidays listed in *Minnesota Statutes*, section 645.44, subdivision 5; nonbanking days of approved state depositories; or holidays authorized under *Minnesota Statutes*, section 373.052, subdivision 1, for deputies who are county officers or employees; or days that an office is not open for business, upon approval from the registrar.

The deputy registrar shall provide written notification to the registrar of the time of the daily close of the office. The time of the daily close may not be changed by the deputy registrar without prior written notification to the registrar at least 15 days before the effective date of the change.

Subp. 1a. [See repealer.]

Subp. 2. **Reporting registrations, fees, and taxes.** Deputy registrars shall report to the registrar, on a summary report form prescribed or approved by the registrar, a summary of the motor vehicle ~~registrations made~~ transactions collected each working day. The summary report must contain:

- A. a list of the names of the transferees or registrants, excluding the names of parties applying solely for renewal;
- B. the type of transaction ~~for which registration was required; and;~~
- C. the ~~amount~~ listing of fees and taxes that were collected. Each working day the deputy registrars shall on that day;
- D. the supporting completed motor vehicle documents and required information for the transactions as specified by the registrar; and
- E. a report to the registrar and to the Minnesota state treasurer, on forms supplied by the Department of Finance, or approved by the registrar, showing the total amount of registration fees and taxes collected and deposited under subpart 3. On the financial report submitted to the registrar, the deputy registrar shall provide the time of the daily close of the deputy registrar office, and the date and time that the deposit was made in the state depository or by other approved method. The deputy registrar must also provide the validated bank deposit slip or other written verification by the bank of the time of deposit.

All transactions collected in an office must be included on the summary report for the day the transaction was collected in the office. A minimum of one summary report must be completed for all transactions collected during each day. More than one summary report may be submitted for one day with prior approval from the registrar.

If an office does not collect any transactions on a day the office is scheduled to be open, a summary report must still be filed with the registrar indicating that no transactions were collected for that day.

Deputy registrars shall deliver the summary report of ~~daily motor vehicle registrations and the report of the registration fees and taxes collected to the registrar and the Minnesota state treasurer by mailing the reports in the United States mail addressed to the registrar and to the Minnesota state treasurer, or by sending the reports to the registrar and to the Minnesota state treasurer by a package delivery service, before the end of the next working day following the day for which the reports are made. receipt of the documents, fees, and taxes by one of the following methods:~~

- A. United States mail;
- B. a package delivery service;
- C. electronic transfer;
- D. hand delivery; or
- E. other methods approved by the registrar.

If the United States mail is used to deliver the summary report to the registrar, the date of delivery by United States mail is the actual day on which the delivery is deposited in a United States mail receptacle, regardless of whether the date is the same as the date the summary report is postmarked.

Subp. 2a. **Processing and reporting incomplete motor vehicle documents.** The processing and reporting requirements listed in items A to G must be met if a deputy registrar receives incomplete motor vehicle transactions.

A. The transactions are not considered accepted and must not be listed on the summary report by the deputy registrar until the collection of the transaction.

B. Inventory must not be released to the customer by the deputy registrar before the time of the collection of the transaction.

C. Registration fees and taxes must not be deposited before the time of the collection of the transaction.

D. Incomplete transactions that cannot be collected the same day that they were received by the deputy registrar must be dated with the date that they were received by the deputy registrar and placed in the incomplete processing area that is required under part 7406.0400, subpart 2, item B.

E. The deputy registrar shall collect for the transaction or return the incomplete transaction to the customer within two working days following receipt of the transaction.

F. The deputy registrar shall inform the customer that the motor vehicle transaction will not be considered accepted by the deputy registrar and stamped with a paid stamp until the collection of the transaction.

G. The deputy registrar must notify the registrar if the deputy registrar's office intends to receive incomplete motor vehicle transactions and submit to the registrar a floor plan of the office space as required under part 7406.0360, subpart 4. If the deputy registrar ceases to accept incomplete motor vehicle transactions, the deputy registrar shall notify the registrar within ten days of the change.

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

Subp. 4. **Maintaining records.** At their business facilities the deputy registrar's office, the deputy registrars registrar shall keep complete records for deposits made to approved state depositories and the daily summary reports prepared under subpart 2 for motor vehicle registrations and fees and taxes collected. The records must be maintained for three years.

Once the records and the corresponding motor vehicle documents are received by the deputy registrar, the records, documents, and information contained on the records and documents become the property of the state of Minnesota and are subject to the terms of the Data Practices Act under Minnesota Statutes, chapter 13. The records, documents, and information contained on the records and documents may not be released by the deputy registrar without prior approval from the registrar, except when authorized by statute for law enforcement personnel and by court order.

Subp. 5. **Penalty Late payment charge.** On discovering a violation of subpart 3, the registrar must send a warning notice to the deputy registrar. The notice must identify the violation and tell the deputy registrar that if the deputy registrar violates subpart 3 again in the following month, a money penalty late payment charge will be imposed. For each month immediately following a month for which the deputy registrar is warned or penalized issued a late payment charge, in which the deputy registrar violates subpart 3 again, the registrar shall impose a penalty late payment charge of \$10 \$30 or an amount computed by the following formula, whichever is greater.

Days Late x Delinquent Amount x Daily Rate = Penalty Late payment charge where:

Days Late = Actual number of days each deposit is delinquent

Delinquent Amount = Actual amount each deposit is delinquent

Daily Rate = Interest on all state funds without authority to be invested separately, as determined by the Minnesota Department of Finance, for the month the deposit was due, divided by ~~the number of 365 days in the month the deposit was due.~~

In determining the number of days a deposit is late, weekends and holidays must be included only if the deposit is determined to be already at least two days late. The registrar shall continue to impose monthly ~~penalties~~ late payment charges until the deputy registrar is no longer in violation of this part.

Subp. 6. **Notice of penalty late payment charge.** The registrar shall send a written notice of ~~penalty a~~ late payment charge by certified mail. The notice must identify the violations of Minnesota Statutes, section 168.33, and subpart 3 for which the ~~penalty~~ late payment charge is imposed. The notice must also tell the deputy registrar when the ~~penalty~~ late payment charge is due, how the ~~penalty~~ late payment charge must be paid, and how to obtain a review of the ~~penalty~~ late payment charge.

Subp. 7. **Unpaid penalties late payment charges.** If a ~~penalty~~ late payment charge remains unpaid for 30 days from the date the registrar mailed the notice of ~~penalty~~ late payment charge and if no review is requested, the registrar shall make a claim for payment

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against the deputy registrar's performance bond, or in the case of a public official serving as a deputy registrar, the registrar shall demand payment from the county treasurer.

Subp. 8. **Administrative review.** When the registrar notifies a deputy registrar that a penalty late payment charge has been imposed:

A. The deputy registrar may ask the registrar to review the penalty late payment charge. The deputy registrar may request a review by submitting a statement, together with written materials showing that the deputy registrar processed the motor vehicle registrations in compliance with *Minnesota Statutes*, section 168.33, subdivision 2, and this chapter. The request for review must be submitted within ten days after the deputy registrar receives the notice of penalty from the date the notice of late payment charge was issued. The registrar shall review the materials and notify the deputy registrar within ten days of receipt of the request for review, whether the penalty late payment charge will be affirmed or rescinded. A deputy registrar may withhold the penalty late payment charge during the review period but must pay the penalty late payment charge to the state depository account by the end of the working day following notice that the penalty late payment charge is affirmed.

B. The deputy registrar may request a formal hearing with or without undergoing the review process set out in item A. The request must be in writing and must be received within 30 days of the day the notice of penalty was mailed. When a formal hearing is requested, the registrar will arrange a contested case hearing before an administrative law judge under *Minnesota Statutes*, chapter 14. After the hearing, the administrative law judge may recommend that the registrar affirm, modify, or reverse the penalty.

The penalty will registrar shall affirm the late payment charge only be affirmed if the penalty charge was calculated correctly and the late deposit was the result of foreseeable circumstances within the control of the deputy registrar.

Subp. 9. **Revocation Discontinuance.** Imposing a penalty under this part does not affect the registrar's authority to revoke the appointment of a deputy registrar under part 7406.0600. A deputy registrar who fails to comply with the late payment charge notice may be subject to discontinuance of the deputy registrar's appointment under parts 7406.0800 to 7406.1000.

### 7406.0500 GENERAL OPERATING RULES FOR DEPUTY REGISTRARS.

Subpart 1. **Sole operator Management of office.** A deputy registrar must manage the office in accordance with the following:

A. Except for publicly operated and American Automobile Association deputy registrar offices, a deputy registrar must be the principal person in charge of the office and must actively participate in the processing of applications.

B. Except for publicly operated and American Automobile Association deputy registrar offices, a deputy registrar may shall not delegate to another person the authority or responsibility of operating the office. The deputy must be in the office operating it on a full-time basis.

C. If a corporation is a deputy registrar under *Minnesota Statutes*, section 168.33, subdivision 2, the individual signing for the corporation as deputy registrar must be an officer of the corporation. This individual is responsible for the duties of the corporation as a deputy registrar; and

B. shall designate one contact person for the office. The deputy registrar shall provide written notification to the registrar of the name of the contact person and of a change in the contact person within ten days of the change. The contact person must be a person who actively participates in the processing of transactions and who is in the office on a full-time basis. The contact person shall act as a liaison between the registrar and the deputy registrar office to discuss and address problems or questions that may arise on a daily basis.

Subp. 2. **Hours.** Deputy registrar offices must be open for business at least 40 hours during each normal workweek week. However, legal holidays listed in *Minnesota Statutes*, section 645.44, subdivision 5, and holidays authorized under *Minnesota Statutes*, section 373.052, subdivision 1, for county offices are included in the 40-hour calculation.

Each deputy registrar shall provide the registrar with an accurate written schedule of the hours the office is open for business. A written request for a change in office hours must be made to the registrar at least ten days before the change in hours. The registrar must approve changes in business hours before the hours become effective.

Subp. 2a. **Closure of office; variance procedure.** An office must be open for at least 40 hours each week unless the registrar grants a variance to allow an office to be closed for a specified period of time. To request a variance for closure of an office for two days or more, the deputy registrar shall submit a written request on a form prescribed by the registrar. Under the variance procedure, the registrar shall consider the following factors before allowing an office to close:

- A. reason the closure is requested;
- B. length of time the closure is requested;
- C. day of the month and time of the year that the closure is requested;

D. number of transactions that an office processes on an annual basis and number of transactions that are processed at the requested time of closure, if known;

E. ability to keep the office open with current, additional, or temporary staff; and

E. number of variances granted that year.

The registrar shall review the information submitted with the variance request and grant or deny the variance within two business days after receipt of the request.

If a variance is granted for closure of an office, the deputy registrar must provide notice to the public at the deputy registrar office of the dates and times of the office closure. If the office is to be closed for four days or less, the deputy registrar must post notice in a conspicuous place inside and outside the office for up to two consecutive weeks before closure. If the office is to be closed for five or more days, the notice must be posted at the office and also published in a qualified newspaper or on a radio station in the county or city in which the office is located. The notice must be published at least two weeks before the closing for two consecutive weeks, or a shorter time as approved by the registrar.

The notice of closure must contain the dates and times that the office will be closed and the location and address of the nearest office where alternative service can be obtained.

Subp. 2b. Emergency and short-term closure of office. For requests of an office closure that is for one day or that is due to an emergency situation, the deputy registrar must notify the registrar by telephone or other means at the earliest opportunity to request a variance from the 40-hour work week. The registrar must follow the criteria in subpart 2a when deciding to grant or deny the variance. If a variance is granted for closure of an office, the deputy registrar must provide notice to the public, as soon as practicable, at the deputy registrar office of the dates and times of the office closure. If the closure of an office is for more than one day, the deputy registrar must follow the variance procedures set forth in subpart 2a.

Subp. 3. [See repealer.]

Subp. 3a. Service area. A deputy registrar may promote or provide, by any means, service within an area not to exceed 75 percent of the distance to another deputy registrar. A deputy registrar or an employee or agent of the deputy registrar may not promote or provide service or by any method pick up transactions beyond 75 percent of the distance between the deputy registrar's office and the office of another deputy registrar. This subpart does not prohibit customers from delivering their transactions for processing to any deputy registrar office of their choice.

Subp. 3b. Variance. A deputy registrar may apply to the registrar for a variance from subpart 3a. The following conditions must be met when a deputy registrar applies for a variance:

A. A deputy registrar must apply for a variance by submitting a written request, on a form prescribed by the registrar, to the registrar.

B. The request for a variance must be submitted to the registrar within six months of the effective date of this subpart or within six months of a move of a deputy registrar office or the appointment of a new deputy registrar office that changes the distance of its current 75 percent service area.

C. Variances will only be considered for a deputy registrar office that has been providing service to a customer outside the deputy registrar's 75 percent service area for over a year before the effective date of this subpart, unless the request for a variance is made as a result of a move of a deputy registrar office or the appointment of a new deputy registrar office.

D. If the request for a variance is made as a result of a move of a deputy registrar office or the appointment of a new deputy registrar office, the request will be considered only if the service to the customer has been provided before the effective date of the move or the appointment of a new deputy registrar office.

E. The deputy registrar shall submit an affidavit from the customer who has been provided service from the deputy registrar. The affidavit must state at least:

(1) the names and addresses of the customer and the deputy registrar who has been providing the service;

(2) what service has been provided by the deputy registrar; and

(3) the date on which the service from the deputy registrar office began.

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F. The deputy registrar shall verify that the information provided by the customer on the affidavit is correct.

G. The deputy registrar shall make the following agreements to the registrar:

(1) that upon death, resignation, revocation, or retirement of the deputy registrar, all variances for service to a customer that have been granted expire; and

(2) that if the service of a customer listed in an affidavit in item E is discontinued or the customer changes locations, the variance for providing that service to that customer expires. The variance granted to a deputy registrar is for a particular customer at a designated location as provided in the affidavit.

This subpart applies only to a deputy registrar promoting or providing service outside the 75 percent service area and does not in any way limit the promotion or providing of service within a deputy registrar's 75 percent service area.

The registrar's decision and the right to a review of the registrar's decision must follow the procedures in part 7406.0330, subparts 3 and 4.

Subp. 3c. Advertising. The distance limitation in subpart 3a does not apply to advertising by the deputy registrar in any print, broadcast, or electronic media. The advertising may not contain any financial incentives for the service provided by the deputy registrar.

Subp. 4. [See repealer.]

Subp. 5. **Filing fees.** Filing fees ~~must be~~ are governed by the following requirements:

A. A deputy registrar ~~must shall~~ charge and receive the full filing fee specified by law. Rebates are prohibited.

B. No ~~additional~~ filing fee may be charged for a ~~document returned for a refund, correction required in a previously submitted application if the error requiring the correction was made by the registrar, a member of the registrar's staff, or by a deputy registrar or employee of a deputy registrar of an error made by the department or a deputy registrar, permanent surrender of a certificate of title, or license plate for a motor vehicle.~~

C. A deputy registrar may not charge a customer for long-distance telephone calls, unless:

(1) the charge is for the exact per-minute charge of the telephone call and does not include any charges for other basic or optional telephone services;

(2) the long-distance telephone call was made at the request of the customer; and

(3) the deputy registrar maintains a record of the long-distance telephone calls made each day, which includes the charges assessed and the name and address of the customer for whom the telephone call was made.

