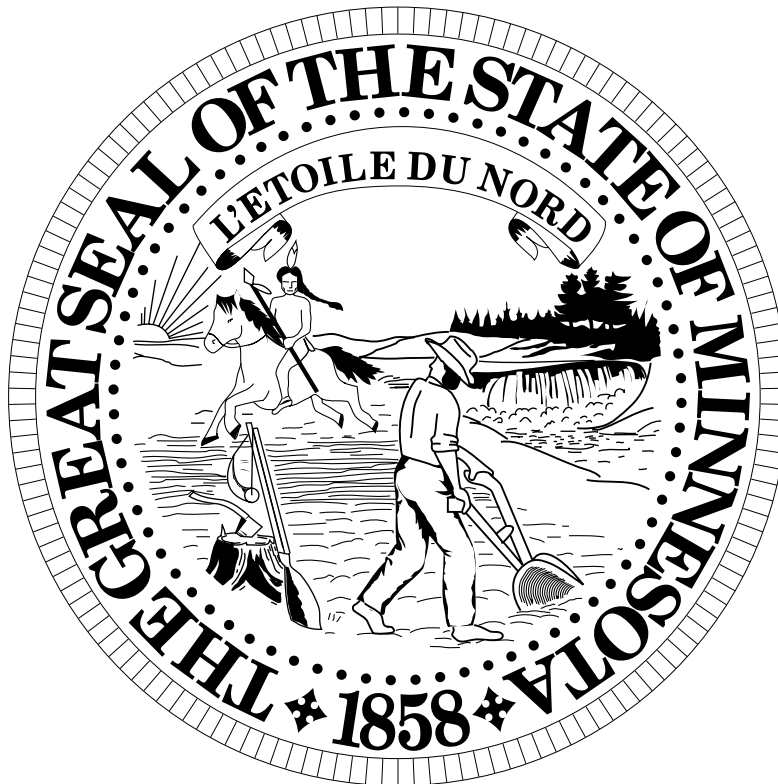


State of Minnesota

# State Register

Rules and Official Notices Edition



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# State Register

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#48	Monday 20 May	Noon Wednesday 8 May	Noon Tuesday 14 May
#49	<b>TUESDAY 28 MAY</b>	Noon Wednesday 15 May	Noon Tuesday 21 May
#50	Monday 3 June	Noon Wednesday 22 May	Noon Tuesday 28 May
#51	Monday 10 June	Noon Wednesday 29 May	Noon Tuesday 4 June

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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 Natural Resources

### Proposed Permanent Rules Relating to Public Waters Work Permits

**DUAL NOTICE: Notice of Intent to Adopt Rules Without A Public Hearing Unless 25 or More Persons Request a Public Hearing, and Notice of Hearing if 25 or More Requests for Hearing are Received**

**Proposed Amendments to the Public Waters Work Permit Program Rules; *Minnesota Rules*, Chapter 6115; and**

**Proposed Repeal of Public Waters Work Permit Program Rules; *Minnesota Rules*, parts 6115.0170, subparts 26 and 36; 6115.0191, subpart 2; and 6115.0211, subpart 2.**



## Proposed Rules

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**Introduction.** The Minnesota Department of Natural Resources (DNR) 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 June 19, 2002, a public hearing will be held in the Wilson Suite, 2nd floor, St. Cloud Civic Center, 10 - 4th Ave. South, St. Cloud, Minnesota, starting at 1:30 p.m. on July 11, 2002 and continuing until those present have been heard, and reconvening in the same location at 7:00 p.m. on July 11, 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 June 19 and before July 11, 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: John Linc Stine at DNR Waters, 500 Lafayette Road, St. Paul, MN 55155-4032, **phone:** (651) 296-0440, **fax:** (651) 296-0445, **email:** [john.stine@dnr.state.mn.us](mailto:john.stine@dnr.state.mn.us)

**Subject of Rules and Statutory Authority.** The proposed rules are about amendments to the Public Waters Work Permit Program rules. The DNR is proposing rule amendments that will convert existing temporary exempt rules to permanent rules. The statutory authority to adopt rules is *Minnesota Statutes*, section 103G.315, subd. 15.

The proposed amendments to the DNR Public Waters Work Permit rules can be divided to two areas of modifications. The first area contains modifications in rule language due to legislative amendments. The second area of modifications includes revisions being proposed by the Department using the rule making authority found in *Minnesota Statutes*, section 103G.315, subdivision 15.

Within the first area of proposed rule modifications, the following proposals are being made to make permanent the exempt rules adopted by the Department pursuant to *Minnesota Laws of 2000*, Chapter 382 that became effective on July 31, 2000 and that expire on July 30, 2002. These modifications were published in the *State Register*, Volume 25, Number 5, on Monday, July 31, 2000, and are located on pages 143-152. These proposals include:

1. amendments due to the repeal of *Minnesota Statutes*, chapter 105, and recodification in *Minnesota Statutes*, chapter 103G that occurred with *Laws of 1990*, Chapter 391;
2. replacing the use of protected waters terminology with the use of public waters and public waters wetlands terminology to distinguish these waters from wetlands subject to provision of the Wetland Conservation Act as passed in *Laws of 1991*, Chapter 354;
3. clarifying terms to make it clear that activities subject to existing DNR aquatic plant management, water aeration system, watercraft, and water appropriation permits that are regulated by the DNR under other statutes and rules do not require separate and additional public waters work permits;
4. amendments to reflect *Laws of 1997*, Chapter 246 granting the Department authority to regulate boathouses;
5. definition clarifications, including modifying the definition of a marina to make it a commercial facility; clarifying the use of ordinary high water terminology to make it consistent with Department practices; and adding new definitions on permits, projects, public water wetlands, local government unit and projects that are consistent with the definitions used in the Wetland Conservation Act rules;
6. amendments to reflect *Laws of 1996*, Chapter 407 granting the Department additional authority to regulate permanent lake level controls;
7. amendments in public waters permit processing, including recognition of the general permit authority authorized by *Laws of 1995*, Chapter 218 and *Laws of 1996*, Chapter 443, language to implement the waiver of public waters wetland permit requirements authorized by *Laws of 2000*, Chapter 382 and *Laws of 2001*, Chapter 146, and language to incorporate permit sequencing and replacement as authorized in section 103G.45, subdivision 7;
8. amendments changes in enforcement authority authorized by *Laws of 2000*, Chapter 382;
9. amendments in the permit review procedures authorized by *Laws of 2000*, Chapter 382 to establish new procedures for developing written agreements between the local government unit administering provisions of the Wetland Conservation Act and the commissioner. These agreements can be written where the local government unit waives the requirement for a wetland replacement plan, no-loss or exemption determination to the DNR for projects where a public waters work permit is also required and the commissioner includes the provisions of *Minnesota Statutes*, sections 103A.201, 103B.3355 and 103G.222 to 103G.2372 and the rules adopted to these same sections in the public waters work permit; and
10. amendments to implement language contained in *Minnesota Laws of 2001*, Chapter 146 that gives the commissioner the authority to waive the requirement for a public waters work permit for projects affecting wetland areas of public waters affected by a public transportation project to the local government unit administering the Wetland Conservation Act.

The other broad area of proposed rule modifications includes proposals initiated within the Department under the authority found in *Minnesota Statutes*, section 103G.315, subdivision 15 to adopt rules. These proposals include language relating to:

1. the addition of provisions to address the sequencing concepts of impact avoidance, minimization and compensation comparable to language found in the Wetland Conservation Act program rules (*Minnesota Rules*, Chapter 8420.0520);
2. the addition of provisions to determine when compensation for a major change in the public waters resource is necessary;
3. the replacement of the term “protected vegetation” with a reference to the broader authority the commissioner currently has to regulate the taking of threatened or endangered species listed pursuant to *Minnesota Statutes*, section 84.0895 and *Minnesota Rules*, chapter 6134;
4. providing procedures that allow plans developed and adopted on a local basis that are approved by the commissioner to form the basis for public water work permit decisions taking place within the area identified in the approved plan;
5. clarifying that docks under eight feet in width that are installed in compliance with city or county zoning ordinances do not require additional DNR permit authorization, and to clarify breakwater and mooring facility development criteria; and
6. the addition of a new section to the rules to address natural resource restoration projects and by adding new language to define the terms of ice ridge, local origin and native plants.

The proposed rules also propose to repeal *Minnesota Rules*, parts 6115.0170, subparts 26 and 36; 6115.0191, subpart 2; and 6115.0211, subpart 2.

A copy of the proposed rules is published in the *State Register*, and can also be accessed at <http://www.comm.media.state.mn.us/bookstore/stateregister.asp> A free copy of the proposed rules is available upon request from the DNR by contacting Bruce Gerbig at DNR Waters, 500 Lafayette Road, St. Paul, MN 55155-4032, **phone:** (651) 296-0515, **fax:** (651) 296-0445, **email:** [bruce.gerbig@dnr.state.mn.us](mailto:bruce.gerbig@dnr.state.mn.us)

**Comments.** You have until 4:30 p.m. on June 19, 2002, to submit written comment in support 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 June 19, 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 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 July 11, 2002, will be cancelled if the agency does not receive requests from 25 or more persons that a hearing be held on the rules. If you requested a 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 651-296-0440 after June 19, 2002, to find out whether the hearing will be held.

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**Notice of Hearing.** If 25 or more persons submit valid written requests for a public hearing on these rules, a hearing will be held following the procedures in *Minnesota Statutes*, sections 14.141 to 14.20. The hearing will be held on the date and at the time and place listed above. Judge Steve Mihalchick can be reached at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, MN 55401-2138, **phone:** (612) 349-2544 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 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 publication 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, MN 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 of 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: 7 May 2002

Allen Garber, Commissioner of Natural Resources

### 6115.0150 PURPOSE AND STATUTORY AUTHORITY.

The purpose of parts 6115.0150 to 6115.0280 is to provide for the orderly and consistent review of permit applications in order to conserve and utilize the water resources of the state in the best interest of its people. In deciding whether to issue permits, the department ~~shall be~~ is guided by the policies and requirements declared in *Minnesota Statutes*, sections ~~104.01, 104.25, 104.32, 105.38, 105.42, 105.64, 103A.201, 103A.208, 103F.101, 103F.105, 103F.205, 103F.351, 103G.297, 103G.305, and 116D.04.~~

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

### 6115.0160 SCOPE.

To achieve the purpose declared in part 6115.0150 ~~these rules, parts 6115.0160 to 6115.0280~~ set forth minimum standards and criteria for the review, issuance, and denial of permits for proposed projects affecting ~~protected~~ public waters. Permits ~~shall be~~ are



required for any activity affecting the course, current, or cross-section of ~~protected~~ public waters unless specifically exempted within ~~these rules~~ parts 6115.0160 to 6115.0280.

These standards and criteria apply to the public waterbasins, public watercourses, and public water wetlands identified on public water inventory maps authorized by Minnesota Statutes, section 103G.201. The designation of waters of the state as public waters does not grant the public additional rights or grant right of access to the waters, diminish the right of ownership or usage of the beds underlying the designated public waters, affect state law forbidding trespass on private lands, or require the commissioner to acquire access to the designated public waters under Minnesota Statutes, section 97A.141.

