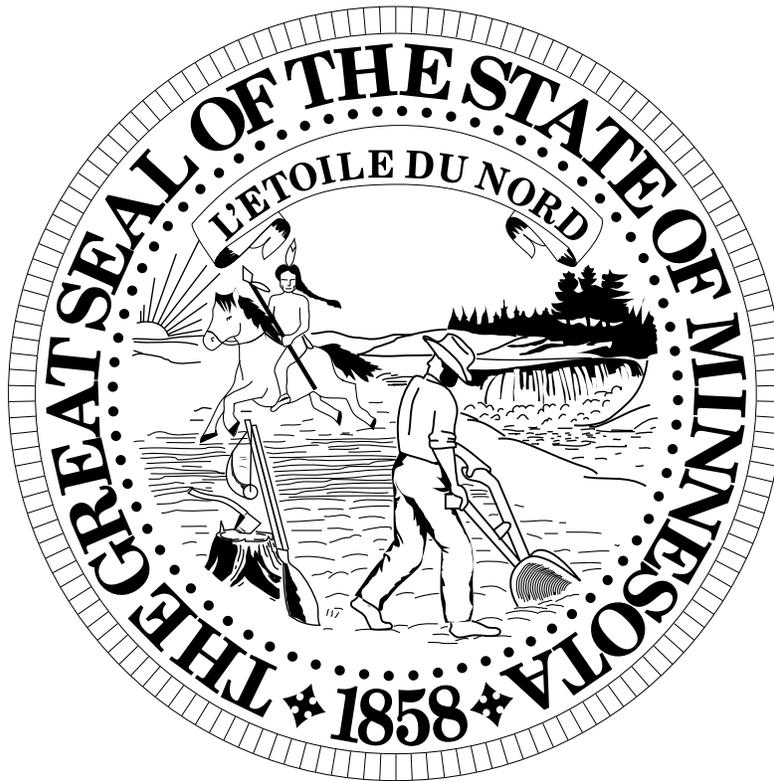


State of Minnesota

State Register

Rules and Official Notices Edition



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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, published weekly to fulfill the legislative mandate set forth in *Minnesota Statutes* § 14.46. The *State Register* contains:

- proposed, adopted, exempt, expedited emergency and withdrawn rules
- executive orders of the governor
- appointments
- proclamations and commendations
- commissioners' orders
- revenue notices
- official notices
- state grants and loans
- contracts for professional, technical and consulting services
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#24	Monday 3 December	NOON TUESDAY 20 NOVEMBER	Noon Tuesday 27 November
#25	Monday 10 December	Noon Wednesday 28 November	Noon Tuesday 4 December
#26	Monday 17 December	Noon Wednesday 5 December	Noon Tuesday 11 December
#27	Monday 24 December	Noon Wednesday 12 December	Noon Tuesday 18 December

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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 80 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. The current 1999 set is a 13-volume bound collection of all adopted rules in effect at the time. Supplements are published to update this set of rules. Generally speaking, proposed and adopted exempt rules do not appear in this set because of their short-term nature, but are published in the *State Register*.

An agency must first solicit **Comments on Planned Rules** or **Comments on Planned Rule Amendments** from the public on the subject matter of a possible rulemaking proposal under active consideration within the agency (*Minnesota Statutes* §§ 14.101). It does this by publishing a notice in the *State Register* at least 60 days before publication of a notice to adopt or a notice of hearing, or within 60 days of the effective date of any new statutory grant of required rulemaking.

When rules are first drafted, state agencies publish them as **Proposed Rules**, along with a notice of hearing, or a 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 most current edition of 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 issues #1-39; issues #40-51 inclusive; and issues #1-52 (or 53 in some years), cumulative for issues #1-52 (or 53). An annual subject matter index for rules was separately printed usually in August, but starting with Volume 19 now appears in the final issue of each volume. For copies or subscriptions to the *State Register*, contact Minnesota's Bookstore, 117 University Avenue, St. Paul, MN 55155 (612) 297-3000, or toll-free 1-800-657-3757.

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Proposed Rules

Comments on Planned Rules or Rule Amendments

An agency must first solicit **Comments on Planned Rules** or **Comments on Planned Rule Amendments** from the public on the subject matter of a possible rulemaking proposal under active consideration within the agency (*Minnesota Statutes* §§ 14.101). It does this by publishing a notice in the *State Register* at least 60 days before publication of a notice to adopt or a notice of hearing, and within 60 days of the effective date of any new statutory grant of required rulemaking.

Rules to be Adopted After a Hearing

After receiving comments and deciding to hold a public hearing on the rule, an agency drafts its rule. It then publishes its rules with a notice of hearing. All persons wishing to make a statement must register at the hearing. Anyone who wishes to submit written comments may do so at the hearing, or within five working days of the close of the hearing. Administrative law judges may, during the hearing, extend the period for receiving comments up to 20 calendar days. For five business days after the submission period the agency and interested persons may respond to any new information submitted during the written submission period and the record then is closed. The administrative law judge prepares a report within 30 days, stating findings of fact, conclusions and recommendations. After receiving the report, the agency decides whether to adopt, withdraw or modify the proposed rule based on consideration of the comments made during the rule hearing procedure and the report of the administrative law judge. The agency must wait five days after receiving the report before taking any action.

Rules to be Adopted Without a Hearing

Pursuant to *Minnesota Statutes* § 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing. An agency must first solicit **Comments on Planned Rules** or **Comments on Planned Rule Amendments** from the public. The agency then publishes a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. 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*.

Department of Health

Division of Environmental Health

Proposed Permanent Rules Relating to Clean Indoor Air

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

Proposed Amendment to Rules Relating to the Minnesota Clean Indoor Air Act, *Minnesota Rules*, Parts 4620.0050 to 4620.1450

Introduction. The Department of Health intends to adopt rules without a public hearing following the procedures set forth in the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28, and rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2300 to 1400.2310. If, however, 25 or more persons submit a written request for a hearing on the rules by 4:30 p.m. on January 2, 2002, a public hearing will be held in the Mississippi Room of the Department's Snelling Office Park building. That building is located at 1645 Energy Park Drive, St. Paul, Minnesota 55108. The hearing will begin at 9:00 a.m. on January 30, 2002. 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 2 and before January 30, 2002.

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

Mr. Georg Fischer
Minnesota Department of Health
Division of Environmental Health
121 East Seventh Place, Suite 360
P.O. Box 64975
St. Paul, Minnesota 55164-0975
Phone: (651) 215-0932
Fax: (651) 215-0975
Email: georg.fischer@health.state.mn.us
TTY: users may call the Department at (651) 215-0707

Subject of Rules and Statutory Authority. The proposed rules relate to the application and enforcement of the Minnesota Clean Indoor Air Act, found in *Minnesota Statutes*, sections 144.411 to 144.417. *Minnesota Statutes*, section 144.417, subdivision 1 explicitly states that the state commissioner of health shall adopt rules necessary and reasonable to implement the provisions of the Minnesota Clean Indoor Air Act. Some of the proposed amendments will bring the rules into conformity with statutory changes made during the 1999 legislative session (*1999 Laws of Minnesota*, chapter 245, article 2, sections 24-26). The statutory changes specifically authorize the commissioner to establish rules that restrict or prohibit smoking in factories, warehouses, and those places

of work where the close proximity of workers or the inadequacy of ventilation causes smoke pollution detrimental to the health and comfort of nonsmoking employees.

The department is proposing additional rule amendments that will affect all entities regulated under the Minnesota Clean Indoor Air Act. The additional changes relate to restaurants, health care facilities, common areas of public buildings, and all other public places where smoking is permitted. The new proposals are based on increasingly strong evidence that environmental tobacco smoke contains substances harmful to human health. Therefore the proposed rules require implementation of measures that are more protective of nonsmokers. 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. on January 2, 2002, to submit written comment in support of or in opposition to the proposed rules or any part or subpart of the rules. Your comment must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comments should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed. You are encouraged to propose any change desired. Any comments that you would like to make on the legality of the proposed rules 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 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 2, 2002. Your written request for a public hearing must include your name and address. You must identify the portion of the proposed rules to which you object or state that you oppose the entire set of rules. Any request that does not comply with these requirements is not valid and cannot be counted by the agency when determining whether a public hearing must be held. You are also 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 valid 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.

Alternative Format/Accommodation. Upon request, this Notice can be made available in an alternative format, such as large print, Braille, or cassette tape. To make such a request or if you need an accommodation to make this hearing accessible, please contact the agency contact person at the address or telephone number listed above.

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 be supported by data and views submitted to the agency or presented at the hearing and the adopted rules may not be substantially different than these proposed rules. If the proposed rules affect you in any way, you are encouraged to participate in the rulemaking process.

Cancellation of Hearing. The hearing scheduled for January 30, 2002, will be canceled if the agency does not receive requests from 25 or more persons that a hearing be held on the rules. If you requested a public hearing, the agency will notify you before the scheduled hearing whether or not the hearing will be held. You may also call the agency contact person at (651) 215-0932 after January 2, 2002 to find out whether the hearing will be held.

Notice of Hearing. If 25 or more persons submit valid written requests for a public hearing on the rules, a hearing will be held following the procedures in *Minnesota Statutes*, sections 14.131 to 14.20. The hearing will be held on the date and at the time and place listed above. The hearing will continue until all interested persons have been heard. Administrative Law Judge George Beck is assigned to conduct the hearing. Judge Beck can be reached at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota 55401-2138, **phone:** (612) 341-7601, 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 before the close of the hearing record. All evidence presented should relate to the proposed rules. 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. 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. Following the comment period, there is a five-working-day rebuttal 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 comments and responses submitted to the Administrative Law Judge must be

<p>KEY: PROPOSED RULES SECTION — <u>Underlining</u> 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 — <u>Underlining</u> indicates additions to proposed rule language. Strike outs indicate deletions from proposed rule language.</p>
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Proposed Rules

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 1400.2000 to 1400.2240, and *Minnesota Statutes*, sections 14.131 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 rebuttal 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 contains a summary of the justification for the proposed rules, including a description of who will be affected by the proposed rules and an estimate of the probable cost of the proposed rules. The statement may also be reviewed and copies obtained at the cost of reproduction from the agency.

Lobbyist Registration. *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. Questions regarding this requirement may be directed to the Campaign Finance and Public Disclosure Board at: Suite 190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, **phone:** (651) 296-5148 or 1-800-657-3889.

Adoption Procedure if No Hearing. If no hearing is required, the agency may adopt the rules after the end of the comment period. The rules 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 rules are submitted to the office. If you want to be so notified, or want to receive a copy of the adopted rules, or want to register with the agency to receive notice of future rule proceedings, submit your request to the agency contact person listed above.

Adoption Procedure After a Hearing. If a hearing is held, after the close of the hearing record, the Administrative Law Judge will issue a report on the proposed rules. You may ask to be notified of the date when the Administrative Law Judge's report will become 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 rules and files them with the Secretary of State, and can make this request at the hearing or in writing to the agency contact person stated above.

Order. I order that the rulemaking hearing be held at the date, time, and location listed above.

Dated: 14 November 2001

Julie Brunner, Deputy Commissioner
Minnesota Department of Health

4620.0050 SCOPE AND PURPOSE.

Parts 4620.0050 to 4620.1450 must be read in conjunction with the Minnesota Clean Indoor Air Act, *Minnesota Statutes*, sections 144.411 to 144.417.

Nothing in parts 4620.0050 to 4620.1450 shall be construed to affect smoking prohibitions imposed by the fire marshal or other laws, ordinances, or regulations or to affect the right of building owners or operators to designate their premises as smoke-free.

4620.0100 DEFINITIONS.

Subpart 1. **Scope.** For the purpose of parts 4620.0050 to ~~4620.1500~~ 4620.1450, the terms in this part have the meanings given them.

Subp. 2. **Acceptable nonsmoking area.** "Acceptable nonsmoking area" means:

A. a contiguous portion of a public place or public meeting including seating arrangements, measuring a minimum of 200 square feet, where smoking is prohibited; and

B. where at least one of the conditions in subitems (1) to (3) exists.

(1) There is a continuous, physical barrier such as a wall, partition, or furnishing, of at least 56 inches (1.42 meters) in height, measured from the highest adjacent floor surface, separating the ~~smoking-permitted~~ smoking and acceptable nonsmoking areas. The barrier may contain doors or portals for exit and entry.

(2) There is a space of at least four feet (1.22 meters) in width separating the ~~smoking-permitted~~ smoking and acceptable nonsmoking areas. This space may be either an unoccupied area or a section of seating area acting as a buffer zone in which smoking is not permitted, but which itself is not part of the acceptable nonsmoking area.

(3) The ventilation system in the room containing both a ~~smoking-permitted~~ smoking and an acceptable nonsmoking area must provide outdoor air requirements for ventilation of not less than 15 cubic feet per minute per person, as verified by an individual certified by the National Environmental Balancing Bureau or the Associated Air Balance Council. The commissioner shall

accept a ventilation rate that has been verified within the previous 12 months, provided changes affecting the operation of the ventilation system have not been made.

Subp. 4. **Bar.** “Bar” means ~~any an~~ an establishment or portion of an establishment where one can purchase and consume alcoholic beverages. ~~Any such establishment or portion of an establishment is not considered a “bar” for the purposes of parts 4620.0050 to 4620.1500 if it and that has either:~~

A. ~~table and seating facilities for more than 50 people at one time a maximum patron seating capacity of not more than 50 and is categorized according to Minnesota Statutes, section 157.16, subdivision 3, paragraph (d), clause (7); and or~~

B. ~~licensed food service provided, in consideration of payment, excluding licensed limited food service establishments under and is categorized according to Minnesota Statutes, section 157.16, subdivision 3, paragraph (e) (d), clause (1), item (i) or (ii).~~

Subp. 4a. Common area. “Common area” means an area used by both nonsmokers and smokers, including, but not limited to, an entry or exit area, lobby area, ticket area, registration area, common traffic area, common area of rental apartment buildings, or similar section of a public place.

Subp. ~~4a~~ 4b. **Environmental tobacco smoke.** “Environmental tobacco smoke” means:

A. ~~smoke from a cigarette, pipe, cigar, or other lighted smoking equipment; and~~

B. ~~exhaled smoke from a smoker; or~~

C. both A and B.

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

Subp. 8. **Office.** “Office” means ~~any a~~ a building, structure, or area used by the general public or serving as a place of work at which the principal activities consist of professional, clerical, or administrative services. An office includes, but is not limited to, professional offices, offices in financial institutions, business offices, telemarketing offices, and government offices.

[For text of subps 9 to 11, see M.R.]

Subp. 11a. **Private enclosed office.** “Private enclosed office” means a room ~~occupied by~~ assigned to only one person with floor to ceiling walls and a closeable door.

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

Subp. 14b. **Public place.** “Public place” has the meaning given in *Minnesota Statutes*, section 144.413. For purposes of parts 4620.0050 to ~~4620.1500~~ 4620.1450, a public place includes all indoor areas used by the general public or serving as a place of work or jury duty. It does not include a place used for a private social function or a private enclosed office.

Subp. 15. **Responsible person.** “Responsible person” means the proprietor or other person in charge.

Subp. 16. **Restaurant.** “Restaurant” ~~means any building, structure, or area used as, maintained as, or advertised as, or held out to the public as a food establishment as defined in part 4626.0020, subpart 35, which requires licensure under Minnesota Statutes, chapter 157, has the meaning given in Minnesota Statutes, section 157.15, subdivision 12, when food service is provided in consideration of payment other than a bar as defined in subpart 4.~~

Subp. 16a. **Retail store.** “Retail store” means that portion of a commercial occupancy used for the transaction of or the rendering of a service directly to the public, including, but not limited to, shops, retail food stores, laundries or laundromats, and department stores.

Subp. 16b. Retail tobacco store. “Retail tobacco store” means a business establishment that derives at least 90 percent of its revenue from selling tobacco products, including, but not limited to, cigars, pipe tobacco, and smoking accessories.

[For text of subp 17, see M.R.]

Subp. 18. **Smoke-free area.** “Smoke-free area” means:

A. a building where smoking is prohibited in its entirety; or

B. a contiguous portion of a public place or public meeting that is separated from all adjacent or connected smoking-permitted areas according to part 4620.0450, subpart 1.

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

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Subp. 19. Smoking area. "Smoking area" means an area that is within a public place where smoking is permitted, but that does not meet the requirements of part 4620.0450, subpart 1.

Subp. 20. Smoking-permitted area. "Smoking-permitted area" means a contiguous portion of a public place or public meeting that is designed and operated according to part 4620.0450, subpart 1.

4620.0300 SMOKING PROHIBITED AREAS.

Subpart 1. General. Smoking is prohibited in all sections of public places or public meetings except in areas designated as ~~smoking-permitted~~ smoking areas. The responsible person must arrange for an acceptable nonsmoking area. The size and location of ~~any smoking-permitted~~ a smoking area must minimize environmental tobacco smoke in any adjacent acceptable nonsmoking area ~~in accordance with procedures specified in~~ according to parts 4620.0050 to ~~4620.1500~~ 4620.1450.