Subp. 6. Cash register. A separate cash register or cash receptacle must be maintained for deputy registrar funds. No other funds from other businesses may be kept with deputy registrar funds, except:

A. funds from driver's license, Department of Natural Resources, or county license bureau transactions, concerning which the deputy registrar must be able to determine at all times which funds are attributable to motor vehicle transactions and which funds are attributable to driver's license, Department of Natural Resources, or county license bureau transactions; or

B. funds from other sources, other than those listed in item A, when the deputy registrar's fee receipt system is able to differentiate funds from various sources and the deputy registrar has received written approval from the registrar to use such a system.

Subp. 7. Imprest cash. A deputy registrar shall maintain a verifiable and identical amount of start-up funds in the cash register or cash receptacle on a daily basis. The deputy registrar shall inform the registrar, in writing, of the amount of money that will be used during the day for start-up funds. The amount of the start-up funds must not be changed without prior written notification to the registrar.

Subp. 8. Inventory to remain in office. Unsold inventory that is assigned to a deputy registrar by the registrar must remain in the office, except in the following authorized circumstances:

A. return of inventory to the registrar;

B. destruction or removal of inventory that is obsolete; or

C. other removal or transfer of inventory that is authorized by the registrar such as approval to reassign inventory to another office or approval to remove inventory through other means such as through newly established technology.

Subp. 9. Mail order transaction. A deputy registrar may mail out inventory to customers upon meeting the conditions in items A to E.

A. The deputy registrar shall provide written notification to the registrar that the office will provide mail service to customers. Once written notification is provided to the registrar, the deputy registrar must accept and process all mail transactions that are

ready for issuance of inventory. Incomplete motor vehicle transactions that are received by mail must follow the procedures in part 7406.0450, subpart 2a.

B. The deputy registrar shall maintain a record of the inventory that was mailed and the name and address where the inventory was mailed. The record may be maintained on the daily summary report under part 7406.0450, subpart 2, or other report maintained separately by the deputy registrar.

C. The inventory must be mailed under uniform mailing standards as provided by the registrar.

D. The deputy registrar must pay the replacement cost of inventory if the inventory is lost in the mail or the customer did not otherwise receive the inventory.

E. The deputy registrar shall mail the inventory by at least first class United States mail, unless a request is made by the customer for other special delivery services. The deputy registrar shall incur the cost of mailing the inventory, unless the customer requests a special delivery of the inventory. If the customer requests a special delivery of the inventory, the deputy registrar may allow the customer to incur the cost of those special delivery charges.

If a deputy registrar does not make a written request to provide mail service to customers, the mail orders received by a deputy registrar, including the filing fee, must be forwarded to the registrar for processing and mailing.

Subp. 10. Registration stickers unaccounted for. Registration stickers assigned to an office, except for the month sticker, must be accounted for by issuance and money collected, by affidavit of missing initial inventory, or by submitting the defective registration sticker to the registrar.

If a registration sticker is unaccounted for, the deputy registrar is responsible for payment of the registration tax loss or replacement cost for each registration sticker unaccounted for. The amount of registration tax that a deputy registrar must pay is either the full, average, or minimum registration tax as determined under items A and B.

A. A deputy registrar must pay the full registration tax for the registration sticker if the registrar has sufficient cause to believe that the full amount of the registration tax was paid for by the customer.

B. A deputy registrar will have to pay the average or minimum registration tax or replacement cost of the registration sticker after consideration of the following factors by the registrar:

(1) timely notification to the registrar, and to the law enforcement agency if applicable, regarding the registration stickers unaccounted for;

(2) the investigation and follow-up measures taken by the deputy registrar regarding the registration stickers unaccounted for;

(3) the action taken by the deputy registrar to recover the registration stickers and the number of registration stickers that were recovered;

(4) the security measures that were in place to protect the registration stickers;

(5) the value of the registration stickers;

(6) the circumstances under which the registration stickers became unaccounted for; and

(7) the results of any audit conducted by the registrar.

The registrar shall notify a deputy registrar of the amount of the full, average, or minimum average tax at the end of each fiscal year. If the full registration tax is required to be paid by the deputy registrar, a late deposit charge calculated under part 7406.0450 must also be paid by the deputy registrar.

Subp. 11. Other inventory or state-issued property unaccounted for. Inventory, other than registration stickers under subpart 10, and other state-issued property provided to an office, must be accounted for by issuance and fees collected, by affidavit of missing initial inventory, or by submitting the defective inventory or state property to the registrar.

If inventory or other state-issued property is unaccounted for, other than stickers, the deputy registrar is responsible for the replacement cost of the inventory or state property.

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### **7406.0700 EXEMPTION.**

Notwithstanding part 7406.0300, a new deputy registrar may be appointed for an existing office location upon the death, resignation, discontinuance, or retirement of an existing deputy registrar whose office does not comply with the requirements for distance or number of applications for registration processed. However, the existing office location must meet the office requirements under part 7406.0400 before an appointment can be made under this part. If, within three months, a new deputy registrar appointment is not accepted by the person to be appointed or if the office is not established by the appropriate local government, then part 7406.0300 applies.

### **DISCONTINUANCE OF APPOINTMENT**

#### **7406.0800 ACTIONS FOR FAILURE TO COMPLY WITH LAWS OR RULES.**

The failure of a deputy registrar or employee of a deputy registrar to comply with applicable laws or rules governing the operation of a deputy registrar office may be cause for discontinuing the deputy registrar appointment or for issuing a correction order under parts 7406.0800 to 7406.1000.

#### **7406.0900 IMMEDIATE SUSPENSION OF APPOINTMENT.**

Subpart 1. Grounds. The registrar may immediately suspend a deputy registrar appointment if the registrar has sufficient cause to believe that an immediate suspension is necessary to ensure the security of the monies of the state or the public or to the operation of the deputy registrar office. In making the determination to immediately suspend, the registrar shall consider:

A. whether grounds exist for the revocation of an appointment;

B. whether the deputy registrar's failure to comply with an applicable law or rule has placed in imminent danger the monies of the state or the public, or the operation of the deputy registrar office; and

C. whether the risk of harm to the monies of the state or the public, or to the operation of the deputy registrar office, outweighs the harm to the deputy registrar of discontinuing the operation of the office during the pendency of a hearing.

Subp. 2. Immediate suspension hearing. When the registrar has grounds for immediate suspension under this part, a contested case hearing must be held within 20 days after the service of the order of immediate suspension and notice of and order for hearing. A contested case hearing for immediate suspension must be conducted in accordance with *Minnesota Statutes*, chapter 14.

Subp. 3. Suspension period and effect. When a deputy registrar appointment is suspended under subpart 1, the deputy registrar shall immediately cease operation of the office and surrender all inventory, fees and taxes, and other state-issued property. The deputy registrar appointment must be suspended until the effective date of the registrar's decision affirming, modifying, or vacating the order of immediate suspension.

#### **7406.1000 SUSPENSION OR REVOCATION OF DEPUTY REGISTRAR APPOINTMENT.**

Subpart 1. Conviction in another jurisdiction. For purposes of this part, "conviction" includes a conviction of a crime in another jurisdiction that, if committed in Minnesota, would be a violation of a Minnesota statute.

Subp. 2. Grounds for suspension or revocation. The following violations are grounds for revocation or suspension of a deputy registrar appointment:

A. conviction for a felony;

B. conviction for any crime:

(1) affecting a public officer or employee;

(2) of theft or related crime;

(3) of forgery or related crime; or

(4) that directly relates to the position of deputy registrar;

C. violation or failure to comply with any provision of this chapter; *Minnesota Statutes*, chapter 168; or an order issued by the registrar;

D. forging of documents or providing false or fraudulent information to the registrar or the public;

E. misappropriation, conversion, or illegal withholding of fees and taxes required to be deposited in accordance with this chapter and *Minnesota Statutes*, chapter 168;

F. failure or refusal to provide the registrar access to office, documents, persons served, or employees;

G. immediate suspension of an appointment under part 7406.0900; or

H. grounds for denial of an appointment under part 7406.0360, subpart 7.

**Subp. 3. Criteria for discontinuance action.** In deciding what discontinuance action to take under subpart 2, the registrar shall consider the following factors:

- A. the laws or rules that have been violated;
- B. the nature and severity of the violation and the conduct;
- C. relevant facts, conditions, and circumstances concerning the violation and the operation of the office;
- D. any aggravating or mitigating factors related to the violation;
- E. the frequency of the violator's failure to comply with laws or rules related to a deputy registrar office;
- F. the likelihood that the violations will occur again;
- G. the degree of the violator's cooperation during the course of the investigation surrounding the violation; and
- H. harm to the public because of the violation.

**Subp. 4. Suspension and revocation hearing.** When the registrar has grounds for revocation or suspension under this part, the registrar shall conduct a hearing before revoking or suspending a deputy registrar appointment under the procedures in parts 7406.1100 to 7406.2600.

**Subp. 5. Effect of revocation.** An owner, officer, director, or five percent shareholder of a revoked office may not be an owner, officer, director, or five percent shareholder of another deputy registrar office during the period of revocation. When a deputy registrar appointment is revoked, the deputy registrar shall immediately surrender all inventory, fees and taxes, and other state-issued property.

**Subp. 6. Effect of suspension.** When a deputy registrar appointment is suspended under subpart 1, the deputy registrar shall surrender all fees and taxes. The registrar shall consider the factors in subpart 3 when determining the length, terms, and conditions of the suspension.

**Subp. 7. Issuance of correction order.** The registrar may issue a correction order for a violation of rule or law rather than a suspension under subpart 1, after consideration of the factors in subpart 3.

A. The correction order must state:

- (1) the specific law or rule violated;
- (2) the conditions that constitute a violation of law or rule;
- (3) the requirements to correct the violation;
- (4) the consequences of the correction order;
- (5) the time allowed to correct each violation, if applicable; and
- (6) how to obtain a review of the correction order.

B. If the deputy registrar believes that the contents of the registrar's correction order are in error, the deputy registrar may ask the registrar to reconsider the parts of the correction order that are alleged to be in error. The request for reconsideration must be in writing and received by the registrar within ten days of the date of the correction order. The written request for reconsideration must:

- (1) specify the parts of the correction order that are alleged to be in error;
- (2) explain why the parts of the order are in error; and
- (3) include documentation to support the allegation of error.

A request for reconsideration does not stay any provision or requirement of the correction order. The registrar shall respond to requests for reconsideration made under this subpart within 15 working days after receipt of the request for reconsideration.

C. A deputy registrar who fails to comply with a correction order may be subject to suspension or revocation of appointment under this part.

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### PROCEDURES FOR SUSPENSION AND REVOCATION HEARINGS

#### 7406.1100 DEFINITIONS.

Subpart 1. Scope. The terms used in parts 7406.1100 to 7406.2600 have the meanings given them in this part.

Subp. 2. Party. "Party" means each person named as a party by the registrar in the notice of and order for hearing. Party includes the registrar and the registrar's employees and agents, but does not include the hearing examiner.

Subp. 3. Person. "Person" means an individual, partnership, corporation, joint stock company, unincorporated association or society, municipal corporation, or any government or governmental subdivision, unit, or agency other than a court of law.

Subp. 4. Service or serve. "Service" or "serve" means personal service or service by first class United States mail or a licensed overnight express mail service, postage prepaid and addressed to the party's last known address. An affidavit of service must be made by the person making the service. Personal service may be accomplished either by delivering a document to the person or by leaving a document at the person's home or place of business with someone of suitable age and discretion who resides in the same house or who is located at the same business address of the person to be served.

Postage must be prepaid. Mail to a person other than a state agency must be addressed to the last known address of the person. Agencies of the state of Minnesota may also deposit the document with the Central Mailing Section, Publications Division, Department of Administration, addressed as above.

#### 7406.1150 TIME.

Subpart 1. Computation. In computing any period of time prescribed by parts 7406.1100 to 7406.2600, the day of the last act, event, or default from which the designated period of time begins to run is not included. The last day of the period so computed must be included, unless it is a Saturday, Sunday, or a legal holiday.

Subp. 2. Extra time; service by mail. Whenever a party has the right or is required to do some act or take some action within a prescribed period after the service of a notice or other paper upon the party, or whenever service is required to be made within a prescribed period before a specified event, and the notice or paper is served by mail, three days must be added to the prescribed period. In the event an agency chooses to utilize the Central Mailing Section, Publications Division, Department of Administration, four days must be added to the prescribed period.

#### 7406.1200 HEARING; SERVICE OF NOTICE.

The registrar shall serve a notice of and order for hearing on the deputy registrar to commence the proceedings. The notice of and order for hearing must be served not less than 30 days before a revocation or suspension hearing under part 7406.1000. The notice of and order for hearing must be served not less than 20 days before an immediate suspension hearing under part 7406.0900; provided, however, that a shorter time may be allowed when it can be shown to the hearing examiner that a shorter time is in the public interest and that interested persons are not likely to be prejudiced.

#### 7406.1300 HEARINGS BEFORE HEARING EXAMINER.

Revocation and suspension hearings under part 7406.1000 must be conducted by a hearing examiner appointed by the registrar.

#### 7406.1400 NOTICE OF AND ORDER FOR HEARING; CONTENT.

The notice of and order for hearing must contain at least the following:

- A. a caption that includes the proposed action and the name of the deputy registrar;
- B. the time, date, and place for the hearing;
- C. the name, address, and telephone number of the hearing examiner;
- D. a citation to the registrar's rule and statutory authority to hold the hearing and take the action proposed;
- E. a statement of the allegations or issues to be determined, together with a citation to the relevant statutes or rules allegedly violated or that control the outcome of the case;
- E. a statement that the registrar's proposed action may affect other deputy registrar appointments in which the deputy registrar or an owner, officer, director, or five percent shareholder of the deputy registrar is involved;
- G. notification of the right of the parties to be represented by an attorney, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law;
- H. a citation to the procedural rules of the registrar in parts 7406.1100 to 7406.2600 and notification of how copies may be obtained;
- I. a brief description of the procedure to be followed at the hearing;

J. a statement advising the parties to bring to the hearing all documents, records, and witnesses needed to support their position;

K. a statement advising the parties of the name of the registrar's staff member or attorney general's staff member to contact to discuss informal disposition;

L. a statement advising the parties that a notice of appearance must be filed with the hearing examiner within 20 days of the date of service of the notice of and order for hearing if a party intends to appear at the hearing, unless the hearing date is less than 20 days from the issuance of the notice of and order for hearing;

M. a statement advising existing parties that failure to appear at the hearing may result in the allegations of the notice of and order for hearing being taken as true, or the issues set out being deemed proved, and a statement explaining the possible results of the allegations being taken as true or the issues proved;

N. a statement advising the parties that if not public data is admitted into evidence it may become public unless a party objects and asks for relief under *Minnesota Statutes*, section 14.60, subdivision 2; and

O. in the case of immediate suspension, a statement that the parties must cease operation of the deputy registrar office immediately and surrender all inventory, fees and taxes, and other state-issued property.