These standards and criteria apply to any and all work ~~which that~~ will cause or result in the alteration of the course, current, or cross-section of ~~protected~~ public waters except for the following:

A. utility crossings of ~~protected~~ public waters ~~which that~~ are regulated under *Minnesota Statutes*, section 84.415, and rules ~~promulgated~~ adopted thereunder; ~~or~~

B. ~~planting, destruction, and control of aquatic vegetation which that~~ is regulated under *Minnesota Statutes*, section ~~84.092, subdivision 1+~~ 103G.615, and rules ~~promulgated~~ adopted thereunder;

C. water aeration systems that are regulated under Minnesota Statutes, section 103G.611, and rules adopted thereunder;

D. watercraft, buoys, or other structures that are regulated under Minnesota Statutes, section 86B.111, 86B.211, or 86B.401, and rules adopted thereunder; or

E. water appropriations that are regulated under Minnesota Statutes, section 103G.271, and rules adopted thereunder.

#### **6115.0170 DEFINITIONS.**

Subpart 1. **Certain terms.** For the purposes of parts 6115.0150 to 6115.0280, certain terms or words used ~~herein shall be~~ are interpreted as follows: the word “shall” is mandatory, not permissive. All distances unless otherwise specified ~~shall be~~ are measured horizontally.

[For text of subp 2, see M.R. 1999]

Subp. 3. **Beds of ~~protected~~ public waters.** “Beds of ~~protected~~ public waters” means all portions of ~~protected~~ public waters located below the ordinary high water ~~mark~~ level.

~~Subp. 3a. **Boat storage structure.** “Boat storage structure” means a structure that is supported on the bed of a public water and has walls, a roof, and either an open well for boats or a floor from wall to wall.~~

~~Subp. 3b. **Boathouse.** “Boathouse” means a floating structure that is moored by spuds, cables, ropes, anchors, or chains; may be intended for habitation; and has walls, a roof, and either an open well for boats or a floor from wall to wall. Boathouse does not include a houseboat or boat storage structure.~~

[For text of subps 4 to 6, see M.R. 1999]

Subp. 7. **Dock.** “Dock” means a narrow platform ~~or structure~~ extending waterward from the shoreline intended for ingress and egress for moored watercraft ~~or seaplanes~~ or to provide access to deeper water for swimming, fishing, or other water-oriented recreational activities.

Subp. 8. **Drainage.** “Drainage” means any method for removing or diverting waters from ~~protected waterbasins or public waters or public water~~ wetlands. ~~Such~~ The methods ~~shall~~ include, but are not limited to, excavation of an open ditch, installation of sub-surface drainage tile, filling, diking, or pumping.

[For text of subp 9, see M.R. 1999]

~~Subp. 9a. **Ecology of the waters.** “Ecology of the waters” means the natural aquatic environment, including organisms, physical characteristics, and interactions between and among the organisms and their surroundings.~~

~~Subp. 9b. **Energy exchanger.** “Energy exchanger” means a structure designed for placement on the bed or excavated into the bed of public waters for the purpose of exchanging energy for heating or cooling and includes accompanying hoses or lines connecting the energy exchange components.~~

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[For text of subs 10 to 12, see M.R. 1999]

Subp. 13. **Floating structure.** “Floating structure” means any ~~houseboat, mooring or navigational buoy, swimming or diving platform, water ski jump, watercraft, or other~~ structure, except for boathouses, watercraft, and seaplanes, that is supported entirely by its own buoyancy which is not permanently anchored by means of pilings, foundations, gabion baskets, or other materials incapable of removal and can be removed from public waters before winter freeze-up by nonmechanized means skidding intact or by disassembly with hand tools.

[For text of subs 14 to 16, see M.R. 1999]

Subp. 16a. **Houseboat.** “Houseboat” means a motorboat that has either a pontoon or a flat-bottomed hull configuration and a permanent enclosed superstructure that houses, at a minimum, built-in sleeping, cooking, and toilet facilities.

Subp. 16b. **Ice ridge.** “Ice ridge” means a linear mound of lakebed materials pushed up onto the lakeshore by the action of ice.

[For text of subs 17 and 18, see M.R. 1999]

Subp. 18a. **Local government unit.** “Local government unit” has the meaning given in part 8420.0110, subpart 30.

Subp. 18b. **Local origin.** “Local origin” means a source for live plant materials and their propagules that is limited to areas of the same region where the plant materials are proposed to be planted, not to exceed 200 miles from where the plant materials are proposed to be planted.

[For text of subp 19, see M.R. 1999]

Subp. 20. **Marina.** “Marina” means either an inland or offshore ~~structure~~ commercial mooring facility for the concentrated mooring of ~~five seven~~ or more watercraft or seaplanes wherein ~~facilities are provided for commercial~~ ancillary services common to marinas are provided such as boat mooring, storage, fueling, launching, mechanical repairs, sanitary pumpout, or restaurant services.

[For text of subs 21 to 23, see M.R. 1999]

Subp. 23a. **Mooring facility.** “Mooring facility” means a concentrated area intended solely for the mooring or containment of seven or more watercraft or seaplanes by docks, mooring buoys, or other means.

Subp. 23b. **Native plants.** “Native plants” means indigenous plant species growing in an ecological classification system province or a major watershed in Minnesota prior to European settlement.

Subp. 24. **Offshore.** “Offshore” means the area waterward of the ordinary high water ~~mark~~ level of a ~~protected~~ public water.

Subp. 25. **Ordinary high water mark level.** “Ordinary high water ~~mark~~ level” means the boundary of ~~protected~~ public waters as defined in *Minnesota Statutes*, section ~~105.37~~ 103G.005, subdivision ~~46~~ 14.

Subp. 26. [See repealer.]

Subp. 26a. **Permit.** “Permit” means a public waters work permit required under *Minnesota Statutes*, section 103G.245.