Subp. 2. Expiration date.

A. This part expires on the effective date of part 4620.0350, according to part 4620.0350, subpart 2, item A, for office buildings and factories, warehouses, or similar places of work.

B. This part expires on the effective date of part 4620.0350, according to part 4620.0350, subpart 2, item B, for a building, structure, enclosure, or part of a building, structure, or enclosure that:

(1) is operated as a hotel, motel, resort, retail store, or other public place and that was constructed after the adoption date of this part; or

(2) is operated as a hotel, motel, resort, retail store, or other public place, but that was not operated as such on the adoption date of this part.

This item does not apply to office buildings; factories, warehouses, or similar places of work; health care facilities; or public conveyances.

C. This part expires on the effective date of part 4620.0350, according to part 4620.0350, subpart 2, item C, for a building, structure, enclosure, or part of a building, structure, or enclosure that is operated as a hotel, motel, resort, retail store, or other public place and that was operated as such on the adoption date of this part. This item does not apply to office buildings; factories, warehouses, or similar places of work; health care facilities; or public conveyances.

D. This part expires on the effective date of part 4620.1010 for a building, structure, enclosure, or part of a building, structure, or enclosure that is operated as a restaurant.

4620.0350 SMOKE-FREE AREAS.

Subpart 1. General. Smoking is prohibited in all sections of public places or public meetings except in areas designated as smoking-permitted areas. The responsible person must arrange for smoke-free areas. The size and location of a smoking-permitted area must minimize environmental tobacco smoke in any adjacent smoke-free areas according to parts 4620.0050 to 4620.1450.

Subp. 2. Effective Date.

A. This part is effective one year after the adoption date of this part for office buildings and factories, warehouses, or similar places of work.

B. This part is effective two years after the adoption date of this part for a building, structure, enclosure, or part of a building, structure, or enclosure that:

(1) is operated as a hotel, motel, resort, retail store, or other public place and that was constructed after the date of this part; or

(2) is operated as a hotel, motel, resort, retail store, or other public place, but that was not operated as such on the adoption date of this part.

This item does not apply to office buildings; factories, warehouses, or similar places of work; health care facilities; or public conveyances.

C. This part is effective three years after the adoption date of this part for a building, structure, enclosure, or part of a building, structure, or enclosure that is operated as a hotel, motel, resort, retail store, or other public place and that was operated as such on the adoption date of this part. This item does not apply to office buildings; factories, warehouses, or similar places of work; health care facilities; or public conveyances.

D. This part is effective two years after the adoption date of this part for a building, structure, enclosure, or part of a building, structure, or enclosure that is operated as a restaurant.

4620.0400 ~~SMOKING PERMITTED~~ SMOKING AREA.

Subpart 1. ~~Smoking permitted~~ **Smoking area in one room.** If smoking is to be permitted in an area of a public place or public meeting, the responsible person must designate the area as ~~“smoking permitted”~~ a smoking area. ~~One and~~ Only one ~~smoking permitted~~ smoking area may be designated per room. However, rooms containing at least 20,000 square feet (1,858 square meters) in total floor space may designate ~~no more than~~ one ~~smoking permitted~~ smoking area per 20,000 square feet, or fraction thereof, ~~and shall~~ but must otherwise comply with parts 4620.0050 to ~~4620.1500~~ 4620.1450.

Subp. 2. ~~Smoking permitted~~ **Smoking area in two or more rooms.** In a public place ~~which that~~ contains two or more rooms used for the same activity, the responsible person may designate one entire room as ~~smoking permitted~~ smoking as long as at least other comparable room has been designated as an acceptable nonsmoking area.

Subp. 3. **Acceptable nonsmoking area within a room.** In the case of a public place consisting of a single room in which a ~~smoking permitted~~ smoking area is designated, the responsible person is responsible for reserving and clearly designating an acceptable nonsmoking area on one side of the room. The responsible person must make reasonable efforts to prevent smoking in nonsmoking areas.

Subp. 4. **Size of the area.** The size of the designated ~~smoking permitted~~ smoking area must not be more than proportionate to the preference of users of that location for a ~~smoking permitted~~ smoking area, as can be demonstrated by a responsible person. The proportional preference of users of a ~~smoking permitted~~ smoking area in that location may be demonstrated by the responsible person by evidence of ~~any either~~ of the following:

- A. the percent of users of the location who express a preference for a ~~smoking permitted~~ smoking area when the responsible person asks all users for their preference; or
- B. ~~the percent of users of the location who request or select a smoking permitted area when the responsible person does not ask all users for their preference; or~~
- ~~C.~~ the percent of users who are determined by the ~~proprietor~~ responsible person to prefer a ~~smoking permitted~~ smoking area by an alternate method ~~which that~~ reasonably indicates the ~~user’s~~ users’ preference.

Subp. 5. **Private enclosed office.** Smoking is permitted in a private enclosed office if the door is kept closed while smoking occurs.

Subp. 6. Expiration date.

A. This part expires on the effective date of part 4620.0450, according to part 4620.0450, subpart 6, item A, for office buildings and factories, warehouses, or similar places of work.

B. This part expires on the effective date of part 4620.0450, according to part 4620.0450, subpart 6, item B, for a building, structure, enclosure, or part of a building, structure, or enclosure that:

- (1) is operated as a hotel, motel, resort, retail store, or other public place and that was constructed after the adoption date of this part; or
- (2) is operated as a hotel, motel, resort, retail store, or other public place, but that was not operated as such on the adoption date of this part.

This item does not apply to office buildings; factories, warehouses, or similar places of work; health care facilities; or public conveyances.

C. This part expires on the effective date of part 4620.0450, according to part 4620.0450, subpart 6, item C, for a building, structure, enclosure, or part of a building, structure, or enclosure that is operated as a hotel, motel, resort, retail store, or other public place and that was operated as such on the adoption date of this part. This item does not apply to office buildings; factories, warehouses, or similar places of work; health care facilities; or public conveyances.

D. This part expires on the effective date of part 4620.1010 for a building, structure, enclosure, or part of a building, structure, or enclosure that is operated as a restaurant.

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

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4620.0450 SMOKING-PERMITTED AREA.

Subpart 1. Smoking-permitted area requirements.

A. A smoking-permitted area must be designed and operated according to items B to E. Documentation of items B to E must be made available to the commissioner upon request.

B. The area must be maintained at a negative pressure with respect to adjacent or connected smoke-free areas.

C. Air from a smoking-permitted area must not be recirculated into a smoke-free area.

D. Air from the smoking-permitted area must be exhausted directly to the outdoors.

E. The area must be equipped with one of the following:

(1) a continuous physical barrier with closed doors, except to permit necessary ingress and egress, that separates the smoking-permitted area from adjacent or connected smoke-free areas; or

(2) an air distribution system that is designed and operated to ensure a unidirectional airflow from adjacent or connected smoke-free areas into the smoking-permitted area, as verified by an individual certified by the National Environmental Balancing Bureau or the Associated Air Balance Council. The commissioner shall accept documentation of unidirectional airflow that has been verified within the previous 12 months, provided changes affecting the operation of the ventilation system have not been made.

Subp. 2. Smoking-permitted area in one room. If smoking is to be permitted in an area of a public place or public meeting, the responsible person must designate the area as smoking-permitted. Only one smoking-permitted area may be designated per room. However, rooms containing at least 20,000 square feet (1,858 square meters) in total floor space may designate one smoking-permitted area per 20,000 square feet, or fraction thereof, but must otherwise comply with parts 4620.0050 to 4620.1450.

Subp. 3. Smoking-permitted area in two or more rooms. In a public place that contains two or more rooms used for the same activity, the responsible person may designate one entire room as a smoking-permitted area as long as at least one other comparable room has been designated as a smoke-free area.

Subp. 4. Smoke-free area within a room. In the case of a public place consisting of a single room in which a smoking-permitted area is designated, the responsible person is responsible for reserving and clearly designating a smoke-free area on one side of the room. The responsible person must make reasonable efforts to prevent smoking in smoke-free areas.

Subp. 5. Size of area. The size of the designated smoking-permitted area must not be more than proportionate to the preference of users of that location for a smoking-permitted area, as can be demonstrated by a responsible person. The proportional preference of users of a smoking-permitted area in that location may be demonstrated by the responsible person by evidence of either of the following:

A. the percent of users of the location who express a preference for a smoking-permitted area when the responsible person asks all users for their preference; or

B. the percent of users who are determined by the responsible person to prefer a smoking-permitted area by an alternate method that reasonably indicates the users' preference.

Subp. 6. Effective date.

A. This part is effective one year after the adoption date of this part for office buildings and factories, warehouses, or similar places of work.

B. This part is effective two years after the adoption date of this part for a building, structure, enclosure, or part of a building, structure, or enclosure that:

(1) is operated as a hotel, motel, resort, retail store, or other public place and that was constructed after the adoption date of this part; or

(2) is operated as a hotel, motel, resort, retail store, or other public place, but that was not operated as such on the adoption date of this part.

This item does not apply to office buildings; factories, warehouses, or similar places of work; health care facilities; or public conveyances.

C. This part is effective three years after the adoption date of this part for a building, structure, enclosure, or part of a building, structure, or enclosure that is operated as a hotel, motel, resort, retail store, or other public place and that was operated as such on the adoption date of this part. This item does not apply to office buildings; factories, warehouses, or similar places of work; health care facilities; or public conveyances.

D. This part is effective two years after the adoption date of this part for a building, structure, enclosure, or part of a building, structure, or enclosure that is operated as a restaurant.

4620.0500 SIGNS.

Subpart 1. **Posting.** To advise persons of the existence of acceptable nonsmoking and ~~smoking-permitted~~ smoking areas, “No Smoking” and “Smoking Permitted” signs must be posted ~~in the places specified in~~ according to this part. In addition, the statement “Smoking is prohibited except in designated areas;” or a similar statement must be conspicuously posted on or immediately inside of all outside entrances to ~~any~~ a public place.

Subp. 2. **Statement on sign.** All signs used to identify a location where the responsible person prohibits smoking in an entire public place or public meeting must use the statement, “No smoking is permitted in this entire establishment;” or a similar statement. The sign must be conspicuously posted either on or immediately inside of all outside entrances to the public place. All signs used to identify a ~~smoking-permitted~~ smoking area must use the words “smoking permitted” or ~~use~~ the international smoking symbol, or both. Signs ~~which that~~ are used to identify an acceptable nonsmoking area must use the words “no smoking” or the international no-smoking symbol, or both.

Subp. 3. **Placement of sign.** All signs used to identify ~~smoking-permitted~~ smoking and acceptable nonsmoking areas must be placed at a height and location easily seen by a person in the establishment and must not be obscured in any way. In areas where signs have to be read from a distance, the following are minimum lettering and symbol sizes ~~which that~~ must be used:

	Furthest distance from which sign is to be read:	Height of lettering:	Diameter of outer circle on symbol:
Up to:	75 feet	1.5 inches	4 inches
	150 feet	4 inches	6 inches
	200 feet	6 inches	10 inches
	350 feet	8 inches	15 inches
	500 feet	12 inches	18 inches

The boundary between an acceptable nonsmoking area and ~~smoking-permitted~~ a smoking area must be clearly designated so a person can differentiate between the two areas.

Subp. 4. **Size of lettering.** Signs used on tables, seats, or entrances to designate acceptable nonsmoking and ~~smoking-permitted~~ smoking areas must use printed letters of not less than 0.5 inches (1.3 centimeters) in height. Whenever either of the international symbols is used, the diameter of the outer circle must not be less than three inches. The size of lettering on signs reading “Smoking Permitted” must not exceed the size of lettering on signs reading “No Smoking” in the same public place.

Subp. 5. **Posting in a bar.** All signs used to identify a bar that has been designated as a smoking area in its entirety must use the statement; “This establishment is a smoking area in its entirety;” or a similar statement. In a bar that has food service other than as specified in part 4620.0100, subpart 4, and that allows smoking in its entirety when food service is not available, all signs used to identify ~~smoking-permitted~~ smoking areas must state; “This establishment is a smoking area in its entirety except when food service is available;” or a similar statement. The sign must be conspicuously posted either on or immediately inside of all outside entrances to the establishment.

Subp. 6. **Posting in a ~~restaurant~~ public place with controlled seating.** A restaurant ~~which~~ or other public place that allows smoking and has controlled seating (where an employee directs patrons to seating or waiting areas) must ask each person whether that person prefers a ~~smoking-permitted~~ smoking or a nonsmoking area before directing that person to a seat in the appropriate area. ~~At least one sign advising the public of this procedure must be conspicuously posted on or immediately inside of all outside entrances to the establishment. Similarly,~~ A restaurant or other public place ~~which that~~ takes advance reservations must ask the person’s preference for a ~~smoking-permitted~~ smoking or nonsmoking area at the time the reservation is made. A restaurant or other public place ~~which that~~ uses controlled seating as defined above is exempt from the sign requirements contained in subparts 3 and 4.

Subp. 7. Expiration date.

A. This part expires on the effective date of part 4620.0955 for office buildings and factories, warehouses, or similar places of work.

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B. This part expires on the effective date of part 4620.0960, according to part 4620.0960, subpart 7, item A, for a building, structure, enclosure, or part of a building, structure, or enclosure that:

(1) is operated as a hotel, motel, resort, retail store, or other public place and that was constructed after the adoption date of this part; or

(2) is operated as a hotel, motel, resort, retail store, or other public place, but that was not operated as such on the adoption date of this part.

This item does not apply to office buildings; factories, warehouses, or similar places of work; health care facilities; or public conveyances.

C. This part expires on the effective date of part 4620.0960, according to part 4620.0960, subpart 7, item B, for a building, structure, enclosure, or part of a building, structure, or enclosure that is operated as a hotel, motel, resort, retail store, or other public place and that was operated as such on the adoption date of this part. This item does not apply to office buildings; factories, warehouses, or similar places of work; health care facilities; or public conveyances.

D. This part expires on the effective date of part 4620.1010 for a building, structure, enclosure, or part of a building, structure, or enclosure that is operated as a restaurant.

4620.0600 PERMISSIBLE ASHTRAYS.

Subpart 1. General. Portable ashtrays are banned in all acceptable nonsmoking areas. Only ash stands and permanent ashtrays may be used at or near the entrance to an acceptable nonsmoking area. Ash stands and permanent ashtrays must be conspicuously labeled with the following message or a similar statement and placed on or near the ash stand or permanent ashtray:

**SMOKING IS PROHIBITED
PLEASE EXTINGUISH ALL SMOKING MATERIALS IMMEDIATELY**

Subp. 2. Expiration date.

A. This part expires on the effective date of part 4620.0650, according to part 4620.0650, subpart 2, item A, for office buildings and factories, warehouses, or similar places of work.

B. This part expires on the effective date of part 4620.0650, according to part 4620.0650, subpart 2, item B, for a building, structure, enclosure, or part of a building, structure, or enclosure that:

(1) is operated as a hotel, motel, resort, retail store, or other public place and that was constructed after the adoption date of this part; or

(2) is operated as a hotel, motel, resort, retail store, or other public place, but that was not operated as such on the adoption date of this part.

This item does not apply to office buildings; factories, warehouses, or similar places of work; health care facilities; or public conveyances.

C. This part expires on the effective date of part 4620.0650, according to part 4620.0650, subpart 2, item C, for a building, structure, enclosure, or part of a building, structure, or enclosure that is operated as a hotel, motel, resort, retail store, or other public place and that was operated as such on the adoption date of this part. This item does not apply to office buildings; factories, warehouses, or similar places of work; health care facilities; or public conveyances.

D. This part expires on the effective date of part 4620.1010 for a building, structure, enclosure, or part of a building, structure, or enclosure that is operated as a restaurant.

4620.0650 PERMISSIBLE ASHTRAYS.

Subpart 1. General. Portable ashtrays are banned in smoke-free areas. Only ash stands and permanent ashtrays may be used at or near the entrance to a smoke-free area. Ash stands and permanent ashtrays must be conspicuously labeled with the following message or a similar statement and placed on or near the ash stand or permanent ashtray:

**SMOKING IS PROHIBITED
PLEASE EXTINGUISH ALL SMOKING MATERIALS IMMEDIATELY**

Subp. 2. Effective date.

A. This part is effective one year after the adoption date of this part for office buildings and factories, warehouses, or similar places of work.

B. This part is effective two years after the adoption date of this part for a building, structure, enclosure, or part of the building, structure, or enclosure that:

(1) is operated as a hotel, motel, resort, retail store, or other public place and that was constructed after the adoption date of this part; or

(2) is operated as a hotel, motel, resort, retail store, or other public place, but that was not operated as such on the adoption date of this part.

This item does not apply to office buildings; factories, warehouses, or similar places of work; health care facilities; or public conveyances.