#### **7406.1500 NOTICE OF APPEARANCE.**

Each party intending to appear at the hearing shall file with the hearing examiner and serve upon all other known parties a notice of appearance advising the hearing examiner of the party's intent to appear and shall indicate the title of the case, the party's current address and telephone number, and the name, office address, and telephone number of the party's attorney or other representative. The notice of appearance must be filed and served within 20 days of the date of service of the notice of and order for hearing; except that when the hearing date is 20 days or less from the commencement of the hearing, the notice of appearance is not necessary. The failure to file and serve a notice may, in the discretion of the hearing examiner, result in a continuance of the hearing if the party failing to file appears at the hearing. A notice of appearance form must be included with the notice of and order for hearing for use by the party served.

#### **7406.1600 RIGHT TO COUNSEL.**

Parties may be represented throughout the proceedings in a hearing by an attorney, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law.

#### **7406.1700 CONSENT ORDER, SETTLEMENT, OR STIPULATION.**

Informal disposition may be made of a hearing or any issue in the hearing by stipulation, agreed settlement, or consent order at any point in the proceedings.

#### **7406.1800 CONTINUANCES.**

Requests for a continuance of a hearing must be granted upon a showing of good cause. Unless time does not permit, a request for continuance of the hearing must be made in writing to the hearing examiner and must be served upon all parties of record. In determining whether good cause exists, due regard must be given to the ability of the party requesting a continuance to effectively proceed without a continuance. A request for a continuance filed within five business days of the hearing must be denied unless the reason for the request could not have been earlier ascertained.

"Good cause" includes: death or incapacitating illness of a party, representative, or attorney of a party; a court order requiring a continuance; lack of proper notice of the hearing; a substitution of the representative or attorney of a party if the substitution is shown to be required; a change in the parties or pleading requiring postponement; and agreement for a continuance by all parties, provided that it is shown that more time is clearly necessary to complete discovery or other mandatory preparation of the case and the parties and the hearing examiner have agreed to a new hearing date; or, the parties are engaged in serious settlement negotiations or have agreed to a settlement of the case which has been or will likely be approved by the final decision maker.

"Good cause" does not include: intentional delay; unavailability of counsel or other representative due to engagement in another judicial or administrative proceeding, unless all other members of the attorney's or representative's firm familiar with the case are similarly engaged, or the notice of the other proceeding was received subsequent to the notice of the hearing for which the continu-

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ance is sought; unavailability of a witness if the witness' testimony can be taken by deposition; and failure of the attorney or representative to properly utilize the notice period to prepare for the hearing.

### 7406.1900 DEFAULT.

The registrar or the hearing examiner may dispose of a revocation or suspension adverse to a party that defaults. Upon default, the allegations of or the issues set out in the notice of and order for hearing may be taken as true or deemed proved without further evidence. A default occurs when a party fails to appear at a hearing without the prior consent of the hearing examiner.

### 7406.2000 RIGHTS AND RESPONSIBILITIES OF PARTIES.

Parties have the right to present evidence, rebuttal testimony, and argument with respect to the issues, and to cross-examine witnesses. A party must have all evidence that the party wishes to present at the hearing, both oral and written, available on the date for hearing.

### 7406.2100 WITNESSES AND TESTIMONY.

A party may be a witness and may present witnesses on the party's behalf at the hearing. All oral testimony at the hearing must be under oath or affirmation. At the request of a party or upon the hearing examiner's own motion, the hearing examiner shall exclude witnesses from the hearing room so that they cannot hear the testimony of other witnesses.

### 7406.2200 BURDEN OF PROOF.

The party proposing that certain action be taken must prove the facts at issue by a preponderance of the evidence. A party asserting an affirmative defense has the burden of proving the existence of the defense by a preponderance of the evidence.

### 7406.2300 HEARING RECORD.

The hearing examiner shall maintain the official record in each deputy registrar hearing until issuance of the hearing examiner's final report.

The record in a deputy registrar hearing must contain all evidence offered or considered; all documents, memoranda, or data submitted by any party in connection with the case; the audiomagnetic recording of the hearing; the transcript of the hearing, if one was prepared; and the hearing examiner's findings of fact, conclusions, and recommendations.

### 7406.2400 HEARING EXAMINER'S CONDUCT.

The hearing examiner shall not communicate, directly or indirectly, in connection with any issue of fact or law with any person or party, including the registrar, concerning any pending case, except upon notice and opportunity for all parties to participate. The hearing examiner may respond to questions relating solely to procedures for the hearing without violating this part.

### 7406.2500 HEARING EXAMINER'S DECISION.

No factual information or evidence that is not a part of the record may be considered by the hearing examiner in the determination of a deputy registrar hearing.

The decision and order rendered by the hearing examiner in a hearing must be in writing, must be based on the record, and must include the hearing examiner's findings of fact and conclusions on all material issues. A copy of the decision and order must be served upon each party or the party's representative.

### 7406.2600 APPEAL OF HEARING EXAMINER'S DECISION.

A person may appeal the hearing examiner's decision and order issued under part 7406.2500 and request a contested case hearing. The contested case hearing must be conducted according to *Minnesota Statutes*, chapter 14, and the rules of the Office of Administrative Hearings. The request for a contested case hearing must be submitted in writing to the registrar within 15 days of the date of the hearing examiner's report. The request for a contested case hearing must set out in detail the reasons why the deputy registrar contends the decision of the hearing examiner should be reversed or modified.

If a contested case is requested, the registrar shall send a copy of the order to all interested parties. The order must fix the time and place for the hearing. The hearing examiner's order must be stayed pending a final determination after the contested case hearing.

**RENUMBERING INSTRUCTION.** In the next edition of *Minnesota Rules*, the revisor of statutes shall renumber each part or subpart listed in column A as the part or subpart listed in column B:

A	B
7406.0100, subp. 5	7406.0100, subp. 19
7406.0100, subp. 6	7406.0100, subp. 20

**REPEALER.** *Minnesota Rules*, parts 7406.0100, subparts 2, 3, and 4; 7406.0450, subpart 1a; 7406.0500, subparts 3 and 4; and 7406.0600, are repealed.

## Secretary of State

### Proposed Permanent Rules Relating to Housekeeping

#### Notice of Intent To Adopt Rules Without A Public Hearing

**Introduction.** The Secretary of State 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. 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:

Joseph Mansky  
Director, Election Division  
Office of the Secretary of State  
180 State Office Building  
100 Constitution Avenue  
St. Paul, MN 55155-1299  
(612) 215-1440

**Subject Of Rules And Statutory Authority.** The proposed rules are relating to the administration of voter registration, the specifications for voter registration cards, public information lists available for inspection, administration of absentee voting, mail balloting, programming of voting machines, arrangement of voting devices, processing ballots at a counting center, training of election judges, and form and style of ballot layout.

The statutory authority to adopt the rules is found in *Minnesota Statutes* sections 201.022, 201.071, 201.221, 203B.08, 203B.09, 203B.125, 204B.25, 204B.45, 204D.11, and 206.57. A free copy of the proposed rules is available on request from the agency contact person listed above.

**Comments.** You have until 4:30 p.m. on January 26, 1996, to submit written comment in support of or in opposition to the proposed rules or any part or subpart of the rule. 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 rule. 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 26, 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 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 Secretary of State 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 agency and may not result in a substantial change in the proposed rule 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 from the agency contact person at the address and phone number listed above. This statement describes the need for and the reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules.

**Small Business Considerations.** In preparing these rules, the Secretary of State 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 these rules will not directly affect small businesses.

**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.

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## Proposed Rules

**Impact on Agricultural Lands.** The adoption of this rule will not have any impact on agricultural land and so *Minnesota Statutes* section 14.11, subdivision 2 is not applicable.

**Adoption and Review of Rule.** 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 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 the agency contact person listed above.

Dated: 11 December 1995

Joan Anderson Growe  
Secretary of State

### Rules as Proposed

#### 8200.1100 PRINTING SPECIFICATIONS.

Voter registration cards printed for the purpose of distribution and mailing must be printed pursuant to items A to E ~~D~~.

A. The size must be six inches by 8-3/4 inches, including a three-fourths inch stub.

B. The paper must be at least 100-pound white offset.

C. ~~Red ink must be used on the card for printing the X's and the following words: "Name," "Township or City of Legal Residence," "Complete Address of Legal Residence," "Date of Birth," "Address of Your Last Registration or Check if NONE," and "Legal Signature of Voter." The certification must also be printed in red ink on the card. The remainder of the form must be printed in blue ink.~~ The secretary of state may approve alternate forms of voter registration cards to be attached to or included in tax booklets and forms used by state agencies, and other forms deemed appropriate by the secretary of state if the forms contain the information required in *Minnesota Statutes*, section 201.071.

~~D. The card must have two 1/16-inch perforations that result in the two equal-sized six-inch by four-inch cards.~~

~~E. The top stub must have a substance applied to it so that the card can be sealed when it is folded together for mailing.~~

#### 8200.1200 REGISTRATION CARD; FORMAT.

Subpart 1. **Form.** The voter registration card must be in the form shown in part 8200.9910:

A. contain the data elements and certification provided in *Minnesota Statutes*, section 201.071;

B. be consistent in layout with the data entry screens used by the statewide registration system;

C. take into consideration readability and ease of understanding;

D. provide room for including a mailing address for returning the completed registration;

E. have printed on or with the card a set of instructions for completing the registration; and

F. have printed on or with the card a statement that assistance for registration and voting is available for elderly and disabled individuals and residents of health care facilities.

The secretary of state shall provide examples of the voter registration card to all county auditors.

Subp. 2. **Box for office use only.** In the upper right-hand corner of The voter registration card there must be contain a box marked for "office use only" which contains "W \_\_," "P \_\_," and "S.D. No. \_\_." These initials stand for "ward," "precinct," and "school district." Other information may also be included. Judges of election shall record the type of election day voter registration proof and its number, if any, in the "office use only" box.

#### 8200.1700 PRINTING AND DISTRIBUTING REGISTRATION CARDS.

Each county auditor shall have printed and shall maintain an adequate number of voter registration cards in compliance with chapter 8200 and *Minnesota Statutes*, chapter 201. An election official who causes voter registration cards to be printed shall print the cards in a form prescribed by chapter 8200 and *Minnesota Statutes*, chapter 201. The auditor shall provide voter registration cards to any person or group who requests a reasonable number of cards for the purpose of distribution. ~~In those areas having pre-election day registration, the auditor shall encourage pre-election day registration by making registration cards available to persons and groups for distribution.~~

**8200.2100 DUTIES OF AUDITOR.**

Each county auditor shall designate a number of public buildings within the county where persons may obtain, complete, and deposit registration cards. The county auditor or a designee shall be on duty in the designated building and the person on duty shall transmit completed registration cards; ~~or a record of them if to the county auditor does not maintain the registration file,~~ within two working days after receipt ~~to the county auditor.~~

**8200.2200 BUILDINGS FOR REGISTRATION.**

Each political subdivision shall have at least one building where voter registration cards may be obtained and deposited, for every 30,000 residents of the political subdivision. ~~The auditor may designate more buildings than are required by law.~~

**8200.3800 EMERGENCY VOTING CARD.**

Subpart 1. **When required.** If a voter who has registered prior to an election day is challenged because the voter's name does not appear ~~in on the duplicate registration file~~ polling place roster of the precinct in which ~~he or she~~ the voter desires to vote, the voter may register on that election day by following the election day registration procedures in parts 8200.1100 to 8200.9300 and 8220.0300 to 8220.4800. Or, if it appears upon examination that the voter's name was erroneously omitted from the ~~file roster,~~ the voter must be permitted to vote in the precinct after completing the required name and address information and signing the oath on the ~~precinct election list~~ polling place roster. The judges shall note on the list that the voter was permitted to vote pursuant to instructions from the county auditor and two judges shall initial the entry.

**8200.5100 REGISTRATION AT PRECINCT ONLY.**

Subpart 1. **Procedure; proof.** Any person otherwise qualified but not registered to vote in the precinct in which the person resides may register to vote on election day at the polling place of the precinct in which the person resides ~~in areas with voter registration.~~ To register on election day, a person must complete and sign the registration card and provide proof of residence. A person may prove residence on election day only: ~~(+)~~

**A.** by presenting

~~(+)~~ **(1)** a valid Minnesota driver's license, learner's permit, or a receipt for either that contains the voter's valid address in the precinct;

~~(+)~~ **(2)** a valid Minnesota identification card issued by the Minnesota Department of Public Safety or a receipt for the identification card that contains the voter's valid address in the precinct; or

~~(+)~~ **(3)** a current student identification card that contains the student's valid address in the precinct, a current student fee statement that contains the student's valid address in the precinct, or a copy of a current student registration card that contains the student's valid address in the precinct;

~~(+)~~ **B.** by having a valid registration in the same precinct under a different address;

~~(+)~~ **C.** by presenting an "ineffective registration notice" mailed by the county auditor or municipal clerk; or

~~(+)~~ **D.** by having a person who is registered to vote in the precinct and knows the applicant is a resident of the precinct sign the oath in part 8200.9939.

The oath in ~~(+)~~ **item D** must be attached to the voter registration card until the address of the applicant is verified by the county auditor. ~~The oath must be printed on a four-inch by six-inch card by the county auditor. After every election day~~ The county auditor shall file the oaths and maintain them for one year.

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

**8200.6100 COPIES OF ~~VOTER REGISTRATION~~ PUBLIC INFORMATION LISTS.**

Persons requesting copies of public information lists of registered voters shall ~~make the request in the form in part 8200.9953 provide the secretary of state or county auditor with a written request stating the information required by Minnesota Statutes, section 201.091, subdivision 4.~~ The secretary of state may provide forms for these requests.

**8200.6200 ~~LISTS IN OTHER FORM~~ PUBLIC INFORMATION LIST AVAILABLE FOR INSPECTION.**

A county auditor may make available lists of registered voters in forms other than paper copies, such as duplicate computer tapes. The secretary of state may review and determine satisfactory methods of reproducing lists of registered voters. This rule does not

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# Proposed Rules

relieve the auditor of the duty to make paper copies of lists of registered voters available. A paper copy of the list of registered voters shall public information list must be available for public inspection for authorized purposes at all times in the county auditor's office. The secretary of state may make available for purchase public information lists on paper and other media.

## 8200.6300 COST DETERMINATION.

When the secretary of state or a county auditor determines the cost of producing lists of registered voters a public information list, the secretary of state or auditor shall take into account only the costs actually incurred to fill the specific request. The secretary of state or auditor shall not take into account the general office expenses or other expenses which would have been incurred by the secretary of state or auditor's office even without the preparation of the request.

## 8200.9300 MAINTAINING DUPLICATE VOTER REGISTRATION RECORDS.

Subpart 1. [See repealer.]

Subp. 2. [See Repealer.]

Subp. 3. [See repealer.]

Subp. 4. [See repealer.]