[For text of subs 27 to 30, see M.R. 1999]

Subp. 30a. **Project.** “Project” means a specific plan, contiguous activity, proposal, or design necessary to accomplish a goal. As used in parts 6115.0150 to 6115.0280, a project may not be split into components or phases for the sole purpose of gaining an exemption from permit requirements.

Subp. 31. **~~Protected Public water or public waters.~~** “~~Protected Public water~~” or “public waters” means those waters of the state identified as ~~public waters or wetlands~~ under *Minnesota Statutes*, section ~~105.37~~ 103G.005, subdivision ~~14 or 15 or 15a, or 105.291, subdivision 4~~ 103G.201.

Subp. 31a. **Public water wetlands.** “Public water wetlands” means those public waters of the state identified as public water wetlands under *Minnesota Statutes*, section 103G.005, subdivision 15a, or 103G.201, as shown on the public water inventory maps.

Subp. 31b. **Public waterbasins.** “Public waterbasins” means those public waters of the state identified as public waterbasins under *Minnesota Statutes*, section 103G.005, subdivision 15, clauses (1) to (8), or 103G.201, as shown on the public water inventory maps. Public waterbasins includes public water wetlands reclassified as public waters according to the procedures in *Minnesota Statutes*, section 103G.201.

Subp. 31c. **Public watercourse.** “Public watercourse” means those public waters of the state identified as natural and altered natural watercourses under *Minnesota Statutes*, section 103G.005, subdivision 15, clauses (9) and (10), or 103G.201, as shown on the public water inventory maps.

Subp. 31d. **Public waters inventory or protected waters inventory.** “Public waters inventory” or “protected waters inventory” means the map prepared by the commissioner on file with the auditor of a county under *Minnesota Statutes*, section 103G.201.

Subp. 31e. Public waters work permit. “Public waters work permit” means a permit issued by the commissioner under Minnesota Statutes, section 103G.245.

[For text of subps 32 and 35, see M.R. 1999]

Subp. 36. [See repealer.]

Subp. 36a. Shoreline zone. “Shoreline zone” means an area immediately waterward of the ordinary high water level that may include the littoral area of a water body.

Subp. 37. **Structure.** “Structure” means any building, footing, foundation, slab, roof, boathouse, deck, wall, dock, bridge, culvert, or any other object extending over or under, anchored to, or ~~permanently~~ attached to the bed or bank of a ~~protected~~ public water.

[For text of subps 38 and 39, see M.R. 1999]

Subp. 40. **Temporary structure.** “Temporary structure” means any ~~seasonal dock or,~~ floating structure, watercraft lift, watercraft canopy, or other structure that can be removed from ~~protected public waters before winter freeze-up~~ by skidding intact or by disassembly with hand tools.

[For text of subps 41 and 42, see M.R. 1999]

Subp. 42a. Watercraft canopy. “Watercraft canopy” means a structure or device with a fabric covered roof and without walls or a floor that is placed on the bed of a public water, is designed to shelter watercraft, and is designed and constructed so that all components may be removed from the lake or stream bed on a seasonal basis by skidding intact or by disassembly with hand tools.

Subp. 42b. Watercraft lift. “Watercraft lift” means a structure or device without walls that is placed on the bed of a public water, is designed to lift watercraft above the level of the public water when not in use, and is designed and constructed so that all components may be removed from the lake or stream bed on a seasonal basis by skidding intact or by disassembly with hand tools. A watercraft lift may be designed to include a fabric covered roof.

[For text of subp 43, see M.R. 1999]

#### **6115.0190 FILLING INTO ~~PROTECTED~~ PUBLIC WATERS.**

[For text of subps 1 and 2, see M.R. 1999]

Subp. 3. ~~Nonpermitted~~ **Prohibited placement.** Placement ~~shall not be permitted~~ is prohibited in the following cases:

[For text of items A to D, see M.R. 1999]

E. to dispose of rock, sand, gravel, or any other solid material resulting from activities carried out above the ordinary high water ~~mark~~ level;

F. to construct a roadway or pathway, or create or improve land accesses from peripheral shorelands to islands, or to facilitate land transportation across the waters; however, ~~where~~ when a project is proposed by a federal, state, or local government agency and this provision would prevent or restrict the project, or create a major conflict with other public purposes or interests, the commissioner may waive this provision ~~provided if:~~

- (1) there is no other feasible and practical alternative to the project that would have less environmental impact; and
- (2) ~~that~~ the public need for the project rules out the no-build alternative; or

G. filling ~~of~~ posted fish spawning areas is prohibited.

Subp. 4. **No permit required.** No permit ~~shall be~~ is required for the following activities unless prohibited under subpart 3:

A. to install a beach sand blanket provided if:

(1) the sand or gravel layer does not exceed six inches in thickness, 50 feet in width along the shoreline, or one-half the width of the lot, whichever is less, and does not extend more than ten feet waterward of the ordinary high water ~~mark,~~ provided level;

(2) the beach sand blanket does not cover emergent vegetation, unless authorized by an aquatic plant management permit;  
and

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(3) local watershed district and local zoning officials are given at least seven days notice by the landowner;

B. for one additional installation of a sand or gravel layer subsequent to an initial installation at the same location and not exceeding the same amounts and dimensions allowed under item A.; or

~~C. To install riprap shore protection, except along the shores of Lake Superior and officially designated trout streams, provided the riprap materials consist of natural rock having an average size of 12 inches or larger in its smallest dimension, and conform with the natural alignment of the shoreline, with a minimum finished slope not steeper than 3:1 horizontal:vertical, no materials are placed more than five feet waterward of the ordinary high water level, and the material does not obstruct the flow of water.~~

~~D.~~ to place fill in a public watercourse having a total drainage area, at its mouth, of five square miles or less, ~~provided that if~~ the watercourse is not an officially designated trout stream and the placement of fill ~~shall~~ does not result in:

(1) any diversions of water from the drainage area;

(2) any impoundment of waters by damming the watercourse; or

(3) any actions ~~which that~~ would result in erosion and cause sedimentation of downstream waters as determined by the county or local soil and water conservation district.