C. This part is effective three years after the adoption date of this part for a building, structure, enclosure, or part of a building, structure, or enclosure that is operated as a hotel, motel, resort, retail store, or other public place and that was operated as such on the adoption date of this part. This item does not apply to office buildings; factories, warehouses, or similar places of work; health care facilities; or public conveyances.

D. This part is effective two years after the adoption date of this part for a building, structure, enclosure, or part of a building, structure, or enclosure that is operated as a restaurant.

4620.0750 LUNCHROOM OR LOUNGE.

Subpart 1. General. A lunchroom or lounge must be designated as specified in this part.

A. The responsible person must designate an acceptable nonsmoking area in the lunchroom or lounge that meets demand. Amenities, such as refrigerators or ~~microwaves~~ microwave ovens, must be located in the nonsmoking area. The space occupied by these amenities must not be calculated as part of the square footage or percentage of area allocated to the nonsmoking seating area.

B. The demand for a nonsmoking area must be determined as specified in part 4620.0400, subpart 4, or the responsible person may designate at least 70 percent of the lunchroom or lounge as a nonsmoking area.

C. The responsible person must also provide a method of separation, as described in part 4620.0100, subpart 2, item B, between the nonsmoking and ~~smoking-permitted~~ smoking areas.

D. If there are two or more lunchrooms or lounges, one may be designated as smoking-permitted in its entirety as long as at least one other comparable lunchroom or lounge is designated as nonsmoking in its entirety.

E. If there is only one lunchroom or lounge and it measures less than 200 square feet, the responsible person may alternate nonsmoking and ~~smoking-permitted~~ smoking break times. Nonsmoking employees must not be required to take breaks ~~during the time while~~ the lunchroom or lounge is designated as ~~smoking-permitted~~ smoking in its entirety.

Subp. 2. Expiration date.

A. This part expires on the effective date of part 4620.0955 for office buildings and factories, warehouses, or similar places of work.

B. This part expires on the effective date of part 4620.0960, according to part 4620.0960, subpart 7, item A, for a building, structure, enclosure, or part of a building, structure, or enclosure that:

(1) is operated as a hotel, motel, resort, retail store, or other public place and that was constructed after the adoption date of this part; or

(2) is operated as a hotel, motel, resort, retail store, or other public place, but that was not operated as such on the adoption date of this part.

This item does not apply to office buildings; factories, warehouses, or similar places of work; health care facilities; or public conveyances.

C. This part expires on the effective date of part 4620.0960, according to part 4620.0960, subpart 7, item B, for a building, structure, enclosure, or part of a building, structure, or enclosure that is operated as a hotel, motel, resort, retail store, or other public place and that was operated as such on the adoption date of this part. This item does not apply to office buildings; factories, warehouses, or similar places of work; health care facilities; or public conveyances.

<p>KEY: PROPOSED RULES SECTION — <u>Underlining</u> 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 — <u>Underlining</u> indicates additions to proposed rule language. Strike outs indicate deletions from proposed rule language.</p>
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Proposed Rules

D. This part expires on the effective date of part 4620.1010 for a building, structure, enclosure, or part of a building, structure, or enclosure that is operated as a restaurant.

4620.0950 OFFICE BUILDINGS.

Subpart 1. General. Smoking is prohibited in all office spaces, except in the following locations:

- A. in a private enclosed office if the door is kept closed while smoking occurs;
- B. in a designated ~~smoking-permitted~~ smoking area of a lunchroom or lounge as specified in part 4620.0750; or
- C. where a ~~designated smoking-permitted area of a~~ lunchroom or lounge is not available with the office space controlled by the responsible person, then one ~~smoking-permitted~~ smoking area per 20,000 square feet, or fraction thereof, may be designated by the responsible person. One of the separation methods specified in part 4620.0100, subpart 2, item B, must be provided between the nonsmoking and ~~smoking-permitted~~ smoking areas.

Subp. 2. Expiration date. This part expires on the effective date of part 4620.0955.

4620.0955 OFFICE BUILDINGS; FACTORIES, WAREHOUSES, OR SIMILAR PLACES OF WORK.

Subpart 1. General. Smoking is prohibited in all office spaces and factories, warehouses, or similar places of work, except:

A. in a private enclosed office if the door is kept closed while smoking occurs and it meets the requirements of part 4620.0450, subpart 1, items B to D:

B. in a designated smoking-permitted area of a lunchroom or lounge that complies with subitems (1) to (5):

(1) the responsible person must designate a smoke-free area in the lunchroom or lounge that meets demand. Amenities, such as refrigerators or microwave ovens, must be located in the smoke-free area. The space occupied by the amenities must not be calculated as part of the percentage of area allocated to the smoke-free seating area;

(2) the responsible person must determine the demand for a smoke-free area according to part 4620.0450, subpart 5, or may designate at least 70 percent of the lunchroom or lounge as a smoke-free area;

(3) if smoking-permitted areas are designated, the responsible person must comply with part 4620.0450, subpart 1;

(4) if there are two or more lunchrooms or lounges, one may be designated as smoking-permitted in its entirety as long as it meets the requirements of part 4620.0450, subpart 1, and at least one other comparable lunchroom or lounge is designated as smoke-free in its entirety; and

(5) if there is only one lunchroom or lounge and it meets the requirements of part 4620.0450, subpart 1, the responsible person may alternate nonsmoking and smoking-permitted break times. Nonsmoking employees must not be required to take breaks while the lunchroom or lounge is designated as smoking-permitted in its entirety; or

C. when a lunchroom or lounge is not available with the space controlled by the responsible person, the responsible person may designate one smoking-permitted area per 20,000 square feet, or fraction thereof. If smoking-permitted areas are designated, the responsible person must comply with part 4620.0450, subpart 1.

Subp. 2. Signs.

A. To advise persons of the existence of smoke-free and smoking-permitted areas, "No Smoking" or "Smoke-free Area" and "Smoking Permitted" signs must be posted according to this part.

B. Signs used to identify a location where the responsible person prohibits smoking in an entire office building or factory, warehouse, or similar place of work must use the statement "No smoking is permitted in this entire establishment" or a similar statement. The sign must be conspicuously posted either on or immediately inside of all outside entrances to the office building or factory, warehouse, or similar place of work.

C. Signs used to identify a location where the responsible person has designated a smoking-permitted area in an office building, factory, warehouse, or similar place of work must use the statement "Smoking is prohibited except in designated areas" or a similar statement. The sign must be conspicuously posted either on or immediately inside of all outside entrances to the office building, factory, warehouse, or similar place of work. All smoking-permitted areas must be posted with a sign using the words "smoking permitted" or the international smoking symbol, or both. Signs that are used to identify a smoke-free area must use the words "no smoking" or "smoke-free area," the international no-smoking symbol, or a combination of words and the symbol.

D. Signs used to identify smoking-permitted and smoke-free areas must be placed at a height and location easily seen by a person in the establishment and must not be obscured in any way. In areas where signs have to be read from a distance, the following are minimum lettering and symbol sizes that must be used:

	<u>Furthest distance from which sign is to be read:</u>	<u>Height of lettering:</u>	<u>Diameter of outer circle on symbol:</u>
<u>Up to:</u>	<u>75 feet</u>	<u>1.5 inches</u>	<u>4 inches</u>
	<u>150 feet</u>	<u>4 inches</u>	<u>6 inches</u>
	<u>200 feet</u>	<u>6 inches</u>	<u>10 inches</u>
	<u>350 feet</u>	<u>8 inches</u>	<u>15 inches</u>
	<u>500 feet</u>	<u>12 inches</u>	<u>18 inches</u>

The boundary between a smoke-free area and a smoking-permitted area must be clearly designated so a person can differentiate between the two areas.

E. Signs used on tables, seats, or entrances to designate smoke-free and smoking-permitted areas must use letters of not less than 0.5 inches (1.3 centimeters) in height. If an international symbol is used, the diameter of the outer circle must not be less than three inches. The size of lettering on signs reading "Smoking Permitted" must not exceed the size of lettering on signs reading "No Smoking" or "Smoke-free Area" in the same office building or factory, warehouse, or similar place of work.

Subp. 3. Effective date. This part is effective one year after the adoption date of this part.

4620.0960 OTHER PUBLIC PLACES.

Subpart 1. General. Smoking is prohibited in all public places not otherwise covered by parts 4620.0050 to 4620.1450, except in:

A. a private enclosed office if the door is kept closed while smoking occurs and it meets the requirements of part 4620.0450, subpart 1, items B to D; or

B. a designated smoking-permitted area of a lunchroom or lounge that complies with subitems (1) to (5):

(1) the responsible person must designate a smoke-free area in the lunchroom or lounge that meets demand. Amenities, such as refrigerators or microwave ovens, must be located in the smoke-free area. The space occupied by the amenities must not be calculated as part of the percentage of area allocated to the smoke-free area;

(2) the responsible person must determine the demand for a smoke-free area according to part 4620.0450, subpart 5, or may designate at least 70 percent of the lunchroom or lounge as a smoke-free area;

(3) if smoking-permitted areas are designated, the responsible person must comply with part 4620.0450, subpart 1;

(4) if there are two or more lunchrooms or lounges, one may be designated as smoking-permitted in its entirety as long as it meets the requirements of part 4620.0450, subpart 1, and at least one other comparable lunchroom or lounge is designated as smoke-free in its entirety; and

(5) if there is only one lunchroom or lounge and it meets the requirements of part 4620.0450, subpart 1, the responsible person may alternate nonsmoking and smoking-permitted break times. Nonsmoking employees must not be required to take breaks while the lunchroom or lounge is designated as smoking-permitted in its entirety.

Subp. 2. Common areas.

A. No person may smoke in common areas except in designated smoking-permitted areas.

B. Common areas must not be designated in their entirety as smoking-permitted areas if nonsmokers are required to use the area to participate in activities for which the public space is intended.

C. Smoking is prohibited in elevators.

D. Smoking is prohibited in public restrooms.

Subp. 3. Retail stores.

A. Smoking is prohibited in all customer areas of retail stores, except in designated smoking-permitted areas according to part 4620.0450 and in customer areas of retail tobacco stores as defined in part 4620.0100, subpart 16b, if those areas meet the requirements of part 4620.0450, subpart 1.

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

B. To allow smoking in a smoking-permitted area, the same goods and services must be available in a smoke-free area.

C. Smoking-permitted areas for customers must be designated according to part 4620.0450.

D. Designated smoking-permitted areas for employees must be separate from all customer areas.

E. When a restaurant is located within a retail store, that space licensed as a restaurant must comply with part 4620.1010.

Subp. 4. **Hotels, motels, resorts.** No person may smoke in hotels, motels, or resorts except in designated smoking-permitted areas. This prohibition does not apply to a sleeping room that is rented to a guest.

Subp. 5. **Theatrical productions.** Performers in a theatrical production may smoke if smoking is an integral part of the story of the theatrical production.

Subp. 6. **Signs.**

A. To advise persons of the existence of smoke-free and smoking-permitted areas, “No Smoking” or “Smoke-free Area” and “Smoking Permitted” signs must be posted according to this part.

B. Signs used to identify a location where the responsible person prohibits smoking in an entire public place or public meeting must use the statement “No smoking is permitted in this entire establishment” or a similar statement. The sign must be conspicuously posted either on or immediately inside of all outside entrances to the public place.

C. Signs used to identify a location where the responsible person has designated a smoking-permitted area in a public place must use the statement “Smoking is prohibited except in designated areas” or a similar statement. The sign must be conspicuously posted either on or immediately inside of all outside entrances to a public place. All smoking-permitted areas must be posted with a sign using the words “smoking permitted” or the international smoking symbol, or both. Signs that are used to identify a smoke-free area must use the words “no smoking” or “smoke-free area,” the international no-smoking symbol, or a combination of words and the symbol.

D. Signs used to identify smoking-permitted and smoke-free areas must be placed at a height and location easily seen by a person in the establishment and must not be obscured in any way. In areas where signs have to be read from a distance, the following are minimum lettering and symbol sizes that must be used:

	<u>Furthest distance from which sign is to be read:</u>	<u>Height of lettering:</u>	<u>Diameter of outer circle on symbol:</u>
<u>Up to:</u>	<u>75 feet</u>	<u>1.5 inches</u>	<u>4 inches</u>
	<u>150 feet</u>	<u>4 inches</u>	<u>6 inches</u>
	<u>200 feet</u>	<u>6 inches</u>	<u>10 inches</u>
	<u>350 feet</u>	<u>8 inches</u>	<u>15 inches</u>
	<u>500 feet</u>	<u>12 inches</u>	<u>18 inches</u>

The boundary between a smoke-free area and a smoking-permitted area must be clearly designated so a person can differentiate between the two areas.

E. Signs used on tables, seats, or entrances to designate smoke-free and smoking-permitted areas must use printed letters of not less than 0.5 inches (1.3 centimeters) in height. If an international symbol is used, the diameter of the outer circle must not be less than three inches. The size of lettering on signs reading “Smoking Permitted” must not exceed the size of lettering on signs reading “No Smoking” or “Smoke-free Area” in the same public place.

F. A public place that has controlled seating where an employee directs patrons to seating or waiting areas must ask each person whether that person prefers a smoking-permitted or a smoke-free area before directing that person to a seat in the appropriate area. A public place that takes advance reservations must ask the person’s preference for a smoking-permitted or smoke-free area at the time the reservation is made. A public place that uses controlled seating is exempt from the sign requirements of items D and E.

Subp. 7. **Effective date.**

A. This part is effective two years after the adoption date of this part for a building, structure, enclosure, or part of a building, structure, or enclosure that:

(1) is operated as a hotel, motel, resort, retail store, or other public place and that was constructed after the adoption date of this part; or

(2) is operated as a hotel, motel, resort, retail store, or other public place, but that was not operated as such on the adoption date of this part.

This item does not apply to office buildings; factories, warehouses, or similar places of work; health care facilities; or public conveyances.

B. This part is effective three years after the adoption date of this part for a building, structure, enclosure, or part of a building, structure, or enclosure that is operated as a hotel, motel, resort, retail store, or other public place and that was operated as such on the adoption date of this part. This item does not apply to office buildings; factories, warehouses, or similar places of work; health care facilities; or public conveyances.

4620.0975 FACTORIES, WAREHOUSES, OR SIMILAR PLACES OF WORK.

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

Subp. 2. **Restriction.** If the conditions specified in subpart 1, items A and B, cannot be met, then smoking must be restricted in a factory, warehouse, or similar place of work to the following locations:

- A. a private enclosed office if the door is kept closed while smoking occurs;
- B. the designated ~~smoking-permitted~~ smoking area of a lunchroom or lounge as specified in part 4620.0750; or
- C. where a ~~designated smoking-permitted area of a~~ lunchroom or lounge is not available with the factory or warehouse space controlled by the responsible person, then one ~~smoking-permitted~~ smoking area per 20,000 square feet, or fraction thereof, may be designated by the responsible person. One of the separation methods specified in part 4620.0100, subpart 2, item B, must be provided between the nonsmoking and ~~smoking-permitted~~ smoking areas.

Subp. 3. **Expiration date.** This part expires on the effective date of part 4620.0955.

4620.1000 RESTAURANTS.

Subpart 1. General. During its hours of operation, a restaurant shall be in compliance with parts 4620.0500 to 4620.1450 if at least 30 percent of the seats in the eating area are designated as "Smoking Prohibited."

When a facility contains both a restaurant and a bar and the restaurant and bar are in separate rooms, and both the restaurant and bar have food service available to patrons, then:

- A. the responsible person must calculate the total seating for both the restaurant and bar;
- B. the responsible person must determine 30 percent of the total seating in item A to be designated as nonsmoking seating; and
- C. the responsible person may locate the required 30 percent nonsmoking seating entirely in the restaurant, entirely in the bar, or allocate part of the 30 percent in the bar and part of the 30 percent in the restaurant.

Subp. 2. **Expiration date.** This part expires on the effective date of part 4620.1010.

4620.1010 RESTAURANTS.

Subpart 1. Dining area.

A. During its hours of operation, a restaurant is in compliance with parts 4620.0600 to 4620.1450 if:

- (1) at least 30 percent of the seats in the eating area are designated as smoke-free; and
- (2) the smoking-permitted areas meet the requirements of part 4620.0450, subpart 1.

B. If a facility contains both a restaurant and a bar, the restaurant and bar are in separate rooms, and both the restaurant and bar have food service available to patrons:

- (1) the responsible person must calculate the total seating for both the restaurant and bar;
- (2) the responsible person must determine 30 percent of the total seating in subitem (1) to be designated as smoke-free seating; and
- (3) the responsible person may locate the required 30 percent of smoke-free seating entirely in the restaurant, entirely in the bar, or allocate part of the 30 percent in the bar and part of the 30 percent in the restaurant.

Subp. 2. Employee lunchroom or lounge.