Subp. 5. [See repealer.]

Subp. 6. [See repealer.]

Subp. 7. **Challenges and other notices.** A record of any challenge to a voter registration shall be made part of the duplicate registration file and shall remain until removed according to law. The word "challenged" shall appear on the same line as or directly above the name of a challenged voter on the precinct election list polling place roster. A record of any notice affixed to an original a voter registration card pursuant to Minnesota Statutes, section 201.15, shall be made part of the duplicate registration file and remain part of the file until removed according to law. The word "guardianship" shall appear on the same line as or directly above the name of the voter on the precinct election list polling place roster. If any other special notice or information is affixed to a voter registration card, a record of that notice shall be part of the duplicate registration file and an indication of the notice shall be printed on the precinct election list polling place roster.

[For text of subp 8, see M.R.]

Subp. 9. **Security.** The auditor or clerk shall be is responsible for maintaining the integrity of the duplicate registration file polling place roster and for restricting access to the electronic or data processing equipment statewide registration system to properly authorized persons. The auditor or clerk may make available lists of registered voters in forms other than paper copies, but in whatever form, no list made available for examination or purchase shall include the birth dates of registered voters. The auditor or clerk shall provide for the transport and security of the precinct election lists in accordance with polling place roster according to part 8200.0800.

Subp. 10. **Voter's receipt.** The election judges shall determine the number of ballots to be counted by adding the number of return envelopes from accepted absentee ballots to the number of voter's receipts issued pursuant to Minnesota Statutes, section 204C.10, subdivision 2, or to the number of names signed on the precinct election lists polling place roster. The election jurisdiction may require that the election judges number or initial each voter's receipt as it is issued.

Subp. 11. **Voter registration cards.** Voter registration cards must conform to the specifications of parts part 8200.1100 to 8200.1600 and parts 8200.9910, 8200.9916, 8200.9919, 8200.9922, and 8200.9925.

## 8200.9939 FORM OF OATH, SPECIFIED BY PART 8200.5100.

I, \_\_\_\_\_ swear or affirm that I am a registered voter in \_\_\_\_\_  
(County) \_\_\_\_\_ City or Township) \_\_\_\_\_  
(Ward) \_\_\_\_\_ (Precinct) and that I personally know that \_\_\_\_\_ (Name of person  
registering) is a resident of this precinct.

\_\_\_\_\_  
Signature of Registered Voter

\_\_\_\_\_  
Subscribed and sworn to before me

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Election Judge

The above oath shall be attached to the voter registration card until the address of the applicant is verified by the county auditor.

**8210.0200 ABSENTEE BALLOT APPLICATION.**

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

Subp. 3. **Postcard application.** The absentee ballot application may be printed as a postcard application or in any other manner deemed appropriate by the auditor or municipal clerk. If the application is printed as a postcard application, it ~~shall be printed in the following manner.~~

~~The postcard shall be white with black ink. The postcard shall weigh not more than one ounce. The size shall be no smaller than 3-1/2 inches by five inches and no larger than 6-1/8 inches by 11-1/2 inches. The postcard shall be at least .007 inches thick must conform to United States Postal Service requirements.~~

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

**8210.0700 ABSENTEE BALLOT RETURN ENVELOPE AS PROVIDED BY MINNESOTA STATUTES, SECTIONS 203B.04 TO 203B.15.**

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

Subp. 3. **Mailing address.** County auditors and municipal clerks shall cause a mailing address to be printed on each return envelope which they mail or deliver to an absent voter. The address block shall be located in the lower right one-quarter of the envelope. ~~Each county auditor or municipal clerk shall determine which of the address forms in subparts 4 to 6 shall be used on each return envelope in the county as the facts require. A return envelope may be addressed to the county auditor, to the municipal clerk of the city or town, or to the election judges of the precinct in which the absent voter is eligible to vote.~~

When an auditor has the duty to address envelopes for a municipality and the envelopes are to be addressed to the election judges, the clerk shall notify the auditor of the proper mailing address of each polling place in the municipality. The clerk shall immediately notify the auditor of every change in the initial notification.

Subp. 4. [See repealer.]

Subp. 5. [See repealer.]

Subp. 6. [See repealer.]

[For text of subp 7, see M.R.]

Subp. 8. **Return address.** A county auditor or municipal clerk may affix the return address to the upper left-hand corner of the return envelope.

**8210.3000 MAIL BALLOTING.**

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

Subp. 2. **Authorization.** The municipal governing body, school board, or county board may authorize mail balloting by resolution adopted no later than ~~60~~ 45 days prior to the first election at which mail balloting will be used. If mail balloting is adopted pursuant to *Minnesota Statutes*, section 204B.45, the resolution remains in effect for all subsequent state and county elections until revoked. Revocation of the resolution may occur no later than 45 days before the next affected election. Authorization to conduct a special election pursuant to *Minnesota Statutes*, section 204B.46, expires after completion of the election.

Subp. 3. **Notice.** The municipal clerk or school district clerk shall notify the county auditor ~~and the secretary of state~~ of the adoption or discontinuance of mail balloting no later than two weeks after adoption or revocation of the resolution. The county auditor shall send a similar notice to the secretary of state for elections authorized pursuant to *Minnesota Statutes*, section 204B.45. The county auditor, municipal clerk, or school district clerk shall post notice of mail ballot procedures at least six weeks before each election. Notice of mail ballot procedures must include:

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

Subp. 4. **Mailing ballots.** The county auditor, municipal clerk, or school district clerk shall mail ballots to the voters registered in the municipality or unorganized territory. A ballot mailing must be sent to each registered voter no earlier than 20 or later than 14 days prior to the election. No ballot may be mailed to a challenged voter.

Ballots must be sent by nonforwardable mail. Ballots for eligible voters who reside in health care facilities may be delivered as provided in *Minnesota Statutes*, section 203B.11. The ballot mailing must be addressed to the voter at the voter's residence address

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## Proposed Rules

as shown on the registration file unless the voter completes an absentee ballot request as provided in *Minnesota Statutes*, section 203B.04.

A return envelope, a ballot secrecy envelope, and instructions for marking and returning mail ballots must be included with the ballots. At the request of the secretary of state, a survey card that the voter can return to the secretary of state must also be included. The ballot return envelope must be printed with the mail voter's certificate. The ballot return envelope must be addressed for return to the county auditor ~~as specified in part 8210.0700, subpart 4, municipal clerk, or school district clerk that is conducting the election.~~ First class postage must be affixed to the return envelope.

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

**Subp. 7. Undeliverable ballots.** Ballots returned by the post office as undeliverable to the voter at the address of registration must be securely retained. If the auditor ~~or, municipal clerk, or school district clerk~~ is able to verify the voter's residence at that address, the ballot may be reissued. A ballot undeliverable to the voter at the address of registration must be considered a returned notice of verification as provided in *Minnesota Statutes*, section 201.12, and the voter's registration must be challenged. The auditor shall maintain a record of all undeliverable ballots.

If the ballot is returned by the post office with notification of the voter's new address within the county, municipality, school district, or unorganized territory, the ~~municipal auditor or~~ clerk shall ~~notify the voter of the procedure for requesting an absentee ballot and registering at the voter's new address~~ resend the ballot to the voter along with a voter registration card, an absentee ballot return envelope as provided in part 8210.9930, and a notice explaining the need and the procedure to register at the voter's new address. The auditor or clerk shall keep a list of individuals who are sent the second mailing and will provide a copy of that list to the election judges for use in processing the returned ballots. The list of voters sent the second mailing will take the place of the absentee ballot request form specified in part 8210.0200.

**Subp. 8. Returning ballots.** Mail ballots may be returned to the county auditor, municipal clerk, or school district clerk, by mail, in person, or by designated agent. Ballots returned in person must be accepted until 8:00 p.m. on the day of the election.

**Subp. 9. Polling place and election judges.** The only polling place required for mail balloting is the office of the ~~county auditor~~ election official conducting the election. ~~If adequate space for counting ballots is not available at the county courthouse,~~ The governing body shall designate ~~another~~ a suitable location where the election judges can meet on election day to receive and count ballots. The location must be open for public observation of the counting of ballots. The governing body shall appoint a ~~suitable number~~ of election judges as provided in *Minnesota Statutes*, sections 204B.19 to ~~204B.22~~ 204B.21. During the day of the election at least three election judges must be present at the office of the official conducting the election to accept mail ballots delivered in person and to process persons registering on election day. Additional judges may be appointed as needed. If paper ballots are used, at least one judge must be appointed for every 150 persons from whom ballots are expected to be returned.

**Subp. 10. Receiving and counting ballots.** On election day, at the time stated in the notice, the election judges shall receive from the county auditor, municipal clerk, or school district clerk, all returned ballots, applications for absentee ballots, and affidavits for replacement ballots, ~~and the list of voters sent a second mailing of the ballot.~~ The judges shall arrange to receive from the ~~auditor election official~~ any additional ballots received in the mail or returned by a voter prior to 8:00 p.m. on election day. ~~If the counting location is not at the county courthouse,~~ Ballots must be transported to the location where ballot counting will occur in a sealed transfer case by two or more election judges ~~of different major political parties~~. During the receiving and counting of ballots, the ballots must at all times remain in the custody of two or more election judges ~~of different major political parties~~.

Prior to 8:00 p.m., the election judges may examine the return envelopes, mark them "accepted" or "rejected" and remove the ballot envelopes from the "accepted" return envelopes. The ballot envelopes must be placed unopened in a locked ballot box or other sealed container. At 8:00 p.m., the election judges shall open the ballot box, remove the ballots from the ballot envelopes, and count the ballots.

[For text of subps 11 and 12, see M.R.]

**Subp. 13. Experimental forms.** The secretary of state may authorize the experimental use of envelopes and other forms related to mail elections.

### 8220.0050 CONDUCT OF ELECTIONS.

Except as provided in *Minnesota Statutes* or in parts 8220.0050 to ~~8230.4250~~ 8230.4350, elections shall be conducted in the manner prescribed for precincts using paper ballots in the Minnesota election law.

### 8220.0150 MINIMUM STANDARDS.

Parts 8220.0050 to ~~8230.4250~~ 8230.4350 set minimum standards for procedures in the use of electronic voting systems. An election jurisdiction may by resolution require additional procedures.

**8220.0250 DEFINITIONS.**

Subpart 1. **Scope.** As used in parts 8220.0150 to ~~8230.4250~~ 8230.4350, terms defined in *Minnesota Statutes*, section 206.56, have the meanings given them in that section, and the following terms defined in this part have the meanings given them.

[For text of subs 2 to 38, see M.R.]

**8220.0850 SCHEDULE FOR COMPLETING PROGRAMS.**

No later than five days after candidates' names are certified by the secretary of state, the election jurisdiction responsible for requesting the computer program must supply any information such as candidates' names and rotation to the individuals designated to prepare the computer program.

The computer program for any election and an exact duplicate of the program for use as backup must be completed and delivered to the election jurisdiction or the county auditor in charge of a common counting center at least 14 days prior to the election. ~~When state offices or questions are on the ballot, a second duplicate must be prepared, as provided in part 8220.1950. Instructions containing the necessary information, steps, and procedures required to operate the computer program must be prepared to accompany the original program and the duplicate programs. There must be at least two copies of the instructions for each computer facility. It is the responsibility of the election jurisdiction to see that the instructions are made available to the computer operators.~~

**8220.1450 DUTIES UPON COMPLETION.**

When an errorless count has been made on all precincts, the election jurisdiction providing the computer program must:

- A. secure all computer programs, including the object code, all support software used except the operating system, test decks, and predetermined results of the test decks, in a ~~metal~~ secure container sealed with a ~~metal~~ numbered seal and stored in a secured area that is subject to normal computer temperature humidity restraints;
- B. prepare a certificate that all precincts have been tested using the test deck or ~~ballot image~~ prepared under the direction of the election jurisdiction and that the results agree with the predetermined results of the test deck, which certificate must contain the seal number that was used to seal the ~~metal~~ container and be attached to the computer results of the test; and
- C. deliver the sealed ~~metal~~ container and the certificate to the county auditor.

**8220.1550 PUBLIC ACCURACY TEST.**

A public accuracy test must be held within ~~five~~ 14 days prior to the election for the purpose of demonstrating the accuracy of the computer programs and computers to be used at the election. The public accuracy test must be conducted according to *Minnesota Statutes*, section 206.73.

The time and place of the public accuracy test must be designated by the election jurisdiction providing the computer program, which must give at least 48 hours' public notice of the time and place of the test by publication in official newspapers, by posting a notice, and by notification to the county or legislative district chair of each major political party.

The test must be open to the public. The chief election official of the election jurisdiction shall explain the methods and test procedures used to determine the accuracy of the computer programs. This will include submitting as public record the certificate prepared in accordance with part 8220.1450 that all precincts have been tested using the test deck or ballot image prepared under the direction of the election jurisdiction.

The sealed container containing the computer programs, test deck, predetermined results, and header cards must be opened and the computer programs and computers tested to determine their accuracy on the computer on which they are to be used on election night. The initial testing of the computers and programs must be with the test deck or ballot image prepared under the direction of the election jurisdiction. The number of precincts to be tested is at the discretion of the election jurisdiction.

The backup computer program prepared and delivered according to part 8220.0850 must be tested on the computer on which it would be used on election night. The test decks used in these procedures must be the ones prepared in accordance with parts 8220.0750 to ~~8220.1950~~ 8220.1850. Any test cards made under parts 8220.0750 to ~~8220.1950~~ 8220.1850 must be marked "TEST."

If an error is detected in any part of the testing, the cause must be ascertained, the error corrected, and an errorless count must be made on all precincts. At the discretion of the election jurisdiction, the meeting may be adjourned to a time and date certain.

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## Proposed Rules

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### 8230.0250 ARRANGEMENT OF VOTING DEVICES.

Voting devices may be used in voting booths or self-contained stations. The booths or stations must be equipped with lights or arranged so that adequate lighting is available for voters to be able to see and mark the ballots. Precincts using punch card or optical scan voting systems may provide voting booths or self-contained stations for use by voters in casting their ballots. The booths or stations must be equipped with lights or arranged so that adequate lighting is available for voters to be able to see and mark the ballots. The booths or stations must be arranged so the secrecy of the ballot is not violated. If a voter claims that the arrangement of the booths or stations does not afford the opportunity to vote in secrecy, the judges shall rearrange the device or booth to provide for increased secrecy.

### 8230.2250 DELIVERY OF TRANSFER CASE.

Subpart 1. **Seal and certificate.** The transfer case must be sealed with a seal so that it is impossible to open the case or insert or remove ballots without breaking the seal. Attached to the transfer case by the seal must be a certificate signed by the judges indicating its content, the precinct name, and the number of the seal used to seal the case. The seal number must also be recorded in the certificate of the election judges. The transfer case certificate must be in a clear plastic envelope of a type approved by the secretary of state and affixed to the case by the seal.