Subp. 5. **Permits required.** Permits ~~shall be~~ are required for the placement of fill in ~~protected~~ public waters, except as provided under subparts 3 and 4, and ~~shall a project must~~ meet all of the following requirements:

A. the project ~~will involve~~ does not exceed more than a minimum ~~of~~ encroachment, change, or damage to the environment, ~~including but not limited to fish and wildlife habitat, navigation, water supply, and storm water retention particularly the ecology of the waters;~~

[For text of items B to D, see M.R. 1999]

E. the proposed project ~~must represent~~ represents the minimal impact solution to a specific need with respect to all other reasonable alternatives;

[For text of item F, see M.R. 1999]

G. adverse effects on the physical or biological character of the waters ~~shall be~~ are subject to feasible and practical measures to mitigate the effects;

H. the proposed filling ~~must be~~ is consistent with applicable floodplain, shoreland, and wild and scenic rivers management standards and ordinances for the waters involved; and

I. the proposed filling ~~must be~~ is consistent with water and related land management plans and programs of local and regional governments, provided such plans and programs are consistent with state plans and programs.

### **6115.0191 SPECIFIC STANDARDS; FILLING.**

[For text of subpart 1, see M.R. 1999]

Subp. 2. [See repealer.]

[For text of subp 3, see M.R. 1999]

Subp. 4. **Shoreline lost by erosion.** ~~Applications~~ Permits for filling to recover shoreland lost by erosion or other natural forces shall be ~~permitted only where~~ granted if:

A. the loss of shoreline is a threat to health and safety through the impending loss or damage to existing shoreline developments; or

B. the loss of shoreline has occurred as a result of changes in water level or flow conditions caused by artificial manipulation of flows or levels of the waters involved within a period of not more than five years prior to the date when an application for filling is submitted.

The requirements of items A and B ~~shall do~~ not preclude the issuance of permits to recover up to 400 square feet of eroded area or to place riprap materials or use other structural means for protection of the shoreline to prevent continuous erosion.

Subp. 5. **Port development or improvement.** Filling necessary for port development or improvement ~~shall be~~ is allowed only on those waters ~~which that~~ are under the jurisdiction of established port authorities subject to the following:

A. no filling ~~shall be~~ is allowed to extend beyond the limits of federally established harbor lines, or ~~where when~~ no harbor line has been established, beyond the maximum distance waterward which could be attained without obstructing navigational use of the waters;

B. the proposed development ~~must be~~ is part of a comprehensive port development plan ~~which that~~ has been approved by the commissioner; and

C. adverse effects of the proposed filling on the physical and biological character of the area ~~shall be~~ are subject to mitigation measures approved by the commissioner.

[For text of subp 6, see M.R. 1999]

Subp. 7. **Trout streams.** Filling in trout streams officially designated by the commissioner ~~shall be~~ is allowed only if:

[For text of items A and B, see M.R. 1999]

[For text of subp 8, see M.R. 1999]

#### **6115.0200 EXCAVATION OF ~~PROTECTED~~ PUBLIC WATERS.**

[For text of subpart 1, see M.R. 1999]

Subp. 2. **Scope.** Excavation as used in this ~~rule part~~ includes any activity ~~which that~~ results in the displacement or removal of bottom materials or the widening, deepening, straightening, realigning, or extending of ~~protected public~~ waters. It may involve proposals for excavations landward or waterward from the ordinary high water ~~mark level~~.

Subp. 3. **~~Nonpermitted~~ Prohibited excavation.** Excavation ~~shall not be permitted~~ is prohibited in the following cases:

[For text of items A and B, see M.R. 1999]

C. ~~where when~~ the proposed excavation will be detrimental to significant fish and wildlife habitat, ~~or protected vegetation~~ and there are no feasible, practical, or ecologically acceptable means to mitigate the effects;

D. ~~to control or eliminate vegetation for the development of beach areas when the proposed excavation will take threatened or endangered species listed in chapter 6134 without authorization by the commissioner according to parts 6212.1800 to 6212.2300;~~

[For text of items E to H, see M.R. 1999]

Subp. 4. **No permit required.** No permit for excavation ~~shall be~~ is required for the following activities unless prohibited in subpart 3:

A. for excavations in a public watercourse having a total drainage area, at its mouth, of five square miles or less, ~~provided that~~ if the watercourse is not an officially designated trout stream and the excavation will not result in:

(1) any diversions of water from the drainage area;

(2) any impoundment of waters by damming the watercourse; or

(3) any actions ~~which that~~ would result in erosion and cause sedimentation of downstream waters as determined by the county or local soil and water conservation district;

B. to remove debris such as trees, logs, stumps, and trash provided such removal does not alter the original alignment, slope, or cross-section of the waters; or

C. for repair of a public drainage system lawfully established ~~pursuant to~~ under *Minnesota Statutes*, chapters ~~106A and 112 103D and 103E, and sponsored by the public drainage authority~~ consistent with the definition of "repair" ~~set forth~~ in *Minnesota Statutes*, section ~~106A.701 103E.701, subdivision 1.~~

Subp. 5. **Permits required.** Permits ~~shall be~~ are required for the excavation and removal of any materials from ~~protected public~~ waters or any excavations extending into or out of ~~protected public~~ waters, except as provided in subparts 3 and 4, and ~~shall be~~ a project is subject to the following general criteria:

A. the project ~~must be~~ is reasonable and practical based upon geologic and hydrologic conditions, including but not limited to:

[For text of subitems (1) to (3), see M.R. 1999]

(4) protection of the water body from increased seepage, pollution, and other hydrologic impacts;

B. the disposal of excavated materials ~~shall be~~ is subject to the following requirements:

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(1) the disposal of any excavated materials containing pollutants ~~shall be~~ is subject to requirements of *Minnesota Statutes*, chapter 115-; and

(2) the most acceptable means of disposing of clean materials, free from pollutants, ~~which that~~ are excavated from ~~protected public~~ public waters listed in order of preference are:

(a) complete removal of excavated materials from the waters and disposal or reuse for other purposes outside of the floodplain-;

(b) deposition in stable on-land disposal sites located above the ordinary high water ~~mark level~~ and outside of floodway districts established under local ordinance. Provisions must be included for sodding, seeding, or otherwise properly stabilizing these materials-;

(c) temporary deposition along shorelines or within floodplains by stockpiling materials for subsequent removal to areas outside of any ~~protected public~~ public waters and outside of established floodplain districts provided that: any stockpile materials are removed within one year of stockpiling; and the stockpile is constructed so that any materials or waters entering or leaving the stockpile are controlled to prevent any introduction of sediment into the environment surrounding the stockpile-;

(d) redeposition of excavated materials, consisting of inorganic materials free from pollutants, into ~~protected public~~ public waters shall only be permitted when it will result in improvement of natural conditions of ~~protected public~~ public waters for the public benefit and will not result in sedimentation, obstruction of navigation, or a loss of fish or wildlife habitat. Separate permit provisions ~~shall be~~ are required for redeposition of excavated materials subject to the standards and criteria of subparts 2 to 5-; and

(e) determination of the public benefit served by redeposition of excavated materials ~~shall be~~ is based on the value to the public of redeposited materials in order to protect shorelines from the damaging effects of erosion due to winds and waves when there are no other feasible, practical, and ecologically acceptable means to protect the shoreline; or create or improve habitat areas for fish and wildlife; or mitigate or enhance the physical and biological environment within ~~protected public~~ public waters when mitigative or enhancement measures are required as a condition of a permitted activity within the waters involved and there are no other feasible, practical, and ecologically acceptable mitigative measures-;

C. the proposed project ~~must represent~~ represents the “minimal impact” solution to a specific need with respect to all other reasonable alternatives-; and does not exceed more than a minimum encroachment, change, or damage to the environment, particularly the ecology of the waters;

D. the excavation ~~must be~~ is limited to the minimum dimensions necessary for achieving the desired purpose-;

E. ~~where when~~ when excavation is proposed in a ~~protected public~~ public water that is perched on an impervious stratum, soil borings ~~must~~ show that the proposed excavation will not rupture the impervious stratum-;

F. the biological character of the waters and surrounding shorelines ~~shall be~~ is affected to the minimum degree feasible and practical-;

G. adverse effects on the physical or biological character of the waters ~~shall be~~ are subject to feasible and practical measures to mitigate the effects-;

H. the water supply, navigational, and drainage characteristics of the waters ~~shall be~~ is protected to ensure that the interests of the public and of private riparian landowners are not adversely affected by the proposed excavation-;

I. the proposed excavation ~~shall be~~ is consistent with applicable floodplain, shoreland, and wild and scenic rivers management standards and ordinances for the waters involved-;

J. the proposed excavation ~~shall be~~ is consistent with plans and management programs of local and regional governments, provided that such plans are consistent with state plans and programs-; and

K. for harbors, boat slips, and other mooring facilities, the excavation ~~shall be~~ is appropriately sized to provide a single mooring space for each riparian lot to be served. The number of mooring spaces to be provided shall generally be the amount of natural shoreline to be served divided by the lot requirements of the local land use control authority and the state shoreland management standards.

### **6115.0201 SPECIFIC STANDARDS; EXCAVATION.**

[For text of subs 1 to 4, see M.R. 1999]

#### **Subp. 5. Harbors and boat slips.**

[For text of items A to D, see M.R. 1999]

E. Excavations for development of inland harbors shall be limited to those waters described in item C and shall meet the following additional requirements:

[For text of subitems 1 and 2, see M.R. 1999]

(3) Additional requirements applicable to specific types of harbors. Private inland harbors serving two or more single family residential riparian lots shall, if practical, be located along the mutual boundary of properties to be served.

Private inland harbors for proposed multifamily or cluster developments, residential planned unit developments, or for resorts, campgrounds, or other commercial purposes. The development plan shall be approved by the local governmental unit. The permit shall be of the title-registration type including a provision that the individual waterfront lots in the development have priority rights to the available mooring spaces thus obviating issuance of future permits for individual harbors for these lots. The harbor shall be appropriately sized, consistent with the number of watercraft to be served ~~with~~. For residential and commercial planned unit developments, the number of mooring spaces not to exceed one mooring space for each riparian unit served or each rental cabin or campsite unit plus consideration of use by transient watercraft to be permitted shall be consistent with part 6120.3800.

Public inland harbor projects must be justified by:

(a) a public need for the proposed inland harbor established by local governmental resolution specifying public interests to be enhanced;

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

(c) the harbor shall be available for use by the general public; and

(d) the harbor may extend more than 200 feet inland provided the plans minimize the total length by which the protected water is proposed to be extended in keeping with the of watercraft to be served and the topography.