A. An employee lunchroom or lounge in a restaurant must be designated according to items B to F.

<p>KEY: PROPOSED RULES SECTION — <u>Underlining</u> 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 — <u>Underlining</u> indicates additions to proposed rule language. Strike outs indicate deletions from proposed rule language.</p>
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Proposed Rules

B. The responsible person must designate a smoke-free area in the lunchroom or lounge that meets demand. Amenities, such as refrigerators or microwave ovens, must be located in the smoke-free area. The space occupied by the amenities must not be calculated as part of the square footage or percentage of area allocated to the smoke-free seating area.

C. The responsible person must determine the demand for a smoke-free area according to part 4620.0450, subpart 5, or may designate at least 70 percent of the lunchroom or lounge as a smoke-free area.

D. If smoking-permitted areas are designated, the responsible person must comply with part 4620.0450, subpart 1.

E. If there are two or more lunchrooms or lounges, one may be designated as smoking-permitted in its entirety as long as it meets the requirements of part 4620.0450, subpart 1, and at least one other comparable lunchroom or lounge is designated as smoke-free in its entirety.

F. If there is only one lunchroom or lounge and it meets the requirements of part 4620.0450, subpart 1, the responsible person may alternate nonsmoking and smoking-permitted break times. Nonsmoking employees must not be required to take breaks while the lunchroom or lounge is designated as smoking-permitted in its entirety.

Subp. 3. Private enclosed offices. Smoking is permitted in a private enclosed office in a restaurant if the door is kept closed while smoking occurs and the office meets the requirements of part 4620.0450, subpart 1, items B to D.

Subp. 4. Common areas.

A. Common areas must not be designated in their entirety as a smoking-permitted area if nonsmokers are required to use the area to participate in activities for which the public space is intended. Parts 4620.0050 to 4620.1450 shall not be construed to prevent designation of a smoking-permitted area in a portion of the establishment that nonsmokers must briefly cross to reach the intended activity.

B. Smoking is prohibited in elevators.

C. Smoking is prohibited in public restrooms.

Subp. 5. Signs.

A. To advise persons of the existence of smoke-free and smoking-permitted areas, "No Smoking" or "Smoke-free Area" and "Smoking Permitted" signs must be posted according to this part.

B. Signs used to identify a location where the responsible person prohibits smoking in an entire restaurant must use the statement "No smoking is permitted in this entire establishment" or a similar statement. The sign must be conspicuously posted either on or immediately inside of all outside entrances to the restaurant.

C. Signs used to identify a location where the responsible person has designated a smoking-permitted area in a restaurant must use the statement "Smoking is prohibited except in designated areas" or a similar statement. The sign must be conspicuously posted either on or immediately inside of all outside entrances to the restaurant. All smoking-permitted areas must be posted with a sign using the words "smoking permitted" or the international smoking symbol, or both. Signs that are used to identify a smoke-free area must use the words "no smoking" or "smoke-free area," the international no-smoking symbol, or a combination of words and the symbol.

D. Signs used to identify smoking-permitted and smoke-free areas must be placed at a height and location easily seen by a person in the establishment and must not be obscured in any way. In areas where signs have to be read from a distance, the following are minimum lettering and symbol sizes that must be used:

	<u>Furthest distance from which sign is to be read:</u>	<u>Height of lettering:</u>	<u>Diameter of outer circle on symbol:</u>
<u>Up to:</u>	<u>75 feet</u>	<u>1.5 inches</u>	<u>4 inches</u>
	<u>150 feet</u>	<u>4 inches</u>	<u>6 inches</u>
	<u>200 feet</u>	<u>6 inches</u>	<u>10 inches</u>
	<u>350 feet</u>	<u>8 inches</u>	<u>15 inches</u>
	<u>500 feet</u>	<u>12 inches</u>	<u>18 inches</u>

The boundary between a smoke-free area and a smoking-permitted area must be clearly designated so a person can differentiate between the two areas.

E. Signs used on tables, seats, or entrances to designate smoke-free and smoking-permitted areas must use printed letters of not less than 0.5 inches (1.3 centimeters) in height. If an international symbol is used, the diameter of the outer circle must not be less than three inches. The size of lettering on signs reading "Smoking Permitted" must not exceed the size of lettering on signs reading "No Smoking" or "Smoke-free Area" in the same public place.

F. A restaurant that has controlled seating where an employee directs patrons to seating or waiting areas must ask each person whether that person prefers a smoking-permitted or a smoke-free area before directing that person to a seat in the appropriate area. A restaurant that takes advance reservations must ask the person's preference for a smoking-permitted or smoke-free area at the time the reservation is made. A restaurant that uses controlled seating is exempt from the sign requirements of items D and E.

Subp. 6. Exemption.

A. A building, structure, enclosure, or part of a building, structure, or enclosure that is licensed under *Minnesota Statutes*, section 157.16, subdivision 3, paragraph (d), clause (1), (2), (3), or (4), is exempt from the requirements of part 4620.0450, subpart 1, if the establishment:

- (1) was licensed before the date of adoption of this part;
- (2) has not had a lapse in licensure of greater than 365 days since the adoption date of this part; and
- (3) has not had a change in ownership since the adoption date of this part.

B. Smoke-free and smoking-permitted areas in establishments that meet the criteria specified in item A must be designed and operated according to subitem (1) or subitems (2) and (3).

(1) Smoke-free and smoking-permitted areas must be designated according to part 4620.0450, subpart 1.

(2) A smoke-free area must be a contiguous portion of the establishment measuring a minimum of 200 square feet or 30 percent of the total seating of the establishment, whichever results in the greater number of smoke-free seats, and separated from smoking-permitted areas by one of the methods described in subitem (3).

(3) A smoking-permitted area must:

(a) be separated from smoke-free areas by a continuous physical barrier, such as a wall, partition, or furnishing, of at least 56 inches in height measured from the highest adjacent floor surface. The barrier may contain doors or portals for exit and entry;

(b) be separated from smoke-free areas by a space of at least four feet (1.22 meters) in width; or

(c) be equipped with a ventilation system in the room containing both smoking-permitted and smoke-free areas that provides outdoor air requirements for ventilation of not less than 15 cubic feet per minute per person. Documentation of the ventilation rate must be verified by an individual certified by the National Environmental Balancing Bureau or the Associated Air Balance Council. The commissioner shall accept a ventilation rate that has been verified within the previous 12 months of initial inspection and within the previous 36 months for subsequent inspections, provided changes affecting the operation of the ventilation system have not been made.

C. Establishments that meet the criteria specified in item A must comply with the sign requirements of subpart 5, except that:

(1) signs used to identify a smoking-permitted area must use the words "smoking permitted" or the international smoking symbol, or both;

(2) signs used to identify a nonsmoking area must use the words "no smoking" or the international no-smoking symbol, or both;

(3) signs that read "Smoke-free" may only be used if the establishment is nonsmoking in its entirety;

(4) signs that read "smoke-free area" may be used only in establishments that designate smoke-free and smoking-permitted areas according to part 4620.0450, subpart 1; and

(5) in establishments where item B, subitems (2) and (3), are used to designate smoking and nonsmoking areas, a sign stating "You may be exposed to secondhand smoke in this establishment," or similar statement must be conspicuously posted on or immediately inside all outside entrances to the establishment.

Subp. 7. Effective date. This part is effective two years after the adoption date of this part.

4620.1025 BARS.

Subpart 1. General. During the hours of operation when food service is available to patrons that requires licensure as a restaurant under *Minnesota Statutes*, chapter 157, and as a food and beverage service establishment under ~~part 4626.0020, subpart 35~~

<p>KEY: PROPOSED RULES SECTION — <u>Underlining</u> 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 — <u>Underlining</u> indicates additions to proposed rule language. Strike outs indicate deletions from proposed rule language.</p>
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Proposed Rules

Minnesota Statutes, section 157.15, subdivision 5, a bar must provide the same percent or greater of nonsmoking seating as required for restaurants in part 4620.1000, subpart 1. During the hours of operation when a bar does not make such food service available, the bar may be designated as ~~smoking permitted~~ a smoking area in its entirety.

Subp. 2. Expiration date.

A. This part expires on the effective date of part 4620.1030, according to part 4620.1030, subpart 3, item A, for a building, structure, enclosure, or part of a building, structure, or enclosure that:

(1) is operated as a bar and that was constructed after the adoption date of this part; or

(2) is operated as a bar, but that was not operated as such on the adoption date of this part.

B. This part expires on the effective date of part 4620.1030, according to part 4620.1030, subpart 3, item B, for a building, structure, enclosure, or part of a building, structure, or enclosure that is operated as a bar and that was operated as such on the adoption date of this part.

4620.1030 BARS.

Subpart 1. General. If an establishment meets the criteria specified in part 4620.0100, subpart 4, the proprietor or other person in charge may permit smoking in the entire patron seating area of the establishment. If an establishment where one can purchase and consume alcoholic beverages and that requires licensure as a food and beverage establishment under Minnesota Statutes, chapter 157, does not meet the criteria specified in part 4620.0100, subpart 4, it must provide the same percent or greater of non-smoking seating as required in part 4620.1010, subpart 1, during the hours of operation when food service is available to patrons. The proprietor or other person in charge may designate the entire patron seating area as smoking-permitted during the hours of operation when the establishment does not make food service available.

Subp. 2. Signs.

A. Signs used to identify a bar that has been designated as a smoking-permitted area in its entirety must use the statement "This establishment is a smoking area in its entirety" or a similar statement. In a bar that has food service as specified in part 4620.0100, subpart 4, and that allows smoking in its entirety when food service is not available, signs used to identify smoking-permitted areas must state "This establishment is a smoking-permitted area in its entirety except when food service is available" or a similar statement. The sign must be conspicuously posted either on or immediately inside of all outside entrances to the establishment.

B. If smoke-free areas are designated in a bar, the areas must meet the sign requirements of part 4620.1010, subpart 6, item C.

Subp. 3. Effective date.

A. This part is effective two years after the adoption date of this part for a building, structure, enclosure, or part of a building, structure, or enclosure that:

(1) is operated as a bar and that was constructed after the adoption date of this part; or

(2) is operated as a bar, but that was not operated as such on the adoption date of this part.

B. This part is effective three years after the adoption date of this part for a building, structure, enclosure, or part of a building, structure, or enclosure that is operated as a bar and that was operated as such on the adoption date of this part.

4620.1100 PUBLIC CONVEYANCES.

Subpart 1. General.

A. No person is permitted to smoke in a public conveyance except in designated smoking areas. ~~Smoking permitted sections~~ Smoking areas may be designated in ~~any~~ a public conveyance with a capacity of ten or more persons including the driver. A public conveyance with a capacity of less than ten persons may be considered to be a smoking area in its entirety if the driver and all passengers expressly consent. Smoking and nonsmoking areas in public conveyances must be designed and operated according to items B and C.

B. A nonsmoking area must be a contiguous portion of the public conveyance measuring a minimum of 200 square feet and separated from smoking areas by one of the methods described in item C.

C. A smoking area must be separated from nonsmoking areas by:

(1) a continuous, physical barrier, such as a wall, partition, or furnishing, of at least 56 inches (1.42 meters) in height measured from the highest adjacent floor surface. The barrier may contain doors or portals for exit and entry; or

(2) a space of at least four feet (1.22 meters) in width.

Subp. 2. Signs.

A. To advise persons of the existence of nonsmoking and smoking areas, “No Smoking” and “Smoking Permitted” signs must be posted according to this part. In addition, the statement “Smoking is prohibited except in designated areas” or a similar statement must be conspicuously posted on or immediately inside of all outside entrances to a public conveyance.

B. Signs used to identify a public conveyance where the responsible person prohibits smoking in an entire public conveyance must use the statement “No smoking is permitted in this entire establishment” or a similar statement. The sign must be conspicuously posted either on or immediately inside of all outside entrances to the public conveyance. Signs used to identify a smoking area must use the words “smoking permitted” or the international smoking symbol, or both. Signs that are used to identify a non-smoking area must use the words “no smoking” or the international no-smoking symbol, or both.

C. Signs used to identify smoking and nonsmoking areas must be placed at a height and location easily seen by a person in the conveyance and must not be obscured in any way. The boundary between a nonsmoking area and a smoking area must be clearly designated so a person can differentiate between the two areas.

D. Signs used on tables, seats, or entrances to designate nonsmoking and smoking areas must use printed letters of not less than 0.5 inches (1.3 centimeters) in height. If an international symbol is used, the diameter of the outer circle must not be less than three inches. The size of lettering on signs reading “Smoking Permitted” must not exceed the size of lettering on signs reading “No Smoking” in the same public conveyance.

Subp. 3. Permissible ashtrays. Portable ashtrays are banned in nonsmoking areas. Only ash stands and permanent ashtrays may be used at or near the entrance to a nonsmoking area. Ash stands and permanent ashtrays must be conspicuously labeled with the following message or a similar statement and placed on or near the ash stand or permanent ashtray:

SMOKING IS PROHIBITED

PLEASE EXTINGUISH ALL SMOKING MATERIALS IMMEDIATELY

Subp. 4. Common areas. Common areas must not be designated in their entirety as a smoking area if nonsmokers are required to use the area to participate in activities for which the public space is intended. This part shall not be construed to prevent designation of a smoking-permitted area in a portion of the public conveyance that nonsmokers must briefly cross to reach the intended activity.

4620.1200 HEALTH CARE FACILITIES.

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

Subp. 2. Smoking in a nursing home, boarding care facility. Smoking areas in nursing homes are regulated according to part 4658.4520. Smoking areas in boarding care facilities are regulated according to part 4660.9940, subpart 2. If a smoking area is provided, a comparable nonsmoking area must also be provided. Smoking in a nursing home, boarding care facility, or other licensed residential facility is permitted in a patient or resident room if the procedures in item A or B are followed.

A. The responsible person must ask all prospective patients or residents or a person authorized to represent the patient or resident whether a ~~smoking-permitted~~ smoking or an ~~acceptable~~ nonsmoking area room is preferred. The responsible person must assign rooms according to this preference when space is available. When space is not available in a nonsmoking room and a person is admitted to a room originally designated for smoking, smoking must be prohibited in that room unless expressly permitted by the nonsmoker.

B. If the responsible person does not assign patient or resident rooms according to the smoking preference of the patient or resident, smoking must be prohibited in all such rooms except rooms occupied exclusively by persons who smoke or persons who express permission for smoking.

Visitors and staff must be prohibited from smoking in patient or resident rooms ~~unless the occupants expressly permit.~~

~~Acceptable nonsmoking areas and smoking-permitted areas in commonly used space of the facilities in this subpart must be designated according to part 4620.0400.~~

<p>KEY: PROPOSED RULES SECTION — <u>Underlining</u> 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 — <u>Underlining</u> indicates additions to proposed rule language. Strike outs indicate deletions from proposed rule language.</p>
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Proposed Rules

Subp. 3. Signs.

A. To advise persons of the existence of nonsmoking and smoking areas, “No Smoking” and “Smoking Permitted” signs must be posted according to this part. In addition, the statement “Smoking is prohibited except in designated areas” or a similar statement must be conspicuously posted on or immediately inside of all outside entrances to a health care facility.

B. Signs used to identify a location where the responsible person prohibits smoking in an entire health care facility must use the statement “No smoking is permitted in this entire establishment” or a similar statement. The sign must be conspicuously posted either on or immediately inside of all outside entrances to the health care facility. Signs used to identify a smoking area must use the words “smoking permitted” or the international smoking symbol, or both. Signs used to identify a nonsmoking area must use the words “no smoking” or the international no-smoking symbol, or both.

C. Signs used to identify smoking and nonsmoking areas must be placed at a height and location easily seen by a person in the establishment and must not be obscured in any way. In areas where signs have to be read from a distance, the following are minimum lettering and symbol sizes that must be used:

	<u>Furthest distance from which sign is to be read:</u>	<u>Height of lettering:</u>	<u>Diameter of outer circle on symbol:</u>
<u>Up to:</u>	<u>75 feet</u>	<u>1.5 inches</u>	<u>4 inches</u>
	<u>150 feet</u>	<u>4 inches</u>	<u>6 inches</u>
	<u>200 feet</u>	<u>6 inches</u>	<u>10 inches</u>
	<u>350 feet</u>	<u>8 inches</u>	<u>15 inches</u>
	<u>500 feet</u>	<u>12 inches</u>	<u>18 inches</u>

The boundary between a nonsmoking area and a smoking area must be clearly designated so a person can differentiate between the two areas.

D. Signs used on tables, seats, or entrances to designate nonsmoking and smoking areas must use printed letters of not less than 0.5 inches (1.3 centimeters) in height. If an international symbol is used, the diameter of the outer circle must not be less than three inches. The size of lettering on signs reading “Smoking Permitted” must not exceed the size of lettering on signs reading “No Smoking” in the same health care facility.