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

### 8230.3250 ABSENTEE VOTING, ELECTRONIC VOTING SYSTEM.

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

Subp. 4. **Demonstrator.** A demonstrator voting device must be available to absentee voters and instructions for casting a ballot on an electronic voting system must be offered to each absentee voter by the municipal clerk or an election judge ~~trained under parts 8240.0100 to 8240.2600.~~

[For text of subps 5 to 10, see M.R.]

### 8230.4350 OPTICAL SCAN VOTING SYSTEMS

[For text of subps 1 to 6, see M.R.]

Subp. 7. **Ballots at counting center.** ~~Except for ballots that must be counted manually, ballots for a precinct must be tabulated together. After tabulation of votes for candidates whose names appear on the ballot at a general election, at least two election judges of different political parties shall count the valid write-in votes on ballots with a write-in indication. The judges shall record the valid write-in votes on the summary statement. The vote totals for central count optical scan systems may be certified by either the election judges who served in the precinct or a set of election judges specifically appointed to serve at the counting center. When the polling place closes, the appropriate election judges shall complete the steps in items A to I.~~

A. At the polling place, count the number of ballots in the ballot box and identify ballots that will need to be remade at the counting center.

B. Seal the ballots inside the transfer case.

C. Complete the parts of the summary statement indicating the number of ballots in the transfer case and the seal number.

D. Transport the transfer case to the counting center by two election judges of different political parties.

E. At the counting center, compare the transfer case seal and the seal number on the summary statement. If the vote totals are to be certified by the election judges at the counting center, all further processing of the ballots and certification of the returns is done by the counting center judges.

F. Remove ballots from the transfer case and read into the ballot counter.

G. Process ballots requiring duplication or manual counting, as needed.

H. Reseal counted ballots in the transfer case and record the seal number on the summary statement.

I. Sign certification of vote totals on the summary statement as recorded by the ballot counter.

### 8240.0100 DEFINITIONS.

Subpart 1. **Scope.** Terms used in parts 8240.0100 to ~~8240.2600~~ 8240.2500 shall have the meanings given.

[For text of subps 2 and 3, see M.R.]

### 8240.0200 SCOPE AND PURPOSE.

Parts 8240.0100 to ~~8240.2600~~ 8240.2500 establish the program for training of election judges required by *Minnesota Statutes*, section 204B.25.

The purpose of the training program is to provide for uniform application of Minnesota election laws and rules by election judges and to promote accuracy, honesty, and efficiency in election procedures.

Parts 8240.0100 to ~~8240.2600~~ 8240.2500 shall be construed as the minimum standards required of training programs conducted pursuant to *Minnesota Statutes*, section 204B.25. Nothing in parts 8240.0100 to ~~8240.2600~~ 8240.2500 shall restrict training authorities from implementing training programs more comprehensive than are required by parts 8240.0100 to ~~8240.2600~~ 8240.2500.

#### **8240.1300 COURSES REQUIRED.**

An election judge who must receive training pursuant to *Minnesota Statutes*, section 204B.25, shall successfully complete a basic training course which meets the requirements of part 8240.1600. After completing the basic training course, an election judge may serve at future elections by successfully completing a review course once every two years which meets the requirements of part 8240.1700 ~~before service at such election~~. The basic training course need not be repeated if the judge serves at least one election every four years.

The basic training course and the review course shall be conducted not more than 60 days or fewer than three days before the election. When one or more election judges are unable to attend a scheduled training session, a makeup session shall be held which conforms to the scheduled training session so far as practicable.

A special training course must be conducted for all election judges not more than 60 nor fewer than three days before a presidential primary election. The county auditor shall establish either a one or two hour training course for the presidential primary. The length of training for the presidential primary should be determined by the voting method used at the presidential primary, and the experience level of election judges with the voting method.

No election judge who successfully completes the training required by ~~these rules~~ parts 8240.0100 to 8240.2500 for a state primary election shall be required to complete additional training for the succeeding general election.

The training authority shall determine the maximum number of trainees in each training session conducted pursuant to parts 8240.1600 and 8240.1700. The maximum number of trainees shall be appropriate to the methods of instruction used.

#### **8240.2400 TRAINING PLAN.**

Each training authority shall submit prepare a training plan to ~~the secretary of state by August 1 of each general election year~~.

The training plan shall include the names of persons conducting training; number of sessions planned; projected attendance at each session; training materials to be used; training methods employed; and an outline of the content of the basic training course, review course, emergency training course, and any health care facility absentee voting course.

Copies of all materials which will be distributed at the training sessions shall be ~~submitted~~ included with the training plan ~~or as soon thereafter as they are available~~.

~~The training plan shall be subject to approval by the secretary of state, who shall approve the plan if it conforms to applicable state statutes and these rules.~~

~~If there is no change in the approved training plan on file with the secretary of state, the training authority need not submit a new training plan until a change occurs. The training plan must be available for public inspection.~~

#### **8250.0370 FORM OF CANARY BALLOT.**

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

Subp. 2. **Ballot order.** County offices must be listed first on the canary ballot in the following order: ~~county~~ commissioner, ~~county~~ auditor, ~~county~~ treasurer, ~~county~~ recorder, ~~county~~ sheriff, ~~county~~ attorney, ~~county~~ coroner surveyor, and ~~county~~ surveyor ~~coroner~~. Special district offices must follow the last county office. Judicial offices must follow special district offices and appear in the following order: chief justice - supreme court, associate justice - supreme court, judge - court of appeals, and judge - district court. Where judicial seats are designated by number, the offices must be listed in numerical order. Optical scan ballots must be prepared in the order provided in *Minnesota Statutes*, chapter 206. County and judicial offices for which there is only one candidate will appear in the manner provided in *Minnesota Statutes*, section 204D.14.

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

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## Proposed Rules

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### 8250.1200 TYPE STYLES AND SIZES.

The words "Put an (X) in the square opposite the name of each candidate you wish to vote for" must be printed in upper and lower case in ~~as close to 8-point Century bold type as practicable.~~

The words "STATE GENERAL ELECTION BALLOT" must be printed in upper case in ~~as close to 18-point Franklin Gothic type as practicable.~~

The office and its identification must be printed in upper case in ~~as close to 10-point Century bold type.~~

The words "VOTE FOR ONE" must be printed in upper case in ~~as close to 8-point Century bold type as practicable.~~

The names of the candidates must be printed in upper case in ~~as close to 8-point Century bold type as practicable.~~

The party designation or political principle must be printed in upper and lower case in ~~as close to 8-point Century bold type as practicable.~~

The words "OFFICIAL BALLOT" on the back of the ballot must be printed in upper case in ~~as close to 18-point Cheltenham bold as practicable type,~~ the date in upper case in ~~as close to 8-point Antique as practicable type,~~ and the word "Judge" in upper and lower case in ~~as close to 10-point Caslon Old Face Italic as practicable type.~~

### 8250.1600 APPLICABILITY.

Parts 8250.1600 to 8250.1800 apply to electronic voting systems, as defined in *Minnesota Statutes*, section 206.56, subdivision 8. To the extent possible, parts 8250.0100 to ~~8250.1500~~ 8250.1400 apply to the use of electronic voting systems, unless otherwise provided.

### 8250.1800 FORMAT OF BALLOT CARDS FOR OPTICAL SCAN SYSTEMS.

Subpart 1. **Type sizes.** The type sizes in items A to ~~D~~ **E** must be used in the printing of ballot cards.

A. The titles "FEDERAL OFFICES," "STATE OFFICES," and "CONSTITUTIONAL AMENDMENTS" must be printed in upper case and bold face in as large as practicable but no smaller than 14-point type.

B. The office titles must be printed in upper case and bold face in as large as practicable but no smaller than 10-point type. Immediately under each office title, the instruction "VOTE FOR ONE" or "VOTE FOR ONE TEAM" must be printed in upper case and bold face in as large as practicable but no smaller than 8-point type. The office titles must be shaded with a screen of ten percent or less.

C. The candidate names must be printed in upper case in as large as practicable but no smaller than 10-point type. The party name must be printed under the candidate name in as large as practicable but no smaller than 8-point type. The name of the candidate must be aligned as close to the vote target as possible.

D. The subject title of a proposed question must be printed in upper case and bold face in as large as practicable but no smaller than 10-point type. The body of the question must be printed in bold face upper and lower case in as large as practicable but no smaller than 8-point type. The words "YES" and "NO" must be printed to the left of the vote targets in upper case and bold face in as large as practicable but no smaller than 10-point type.

E. On each write-in line the words "Write-In If Any" must appear in upper and lower case in as large as practicable but no smaller than 6-point type. The words "Write-In If Any" must be aligned next to the vote target.

[For text of subs 2 and 3, see M.R.]

**REPEALER.** *Minnesota Rules*, parts 8200.0400; 8200.0700; 8200.1400; 8200.1500; 8200.3200; 8200.3300; 8200.3400; 8200.9100; 8200.9200; 8200.9300, subparts 1, 2, 3, 4, 5, and 6; 8200.9910; 8200.9919; 8200.9953; 8210.0700, subparts 4, 5, and 6; 8220.1950; 8220.2750; 8240.1000; 8240.2600; and 8250.1500, are repealed.

**TERM CHANGE.** Change the title to chapter 8230 from "ELECTION JUDGES AND COUNTING CENTERS" to "POLLING PLACES AND COUNTING CENTERS."

**Department of Trade and Economic Development****Proposed Permanent Rules Relating to Business and Community Development Grants****Notice of Intent to Adopt a Rule Without a Public Hearing**

The Department of Trade and Economic Development intends to adopt a permanent rule 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 rule and may also submit a written request that a hearing 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: Paul Moe, Department of Trade and Economic Development, 500 Metro Square, 121 - 7th Place East, St. Paul, MN 55101, 612-297-1391, fax 612-296-5287, TTY/TDD 612-282-6142.

**Subject of Rule and Statutory Authority.** The proposed rule is being sought in order to bring them in accordance with current statutes and the state's *Economic Blueprint* in addressing community and economic development needs.

The statutory authority to adopt this rule is *Minnesota Statute*, section 116J.035 which authorizes the Department to adopt rules as necessary to carry out the Commissioner's duties and responsibilities under this chapter.

**Comments.** You have until 4:30 p.m. on January 29, 1996 to submit written comment in support of or in opposition to the proposed rule and any part or subpart of the rule. Your comment must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comment should identify portion of the proposed rule addressed and the reason for the comment. You are encouraged to propose any change desired. Any comments that you would like to make on the legality of the proposed rule must also be made during this comment period.

**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 agency contact person by 4:30 p.m. on January 29, 1996. Your written request for a public hearing must include your name and address. You must identify the portion of the proposed rule to which you object or state that you oppose the entire rule. You are encouraged to state the reason for the request and any changes you want made to the proposed rule. Any request that does not comply with this paragraph is not valid and cannot be counted by the agency for determining whether a public hearing must be held. 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 enough requests for hearing are withdrawn to reduce the number below 25, the agency must give written notice of this to all persons who requested a hearing, explain the actions the agency took to effect the withdrawal and ask for written comments on this action. If a public hearing is required, the agency will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20.

**Modifications.** The proposed rule may be modified as a result of public comment. The modifications must be supported by comments and information submitted to the agency, and the adopted rule may not be substantially different than this proposed rule. 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 agency contact person. This statement contains a summary of the justification for the proposed rule, including a description of who will be affected by the proposed rule and an estimate of the probable cost of the proposed rule.

**Adoption and Review of Rule.** If no hearing is required, the agency may adopt the rule after the end of the comment period. The rule and supporting documents will then be submitted to the Office of Administrative Hearings for review for legality. You may ask to be notified of the date the rule is submitted to the office. If you want to be so notified, or want to receive a copy of the adopted rule, or want to register with the agency to receive notice of future rule proceedings, submit your request to the agency contact person listed above.

Dated: 8 December 1995

Jennifer L. Engh, Deputy Commissioner  
Business and Community Development Division

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# Proposed Rules

## Rules as Proposed

### BUSINESS AND COMMUNITY DEVELOPMENT DIVISION COMMUNITY BLOCK GRANTS

#### 4300.0100 DEFINITIONS.

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

Subp. 2a. [See renumberer.]

Subp. 2b. **Business and community development application.** "Business and community development application" means the official consolidated application form as developed by the Department of Trade and Economic Development to be used to apply for funding assistance from various ~~community~~ assistance programs administered by the business and community development division.

Subp. 3. **Business and community development need.** "Business and community development need" means a demonstrated deficiency in housing stock, public facilities, economic development opportunities consistent with part 4300.1901, or other services which are necessary for developing or maintaining viable communities.

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

Subp. 5a. **Division.** "Division" means the business and community development division in the Department of Trade and Economic Development to which the program is assigned.

Subp. 5b. **Economic development grant.** "Economic development grant" means an agreement between the state and an eligible recipient through which the state provides money to carry out specified programs, services, or activities designed to create new employment, maintain existing employment, increase the local tax base, or otherwise increase economic activity in a community.

[For text of subs 6 to 12, see M.R.]

Subp. 13. **Low and moderate income.** As it applies to federal sources of funding, "low and moderate income" means income which does not exceed 80 percent of the median income for the area, with adjustments for smaller and larger families. State funds are not limited to or constrained by low and moderate income requirements.

[For text of subs 14 to 17, see M.R.]

Subp. 18. [See repealer.]

[For text of subs 19 to 22, see M.R.]

Subp. 23. [See repealer.]

[For text of subs 25 to 27, see M.R.]

#### 4300.1200 APPLICATION PROCESS AND REQUIREMENTS.

Subpart 1. **Business and community development application manual.** The division shall make the business and community development application manual, additional instructional materials, and forms available on a year-round basis. The manual and additional materials and forms shall instruct applicants in the preparation of applications and describe the method by which the division will evaluate and rank applications.

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

Subp. 3. **Disqualification of applicants.** Applications from otherwise eligible applicants ~~shall~~ may be disqualified ~~where~~ for ~~previously awarded grants under these parts or awarded by the Department of Housing and Urban Development under United States Code, title 42, section 5306 (1981);~~ if it is determined by the division that any of the following conditions exist:

A. there are outstanding audit findings on previous ~~community~~ economic development or competitive grants and the grantee has not objected on a reasonable basis to the findings or demonstrated a willingness to resolve the findings;

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

Subp. 4. **Contents of business and community development application.** The contents of a business and community development application must be consistent with the informational requirements of this chapter and must be on a form prescribed by the division. A complete business and community development application shall include, but not be limited to:

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

E. resolution, from the submission of the local government applicant approving the application and authorizing execution of the grant agreement according to the requirements of the business and community development division if funds are made available; and

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

[For text of subs 5 and 6, see M.R.]

#### **4300.1901 EVALUATION OF ECONOMIC DEVELOPMENT PROJECTS.**

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

Subp. 2. **Federal and state eligibility thresholds.** Applicants for federal funds shall provide a description of the ways that activities address one of the federal objectives described in part 4300.0300 and the state economic development objectives in items A to D. Each activity proposed for funding must be eligible under current federal regulations.

Applicants for state funds shall describe how they will meet ~~two of the three~~ following ~~thresholds based on~~ state economic development objectives:

- A. creation or retention of permanent private sector jobs;
- B. stimulation or leverage of private investment; ~~or~~
- C. increase in local tax base; or
- D. improved employment and economic opportunity for Minnesota citizens to create a reasonable standard of living.