[For text of subs 6 and 7, see M.R. 1999]

#### **6115.0210 STRUCTURES IN ~~PROTECTED~~ PUBLIC WATERS.**

[For text of subs 1 and 2, see M.R. 1999]

Subp. 3. **Prohibited placement of structures ~~not permitted~~.** Placement of structures ~~shall not be permitted where, temporary structures, and floating structures is prohibited when~~ the structure, temporary structure, or floating structure:

A. will obstruct navigation or create a water safety hazard;

B. will be detrimental to significant fish and wildlife habitat, ~~or protected vegetation~~. Construction is prohibited in posted fish spawning areas;

C. is designed or intended to be used for human habitation or as a ~~boathouse~~, boat storage structure;

D. is designed or intended to include walls, a roof, or sewage facilities; ~~or~~

E. will take threatened or endangered species listed in chapter 6134 without authorization by the commissioner according to parts 6212.1800 to 6212.2300.

Subp. 4. **No permit required.** No permit ~~shall be~~ is required for the following activities, unless prohibited under subpart 3:

A. to construct, reconstruct, or install a ~~seasonal dock or~~, floating or temporary structure ~~provided, watercraft lift, or mooring facility if:~~

(1) the structure or mooring facility will not constitute a hazard to navigation or public health, safety, and welfare, as determined by the commissioner;

(2) ~~the structure will not include fuel handling facilities;~~

~~(3) the structure will allow the free flow of water beneath it; and~~

~~(4) (3) the structure or mooring facility is not used or intended to be used as a marina;~~

(4) the structure or mooring facility is consistent with or allowed under local land use controls, as determined by the local government land use authority;

(5) the length of the structure is limited to that necessary to accomplish its intended use, including reaching navigable water depths;

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(6) the structure, other than a watercraft lift or watercraft canopy, is not more than eight feet in width and is not combined with other similar structures so as to create a larger structure; and

(7) docks placed on rock filled cribs are located only on waters where the bed is predominantly bedrock, which is incapable of accepting pilings;

~~B. To construct or reconstruct a permanent dock on wood pilings or rock filled cribs on lakes provided:~~

~~(1) the dock is a single lineal structure with no appurtenances;~~

~~(2) only one dock is installed per riparian lot;~~

~~(3) the structure shall not exceed six feet in width nor exceed 50 feet in length, or extend to a depth greater than four feet, whichever is less;~~

~~(4) the structure shall comply with the requirements of item A, subitems (2), (3), and (4);~~

~~(5) for a permanent dock on wood pilings, the surface area of the lake is equal to or greater than 500 acres;~~

~~(6) for a permanent dock on rock filled cribs, the surface area of the lake is equal to or greater than 2,500 acres; and~~

~~(7) structures using rock filled cribs shall only be placed where the lake bed is predominantly bedrock which is incapable of supporting wood pilings and shall utilize intermittently spaced cribs which allow unrestricted circulation of water beneath the dock.~~

~~C. to construct or reconstruct a boat launching ramp provided if:~~

~~(1) privately owned ramps shall do not exceed 12 feet in width; and do not extend more than ten feet beyond the ordinary high water mark shoreline or into water more than four feet in depth, whichever is less. Excavations five cubic yards or less, and placement of up to five cubic yards of crushed rock, gravel, clean sand, or small stone shall be are allowed in order to provide a stable base or maintain use of the ramp;~~

~~(2) publicly owned ramps shall do not exceed 24 36 feet in width and do not extend more than 20 30 feet waterward of the shoreline or into water more than four feet in depth, whichever is less. Excavations of 60 200 cubic yards or less, and placement of up to 30 80 cubic yards of crushed rock, gravel, clean sand, or small stone shall be are allowed in order to provide a stable base or maintain use of the ramp. The use of coffer dams constructed of metal sheet piling or other portable materials is allowed to construct and maintain public boat launching ramps if all materials are completely removed from public waters within 30 days of completion of the project;~~

~~(3) the ramp shall be is constructed of gravel, natural rock, concrete, steel matting, or other durable inorganic material not exceeding six seven inches in thickness; and~~

~~(4) the ramp is not located on a federally designated wild and scenic river; or~~

~~D. C. to remove structures or other waterway obstructions provided if:~~

~~(1) the original cross-section and bed conditions shall be are restored insofar as practicable;~~

~~(2) the structure shall be is completely removed including any footings or pilings which that obstruct navigation;~~

~~(3) the structure is not located on an officially designated trout stream; and~~

~~(4) the structure does not function as a water level control device.~~

Subp. 5. **Permits required; criteria.** Permits shall be are required for the construction, reconstruction, repair, or relocation of any structure or mooring facility on or in protected public waters, except as provided under subparts 3 and 4, and shall a project must meet the following general criteria:

A. the proposed project must represent the minimal impact solution to a specific need with respect to all other reasonable alternatives;

B. the project ~~will involve~~ does not exceed more than a minimum of encroachment, change, or damage to the environment, ~~including but not limited to fish and wildlife habitat, navigation, water supply, and storm water retention.~~ particularly the ecology of the waters;

C. the proposed structure ~~shall be is~~ consistent with applicable floodplain, shoreland, and wild and scenic rivers management standards and ordinances for the waters involved;

D. adverse effects on the physical or biological character of the waters ~~shall be are~~ subject to feasible and practical measures to mitigate the effects;

E. the proposed structure ~~shall be is~~ consistent with water and related land management plans and programs of local and regional governments, provided these plans and programs are consistent with state plans and programs; and

F. except for ~~docks~~ mooring facilities and boat ramps, all new structures ~~shall~~ have a title-registered permit, unless a public agency or local governmental unit accepts responsibility for future maintenance or removal.

**6115.0211 SPECIFIC STANDARDS; STRUCTURES.**

[For text of subpart 1, see M.R. 1999]

Subp. 2. [See repealer.]

Subp. 3. **Wharves.** A permit ~~shall be~~ is required for the construction or reconstruction of all wharves. The following order of preference for construction types shall be utilized: bulkheaded shoreline, inland slip with bulkheaded sidewalls, and wharf projecting into ~~protected~~ public waters.