Subp. 4. Permissible ashtrays. Portable ashtrays are banned in nonsmoking areas. Only ash stands and permanent ashtrays may be used at or near the entrance to a nonsmoking area. Ash stands and permanent ashtrays must be conspicuously labeled with the following message or a similar statement and placed on or near the ash stand or permanent ashtray:

SMOKING IS PROHIBITED

PLEASE EXTINGUISH ALL SMOKING MATERIALS IMMEDIATELY

4620.1300 HOTELS, MOTELS, AND RESORTS.

Subpart 1. General. No person may smoke in hotels, motels, and resorts except in designated smoking areas. This prohibition does not apply to sleeping rooms which are rented to a guest.

Subp. 2. Expiration date.

A. This part expires on the effective date of part 4620.0960, according to part 4620.0960, subpart 7, item A, for a building, structure, enclosure, or part of a building, structure, or enclosure that:

- (1) is operated as a hotel, motel, or resort and that was constructed after the adoption date of this part; or
- (2) is operated as a hotel, motel, or resort, but that was not operated as such on the adoption date of this part.

B. This part expires on the effective date of part 4620.0960, according to part 4620.0960, subpart 7, item B, for a building, structure, enclosure, or part of a building, structure, or enclosure that is operated as a hotel, motel, or resort and that was operated as such on the adoption date of this part.

4620.1400 COMMON AREAS.

Subpart 1. General. ~~Common areas are areas used by both nonsmokers and smokers such as entry or exit areas, lobby areas, ticket areas, registration areas, common traffic areas, common areas of rental apartment buildings, or similar sections of public places. These~~ Common areas must not be designated in their entirety as a ~~smoking permitted~~ smoking area if nonsmokers would be required to use the area to participate in activities for which the public space is intended. Parts 4620.0050 to 4620.1450 shall not be construed to prevent designation of a smoking-permitted area in a portion of the establishment which nonsmokers must briefly cross to reach the intended activity.

[For text of subs 2 and 3, see M.R.]

Subp. 4. Expiration date.

A. This part expires on the effective date of part 4620.0960, according to part 4620.0960, subpart 7, item A, for a building, structure, enclosure, or part of a building, structure, or enclosure that:

(1) is operated as a hotel, motel, resort, retail store, or other public place and that was constructed after the adoption date of this part; or

(2) is operated as a hotel, motel, resort, retail store, or other public place, but that was not operated as such on the adoption date of this part.

B. This part expires on the effective date of part 4620.0960, according to part 4620.0960, subpart 7, item B, for a building, structure, enclosure, or part of a building, structure, or enclosure that is operated as a hotel, motel, resort, retail store, or other public place and that was operated as such on the adoption date of this part.

C. This part expires on the effective date of part 4620.1010 for a building, structure, enclosure, or part of a building, structure, or enclosure that is operated as a restaurant.

4620.1425 RETAIL STORES.

Subpart 1. General. Smoking is prohibited in all customer areas of retail stores, except for designated smoking areas. To allow smoking in a ~~smoking permitted~~ smoking area, the same goods and services must be available in a nonsmoking area. ~~Smoking permitted~~ Smoking areas must be designated according to part 4620.0400. ~~Smoking permitted~~ Smoking areas for employees ~~may~~ must be designated according to parts 4620.0400 and 4620.0750. However, designated ~~smoking permitted~~ smoking areas for employees must be separate from all customer areas. When a restaurant is located within a retail store, that space licensed as a restaurant must comply with ~~the provisions of~~ part 4620.1000.

Subp. 2. Expiration date.

A. This part expires on the effective date of part 4620.0960, according to part 4620.0960, subpart 7, item A, for a building, structure, enclosure, or part of a building, structure, or enclosure that:

(1) is operated as a retail store and that was constructed after the adoption date of this part; or

(2) is operated as a retail store, but that was not operated as such on the adoption date of this part.

B. This part expires on the effective date of part 4620.0960, according to part 4620.0960, subpart 7, item B, for a building, structure, enclosure, or part of a building, structure, or enclosure that is operated as a retail store and that was operated as such on the adoption date of this part.

4620.1440 COMPLIANCE.

The responsible person must comply with parts 4620.0050 to 4620.1450. If a rule governing specific affected places conflicts with or is inconsistent with a general provision of parts 4620.0050 to 4620.0600, the specific provision of parts 4620.0750 to 4620.1450 prevails over the general provision. A public place specified in parts 4620.0050 to 4620.1450 must comply with parts 4620.0750 to 4620.1450 according to the activities that take place in the public area. Different rules may apply to individual areas within a building according to the actual activities conducted within each area.

4620.1450 VARIANCE TO RULES RELATING TO CLEAN INDOOR AIR.

The commissioner shall grant variances to parts 4620.0100 to ~~4620.1500~~ 4620.1450, except ~~part~~ parts 4620.0300 and 4620.0350, only according to the procedures and criteria specified in parts 4717.7000 to 4717.7050.

REPEALER. *Minnesota Rules*, part 4620.0700, 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

Department of Human Services

Proposed Permanent Rules Relating to Dental Coverage/Medical Assistance

NOTICE OF HEARING

Proposed Amendments to Rules Governing Coverage of Dental Services Provided Under the Medical Assistance [MA] Program, *Minnesota Rules*, Part 9505.0270

Public Hearing. The Department of Human Services intends to adopt rules after a public hearing following the procedures set forth in the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2200 to 1400.2240, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.131 to 14.20. The agency will hold a public hearing on the above-entitled rules in the basement hearing room, State Office Building, 100 Constitution Avenue, St. Paul, MN 55155, starting at 9:30 a.m. on Friday, January 4, 2002 and continuing until the hearing is completed. Additional days of hearing will be scheduled if necessary. All interested or affected persons will have an opportunity to participate by submitting either oral or written data, statements, or arguments. Statements may be submitted without appearing at the hearing.

Administrative Law Judge. The hearing will be conducted by Administrative Law Judge Beverly Jones Heydinger, who can be reached at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota 55401-2138, **phone:** (612) 341-7606 and **fax:** (612) 349-2665. The rule hearing procedure is governed by *Minnesota Statutes*, sections 14.131 to 14.20, and by the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2000 to 1400.2240. Questions concerning the rule hearing procedure should be directed to the Administrative Law Judge.

Subject of Rules, Statutory Authority, and Agency Contact Person. The proposed amendments specify what services are covered and remove authorization requirements in the current rule for services that are well established as cost effective and medically necessary by current community standards of dental practice. The proposed amendments address definitions, covered services, payment limits on covered services, and services excluded from MA dental coverage.

Clarifying the rule and streamlining the authorization process is one of several legislative and department initiatives to address the problem of dental access in Minnesota. Part of the access problem is a shortage of dental providers who are enrolled as providers in the MA program. Only enrolled providers can provide services for payment by medical assistance. Because of this shortage, people who are eligible for dental care under MA and other public health programs do not always receive it because they cannot find an MA-enrolled dental provider. The intended effect of the proposed amendments is to help increase dental provider enrollment in the MA program by clarifying the rules and streamlining the authorization process.

Minnesota Statutes, section 256B.04, subdivision 2 directs the department to promulgate rules to uniformly administer a statewide medical assistance program. Because dental services are a covered MA service as specified in *Minnesota Statutes*, section 256B.0625, subdivision 9, the department has the authority to determine the coverage of dental services for medical assistance-eligible clients and to promulgate rules governing dental coverage.

A copy of the proposed rules is published in the *State Register* and attached to this notice as mailed. A free copy of the rules is available upon request from the agency contact person. The agency contact person is: Alice Weck at the Minnesota Department of Human Services, 444 Lafayette Road, St. Paul, MN, 55155-3816. You can reach Ms. Weck by **phone** at: (651) 297-4302 and by **fax:** at (651) 297-3173. **TTY** users may call the Department of Human Services at (651) 296-5705.

Statement of Need and Reasonableness. A Statement of Need and Reasonableness is now available for review at the agency offices and at the Office of Administrative Hearings. This statement contains a summary of the justification for the proposed rules, including a description of who will be affected by the proposed rules and an estimate of the probable cost of the proposed rules. The statement may be reviewed and copies obtained at the cost of reproduction from the agency.

Public Comment. You and all interested or affected persons, including representatives of associations and 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 before the close of the hearing record. All evidence presented should relate to the proposed rules. 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. 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. Following the comment period, there is a five-working-day rebuttal 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 rebuttal period. All comments 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.

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 rebuttal period also submit a copy of the written views or data to the agency contact person at the address stated above.

Alternative Format/Accommodation. Upon request, this Notice can be made available in an alternative format, such as large print, Braille, or cassette tape. To make such a request or if you need an accommodation to make this hearing accessible, please contact the agency contact person at the address or telephone number listed above.

Modifications. The proposed rules may be modified as a result of the rule hearing process. Modifications must be supported by data and views presented during the rule hearing process, and the adopted rules may not be substantially different than these proposed rules. If the proposed rules affect you in any way, you are encouraged to participate.

Adoption Procedure After The Hearing. After the close of the hearing record, the Administrative Law Judge will issue a report on the proposed rules. You may ask to be notified of the date when the judge's report will become 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 rules and files them with the Secretary of State, or ask to register with the agency to receive notice of future rule proceedings, and can make these requests at the hearing or in writing to the agency contact person stated above.

Lobbyist Registration. *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. Questions regarding this requirement may be directed to the Campaign Finance and Public Disclosure Board at: Suite 190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, **phone:** (651) 296-5148 or 1-800-657-3889.

Order. I order that the rulemaking hearing be held at the date, time, and location listed above.

Dated: 16 November 2001

MINNESOTA DEPARTMENT OF HUMAN SERVICES
Michael O'Keefe
Commissioner

9505.0270 DENTAL SERVICES.

Subpart 1. **Definition Definitions.** For the purposes of this part, the following terms have the meanings given them.

A. "Crown" means a restoration covering or replacing the major part or the whole portion of the tooth not covered by supporting tissues.

~~A. B.~~ "Dental service" means a diagnostic, preventive, or corrective procedure furnished by or under the supervision of a dentist.

~~B. C.~~ "Fixed partial denture" or "fixed cast metal restoration" or "fixed bridge" means a prosthetic replacement of one or more missing teeth that is cemented or attached to the abutment adjacent to the space filled by the prosthetic replacement and that cannot be removed by the patient.

D. "Implant" means material inserted or grafted into tissue or bone; or a device specially designed to be placed surgically within or on the mandibular or maxillary bone as a means of providing for dental replacement.

E. "Oral hygiene instruction" means an organized education program carried out by or under the supervision of a dentist to instruct a recipient patient about the care of the recipient's patient's teeth.

~~C. E.~~ "Rebase" refers to totally replacing the denture base material that rests on the recipient's denture foundation area means the process of refitting a denture by replacing the base material.

~~D. G.~~ "Reline" refers to means the process of resurfacing the portion tissue side of the denture base that rests on the recipient's denture foundation area with a new base material.

~~E. H.~~ "Removable prosthesis" or "removable dental prosthesis" includes dentures and removable partial dentures and means a removable structure that is prescribed by a dentist to replace a complete or partial set of teeth and made according to the dentist's direction; any dental device or appliance replacing one or more missing teeth, including associated structures, if required, that is designed to be removed and reinserted by the patient.

Subp. 2. **Eligible dental Covered services.** ~~The medical assistance program shall pay for a recipient's dental service that is medically necessary. The dental services in items A to T are covered services for MA-eligible patients, subject to the limits in subpart 2a, the general cost principles in part 9505.0210, and the requirements in parts 9505.5010 and 9505.5030, that apply when a service or procedure requires authorization. Services and procedures requiring authorization are published in the *State Register* as required by *Minnesota Statutes*, section 256B.0625, subdivision 25.~~

<p>KEY: PROPOSED RULES SECTION — <u>Underlining</u> 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 — <u>Underlining</u> indicates additions to proposed rule language. Strike outs indicate deletions from proposed rule language.</p>
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Proposed Rules

A. oral hygiene instruction;

B. fluoride treatment;

C. panoramic film;

D. dental x-rays;

E. dental prophylaxis;

F. sealants;

G. oral evaluation;

H. full mouth debridement;

I. behavior management, which in dental terminology, is a documented service that is necessary to ensure that a covered dental procedure is performed correctly and safely;

J. space maintainer;

K. oral surgery and extractions;

L. fillings;

M. endodontic therapy and periodontic therapy;

N. removable partial dentures;

O. removable dentures;

P. crowns that meet the specifications in subpart 2a, item G;

Q. orthodontic treatment that meets the specifications in subpart 2a, item F;

R. reline or rebase of a removable denture;

S. dental implants that meet the criteria in subpart 2a, item H; and

T. any other service, subject to the limits stated in this subpart, that the commissioner determines should be added for consistency with prevailing standards of practice within the dental community.

Subp. 2a. Payment limits on covered dental services. Payment for some of the covered dental services listed in subpart 2 is limited as specified in items A to H.

A. Initial placement or replacement of a removable prosthesis is limited to once every three years per patient unless a condition in subitem (1) or (2) applies:

(1) Replacement of a removable prosthesis in excess of the limit in item A is eligible for payment if the replacement is necessary because the removable prosthesis was misplaced, stolen, or damaged due to circumstances beyond the patient's control. When applicable, the patient's degree of physical and mental impairment must be considered in determining whether the circumstances were beyond a patient's control.

(2) Replacement of a partial prosthesis is eligible for payment if the existing prosthesis cannot be modified or altered to meet the patient's dental needs.

B. Service for a removable prosthesis must include instruction in the use and care of the prosthesis and any adjustment necessary to achieve a proper fit during the six months immediately following the provision of the prosthesis. The dentist shall document the instruction and the necessary adjustments, if any, in the patient's dental record.

C. All criteria under subitems (1) to (3) must be met in order for a provider to receive payment for a cast metal removable prosthesis:

(1) the crown to root ratio must be better than 1:1;

(2) the surrounding abutment teeth and the remaining teeth must not have extensive tooth decay; and

(3) the abutment teeth must not have large restorations or stainless steel crowns.

D. The criteria in subitems (1) to (4) must be met in order to receive payment for periodontal scaling and root planing:

(1) evidence of bone loss must be present on the current radiographs - panoramic, full mouth series or bitewing - to support the diagnosis of periodontitis;

(2) there must be current periodontal charting with six point and mobility noted, including the presence of pathology and periodontal prognosis;

(3) the pocket depths must be greater than four millimeters; and

(4) classification of the periodontology case type must be in accordance with documentation established by the American Academy of Periodontology.

E. Hospitalization coverage for dental surgeries and services is subject to parts 9505.0501 to 9505.0545, which establish a system for reviewing the use of inpatient hospital services.

F. At least one of the following criteria must be met for coverage of orthodontic treatment to apply:

(1) there is a disfigurement of the patient's facial appearance including protrusion of upper or lower jaws or teeth;

(2) there is spacing between adjacent teeth which interferes with the biting function;

(3) there is an overbite to the extent that the lower anterior teeth impinge on the roof of the mouth when the person bites;

(4) positioning of jaws or teeth impairs chewing or biting function; or

(5) based on a comparable assessment of subitems (1) to (4), there is an overall orthodontic problem that interferes with the biting function.

G. Crowns must be made of the following material in order to be covered:

(1) an individual crown must be made of prefabricated stainless steel, prefabricated resin, or laboratory resin; or

(2) other material determined by the commissioner to be cost effective and of a quality that is at least the equivalent of the materials listed in subitem (1).

H. The criteria in subitems (1) to (3) must be met in order to receive payment for dental implants:

(1) there must be bone and tooth loss resulting from cancer, trauma, or birth defects which cause facial deformities that compromise chewing or breathing;

(2) the implants must be medically necessary and cost-effective; and

(3) a complete treatment plan, including prosthesis and all related services, must be approved prior to the start of treatment.

Subp. 3. [See repealer.]

Subp. 4. [See repealer.]

Subp. 5. [See repealer.]

Subp. 6. [See repealer.]

Subp. 7. [See repealer.]

Subp. 8. [See repealer.]

Subp. 9. [See repealer.]

Subp. 10. **Excluded dental services.** The dental services in items A to ~~M~~ L are not eligible for payment under the medical assistance program:

~~A. full-mouth or panoramic X rays for a recipient under eight years of age unless prior authorization is given, or in the case of an emergency;~~

~~B. bases or pulp caps;~~

~~C. B. a local anesthetic that is used in conjunction with an operative or surgical procedure and billed as a separate procedure;~~

~~D. C. hygiene aids, including toothbrushes;~~

~~E. D. medication dispensed by a dentist that a recipient patient is able to obtain from a pharmacy;~~

~~F. E. acid etch for a restoration that is billed as a separate procedure;~~

~~G. periapical X rays, if done at the same time as a panoramic or full-mouth X ray survey unless prior authorization is given;~~

~~H. E. prosthesis cleaning;~~

~~I. G. removable unilateral partial prosthesis involving posterior teeth denture that is a one-piece cast metal including clasps and teeth;~~

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

~~J. H. individual crown made of a substance other than stainless steel and prefabricated acrylic dental services for cosmetic or aesthetic purposes;~~

~~K. I. fixed ~~prosthodontics~~ partial denture or fixed bridge, unless it has been determined to be medically necessary and cost-effective for a person who cannot use a removable prosthesis due to a medical condition;~~

~~L. J. replacement of a denture when a reline or rebase would correct the problem; and~~

~~M. K. gold restoration or inlay, including cast nonprecious and semiprecious metals; and~~

~~L. implants and related services when the conditions and criteria in subpart 2a, item H, are not met.~~

REPEALER. Minnesota Rules, part 9505.0270, subparts 3, 4, 5, 6, 7, 8, and 9, are repealed.