Subp. 3. **Project review.** Applications that meet eligibility thresholds will be awarded points by the division based on evaluation of the two rating categories: project design and financial feasibility. Applications must attain at least 400 of the 600 available points for economic development to be recommended for funding. Applications must score at least half of the points available in each of the two rating categories.

Four hundred points will be awarded based on an evaluation of project quality design including an assessment of need, impact, and the capacity of the applicant to complete the project in a timely manner. ~~Consideration of~~ Need for an economic development project must be based on the value and benefit of the project as it relates to securing and improving economic stability while giving consideration to deficiencies in employment opportunities and circumstances contributing to economic vulnerability and distress. Consideration of impact must be based on the extent to which the project ~~reduces or eliminates the need~~ positively affects or addresses the creation or retention of permanent private sector jobs, the wage level of those jobs, and the increase in tax base. Consideration of capacity must be based on demonstration of administrative capability, realistic implementation schedules, and the ability to conform to state and federal requirements.

Two hundred points will be awarded based on an evaluation of the effective use of program funds to induce economic development. Consideration of financial feasibility must include investment analysis, commitment of other funds, and other factors relating to the type of program assistance requested.

Subp. 4. **Funding recommendations.** Applications that attain at least 400 points ~~will~~ may be recommended to the commissioner for funding. Applications not recommended for funding may be revised and resubmitted.

#### **4300.2000 DETERMINATION OF GRANT AWARDS.**

Subpart 1. **Funds available for grants.** The amount of funds available for grants shall be equal to the total allocation of federal funds made available to the state under *United States Code*, title 42, section 5306, after subtracting an amount for costs available to the division for administration of the program, as allowed by that law, plus any money made available by the state legislature. The ~~division~~ department is not liable for any grants under this chapter until funds are received from the United States Department of Housing and Urban Development.

Subp. 2. **Division of funds.** Of the federal funds available ~~for grants~~ in each grant year, 30 percent shall be reserved ~~by the division~~ to fund single purpose grants, 15 percent shall be reserved for economic development grants, and 55 percent shall be reserved by the ~~division~~ commissioner to fund comprehensive grants. However, the ~~division~~ commissioner may modify the proportions of funds available ~~for single purpose and comprehensive grants if, after review of all applications, it~~ the commissioner determines that there is a shortage of fundable applications in ~~either~~ any category.

~~At least 30 percent of the funds made available for single purpose grants shall be awarded for applications in each of the two categories: housing and public facilities. However, no application with a rating below the median score for its category shall be funded by the division solely for the purpose of meeting this requirement.~~

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## Proposed Rules

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If there are unawarded economic development funds available at the end of the application year, two-thirds of the remaining funds will be available for competitive single purpose projects and one-third will be available for economic development projects during the next application year.

[For text of subps 3 to 6, see M.R.]

### 4300.3100 GRANT AGREEMENTS.

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

Subp. 2. **Contents of grant contract.** The grant contract must include:

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

C. assurances that the grant recipient will comply with all applicable state and federal laws, including at least the federal laws or regulations for which the state is made responsible for enforcement in *Code of Federal Regulations*, title 24, sections 570.495 and 570.496.

[For text of subps 3 to 7, see M.R.]

Subp. 8. Grant termination. If the department finds that there has been a failure to comply with the provisions of the grant agreement, that reasonable progress has not been made, or that the purposes for which the funds were granted have not been made, the department may take action to terminate the grant and/or protect the interests of the state, including requiring the return of all or part of the funds already disbursed.

**REPEALER.** Minnesota Rules, part 4300.0100, subparts 18 and 23, are repealed.

**TERM CHANGE.** Part 4300.0300, change headnote to read "Objective of the Competitive Program."

**RENUMBERER.** Renumber part 4300.0100, subpart 2a, as subpart 3a.

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.

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## Agriculture Department

### Minnesota Rural Finance Authority Public Hearings on the Issuance of Agricultural Development Revenue Bonds Under *Minnesota Statutes*, Chapter 41C

NOTICE IS HEREBY GIVEN that a public hearing will be held on **January 12, 1996, at 9 A.M.** in Room 145 Department of Agriculture Building, 90 West Plato Boulevard, Saint Paul Minnesota, on a proposal that the Minnesota Rural Finance Authority (the Authority) issue its revenue bond under *Minnesota Statutes*, Chapter 41C, in order to finance the purchase of **approximately 30 heifers** located in **Section 29, Township 119N, R23W, Hennepin County, Minnesota** on behalf of **Steven & Stephanie Strehlow**, a married couple (the Borrowers). The maximum aggregate face amount of the proposed bond issue is **\$35,000.00**. The revenue bond will be a limited obligation of the Authority, payable solely from the revenue pledged to the payment thereof. No holder of such revenue bond will ever have the right to compel any exercise of the taxing power of the State of Minnesota to pay the bond or the interest thereon, nor to enforce payment against any property of the Authority or the State of Minnesota, except the revenues specifically pledged to the payment thereof. Before issuing the revenue bond, the Authority will enter into an agreement with the Borrower whereby the Borrower will be obligated to make payments at least sufficient at all times to pay the principal of and interest on such revenue bond when due. All persons interested may appear and be heard at the time and place set forth above, or may file written comments with the Executive Director of the Authority prior to the date of the hearing set forth above.

Dated: 6 December 1995

Jim Boerboom  
RFA Director

NOTICE IS HEREBY GIVEN that a public hearing will be held on **January 12, 1996, at 9 A.M.** in Room 145 Department of Agriculture Building, 90 West Plato Boulevard, Saint Paul Minnesota, on a proposal that the Minnesota Rural Finance Authority (the Authority) issue its revenue bond under *Minnesota Statutes*, Chapter 41C, in order to finance the purchase of **approximately four (4) elk** located in **Section 14 & 23, Albion Township, Wright County, Minnesota** on behalf of **Curtis & Margaret Mattila**, a married couple (the Borrowers). The maximum aggregate face amount of the proposed bond issue is **\$26,000.00**. The revenue bond will be a limited obligation of the Authority, payable solely from the revenue pledged to the payment thereof. No holder of such revenue bond will ever have the right to compel any exercise of the taxing power of the State of Minnesota to pay the bond or the interest thereon, nor to enforce payment against any property of the Authority or the State of Minnesota, except the revenues specifically pledged to the payment thereof. Before issuing the revenue bond, the Authority will enter into an agreement with the Borrower whereby the Borrower will be obligated to make payments at least sufficient at all times to pay the principal of and interest on such revenue bond when due. All persons interested may appear and be heard at the time and place set forth above, or may file written comments with the Executive Director of the Authority prior to the date of the hearing set forth above.

Dated: 6 December 1995

Jim Boerboom  
RFA Director

NOTICE IS HEREBY GIVEN that a public hearing will be held on **January 12, 1996, at 9 A.M.** in Room 145 Department of Agriculture Building, 90 West Plato Boulevard, Saint Paul Minnesota, on a proposal that the Minnesota Rural Finance Authority (the Authority) issue its revenue bond under *Minnesota Statutes*, Chapter 41C, in order to finance the purchase of **approximately 160 acres of bare farmland** located in **Section 17, Seely Township, Faribault County, Minnesota** on behalf of **Timothy M. Gudal**, a single person (the Borrower). The maximum aggregate face amount of the proposed bond issue is **\$161,000.00**. The revenue bond will be a limited obligation of the Authority, payable solely from the revenue pledged to the payment thereof. No holder of such revenue bond will ever have the right to compel any exercise of the taxing power of the State of Minnesota to pay the bond or the interest thereon, nor to enforce payment against any property of the Authority or the State of Minnesota, except the revenues specifically pledged to the payment thereof. Before issuing the revenue bond, the Authority will enter into an agreement with the Borrower whereby the Borrower will be obligated to make payments at least sufficient at all times to pay the principal of and interest on such revenue bond when due. All persons interested may appear and be heard at the time and place set forth above, or may file written comments with the Executive Director of the Authority prior to the date of the hearing set forth above.

Dated: 6 December 1995

Jim Boerboom  
RFA Director

## Official Notices

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NOTICE IS HEREBY GIVEN that a public hearing will be held on **January 12, 1996**, at **9 A.M.** in **Room 145** Department of Agriculture Building, 90 West Plato Boulevard, Saint Paul Minnesota, on a proposal that the Minnesota Rural Finance Authority (the Authority) issue its revenue bond under *Minnesota Statutes*, Chapter 41C, in order to finance the purchase of **approximately 45 acres of bare farmland** located in **Section 21, McPherson Township, Blue Earth County, Minnesota** on behalf of **Michael R. Ward**, a single person (the Borrower). The maximum aggregate face amount of the proposed bond issue is **\$50,000.00**. The revenue bond will be a limited obligation of the Authority, payable solely from the revenue pledged to the payment thereof. No holder of such revenue bond will ever have the right to compel any exercise of the taxing power of the State of Minnesota to pay the bond or the interest thereon, nor to enforce payment against any property of the Authority or the State of Minnesota, except the revenues specifically pledged to the payment thereof. Before issuing the revenue bond, the Authority will enter into an agreement with the Borrower whereby the Borrower will be obligated to make payments at least sufficient at all times to pay the principal of and interest on such revenue bond when due. All persons interested may appear and be heard at the time and place set forth above, or may file written comments with the Executive Director of the Authority prior to the date of the hearing set forth above.

Dated: 6 December 1995

Jim Boerboom  
RFA Director

## Agricultural and Economic Development Board

### Notice of Public Hearing on Proposed Project and the Issuance of Bonds under *Minnesota Statutes* 1986, Chapter 116M and *Minnesota Statutes*, Chapter 41A

NOTICE IS HEREBY GIVEN that the Minnesota Agricultural and Economic Development Board (the "Board") or its designated representative, shall meet on January 10, at 9:00 a.m., at 500 Metro Square, 121 7th Place East, St. Paul, Minnesota, for the purpose of conducting a public hearing on a proposed issues of bonds (the "Bonds") and the provision of other financial assistance under *Minnesota Statutes* 1986, Chapter 116M, and *Minnesota Statutes*, Chapter 41A, as amended (the "Act"), to undertake and finance a project on behalf of Impressions Incorporated, a Minnesota corporation and JME Incorporated, a Minnesota corporation (the "Applicant"). Such persons as desire to be heard with reference to said issue of Bonds will be heard at this public hearing.

The project to be financed consists of the acquisition, construction and equipping of a printing plant at the north side of Industrial Boulevard one half block east of Michigan Street in Hutchinson Industrial Park in the City of Hutchinson, Minnesota (the "Project"). The initial owner of the Project will be the Applicant and the Project is expected to be operated and managed by the Applicant. It is contemplated that the Project will be used primarily for the manufacture of printed products including packaging and folding cartons. The estimated amount of the Board's proposed bond issue is an amount not to exceed \$6,000,000. The Bonds shall be limited obligations of the Board, the Bonds and the interest thereon shall be payable solely from the revenue pledged to the payment thereof, and a mortgage or security interest or other security arrangements to be established by or on behalf of the Applicant. In addition, the Bonds and the Project may be subsequently considered by the Board for financial assistance to be provided by the Economic Development Fund created and established under *Minnesota Statutes* 1986; Chapter 116M or other financial or special assistance from the Board. Notwithstanding the foregoing, no holders of any such Bonds shall ever have the right to compel any exercise of the taxing powers of the State of Minnesota or any political subdivision thereof to pay the Bonds or the interest thereon nor to enforce payment against any property of said State or said political subdivision.

A copy of the Application to the Board for approval of the Project, together with all attachments and exhibits thereto and a copy of the Board's resolution accepting the Application and accepting the Project is available for public inspection at the Offices of the Board at 500 Metro Square, 121 7th Place East, St. Paul, Minnesota from the date of this notice to the date of the public hearing hereinabove identified, during normal business hours.

Dated: 15 December 1995

Jim Boerboom  
By Order of the Members of the  
Minnesota Agricultural and  
Economic Development Board  
Paul Moe, Executive Director  
Minnesota Agricultural and  
Economic Development Board

## **Minnesota State Agricultural Society**

### **Minnesota State Fair**

#### **Annual Meeting Notice**

The 137th annual meeting of the Minnesota State Agricultural Society, governing body of the State Fair, will be held January 12, 13 and 14 at the St. Paul Radisson Hotel. The society's general business session is scheduled for 8:30 a.m. Sunday, January 14, followed by a meeting of the society's board of managers.

Complete programs of all scheduled events will be available at the hotel.

## **Arts Board**

### **Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rule Governing Procedures for Receiving and Reviewing Requests for, and Standards for Distribution of, Grants and Other Forms of Assistance**

**NOTICE IS HEREBY GIVEN** that the State Board of the Arts is seeking information or opinions from sources outside the agency in preparing to propose the repeal and reenactment of the rules governing the agency's procedures for receiving and reviewing requests for, and standards for distribution of, grants and other forms of assistance. The adoption of the rules is authorized by *Minnesota Statutes*, section 129D.04, subd. 1(e) and (f) (1994), which requires the agency to promulgate by rule procedures to be followed by the board for receiving and reviewing requests for grants and other forms of assistance, and to promulgate standards consistent with sections 129D.01 - .06 to be followed by the board in distribution of grants and other forms of assistance. Outside opinion is also solicited as to how the rules will affect small businesses as defined under *Minnesota Statute* Section 14.155, subd. 1. These rules are necessary to inform potential applicants and the general public of the procedures and requirements for seeking grants and other forms of assistance and the standards for distributing grants and other forms of assistance. These rules would be effective immediately upon final adoption.

Specifically, the groups or persons affected by these rules are arts organizations, individual artists, arts educators, arts patrons and the Minnesota Regional Arts Councils. The State Board of the Arts requests information and opinions concerning the subject matter of the rules. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to: Natalie B. Madgy, Rules Writer, Minnesota State Arts Board, Park Square Court, 400 Sibley Street, Suite 200, Saint Paul, Minnesota 55101. Oral statements will be received during regular business hours over the telephone at 612/ 215-1600 and in person at the above address.

A draft of the proposed rule is available and may be obtained from the agency by contacting Natalie B. Madgy at 612/ 215-1600.

All statements of information and opinions shall be accepted until February 26, 1996. Any written material received by the State Board of the Arts shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

Dated: 11 December 1995

Sam W. Grabarski, Executive Director

## **Health Department**

### **Notice Regarding Quarterly Change in the Regional and National Consumer Price Index:**

Pursuant to *Minnesota Statutes* section 62J.04, Subdivision 1, the commissioner of health is required to publish the quarterly change in the regional consumer price index for urban consumers. The intent of the publication of this number is to monitor the change in general inflation as measured by the quarterly change in the North Central CPI-U index. The quarterly change in the U.S. city average CPI-U index is also published for comparative purposes.

The change in the average, unadjusted North Central CPI-U index for all items, from the 2nd quarter 1995 to the 3rd quarter 1995, is 0.45%.