Exempt Rules

Exempt rules are excluded from the normal rulemaking procedures (*Minnesota Statutes* § 14.386 and 14.388). They are most often of two kinds. One kind is specifically exempted by the Legislature from rulemaking procedures, but approved for form by the Revisor of Statutes, reviewed for legality by the Office of Administrative Hearings, and then published in the *State Register*. These exempt rules are effective for two years only.

The second kind of exempt rule is one adopted where an agency for good cause finds that the rulemaking provisions of *Minnesota Statutes*, Chapter 14 are unnecessary, impracticable, or contrary to the public interest. This exemption can be used only where the rules:

- (1) address a serious and immediate threat to the public health, safety, or welfare, or
- (2) comply with a court order or a requirement in federal law in a manner that does not allow for compliance with *Minnesota Statutes* 14.14-14.28, or
- (3) incorporate specific changes set forth in applicable statutes when no interpretation of law is required, or
- (4) make changes that do not alter the sense, meaning, or effect of the rules.

These exempt rules are also reviewed for form by the Revisor of Statutes, for legality by the Office of Administrative Hearings and then published in the *State Register*. In addition, the Office of Administrative Hearings must determine whether the agency has provided adequate justification for the use of this exemption. Rules adopted under clauses (1) or (2) above are effective for two years only.

The Legislature may also exempt an agency from the normal rulemaking procedures and establish other procedural and substantive requirements unique to that exemption.

Department of Public Safety

Adopted Exempt Permanent Rules Repealing Rules Governing Emergency Vehicle Sirens

REPEALER. Minnesota Rules, parts 7420.0200; 7420.0300; 7420.0400; 7420.9910; 7420.9920; and 7420.9930, are repealed.

Executive Orders

The governor has the authority to issue written statements of orders, called Executive Orders, as well as Emergency Executive Orders. The governor's authority is specified in the *Constitution of the State of Minnesota*, Article V, and in *Minnesota Statutes* 4.035. Emergency Executive Orders, for protection from an imminent threat to health and safety, become effective immediately, are filed with the secretary of state, and published in the *State Register* as soon as possible after they are issued. Other Executive Orders become effective 15 days after publication in the *State Register* and filing with the secretary of state. Unless otherwise specified, an executive order expires 90 days after the date the governor who issued the order vacates office.

Office of the Governor

Emergency Executive Order # 01-12: Providing for Assistance to the Manohmen County Sheriff

I, JESSE VENTURA, GOVERNOR OF THE STATE OF MINNESOTA, by virtue of the authority vested in me by the Constitution and the applicable statutes, do hereby issue this Executive Order:

WHEREAS, the Manohmen County Sheriff has reported a hunter missing in the Elbow Lake area since 13:30 on Saturday, 24 November; and

WHEREAS, the Manohmen County Sheriff's Department does not have adequate local resources for a search and rescue mission; and

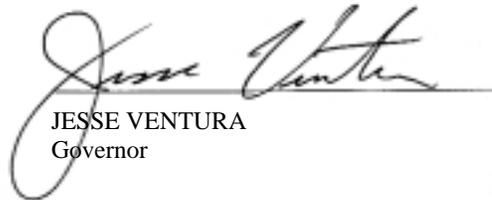
WHEREAS, the Manohmen County Sheriff has requested the National Guard's assistance in searching for the hunter;

NOW, THEREFORE, I hereby order that:

1. The Adjutant General of Minnesota order to state active duty on or about November 25, 2001, in the service of the State, such personnel and equipment of the military forces of the State as required to participate in a search and rescue effort.
2. The Adjutant General is authorized to purchase, lease or contract goods or services necessary to accomplish the mission.
3. The cost of subsistence, transportation, fuel, pay and allowances of said individuals shall be defrayed from the general fund of the State, as provided for in *Minnesota Statutes* 2000, Sections 192.49, Subd. 1; 192.52 and 192.54.

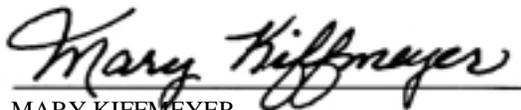
Pursuant to *Minnesota Statutes* 2000, Section 4.035, Subd. 2, this Order is effective immediately and shall remain in effect until such date as elements of the military forces of the State are no longer required.

IN TESTIMONY WHEREOF, I have set my hand this 26th day of November, 2001.



JESSE VENTURA
Governor

Filed According to Law:



MARY KIFFMEYER
Secretary of State

Commissioners' Orders

Various agency commissioners are authorized to issue "commissioner's orders" on specified activities governed by their agency's enabling laws. See the *Minnesota Statutes* governing each agency to determine the specific applicable statutes. Commissioners' orders are approved by assistant attorneys general as to form and execution and published in the *State Register*. These commissioners' orders are compiled in the year-end subject matter index for each volume of the *State Register*.

Environmental Quality Board

Approval Granted for Increase in Operating Voltage to Great River Energy

EQB Docket # 01-31-TR-GRE

On November 15, 2001, the Minnesota Environmental Quality Board approved the following resolution:

NOW THEREFORE BE IT RESOLVED, that the MEQB approves and adopts the Findings of Fact and Conclusions, and Order that grants Great River Energy a minor alteration to the Construction Permit CU-TR-1 allowing the nominal operating voltage of the dc transmission line to be increased from ± 400 kV to ± 410 kV.

BE IT FURTHER RESOLVED, that Gene Hugoson, the Chair of the Board, is authorized to sign the Findings of Fact, Conclusions and Order.

Minnesota Public Utilities Commission

Commissioner's Order Accepting Filing As Substantially Complete and Notice and Order for Hearing In the Matter of the Application of Rapids Power LLC for a Certificate of Need for Its Grand Rapids Cogeneration Project

Gregory Scott, Chair
Edward A. Garvey, Commissioner
Marshall Johnson, Commissioner
LeRoy Koppendray, Commissioner
Phyllis A. Reha, Commissioner

ISSUE DATE: November 19, 2001

DOCKET NO. IP-4/CN-01-1306

PROCEDURAL HISTORY

On August 22, 2001, Rapids Power LLC (Rapids Power, the Company or the Applicant) filed a request for exemptions from several data requirements in the certificate of need rules.¹ The Company stated that it intended to submit an application for a certificate of need to construct a cogeneration facility near the Blandin Paper mill in Grand Rapids. The facility would be a large energy facility as defined in *Minnesota Statutes* § 216B.2421, subd.2 (1).

On September 10, 2001, the Company filed its certificate of need application, stating that it recognized it would have to supplement the application should the Commission deny some or all of its exemption requests. The Company further stated that it wished to make it available to the public as soon as possible.

On September 17, 2001, the Commission issued its ORDER VARYING RULE AND EXTENDING TIME LINE FOR COMMISSION ACTION. This Order changed the time period for consideration of the Company's exemption request.

On October 9, 2001, the Commission issued its ORDER GRANTING EXEMPTIONS FROM FILING REQUIREMENTS, PERMITTING EXPEDITED FILING, AND EXTENDING PERIOD TO DETERMINE ADEQUACY OF FILING. Specifically, the Order granted the exemption request of Rapids Power, granted a variance from *Minnesota Rules* that allowed the Company to submit its certificate of need application before the expiration of the 45-day period stated in the rule,² and allowed a longer period than 30 days for consideration of whether the Company's filing was substantially complete.³ The Commission indicated that it would treat October 8, 2001⁴ as the filing date of the application for purposes of calculating statutory deadlines.

¹ *Minnesota Rules*, parts 7849.0010 *et seq.*

² *Minnesota Rules*, parts 7849.0200, subp. 6.

³ *Minnesota Rules*, parts 7849.0200, subp. 5

⁴ This is the first date the application could have been filed under the rule.

Comments on the completeness of the Company's application were submitted by the Department of Commerce (DOC) on October 15, 2001 and by the Minnesota Environmental Quality Board (MEQB) on October 17, 2001.

Reply comments, including supplemental information in response to the DOC's comments, were submitted by Rapids Power on October 23, 2001.

On October 26, 2001, Rapids Power submitted a supplement to its application.

This matter came before the Commission on November 8, 2001.

FINDINGS AND CONCLUSIONS

I. Jurisdiction

The Commission has jurisdiction over applications for certificates of need for large energy facilities under *Minnesota Statutes* § 216B.243. The statute requires the Commission to hold at least one public hearing under the Administrative Procedure Act before acting on this or any other application for a certificate of need. *Minnesota Statutes* § 216B.243, subd. 4.

II. Comments of the Parties

A. The DOC

The Department concludes that Rapids Powers' application contains all the information required by statute and Commission rule, with the possible exception of the materials for which the Commission has granted an exemption.

B. Minnesota Environmental Quality Board

The Minnesota Environmental Quality Board (MEQB) expressed concern that the application does not contain all the facts necessary to evaluate the project or to determine the basis for many of the conclusions made in the application.

The MEQB argued that if the application was accepted now as substantially complete, the Company should be put on notice that it will have to come forward with additional facts in a prompt and complete fashion in order to create the necessary record.

C. The Sierra Club

At the Commission meeting, the Sierra Club supported the MEQB's position that more information would need to be provided by the Company. The issue, it argued, was whether the information was to be provided before the process begins or after the process has been started. It argued that the Commission should either find that the application is not substantially complete or, in the alternative, require that the Company come forth with additional information within a definitive time.

D. Rapids Power

Rapids Power argued that its application, supplemented in response to comments of the DOC, meets the Commission standard for substantial completeness. It argued that the information that the MEQB would like to see in the record would best be developed through discovery and the presentation and examination of witnesses in a contested case procedure.

In its oral presentation at the Commission meeting, the Company requested that the prehearing conference, that would start the contested case proceeding, be held after January 2, 2002, to give the Company time to make updates to its materials prior to the start of the contested case hearing. The Company also stated that it recognized and accepted that in order for the Commission to do a thorough and complete review of the Company's application, the certificate of need proceedings would take longer than the six months set forth in the statute.⁵

III. Commission Action

A. Finding Filing Substantially Complete

Upon review of the Company's filing, and on the basis of the record, the Commission finds that Rapids Powers' filing is substantially complete. The Commission clarifies that its assessment of the completeness of the filing does not prejudice the merits of Rapids Powers' application, which will be thoroughly examined in the course of this docket.

The Commission will accept the filing as of October 26, 2001, the date of the supplementary filing.

⁵ *Minnesota Statutes* § 216B.243, subd. 5.

Commissioner's Orders

B. Referral for Contested Case Proceedings

The Commission finds that it cannot satisfactorily resolve all issues raised by the Company's application on the basis of its filing and the single public hearing required under the statute. The Commission will therefore refer the matter to the Office of Administrative Hearings for contested case proceedings.

C. The Environmental Report Requirement

Pursuant to *Minnesota Rules*, part 4410.7100, the Commission is responsible for preparing an environmental report on each application for a certificate of need for a large electric generating facility. The environmental report is included in the certificate of need hearing record. That record will be considered by the Commission as it eventually determines the merits of the certificate of need application.

In light of the need for the Commission to maintain neutrality for its ultimate finding on the application, in deference to the investigatory expertise of the Department, and consistent with past Commission practice,⁶ the Commission will delegate to the Department the preparation of the environmental report in this proceeding.

D. Public Participation

Minnesota Statutes § 216B.243, subd. 4 encourages public participation in certificate of need proceedings. The statute requires at least one hearing to obtain public opinion on the application and requires the Commission to designate an employee to facilitate citizen participation in the hearing process.

The Commission has designated statistical analyst David L. Jacobson to facilitate and coordinate public participation in this proceeding. He may be reached by **phone** at: (651) 297-4562 and by **fax** at: (651) 297-7073. His address is 121 7th Place East, Suite 350, St. Paul, Minnesota 55101-2147.

Members of the public need not become formal parties to participate in the hearing process. They are encouraged to attend the public hearing(s) and to submit testimony and exhibits. Persons who cannot attend the public hearing(s) and wish to comment may submit written comments to the Administrative Law Judge. The Commission will require the Company to publish notice of the public and evidentiary hearings in relevant newspapers to encourage public participation.

IV. Procedural Outline

A. Administrative Law Judge

The Administrative Law Judge assigned to this case is Allan W. Klein. His address and telephone number are as follows: Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota 55401-2138; (612) 341-7609.

B. Hearing Procedure

Controlling Statutes and Rules

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, *Minnesota Statutes* §§ 14.57-14.62; the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.5100 to 1400.8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, *Minnesota Rules*, parts 7829.0100 to 7829.3200.

Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 117 University Avenue, St. Paul, Minnesota 55155; **phone**: (651) 297-3000. These rules and statutes also appear on the State of Minnesota's **website** at: www.revisor.leg.state.mn.us

The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association.

Right to Counsel and to Present Evidence

In these proceedings, parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under *Minnesota Rules*, part 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

⁶ See, for example, In the Matter of the Application of Lakefield Junction LLC for Certification of its Southern Minnesota Independent Power Project, Docket No. IP-3/CN-98-1453.

Discovery and Informal Disposition

Any questions regarding discovery under *Minnesota Rules*, parts 1400.6700 to 1400.6800 or informal disposition under *Minnesota Rules*, part 1400.5900 should be directed to David Jacobson, Public Utilities Rates Analyst, Minnesota Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101-2147, **phone:** (651) 297-4562; or Jim Alexander, Assistant Attorney General, 1100 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, **phone:** (651) 282-9965.

Protecting Not-Public Data

State agencies are required by law to keep some data not public. Parties must advise the Administrative Law Judge if not-public data is offered into the record. They should take note that any not-public data admitted into evidence may become public unless a party objects and requests relief under *Minnesota Statutes* § 14.60, subd. 2.

Accommodations for Disabilities; Interpreter Services

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified interpreter if necessary. Persons must promptly notify the Administrative Law Judge if an interpreter is needed.

Scheduling Issues

The times, dates, and places of public and evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and intervening parties.

Notice of Appearance

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing.

Sanctions for Non-compliance

Failure to appear at a prehearing conference, a settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in facts or issues being resolved against the party who fails to appear or comply.

C. Parties and Intervention

The current parties to this case are the Rapids Power LLC and the Minnesota Department of Commerce. Other persons wishing to become formal parties shall promptly file petitions to intervene with the Administrative Law Judge. They shall serve copies of such petitions on all current parties and on the Commission. *Minnesota Rules*, part 1400.6200.

D. Prehearing Conference

A prehearing conference will be held in this case as soon as practicable after January 1, 2002, with a specified date, time and location to be determined by the Administrative Law Judge and Commission staff. Persons participating in the prehearing conference should be prepared to discuss time frames, scheduling, discovery procedures, and similar issues. Potential parties are invited to attend the pre-hearing conference and to file their petitions to intervene as soon as possible.

V. Application of Ethics in Government Act

The lobbying provisions of the Ethics in Government Act, *Minnesota Statutes* §§ 10A.01 *et seq.*, may apply to this case. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Campaign Finance and Public Disclosure Board, phone: (651) 296-5148, with any questions.

VI. Ex Parte Communications

Restrictions on *ex parte* communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at *Minnesota Rules*, parts 7845.7300-7845.7400, which all parties are urged to consult.

ORDER

1. The Company's application is substantially complete, as supplemented on October 26, 2001.
2. The Commission hereby refers this case to the Office of Administrative Hearings for contested case proceedings, as set forth above.
3. The contested case proceeding shall begin with a prehearing conference as soon as practicable after January 1, 2002, with a specified date, time and location to be determined by the Administrative Law Judge and Commission staff.

Commissioner's Orders

4. The Department of Commerce shall report to the Commission on the reasonableness of granting a certificate of need to the Company.
5. The Department of Commerce shall prepare a draft environmental report, distribute it, and respond to public comments on it under the guidelines specified by *Minnesota Rules*, parts 4410.7100.
6. The applicant shall facilitate in every reasonable way the investigation of the Department of Commerce.
7. The Commission staff shall work with the Administrative Law Judge in selecting suitable locations for the public and evidentiary hearings on the application.
8. The applicant shall provide notice of the public and evidentiary hearings in newspapers of general circulation at least ten days prior to the start of the hearings. Such notice shall be in the form of visible display ads. The applicant shall obtain proofs of publication of such ads from the newspapers selected. The applicant shall consult with Commission staff on the timing, text, and distribution of such ads prior to publication.
9. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION
Burl W. Haar
Executive Secretary

Official Notices

Pursuant to Minnesota Statutes §§ 14.101, an agency must first solicit comments from the public on the subject matter of a possible rulemaking proposal under active consideration within the agency by publishing a notice in the State Register at least 60 days before publication of a notice to adopt or a notice of hearing, and within 60 days of the effective date of any new statutory grant of required rulemaking. The State Register also publishes other official notices of state agencies and non-state agencies, including notices of meetings and matters of public interest.