## Official Notices

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The change in the average, unadjusted U.S. city CPI-U index for all items, from the 2nd quarter 1995 to the 3rd quarter 1995, is 0.44%.

The seasonally adjusted annualized rate of change in the average U.S. city CPI-U index, from the 2nd quarter 1994 to the 3rd quarter 1995, is 2.03%.

## Higher Education Facilities Authority

### Notice of Public Hearing on Revenue Obligations

**NOTICE IS HEREBY GIVEN** that a public hearing will be held by the Minnesota Higher Education Facilities Authority (the "Authority") with respect to a proposal to issue revenue bonds or other obligations on behalf of the College of St. Scholastica, Inc. a Minnesota nonprofit corporation (the "College"), as owner and operator of the College of St. Scholastica, Inc. an institution of higher education, at the Authority's offices at Suite 450 Galtier Plaza, 175 East Fifth Street, St. Paul, Minnesota on January 17, 1996 at 3:00 p.m. Under the proposal, the Authority would issue its revenue bonds or other obligations in an original aggregate principal amount of up to approximately \$2,275,000 to finance a project generally described as the construction of an approximately 28,300 square foot addition to and related remodeling and equipping of the existing Science Building (collectively, the "Project"), owned or to be owned and operated by the College and located on its main campus, the principal street address of which is 1200 Kenwood Avenue, Duluth, Minnesota 55811.

At said time and place the Authority shall give all parties who appear or have submitted written comments an opportunity to express their views with respect to the proposal to undertake and finance the Project.

Dated: 26 December 1995

By Order of the Minnesota  
Higher Education Facilities Authority  
J. Luther Anderson  
Executive Director

## Department of Labor and Industry

### Labor Standards Division

### Notice of Prevailing Wage Certifications for Commercial Construction Projects

Effective December 26, 1995 prevailing wage rates were determined and certified for commercial construction projects in the following counties:

**Hennepin:** Lindbergh Terminal Roof Rehabilitation-MSP International Airport; County ADA Corrections-317 Building-Minneapolis; Blegen Hall Sprinkler Protection-Minneapolis; GTC Finishes-MSP International Airport; County ADA Corrections-Rauar Bldg-Minneapolis; Northeast School Asbestos Abatement-Minneapolis.

**Ramsey:** St Paul Technical College 1996 Asbestos Abatement-St Paul.

**St Louis:** Kirby Student Center Passenger Elevator Modernization-Duluth; Replace Chiller NRRI U of M Duluth-Duluth; Replace Cooling Tower MW Alworth Hall U of M Duluth-Duluth; Pyhala Farm Restoration Phase I, II, III-Embarrass.

**Stearns:** Addition & Renovation Library-Paynesville.

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

## **Department of Labor and Industry**

### **Labor Standards Division**

#### **Notice of Correction to Prevailing Wage Rates**

Highway and Heavy Prevailing Wage Rates Certified 10/16/95 have been adjusted for various Labor Codes due to errors in calculation in the following Counties:

Nobles; Murray.

Copies of the corrected certification may be obtained by contacting the Minnesota Department of Labor and Industry, Prevailing Wage Section, 443 Lafayette Road, St. Paul, Minnesota 55155-4306, or calling (612) 296-6452.

Gary W. Bastian, Commissioner

## **Pollution Control Agency**

### **Hazardous Waste Division**

#### **Notice of Solicitation of Outside Information or Opinions Regarding the Amendment of Minnesota Rules Ch. 7045 Governing Hazardous Waste, Specifically Amendments Applicable to the Generators of Very Small Quantities of Hazardous Waste, Exemptions, Recycled Waste, License Applications, One Time Disposal, Storage, Personnel Training, Ground Water Standards, and Container Labeling**

**Introduction.** Notice is hereby given that the Minnesota Pollution Control Agency (MPCA) is seeking information or opinions from sources outside the MPCA regarding proposed amendments to the hazardous waste rules that govern the generators of hazardous waste and the operators of hazardous waste facilities (*Minnesota Rules* ch. 7045).

**Summary of Issues.** The MPCA requests comments on its plan to amend the hazardous waste rules to address provisions specific to the management of very small quantities of hazardous waste and also to make minor miscellaneous amendments applicable to all hazardous waste generators. The following general areas of amendment are being considered:

1. A number of changes to the requirements governing the generators of very small quantities of hazardous waste are being considered. These will address the licensing of generators, transport of small amounts of waste, recordkeeping, identification numbers and the proper labeling and storage of waste prior to disposal. The draft amendments also may significantly reduce the current requirements applicable to businesses that generate less than 10 gallons of hazardous waste per year to make it easier for these generators to properly manage small quantities of waste.
2. A number of the MPCA's requirements for obtaining a hazardous waste generator license will be considered for amendment to eliminate some obsolete requirements and to provide clarity for remaining requirements. The form in which the metropolitan county hazardous waste programs report information to the MPCA may also be revised.
3. A number of revisions are considered to enhance understanding of current rule requirements. These amendments will provide clarification of existing rules governing one time disposal requirements, waste accumulation requirements, treatment in containers, the applicable time period for personnel training, used oil collection centers, and disposal of polychlorinated biphenyls.
4. An exemption is considered to remove arsenical treated wood from regulation as a hazardous waste under certain circumstances.
5. Revisions to the existing requirements are being considered to address the labeling of containers, property set back requirements for ignitable wastes, ground water protection standards, and evaporation of waste.

**Groups and individuals likely to be affected.** These amendments to the rules, if adopted, will affect all categories of hazardous waste generators and also the operators of certain hazardous waste facilities. The amendments being considered will result in a decrease in the current level of regulation by either reducing, eliminating or clarifying an existing requirement.

**When and where to comment.** Interested person or groups may submit comments or information on this planned rule in writing or orally until 4:30 p.m. on February 2, 1996 at the address shown below.

## Official Notices

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Oral statements and requests will be accepted during business hours on Mondays, Wednesdays and Fridays at (612) 297-8371 and in person on those days at the above address. Any written material received by the MPCA will become part of the rulemaking record in the event that the rules are adopted.

**How to obtain drafts of the proposed amendments.** The MPCA has prepared a draft of the proposed rule amendments. Requests for the draft rule amendments or other information should be directed to:

Carol Nankivel  
Hazardous Waste Division  
Minnesota Pollution Control Agency  
520 Lafayette Road  
St. Paul, Minnesota 55115-4194

Dated: 26 December 1995

Charles W. Williams  
Commissioner  
MPCA

## Public Utilities Commission

### Notice of Commission Meeting on Reconsideration of the Commission's October 24, 1995 Order Modifying the Consensus Recommendation of Eleven Parties to the Local Telephone Calling Scope Investigation - P-999/CI-94-296

#### Background

In 1994, the Legislature added a subdivision to *Minnesota Statutes* § 237.161 which requires that the Minnesota Public Utilities Commission no longer accept petitions for extended area telephone service through June 1, 1996, but instead institute:

“a proceeding or series of proceedings to investigate issues related to extended area telephone service and (the commission) shall issue a final order to establish, at a minimum, an orderly and equitable process and standards for determining the configurations of and cost allocations for extended area service in the state.”

*Minnesota Statutes* § 237.161, subd. 6 (1994).

On April 20, 1994, the Public Utilities Commission gave notice of its intent to investigate the appropriate local calling scope of telephone subscribers in Minnesota. The Notice, which included publication in the *State Register* on May 2, 1994, solicited comments from interested parties regarding the parameters of the investigation.

In its Order of August 22, 1994, the Commission established the parameters of the case. The primary aspects of the case, titled *In the Matter of an Investigation into the Appropriate Local Calling Scope, in Accordance with Minnesota Statutes* § 237.161 (1994) were that any interested party could submit to the Commission by November 30, 1994, a plan for an appropriate local calling scope. The Commission would issue a Notice by December 15, 1994, summarizing the plans that had been filed and any other plans that the Commission believed merited further consideration. Parties would have until March 1, 1995, to file responsive comments. Also, during the months of September and October, 1994, the Commission held a series of public forums around the State to explain the case and collect the views of the public. (See notice in *State Register* of August 29, 1994.)

Eleven of the parties to this proceeding submitted a consensus recommendation to the Commission. In summary, the consensus recommendation was that:

1. The Commission should adopt the parties' interim solution to the local calling scope issue until the local service competition rulemaking in Docket No. P-999/R-95-53 is completed;
2. The Commission should issue a final order in this docket adopting on an interim basis, until the rules in the local service competition rulemaking take effect, the EAS process and standards embodied in *Minnesota Statutes* § 237.161, subd. 1-5 with one modification. The threshold calling requirement under *Minnesota Statutes* § 237.161, subd. 1(a)(3) should be changed to require that at least 50 percent of the customers in a petitioning exchange make *four or more calls per month* to the exchange or local calling area to which extended area service is requested; and
3. The Commission should expand the local service competition rulemaking docket to explicitly include the local calling scope issues raised in this docket.

The Minnesota Senior Federation—Iron Range Region and the City of Hoyt Lakes filed separate comments in response to the Commission's request for additional comments.

In an Order issued October 24, 1995, the Commission rejected the consensus recommendation that would have expanded the local service competition rulemaking docket to explicitly include the local calling scope issues raised in this docket and rejected the recommendation that the calling threshold be increased to at least 50 percent of the subscribers in the petitioning exchange make 4 or more calls per month to the petitioned exchange. Instead, the Commission determined that any interested parties could request that the local competition rulemaking task force consider for inclusion in that proceeding any of the local calling scope issues. The Commission also determined that the calling threshold should remain at 1 for petitions in greater Minnesota but that the calling threshold should be increased to at least 50 percent of the subscribers make 2 or more calls per month for petitions requesting local calling with the Minneapolis/St. Paul metropolitan calling area.

On November 3, 1995, AT&T requested reconsideration of the Commission's October 24, 1995 Order. On November 13, 1995, MCI and the Minnesota Independent Coalition and Frontier Communications requested reconsideration of the October 24, 1995 Order. On November 27, 1995, the Department of Public Service filed comments in response to the requests for reconsideration.

**Interested persons are advised that the Commission will meet to consider the requests for reconsideration at a meeting on Tuesday, January 30, 1996, beginning at 1:00 p.m. This meeting will be held in the Commission's Large Hearing Room, 121 7th Place East, 3rd Floor (Metro Square Building), St. Paul, Minnesota.**

Commission staff is recommending that the Commission grant the requests for reconsideration and adopt a uniform, statewide calling threshold of at least 50 percent of the subscribers in the petitioning exchange make 2, 3 or 4 calls per month to the petitioned exchange. Commission staff is also recommending that the Commission indicate that if there are issues parties believe are relevant to the local calling scope, and that are unresolved in the local competition rulemaking, parties may request that the Commission open a proceeding to commence no later than February 1, 1998, to resolve any remaining local calling scope issues.

Please contact Diane Wells of the Commission's staff at 612/296-6068 or 1-800/657-3782 if you would like a copy of the briefing papers or if you have any questions regarding the local calling scope investigation.

Dated: 14 December 1995

Burl W. Haar  
Executive Secretary

# State Grants

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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.

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## Department of Health

### Division of Disease Prevention and Control

#### AIDS/STD Prevention Services Section

#### Request for Proposals: 1996/1997 Community-Based HIV/STD Prevention Programs

NOTICE IS HEREBY GIVEN that the AIDS/STD Prevention Services Section, Division of Disease Prevention and Control, Minnesota Department of Health is seeking proposals from public and private agencies for HIV/STD prevention programming.

##### Purpose

The Minnesota Department of Health (MDH) has funds available for a 12-month period (June 15, 1996 - June 30, 1997) for Human Immunodeficiency Virus (HIV) and Sexually Transmitted Disease (STD) prevention programming within the following program categories:

1. **Injecting Drug Users**

Programs to prevent HIV/STD transmission among adults who are: injecting drug users, sexual partners of injecting drug users, and men who have sex with men who also use injectable drugs. All proposals submitted should include strategies that address all forms of chemical dependency or use within the target population, and should include strategies that specifically target injecting drug users who are also low income, homeless and/or undocumented.

2. **Youth at Risk**

Programs to prevent HIV/STD transmission among youth (ages 19 and under), who are: men who have sex with men, lesbian, sexual partners of men who have sex with men, injecting drug users, sexual partners of injecting drug users, HIV or STD infected, sexual partners of people who are HIV or STD infected, not in school, homeless, sex workers, chemically dependent and chemical users, and/or parents. All proposals submitted should include strategies that specifically address all forms of chemical dependency and use among the target population, and strategies that involve/provide education to parents of the target population where ever feasible.

3. **Men Who Have Sex With Men**

Programs to prevent HIV/STD transmission among men who are: HIV/STD infected; male sexual partners of HIV/STD infected men; men who have sex with men; men who have sex with men and use injectable drugs; men of color who have sex with men; and male sex workers. Proposals submitted should include strategies that address all forms of chemical dependency or use in the target population, and that address maintenance of long-term behavior change (relapse prevention). At least one program targeting Asian men who have sex with men, and one program targeting African American men who have sex with men will be funded. Programs reaching Native American and Hispanic men who have sex with men are already receiving funding.

4. **Women at Risk**

Programs to prevent HIV/STD transmission among women who are: injecting drug users, sexual partners of injecting drug users, sexual partners of men who have sex with men, HIV/STD infected, sexual partners of people who are HIV/STD infected, chemically dependent, sex workers, battered or in abusive relationships. All proposals should include strategies that specifically address all forms of chemical dependency and use among the target population, strategies that specifically target women who are homeless, of low income, and/or undocumented, and strategies designed to empower women in sexual situations.

5. **Special Programming for General Populations**

Programs to prevent HIV/STD transmission within an entire community, rather than a specific high-risk population within a community. Priority will be given to programs intending to target communities that have not previously received funding for HIV/STD prevention, or who do not have an extensive history of providing HIV/STD prevention programming. Examples of such communities include, but are not limited to, the transgender community, the disabled communi-

ty, churches, parents, and elders. Programs **MUST** include specific strategies that address HIV/STD transmission among men who have sex with men, and injecting drug users, within the chosen target population.

**Amount**

\$1,500,000

**Duration**

The grant period is established for 12 months, June 15, 1996 - June 30, 1997. Funded programs may be eligible to apply for additional future funding through December 31, 1998. Continuation or expansion funding may be available, and will be dependent upon the availability of state and federal HIV/STD prevention funds to the MDH and satisfactory program performance during the first year.

**Funded Program Goals**

The overall goal of the funding process is to develop, maintain and/or augment HIV/STD prevention programming by striving to target specific populations at risk, with interventions shown to be or likely to be effective through scientific research and theory.

1. To stimulate programming for injecting drug users, youth at risk, men who have sex with men, women at risk, and specific general populations at risk of HIV and STD infection with priority funding for those programs, existing or new, employing strategies most likely to be effective.
2. To develop, maintain and/or augment programming within communities of color with priority funding for those programs operated by and serving primarily persons of color, designed to reach the individuals most at risk of HIV and STD infection, especially men who have sex with men and injecting drug users, within the designated populations, and employing strategies most likely to be effective.
3. To maintain or stimulate community collaboration and networking efforts to the extent that these efforts are shown to directly affect prevention efforts targeted toward persons most at risk in the designated populations, especially men who have sex with men and injecting drug users.
4. To systematically address other sexually transmitted diseases within the context of all HIV prevention programming.