Department of Administration

Office of Technology

Notice of the Technology Enterprise Board Meeting

NOTICE IS HEREBY GIVEN that the Minnesota Department of Administration and the Office of Technology are holding a Technology Enterprise Board meeting. The Board Members will evaluate the role of the board and gather additional information about the states prior work regarding State Telecommunication/ Networks.

The meeting date/ time and location are:

December 6, 2001
12:00 p.m. to 3:00 p.m.
World Trade Center
Executive Board Room, 3rd Floor
30 East 7th Street
St. Paul, MN

**Minnesota Department of Agriculture
Agriculture Marketing Services Division**

REQUEST FOR COMMENTS on Possible Amendments to Rules Governing Commodity Councils; Promotional Orders: *Minnesota Rules*, 1570.0200, 1570.0600, 1570.0700, and 1570.0800

Subject of the Rule. The Minnesota Department of Agriculture requests comments on its planned amendments to rules governing Commodity Councils. The department is considering amendments that update the rules to reflect current practices.

Persons Affected. The amendments would likely affect Commodity Councils. The department does not contemplate appointing an advisory committee to comment on the planned amendments.

Statutory Authority. *Minnesota Statutes* section 17.58, subd. 4, requires the commissioner to adopt rules that govern the organization, conduct of elections, referenda, and meetings of commodity councils.

Public Comment. Interested persons or groups may submit comments or information on the possible rules in writing or orally until 4:30 p.m., on February 1, 2002. The department has not prepared a draft of the planned amendments. Written or oral comments, questions, requests to receive a draft of proposed rules when prepared, and requests for more information on the possible rules should be addressed to: Ruth White, AMS, Minnesota Department of Agriculture, 90 W. Plato Blvd., St. Paul, MN 55107: **phone:** (651) 297-5794, **fax:** (651) 296-6890, **email:** *ruth.white@state.mn.us*. **TTY** users may contact the Department of Agriculture through Minnesota Relay Service at 1-800-627-3529.

Comments submitted in response to this notice will not be included in the formal rulemaking record when a proceeding to adopt a rule is started.

Dated: 26 November 2001

Jim Boerboom
Assistant Commissioner

Department of Commerce

Presumed Legal Cigarette Prices

The presumed prices for wholesalers and retailers, as provided for by *Minnesota Statutes*, chapter 325D, are shown in this schedule. The computations are based on manufacturers' list prices available as of October 26, 2001. All cigarettes in a wholesaler's or retailer's inventory must be priced to reflect the new presumed prices within seven (7) calendar days after the manufacturer's price change is reflected on a purchase invoice. A wholesaler or retailer may sell for less if they can show that their actual costs of doing business are lower than the presumed minimum. For questions, contact the Department of Commerce at (651) 296-9428.

	<u>Presumed Minimum Wholesale Price Per Carton</u>	<u>Presumed Minimum Retail Price Per Carton</u>	<u>Presumed Minimum Retail Price Per Pack</u>
Major Brands (Kings, Regulars, 100's, 120's)	\$32.65	\$35.26	\$3.53
Examples of major brands: Marlboro, Benson & Hedges, Players, Lark, Parliament, L & M, Saratoga, Winston, Merit, Commanders, Eve, Jade, Advance, Barclay, Virginia Slims, Kool, Lucky Strike, Raleigh (Kings, 100's, Plain End), Pall Mall (Gold, Red), Silva Thins, Tall, Tareyton, Capri, Camel, More, Now, Salem, Vantage, "B", Planet, Kent, Newport, Carlton, True, Satin, Triumph, Max			
Marlboro 25's (Kings)	\$32.65	\$35.26	\$4.41
Old Gold, Bucks, Sterling, Basic, Doral, Magna, Sterling, Cambridge, Am Light, Montclair, Bristol,	\$29.82	\$32.21	\$3.22

Official Notices

Alpine, Stars & Bars,
Maverick
(Kings, Regulars
100's, 120's)

Raleigh Extra (Kings, 100's)	\$29.30	\$31.65	\$3.16
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Monarch, Best Value	\$21.83	\$23.58	\$2.36
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GPC's, Viceroy's Misty's, Pall Mall Box	\$21.62	\$23.35	\$2.34
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Liggett Pyramid (Kings, Regulars, 100's)	\$19.11	\$20.64	\$2.06
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Liggett Select (Kings, 100's)	\$15.98	\$17.26	\$1.73
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Minnesota Comprehensive Health Association

Notice of Meeting of the Finance Committee

NOTICE IS HEREBY GIVEN that a meeting of the Minnesota Comprehensive Health Association's (MCHA), Finance Committee will be held at 1:00 p.m., on Wednesday, December 5, 2000 *by conference call*. Members of the public interested in monitoring the conference call should come to the MCHA executive office located at 5775 Wayzata Blvd., Suite 910, St. Louis Park, MN.

For additional information, please call Lynn Gruber at (952) 593-9609.

Emergency Medical Services Regulatory Board

Notice of Completed Application in the Matter of the License Application of the St. Peter Area Ambulance Service, St. Peter, Minnesota

PLEASE TAKE NOTICE that the Emergency Medical Services Regulatory Board (hereinafter EMSRB) has received a completed application from the **St. Peter Area Ambulance Service, St. Peter, Minnesota**, for a new license, advanced ambulance - part time.

NOTICE IS HEREBY GIVEN that, pursuant to *Minnesota Statutes* sec. 144E.11, subd. 3, each municipality, county, community health board, governing body of a regional emergency medical services system, ambulance service and other person wishing to make recommendations concerning the disposition of the application, shall make written recommendations or comments opposing the application to the EMSRB within 30 days or by January 7, 2002, 4:30 p.m.

Written recommendations or comments opposing the application should be sent to: Mary Hedges, Executive Director, EMSRB, 2829 University Avenue S.E., Suite 310, Minneapolis, Minnesota 55414-3222.

If fewer than six comments opposing the application are received during the comment period, and the EMSRB approves the application, the applicant will be exempt from a contested case hearing, pursuant to *Minnesota Statutes* sec. 144E.11, subd. 4. If six or more comments in opposition to the application are received during the comment period or the EMSRB denies the application, the applicant may immediately request a contested case hearing, or may try to resolve the objections of the public and/or the

EMSRB within 30 days, pursuant to *Minnesota Statutes* sec. 144E.11, sub. 5(a), (b). If the applicant is unable to resolve the objections within 30 days, or if the applicant initially requests a contested case hearing will be scheduled and notice of the hearing given pursuant to *Minnesota Statutes* sec. 144E.11, subd. 5(c), (e).

Dated: 26 November 2001

Mary F. Hedges, Executive Director

Minnesota Department of Health

NOTICE OF WITHDRAWAL OF HEARING REQUESTS on Proposed Amendment to Rules Governing Health Risk Values, *Minnesota Rules*, Parts 4717.8000 to 4717.8600

To Persons Who Requested a Hearing. In accordance with *Minnesota Statutes*, section 14.25, subdivision 2, this Notice is being sent to all persons who requested a hearing.

There Will Be No Hearing. In the August 13, 2001, *State Register*, on pages 154 to 180, the Department of Health published a Notice of Intent to Adopt Rules relating to Health Risk Values. The Notice stated that a hearing would be held on the proposed rules if 25 or more persons submitted written requests for a hearing UNLESS a sufficient number withdrew their requests in writing. In response to the Notice, the Department received 26 hearing requests, however, 16 hearing requests were subsequently withdrawn. Consequently, there will be no hearing because there are fewer than 25 outstanding hearing requests. The Department will proceed to adopt the rules without a hearing and then submit the rules and other required documents to the Chief Administrative Law Judge for review by the Office of Administrative Hearings. The Department will consider all written comments when it adopts the rules.

Withdrawal of Hearing Request. The hearing requests were withdrawn because resolution on those issues that led to the requests for hearing was reached through discussions between the Department of Health and the requesters. The six rules items that were addressed in these discussions and the Department of Health's actions on these items are summarized below.

1. The requesters questioned the proposed chronic Health Risk Value (HRV) for benzene, specifically the use of a range versus a single value.

During discussions with the requesters, the Department of Health explained the reasons for the range and how it was developed. The requesters accepted the Department's explanation.

Action: no change.

2. Requesters objected to the proposed chronic HRV for naphthalene, specifically to the use of an uncertainty factor of 3000, and requests that this HRV be withdrawn.

The Department of Health concurs that the HRV Advisory Work Group did adopt criteria for this rulemaking that would limit the use of uncertainty factors to 1000. This issue may be reconsidered in future rulemaking.

Action: The Department of Health will withdraw the chronic HRV for naphthalene from the final rule.

3. Requesters asked that for a statement of clarification in the proposed rule or Statement of Need and Reasonableness that explicitly states - the MHRV for methylmercury does not apply to other forms of mercury.

Action: The Department of Health will make a statement of clarification to this effect in its response to comments. The response to comments will become part of the official rule record and have the effect of clarifying the Statement of Need and Reasonableness.

4. Requesters noted that the proposed rule uses the terms "cumulative HRV" and "cumulative MHRV" but does not define these terms.

This was an oversight on the part of Department of Health staff.

Action: A definition for cumulative HRV and cumulative MHRV will be included in the final rule.

5. Requesters noted that the Department of Health has erroneously applied a time adjustment for acute HRVs that are based on studies with exposure periods between 0.5 and 2 hours.

Official Notices

The requesters are correct.

Action: Rule part 4717.8500, Subp. 3, which includes the method for correcting exposure times between 30 minutes and 1 hour, will be deleted. The HRVs for chemicals that this rule correction affects will be recalculated and corrected in the final rule.

- Requesters raised an issue on the portion of the rule and Statement of Need and Reasonableness that discusses reproductive/developmental endpoints. They point out that an HRV endpoint should not be designated "Reproductive/Developmental" unless critical studies indicate both types of responses at very similar doses.

The term "Reproductive/Developmental Effects" refers to the changes that result from an *in utero* exposure to a chemical and therefore includes endocrine disrupting chemicals that cause changes in the reproductive systems of developing embryos and fetuses. This terminology is consistent with the California acute Reference Exposure Levels. With the current research interest in endocrine disrupters it is likely that a number of chemicals will be identified that have the ability to alter the normal development of the reproductive system, but whose effects may not be apparent until the impacted individual reaches sexual maturity. It is important that HRVs for these chemicals be considered ceiling values. These reproductive/developmental endpoints are distinct from the reproductive effects that occur following post-natal exposures and should not be included in calculation of hazard index for reproductive toxins.

Action: A detailed clarification, similar to the above, will be included in the Department of Health's response to comments.

Comments Relating to the Withdrawals. If you have comments or questions relating to the withdrawals, please contact Larry Gust at the Department of Health, Environmental Health Division, 121 East Seventh Place, Suite 220, P.O. Box 64975, St. Paul, MN 55164-0975, **phone:** (651) 215-0921, **fax:** (651) 215-0975, **email:** larry.gust@health.state.mn.us **within five working days.** This Notice and all written comments received by the Department become part of the rulemaking record that will be reviewed by an Administrative Law Judge.

Dated: 26 November 2001

Patricia A. Bloomgren, Director
Environmental Health Division

Department of Human Services

Vacancies on Medicaid Citizens' Advisory Committee

Pursuant to title 42, part 431, section 12 (42 CFR §431.12) of the *Code of Federal Regulations* governing the Medicaid Program, the Minnesota Department of Human Services seeks applications from Medical Assistance (Medicaid) recipients and others interested in serving on the Medicaid Citizens' Advisory Committee. The purpose of the committee is to ensure that continued high quality health and medical services are provided to low-income persons. The committee, representing Medicaid recipients, advises the Department and helps define what the Medicaid Program should be in relationship to future technological needs. Specifically, the committee explores designated problem areas, evaluates Department programs, makes specific recommendations and resolutions, and contributes to the formulations of Department policy and standards.

In recent years, the committee heard presentations about and advised the Department on access to dental care in managed care plans; revisions to the Minnesota Health Care Programs Application; school-based Medical Assistance services; the Department's performance measurement and quality improvement activities; revenue enhancement initiatives; the Long Term Care Task Force recommendations; State Children's Health Insurance Program (SCHIP) funding; the Department's work on relocating/diverting persons with disabilities from institutional settings; and the Department's MinnesotaCare Health Care Reform waiver.

New members will be appointed for two-year terms, beginning in January, 2002. Committee meetings are held up to four times a year at the Department of Human Services, 444 Lafayette Road North, St. Paul, Minnesota. Employees of the State of Minnesota (except for employees of the Department of Health) and private persons or organizations under contract to the Department of Human Services for administrative services will not be appointed to the committee.

For further information, contact Stephanie Schwartz, Minnesota Department of Human Services at (651) 297-7198. Letters of interest should be sent to: Stephanie Schwartz, Federal Relations, Health Care Administration, Minnesota Department of Human Services, 444 Lafayette Road North, St. Paul, Minnesota 55155-3853. Letters of interest will be accepted until Monday, January 14, 2002.

Minnesota Sentencing Guidelines Commission

Cancellation of Public Hearing to Consider Modifications to the Sentencing Guidelines

THE MINNESOTA SENTENCING GUIDELINES COMMISSION WILL CANCEL ITS PUBLIC HEARING scheduled for Thursday, December 20, 2001, at 3:00 p.m., in Room 15, State Capitol, St. Paul, Minnesota. The public hearing was to consider proposed modifications to the sentencing guidelines and commentary regarding felony Driving While Impaired passed during the 2001 *Special Legislative Session*. Please contact the commission office **phone** at: (651) 296-0144 if you have any questions.

State Grants & Loans

In addition to requests by state agencies for technical/professional services (published in the State Contracts section), the *State Register* also publishes notices about grants and loans available through any agency or branch of state government. Although some grant and loan 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 and loan notices, and to provide financial estimates as well as sufficient time for interested parties to respond.

Department of Human Services

Health Care Purchasing and Service Delivery

Notice of Request for Proposal from Prepaid Health Plans for Minnesota Health Care Program Recipients in Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington Counties

The Minnesota Department of Human Services (DHS) is seeking proposals from prepaid health plans to provide health care services to persons in Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, Washington Counties who are covered by Medical Assistance (MA), General Assistance Medical Care (GAMC), or MinnesotaCare. The covered populations include all persons enrolled in MinnesotaCare, and people in the MA eligibility groups of Temporary Assistance to Needy Families (TANF), TANF related, needy children, aged, and GAMC. The enrollment process will begin October 1, 2002. The estimated number of eligible enrollees is:

MA:	9,679
GAMC:	123,969
MinnesotaCare:	52,515
Total:	186,063

Prepaid health plans qualified to respond to this RFP must have the ability to provide all MA/GAMC/MinnesotaCare covered services, and accept financial risk. Capitation rates have been set by DHS in consultation with an independent actuary. Contracts will be awarded based on: (1) network capacity, and geographic accessibility of service delivery sites; (2) ability to comply with service delivery standards appropriate to the demographic characteristics of the population to be enrolled; (3) financial and risk capability; and (4) ability to meet quality assurance, complaint, appeal, and reporting requirements. The Commissioner reserves the right to reject any proposal.

Proposal requirements for prospective respondents currently contracting with DHS for Minnesota Health Care Programs enrollment in our counties include network information applicable to Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, Washington Counties, and assurances and exhibits addressing specific county issues and concerns. Prospective respondents who have no current contracts with DHS for Minnesota Health Care Programs are required to submit additional information pertaining to network capabilities, administration and reporting capabilities.

State Grants & Loans

Request for Proposals will be available for distribution December 10, 2001. Interested parties may receive a copy of the Request for Proposal by contacting:

Mary Freeberg, Development Manager
Purchasing and Service Delivery Division
Minnesota Department of Human Services
444 Lafayette Road
St. Paul, Minnesota 55155-3854
Phone: (651) 297-7968
Fax: (651) 297-3230
Email: *Mary.E.Freeberg@state.mn.us*

Prospective respondents with questions regarding this RFP may call write or **email:** Mary Freeberg at the above address. Ms. Freeberg is the only person at the Department of Human Services who is authorized to answer questions regarding this document. All responses to this RFP are due to the Department of Human Services by 12:00 p.m., March 20, 2002

Department of Human Services

Notice of Request for Proposals – Alternative Payment for Nursing Facility Services

1995 Laws of Minnesota, Chapter 207, Article 7, Section 32 (hereinafter *Minnesota Statutes* Section 256B.434) authorized the Commissioner of the Department of Human Services to establish a contractual alternative payment system as an alternative way to pay for nursing facility services under the Medical Assistance (MA) Program. In order to implement this legislation, the Department established the “Nursing Home Contract Project.” The purpose of the Project was to explore a contract-based reimbursement system as an alternative to the current cost-based system for reimbursement of nursing facility services under *Minnesota Statutes* Section 256B.431.