**Eligibility**

1. Any public or private agency (not-for-profit) that can demonstrate administrative, organizational, programmatic, and fiscal capability to develop, implement, and evaluate the proposed program.
2. Demonstrated support from Community Health Boards (local health departments), community and neighborhood agencies, health care providers, members of the target population, representatives from the communities of color (if applicable), and other appropriate organizations, groups, and/or individuals within the community.
3. Demonstrated current and/or future potential for additional complementary funding and other resources for development, implementation, and evaluation of the program; as well as continuation of the program beyond 1998.

**Minimum Expectations**

1. Identification of a target population of injecting drug users, youth at risk, men who have sex with men, women at risk, and/or specific general populations who are at risk of HIV and STD infections due to sexual or needle using behaviors.
2. Identification of a means of effectively locating and reaching those individuals within the designated populations identified as being at risk of HIV and STD infections, and identification of a community collaboration/networking strategy which will directly impact prevention programming for that population.
3. Identification of specific intervention strategies most likely to demonstrate success within the designated target population in terms of facilitating and maintaining behavioral changes and choices to reduce the risk of HIV and STD infections.
4. Identification of a system for collecting information and evaluation relative to program effectiveness.

**Procedure for Grant Application****Letters of Intent:**

Agencies intending to submit a proposal for HIV/STD prevention programming are required to submit a *Letter of Intent* by 4:00 p.m., Tuesday January 23, 1996. Letters should follow the format presented on the *Letter of Intent Outline* (see Attachment A) and must have a legible postmark from the United States Postal Service, or a legible pick-up or drop-off time from a private carrier with a date and time that precedes 4:00 p.m., Tuesday January 23, 1996. **Applicants are strongly encouraged to obtain the full RFP packet to assist them in preparing a Letter of Intent.** Only those agencies submitting a Letter of Intent are eligible to submit a full proposal. Letters of Intent are used by the MDH to assist staff in providing technical assistance, and not as a screening tool.

## State Grants

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Therefore, all applicants who submit a Letter of Intent are eligible to submit a full proposal. While MDH staff will make every effort to contact all applicants who submit a Letter of Intent as soon as possible, applicants should not wait for a response from MDH before beginning work on a full proposal.

### Grant Proposals:

All agencies which meet the eligibility criteria outlined above are eligible to submit a full proposal(s). Agencies wishing to submit a full proposal should request the RFP packet as soon as possible. To obtain the RFP packet, please contact Gary Novotny at (612) 623-5698. This packet includes crucial instructions, format, necessary forms, and selected readings. Proposals will be accepted if they address one of the program categories outlined above. Applicants may apply for funding under more than one category provided that *a separate narrative is submitted for each program category addressed*. A separate narrative includes a separate description of the target population, outreach strategies, interventions strategies, evaluation plan, and *budget and staffing plan*.

*Proposals will only be accepted if the applicant agency is also the fiscal agent, and only one fiscal agent is allowed per proposal.*

Agencies seeking MDH funding for HIV/STD prevention programming are required to submit an original and 17 copies of the completed proposal that arrives at MDH on or before

4:00 p.m., Friday, March 1, 1996

or that has a legible postmark from the United States Postal Service, or a legible pick-up or drop-off time from a private carrier with a date and time that precedes 4:00 p.m., Friday, March 1, 1996. Agencies are requested, but not required, to submit a copy of the proposal in electronic format on a 3.5" double sided, high density diskette, in WordPerfect 5.1.

Full proposals are to be submitted by the specified date and time to:

Gary Novotny  
Prevention Programs Unit  
AIDS/STD Prevention Services Section  
Minnesota Department of Health  
717 S.E. Delaware Street  
P.O. Box 9441  
Minneapolis, Minnesota 55440-9441  
(612) 623-5698

PLEASE NOTE: All submissions are final. *Full proposals not received by the deadlines outlined above will not be considered.*

### *Informational Meeting for Prospective Applicants*

An informational meeting will be held in Room 110 at Pathfinder Resources, Inc. Midtown Commons, 2324 University Avenue West, St. Paul, MN 55114 to review application materials and provide an opportunity for questions and answers regarding the application process. The meeting will be held on **Wednesday, January 17, 1996**, from 1:00 p.m. to 3:30 p.m.

### **Disclaimer**

The Minnesota Department of Health and the Proposal Review Committee reserve the right to withhold the distribution of funds in cases where proposals submitted do not meet the necessary criteria.

## The Legislative Commission on Minnesota Resources (LCMR)

### Announces a Request for Proposals (Biennium Ending June 1999)

Proposals are due by **4:30 PM, February 23, 1996** for two-year projects beginning July 1, 1997.

The LCMR will be accepting proposals for projects designed to help maintain and enhance Minnesota's natural resources. The Request for Proposals (RFP) is for new, innovative or accelerative natural resource projects. Proposers are asked to respond to strategies for funding. Proposals will be evaluated according to the strategies and criteria outlined in the RFP.

Total estimated funding amount available is \$28.5 million. The LCMR makes funding recommendations from the following revenue sources:

- Minnesota Future Resources Fund (MS 116P.13), estimated amount available \$14.5 million
- Minnesota Environment and Natural Resource Trust Fund (Trust Fund) (MS 116P.08), estimated amount available \$14 million
- Great Lakes Protection Account (MS 116Q.02), estimated amount available \$40,000

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## Professional, Technical & Consulting Contracts

Of the \$31.4 million available for expenditure, it is intended that approximately \$8.5 million will be expended on state and regional parks and trails and a local initiatives grants program. Approximately \$23.4 million is available for additional strategy funding.

For a complete copy of the Request for Proposals, please contact the LCMR office at:

Legislative Commission on Minnesota Resources  
Room 65, State Office Building  
100 Constitution Avenue  
St. Paul, MN 55155  
(612) 296-2406  
TDD: (612) 296-9896 or 1-800-657-3550 Relay: (612) 297-5350 or 1-800-627-3529  
E-Mail: [lcmr@commissions.leg.state.mn.us](mailto:lcmr@commissions.leg.state.mn.us)

The Legislative Commission on Minnesota Resources (LCMR) consists of 16 select legislators who are appointed by their peers. The function of the LCMR is to make funding recommendations to the legislature for natural resource projects. Today's LCMR developed from a program initiated in 1963. Since that time, over \$300 million has been spent on projects recommended by the LCMR to protect and enhance Minnesota's natural resources.

**OPEN TO ALL**

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## 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].

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## Department of Administration

### Print Communications Division

### Request for Proposal Professional and Technical Services

The Department of Administration, Print Communications Division, is required to print a variety of public and state information products.

Lack of state capability in this area, a large workload and the need to meet deadlines require the Print Communications Division to contract with outside entities for professional, technical and creative services, as needed.

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.

#### I. Scope of Contract

The contract covers consultation, creation, production and delivery of various creative services, as assigned. Vendor provides staff, materials, production facilities and equipment, pick-up delivery, as requested.

#### II. Contract Tasks

Vendor must have the capability to provide the following creative services:

- Creative consultation and concept development.
- Graphic design and layout.
- Photography (black and white and color, and studio and location).
- Photograph retouching (air brush or using Photoshop).
- Illustration.
- Graph, chart, and table design and artwork.
- Desktop Publishing.
- Keylining.
- Display art.
- Calligraphy.

## Professional, Technical & Consulting Contracts

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These services will be completed using traditional graphic arts methods or using a MAC platform. Mac work will utilize only Pagemaker, QuarkXpress, Freehand, Illustrator, or Photoshop. If using an IBM compatible software, it is limited to Pagemaker and Corel Draw.

Respondent may propose additional tasks or activities that substantially improve the capabilities of the vendor. Of special significance would be "service bureau" output.

### III. Contract Costs

The estimated amount of each individual contract will range between \$5,000 - \$50,000, no guarantee. There will be multiple contracts awarded.

### IV. Project Completion Date

Assignments within the scope of the project will be made on an as-needed basis. The contract will run from March 1, 1996 to February 28, 1997, with the option to renew up to three (3) years.

### V. Proposal Contents

The proposal must, at a minimum:

- A. Identify and describe the services to be provided by the respondent.
- B. Outline the respondent's background and experience including local, state and federal government work, if any, and identify the personnel who will conduct the project, their training and their work experience.
- C. Include a detailed list of costs and turnaround times for each of the services listed under "II. Contract Tasks." This information will be a scheduling and management tool as well as the basis for invoicing.
- D. A current portfolio must accompany all proposals. All portfolios must be clearly labeled with company name, phone number, and contact person.

### VI. Submissions of Proposals

All proposals must be sent or delivered to and received by:

Berry J. Conway, Sales/Service Manager  
Print Communications Division  
Department of Administration  
117 University Avenue, Room 124A  
St. Paul, MN 55155

All proposals must be time-stamped by the Division no later than 4:00 p.m. on January 19, 1996. Late proposals will not be accepted. Two copies of the proposal are to be sealed in the mailing envelopes or packages with the respondent's name and address clearly written on the outside. Each copy of the proposal must be signed in ink by an authorized member of the firm. Prices and terms of the proposal as stated must be valid for the length of the project.

### VII. Department Contacts

Prospective respondents who have questions regarding this request for proposal may call or write:

Berry J. Conway	117 University Avenue, Room 124A
Print Communications Division	St. Paul, MN 55155
Department of Administration	(612) 296-9886

This is the only employee authorized to answer questions regarding this proposal.

### VIII. Human Rights Certificate of Compliance

All responders having more than 20 full-time employees at any time during the previous 12 months shall have an affirmative action plan approved by the Commissioner of Human Rights before a proposal may be accepted. **Your proposal will not be accepted unless it includes one of the following**

1. A copy of your firm's current certificate of compliance issued by the Commissioner of Human Rights; or
2. A notarized statement certifying that your firm has not had more than 20 full-time employees at any time during the previous 12 months.

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).

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## Professional, Technical & Consulting Contracts

### IX. MS 15.091

Notice of this contract will be provided to the Human Resources offices of all MS 15.091 agencies and the Higher Education Board. After 5 working days, due consideration will be given to any responding employee when the final contracting decision is made.

## State Lottery

### Notice of Request for Proposal for Consumer Survey

The Minnesota State Lottery is requesting proposals from individuals and firms to conduct consumer interviews at selected lottery sales locations. The interviews will take place in the Twin Cities and St. Cloud areas. The contract will commence around March 1, 1996.

Details are contained in the RFP which may be obtained by calling or writing:

Susie Kivi  
Buyer  
Minnesota State Lottery  
2645 Long Lake Road  
Roseville, MN 55113  
(612) 635-8105

## Department of Children, Families & Learning

### Resources and Services Division

### Proposal Readers Wanted for Indian Education Grant Programs

Readers are being sought to read proposals for the Fiscal Year 1997:

- American Indian Language and Culture Education Program (AILCE)
- Post-Secondary Preparation Program (PSPP)

Number of readers sought: 4 (AILCE) and 4 (PSPP)

Time obligation: 2.5 Days (overnight included) in St. Paul for meetings **plus** proposal reading on your own (2 weeks) **plus** travel time to St. Paul.

Compensation: \$450.00 plus reimbursement for expenses

#### Eligibility / Qualifications:

- Parents of children eligible to be enrolled in American Indian education programs;
- American Indian language and culture education teachers and aides;
- Representative from American Indian communities or Tribal governments;
- Person experienced in the training of teachers for American Indian education programs;
- Persons involved in programs for American Indian children in American Indian schools;
- Persons knowledgeable in the field of American Indian education; and
- Students enrolled in post-secondary education programs in American Indian education.

#### **\*All readers should have experience in reading grant proposals\***

Duties: Readers will be given 1/2 day of in-service for instructions and orientation. AILCE readers will meet February 16, 1996 and PSPP readers will meet March 8, 1996. They will have 2 weeks to read approximately 28-36 proposals, each approximately 20 pages in length. They will evaluate each proposal against State Board of Education adopted Selection Criteria and rate each criterion by assigning points to each proposal. AILCE readers will meet again on March 4 & 5, 1996 and PSPP readers will meet again on March 25 & 26, 1996 to assign team points to proposals. How to apply: Send letter stating interest to serve as a reader. Briefly describe your experience reading proposals or grant application and/or your background in American Indian education programs. Include a current resume.

## Non-State Public Bids, Contracts & Grants

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Letters must be received no later than January 15, 1996 for AILCE and PSPP readers. AILCE and PSPP readers will be notified by January 30, 1996. Proposal reading must be completed before you return to St. Paul for your second meeting.

Send letters to: Indian Education Section  
Minnesota Department of Children, Families & Learning  
740 Capitol Square Building  
550 Cedar Street  
St. Paul, Minnesota 55101

Office phone number: (612) 296-6458  
FAX number: (612) 297-7895

## Non-State Public Bids, Contracts & Grants

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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.

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## Metropolitan Council

### Public Notice of Request for Proposal for Employment and Human Resources Law Legal Services

The Metropolitan Council is requesting proposals for the performance of employment and human resources law legal services. The legal services will involve representing the Metropolitan Council in employment law and human resources matters on an organization wide basis and providing legal advice on employment-related matters. In addition to performing its historical regional planning and coordinating activities, the Metropolitan Council now operates and maintains regional bus and transit systems and the metropolitan sewer disposal system. The Metropolitan Council anticipates the legal services contract will cover the time period from March 1, 1996 through February 28, 1999. A copy of the Request for Proposal may be obtained from:

Jay M. Heffern, General Counsel  
Metropolitan Council  
Mears Park Centre  
230 East Fifth Street  
Saint Paul, Minnesota 55101-1634  
(612) 229-2723 Voice  
(612) 291-6640 Facsimile  
(612) 291-0904 TDD/TTY

In accordance with *Minnesota Statutes* section 473.144 (1994) the Metropolitan Council may not accept any bid or proposal for a contract or execute a contract for services in excess of \$50,000 with any firm or business having more than 20 full-time employees on a single working day during the previous 12 months unless the firm or business has an affirmative action plan for the employment of minority persons, women and disabled persons that has been approved by the Commissioner of Human Rights. A proposal will not be accepted by the Metropolitan Council unless the proposal includes one of the following: (1) a copy of the proposer's current and valid certificate of compliance from the Commissioner of Human Rights; or (2) a valid affidavit stating the proposer did not have more than 20 full-time employees on a single working day during the previous 12 months.

This request does not obligate the Metropolitan Council to complete the work contemplated in this notice and Request for Proposal. The Metropolitan Council reserves the right to cancel this solicitation, reissue the Request for Proposal and to proceed to do the proposed work otherwise. All expenses incurred in responding to this notice and the Request for Proposal are the responsibility of and will be borne by the responding parties. All written proposals responding to this Request for Proposal must be received at the Metropolitan Council's Mears Park Centre offices in Saint Paul, Minnesota by 4:00 p.m. on Friday, January 26, 1996.