The *2000 Laws of Minnesota*, chapter 245, article 3, section 25 established the authority for the Commissioner to implement a performance-based contracting system to replace the current method of setting operating cost payment rates under sections 256B.431 and 256B.434 and *Minnesota Rules*, parts 9549.0010 to 9549.0080 to be effective July 1, 2001. *2001 First Special Session*, Article 5, Section 35(d) states, Notwithstanding *Minnesota Statutes*, section 256B.435, the commissioner must not implement a performance-based contracting system for nursing facilities prior to July 1, 2003. The commissioner shall continue to reimburse nursing facilities under *Minnesota Statutes*, section 256B.431 or 256B.434, until otherwise directed by law. The commissioner will consider proposals from all nursing facilities that have payment rates established under section 256B.431. The commissioner may develop reasonable requirements which, in the judgment of the commissioner, are necessary to protect residents or ensure that the performance-based contracting system furthers the interests of the state of Minnesota. The nursing facility may be required to negotiate with the State any modifications to the proposal as required by the State to make the terms of the proposal more favorable to the State.

The purpose of this RFP is to solicit proposals from eligible nursing facilities to enter into contracts with the Department to provide nursing facility services to MA recipients. Facilities selected to participate in this project will be eligible to contract with the Department for one-year terms.

Requests for copies of the complete RFP, “Alternative Payment for Nursing Facility Services,” should be directed to Bev Milotzky **phone** at: (651) 296-2673. The original and two (2) copies of the proposal in response to the RFP must be submitted to the Nursing Home Contract Project, Department of Human Services, 444 Lafayette Road, St. Paul, Minnesota 55155-3836, no later than 4:00 p.m., on Tuesday, January 15, 2002.

The State of Minnesota reserves the right to reject any and all proposals submitted.

State Contracts

Informal Solicitations

Effective December 1, 2001, informal solicitations for all contracting opportunities for professional/technical (consultant) contracts with values estimated to be over \$5,000 and under \$50,000 must be posted on the Department of Administration's, Materials Management Division's web page (www.mmd.admin.state.mn.us).

Formal Requests for Proposals

Department of Administration procedures require that formal notice of any professional/technical (consultant service) contract which has an estimated value over \$50,000 must be printed in the *State Register*. Certain quasi-state agencies and Minnesota State Colleges and Universities institutions are by law exempt from these requirements.

Department of Administration

Notice of Request for Proposals for Timesheet Management Reporting Software

Request for Proposal (RFP) to establish a contract for Timesheet Management Reporting Software.

There will not be pre-proposal vendor conference.

Questions concerning the RFP terms and conditions or technical requirements must be sent to the Acquisition Management Specialist listed in the RFP by December 7, 2001.

Proposals will be due on December 27, 2001, at 3:00 p.m., CDT.

Contact the Materials Management Division:

50 Sherburne Avenue
St. Paul, MN 55155
Phone: (651) 296-2600
Fax: (651) 297-3996

to request a copy of the complete Request for Proposal.

Department of Public Safety

Driver and Vehicle Services

Notice of Request for Proposals for Professional Technical Services to Create Web Based Interface Application with an IBM mainframe Database

NOTICE IS HEREBY GIVEN that the Department of Public Safety, Driver and Vehicle Services Division is seeking qualified vendors to provide professional technical services to the State of Minnesota. This contract will be for one fiscal year only.

Qualified vendors shall be considered who have:

- 1) experience in designing web based applications and knowledge in writing interface application bridges to IBM mainframe database systems.
- 2) experience in creating Active Server Page (ASP) web pages in Visual Interdev, com objects, and utilizing Verastream VHI models.
- 3) creating report and management tool web pages, which interface with web page applications and IBM mainframe database.
- 4) experience in testing and deployment of web applications, and documentation of work processes.

This contract does not obligate the State to any particular vendor, nor to renewal, other than terms and conditions of the original contracting instrument.

For a copy of the full Request for Proposals, or more information, contact:

Department of Public Safety, Driver and Vehicle Services
Paul Mathe, CPPB
445 Minnesota Street, Suite 196
St. Paul, MN 55101
Phone: (651) 215-6252 **Fax:** (651) 282-2462 **Email:** paul.mathe@state.mn.us

Deadline for proposals in 2:30 p.m., CST, December 17, 2001. No late proposals will be considered.

State Contracts

Department of Public Safety

Office of Drug Policy and Violence Prevention

Notice of Request for Proposal for Model Policing Projects

The Commissioner of Public Safety is soliciting grant proposals from law enforcement agencies, local units of government or non-profit organizations to develop model policing pilot projects for responding to calls involving emotional crises and mental illness (*Minnesota Statutes* 626.844). Up to four pilot projects will be funded with awards ranging from \$25,000-\$50,000 (\$150,000 total available funding) for approximately eighteen months in duration. Proposals must be submitted **by 3:00 p.m., on Friday, January 25, 2002. No late proposals will be accepted.**

Copies of the request for proposal and application materials are available at www.safe.state.mn.us/funding or by contacting:

Laurie Beyer-Kropuenske
Minnesota Department of Public Safety-ODPVP
444 Cedar Street, Suite 100
St. Paul, MN 55101-5100
Phone: (651) 284-3321
Email: laurie.beyer-kropuenske@state.mn.us

Department of Transportation

Program Support Group

Project Delivery Streamlining Team

For information only: Request for Proposals from Short-Listed Design-Build Proposers for a Design-Build Contract on Minnesota State Trunk Highway 100 in Golden Valley, Minnesota, S. P. 2735-172

The Minnesota Department of Transportation ("Mn/DOT") is requesting technical and price proposals, **FROM SHORT-LISTED DESIGN-BUILD PROPOSERS ONLY**, for the State Trunk Highway 100 Design-Build project, S.P. 2735-172, ("Project") in Golden Valley, Minnesota.

Mn/DOT, as announced in the October 8 *State Register*, and the October 12, 19, and 26 editions of the *Construction Bulletin* magazine, requested statements of qualifications from interested design-build Proposers by November 2, 2001. Mn/DOT has since evaluated all statements of qualifications submitted by the deadline, established a short list of design-build Proposers, and issued a Request for Proposals (RFP) to each Proposer. **ONLY THE SHORT-LISTED PROPOSERS ARE ELIGIBLE TO RESPOND TO THE RFP, ALTHOUGH OTHER INTERESTED INDIVIDUALS MAY PURCHASE COPIES OF THE RFP FOR INFORMATION.** The Project involves reconstructing approximately one mile of Trunk Highway 100 from just south of Duluth Street to 29th Avenue North in Golden Valley, Duluth Street under and adjacent to Trunk Highway 100, and local access connections. The new Trunk Highway 100 roadway will be a limited access, six-lane, high-speed highway facility on existing alignment. The work is expected to include several types of construction, including but not limited to grading, bituminous and concrete surfacing, utility relocations, water line, drainage systems, ponding areas, retaining walls, noise walls, traffic signals, signing, lighting, bridge, bypass, and embankment. A separate, fully-designed pedestrian bridge may also be part of the Project. Five-year warranty provisions will apply to many of the Project's major components. The current estimated cost for design and construction is approximately \$19 million.

The RFP will be available for purchase after 1:00 p.m., Central Time, Wednesday, December 5, 2001. RFPs may be purchased from Mn/DOT, Room 109, MS 694, 395 John Ireland Boulevard, St. Paul, Minnesota, 55155, or by **phone:** (651) 296-6101 or 1-800-818-6869. Short-listed Proposers must deliver their Proposals any time up to **12:00 p.m. (noon) Central Daylight Time, Wednesday, January 16, 2002**, as described in the RFP.

ALL QUESTIONS AND COMMENTS ABOUT THE PROJECT must be submitted in writing to Liz Benjamin, Mn/DOT Project Manager, by mail, fax, or email:

2055 North Lilac Drive, Golden Valley, MN 55422

Fax: (763) 797-3089

Email: elizabeth.benjamin@dot.state.mn.us

Mn/DOT will only accept written questions or comments. Mn/DOT's design-build **website:** www.dot.state.mn.us/designbuild contains more information about this project, including portions of the RFP, and Mn/DOT's other design-build projects.

Department of Transportation

Program Support Group

Project Delivery Streamlining Team

Notice of Intent to Publish a Request for Qualifications and Make Draft Project Documents Available for Public Review and Comment for a Best Value Design-Build Contract on Minnesota State Trunk Highway 14/52 in Rochester, Minnesota

NOTICE IS HEREBY GIVEN that the Minnesota Department of Transportation ("Mn/DOT") intends to publish a Request for Qualifications ("RFQ") in the near future for persons interested in designing and building the proposed State Trunk Highway 14/52 Design-Build project ("Project") in Rochester, Minnesota. The project is located in Olmsted County, city of Rochester, Minnesota, extending from approximately 3000 ft north of 55th St NW to Trunk Highway 63 (Broadway), a distance of approximately 14.13 km (8.78 mi). Mn/DOT would use the best value design-build method of project delivery. The current project cost estimate is \$214 million.

Mn/DOT will be publishing information about the Project on its design-build **website:** www.dot.state.mn.us/designbuild, for public review and comment. This information will include drafts of the RFQ and other Project information.

The proposed project would involve reconstruction of the existing four-lane highway to provide an urban six-lane section from 65th Street N.W. to 16th Street S.W. and a rural four-lane section from 16th Street S.W. to Trunk Highway 63. The proposed project would involve reconstructing six Trunk Highway 14/52 interchanges. Overall, the Project contains 26 bridges, including five temporary bridges and one pedestrian bridge.

The project would include the reconstruction of portions of the existing frontage road system, facilities necessary to accommodate bicyclist and pedestrian needs throughout the corridor, and a section of TH 14 West/Civic Center Drive that is under TH 52.

The RFQ would provide information about the Project scope, schedule, and weighted qualifications criteria that Mn/DOT would use to establish a short list. The RFQ would invite interested design-build teams to submit statements of qualifications that show how each team satisfies certain criteria relevant to the Project, including but not limited to the following items: construction experience, design experience, design-build team organizational structure, project approach, project management, project administration, quality control plan, and financial profile.

Responders would have four or possibly six weeks to reply once the RFQ is issued. Mn/DOT would evaluate and score all statements of qualifications and compile a short list of at least two but not more than five teams. Mn/DOT intends to issue a Request for Proposals ("RFP") after establishing the short list. Only short-listed firms would be eligible to respond to the RFP, although other interested individuals could purchase copies of the RFP for information. Mn/DOT would offer a stipend of at least 0.2% of the estimated Project design and construction cost to each unsuccessful short-listed team who submits a proposal that Mn/DOT considers responsive.

All questions and comments about the Project should be submitted by email or in writing to Jon Chiglo, Mn/DOT Project Manager, to one of the following addresses: jon.chiglo@dot.state.mn.us or 2900 48th Street NW, Rochester, MN 55903.

Non-State Contracts & Grants

The *State Register* also serves as a central marketplace for contracts let out on bid by the public sector. The *State Register* meets state and federal guidelines for statewide circulation of public notices. Any tax-supported institution or government jurisdiction may advertise contracts and requests for proposals from the private sector. It is recommended that contracts and RFPs include the following: 1) name of contact person; 2) institution name, address, and telephone number; 3) brief description of project and tasks; 4) cost estimate; and 5) final submission date of completed contract proposal. Allow at least three weeks from publication date (four weeks from date article is submitted for publication). Surveys show that subscribers are interested in hearing about contracts for estimates as low as \$1,000. Contact the editor for further details.

Metropolitan Council

Invitation for Prequalification to Supply a Rotating Machine Asset Management System

Prequalification Submittal Documents (PSDs) are solicited by the Metropolitan Council (Council) for the purpose of establishing a list of qualified vendors to supply the Council with a Rotating Machine Asset Management System to be installed by others at the Council's Metropolitan Wastewater Treatment Plant (MWWTP). The Council intends to procure vibration units, field sensors, testing and training for seven (7) aeration compressors and portable vibration monitoring equipment, testing and training. Delivery of these items will occur approximately June 2002.

The Council intends to use a two-step process to procure these systems. In this first step, vendors are invited to submit PSDs which will be evaluated based upon required specifications. In the second step, the Council will issue an Invitation for Bids only to vendors whose PSD was determined to be acceptable, either initially or as a result of further discussions. Bids submitted by vendors in the second step must be based on the vendor's approved PSD, without any changes, additions, deletions, or exceptions. Vendors interested in obtaining an Invitation for Prequalification should contact:

Sunny Jo Emerson, Senior Administrative Assistant
Metropolitan Council
230 East 5th Street
St. Paul, MN 55101
Phone: (651) 602-1499
Fax: (651) 602-1083
Email: sunnyjo.emerson@metc.state.mn.us

The tentative schedule for this procurement is as follows:

<i>Invitation for Prequalification Issued</i>	November 26, 2001
<i>PSD Due</i>	January 8, 2002 at 2 p.m. local time
<i>Notification of Successful Prequalification</i>	January 28, 2002
<i>Invitation for Bids</i>	February 2002
<i>Due date of Bids</i>	February 2002
<i>Award of Contract</i>	March 2002

University of Minnesota

Notice of Bid Information Service (BIS) Available for All Potential Vendors

The University of Minnesota offers 24 hour/day, 7 day/week access to all Request for Bids/Proposals through its web based Bid Information Services (BIS). Subscriptions to BIS are \$75/year. Visit our web site at bidinfo.umn.edu or call the BIS Coordinator at (612) 625-5534.

Requests for Bids/Proposals are available to the public at no charge each business day from 8:00 a.m. to 4:30 p.m. in Purchasing Services lobby, Suite 560, 1300 S. 2nd Street, Mpls., MN 55454.

Available at Minnesota Bookstore

Order form on back page

The Pheasant in Minnesota

A fascinating "magazine" devoted to the ring-neck pheasant. Included is the history of the bird, its origin, development and introduction to this region. Color photos, softcover, 48pp.
Stock No. 9-13 \$5.95 + shpg. & sales tax

Dressing & Cooking Wild Game

Now that you've "bagged your catch", what do you do with it? This book offers clear instructions along with color photos to walk you step-by-step from field dressing and transport to hanging, skinning, butchering, dressing, "clean-up" and freezing. With the hard work out of the way, then cook up one of the mouth-watering recipes for cooking big and small game, upland game birds, and waterfowl. Hardcover, 160pp.

Stock No. 19-38 \$19.95 + shpg. & sales tax

651.297.3000 * 800.657.3757

Mon-Fri 8am-5pm

www.minnesotasbookstore.com

It's Hunting Season!



Hunter's Field Guide

This popular *Outdoor Life* field guide offers practical advice on how to be a safe, successful and responsible hunter. Through easy-to-read illustrations and text, learn tips on: treating common injuries, reloading shot gun shells, the basics of bow hunting, how to hold and carry a muzzle-loader, recommended shot and target range for various game, and much more. Great tool for the beginner as well as the experienced hunter. Softcover, 194pp.

Stock No. 19-31 \$5.99 + shpg. & sales tax

Hunter Education Training Course

Great tool for teaching the beginner the key to safe, successful hunting. This course includes the Hunter's Field Guide (described above), a Workbook and a Safety video. Excellent refresher for the experienced hunter, too! **Stock No. 19-111 ONLY \$14.99 + shpg. & sales tax**

Animal Tracks of Minnesota & Wisconsin

Great drawings and quick reference captions provide a solid picture of more than 60 different mammals, birds and reptiles of our area. Truly pocket-sized, this field guide identifies animal tracks charting the size of fore prints and hind prints, stride and straddle patterns, and descriptive information about the creature's behavior. Softcover, 160pp.

Stock No. 9-72 \$6.95 + shpg. & sales tax

Hunting and Wildlife Guides



Celebrating our Rural Heritage



Death of the Dream: Farmhouses in the Heartland

Death of the Dream tells the story of America's rural past and a forgotten lifestyle-- the vanishing farmhouse of the Midwest and the rich lives that were lived in them. Trace the evolution of the classic farmhouse --from its humble origins through the high tech present-- and learn about the impact that changing economies have had on lives of midwestern farm families. 87 illustrations, including 72 tritone photo plates. Softcover, 128pp.

Stock No. 19-19 \$24.95 + shipping & sales tax

Small Town Minnesota: A to Z

Author and photographer Tony Andersen toured Minnesota focusing on 26 communities - one for each letter in the alphabet - that are home to less than 1,000 residents. Follow along with Tony as he writes of the generosity and friendly curiosity of the people on the rural landscape and be reminded of the beauty a small town offers through 160 color photographs.

Stock No. 19-2 \$24.95 + shipping & sales tax

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www.minnesotasbookstore.com