Wharves shall be ~~permitted provided~~ approved if the structure:

- A. is part of a designated port facility;
- B. is consistent with local land use plans and ordinances;
- C. does not extend further waterward than any existing wharves in the area or beyond any established harbor line, whichever is less;
- D. ~~size is of~~ is the minimum practicable ~~size~~; and
- E. is not an obstruction to flood flows or longshore drift and is adequately designed to resist the natural forces of ice, wind, and wave.

Subp. 4. **Breakwaters and marinas.** A permit ~~shall be~~ is required for the construction or reconstruction of all offshore breakwaters ~~and marinas~~. These structures shall be ~~permitted provided~~ approved if the following general conditions and the additional listed specific conditions are met:

- A. alternative dock or inland facilities are infeasible;
- B. the structure is limited to those waters where:

(1) prevalent wind, wave, or current conditions along the shoreline are of a magnitude and frequency that preclude the use and maintenance of docks to moor watercraft. Determinations of magnitude and frequency that would inhibit the use of docks is based on supporting facts including:

(a) the character of the water involved and its shoreline in relation to exposure to severe wind, wave, or current actions and the configuration and area of the water;

(b) the frequency of occurrence of storms producing severe winds and waves based on climatological data for the area;  
and

(c) the average number of days during each month of the navigational season when the shoreline is affected by severe wind, waves, or currents; and

(2) the conditions of the site and the number, type, or size of watercraft intended to be moored would preclude the development and use of on-land facilities, such as rollers, winch and track systems, sliderails, or other facilities that could be used to haul watercraft out of the water for on-land storage;

~~C.~~ D. the facility ~~shall be~~ is adequate in relation to appropriate engineering factors, including but not limited to those listed in part 6115.0201, subpart 5, item E, subitem (2), units (f) to (n);

~~C.~~ D. the plan ~~shall be~~ is adequate in relation to the geologic and hydrologic factors listed in part 6115.0201, subpart 5, item E, subitem (2), units (a) to (e);

~~D.~~ E. the ~~size and shape shall be~~ structure is designed in a compact fashion so as to blend in with the surrounding shoreline and so that all mooring and maneuvering activities can be confined to an area bounded by the property lines as extended into the public waters while minimizing the surface area occupied in relation to the number of watercraft to be served; and

~~E.~~ F. the breakwaters ~~shall do~~ are not exceed the minimum thickness necessary to withstand the anticipated forces consistent with maintenance requirements and ~~shall be~~ are faced with an adequate layer of natural rock riprap of appropriate size and gradation.

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~~F.~~ Subp. 4a. **Mooring facilities.** Except as provided in part 6115.0210, subpart 4, item A, a permit is required for the construction of all offshore mooring facilities. A mooring facility shall be approved if the following general conditions and the additional listed specific criteria are met:

A. the mooring facility is designed in a compact fashion so as to blend in with the surrounding shoreline and so that all mooring and maneuvering activities can be normally confined to an area bounded by the property lines as extended into public waters while minimizing the surface area occupied in relation to the number of watercraft to be served;

B. the mooring facility minimizes encroachment waterward of the ordinary high water level; and

C. for docks or mooring facilities more than eight feet in width, the applicant provides reasonable justification that the proposed width represents the minimal impact solution to a specific need with respect to all reasonable alternatives;

D. the following types of offshore structures mooring facilities shall be ~~permitted~~ approved, subject to the listed specific conditions:

(1) private offshore structures mooring facilities not serving several contiguous riparian lots; provided: as marinas, if the mooring facility is consistent with or allowed under local land use controls, as determined by the local government land use authority:

(a) the site shall meet the standards of subpart 2 for a dock.

(b) the structure shall minimize encroachment waterward of the ordinary high water mark.

(c) the total length of the structure shall be appropriately sized to provide a single mooring space for each riparian lot served.

(2) private offshore structures for proposed multifamily or cluster or residential planned unit developments; provided:

(a) the structure shall minimize encroachment waterward of the ordinary high water mark and its total length shall be appropriately sized to provide a single mooring space for each riparian lot to be served. The number of mooring spaces to be provided shall generally be the amount of natural shoreline to be served divided by the lot frontage requirements of the local land use control authority.

(b) the development plan shall be approved by the local land use control authority.

(3) private offshore structures for resorts, campgrounds, or similar enterprises; provided

(a) the structure shall minimize encroachment waterward of the ordinary high water mark and its total length shall be appropriately sized to provide one mooring space for each rental cabin or campsite unit plus a reasonable number of mooring spaces for transient watercraft.

(b) the development plan shall be approved by the local land use control authority.

(4) (2) public offshore structure projects; provided mooring facilities not serving as marinas, if:

(a) a local unit of government shall pass passes a resolution which that specifies the public interests to be benefited by the proposal;

(b) the structure shall be mooring facility is appropriately sized consistent with the demand for mooring facilities in the area and the number of watercraft to be served; and

(c) the structure shall be mooring facility is available for use by the general public; and

(d) the development plans shall minimize the waterward encroachment of the facilities.

(5) (3) offshore marinas; provided, if:

(a) the area shall be is zoned for such use or the local government shall grant land use authority grants a land use permit; and

(b) the proposed marina shall minimize encroachment waterward of the ordinary high water mark.

(c) the marina shall be is sized consistent with the demand for mooring facilities in the area and the number of watercraft to be served.

Subp. 5. **Retaining walls and erosion and sedimentation control structures.** A permit ~~shall be~~ is required for the construction or reconstruction of all retaining walls and erosion and sedimentation control structures that do not impound water. The construction of retaining walls ~~shall be~~ is discouraged because their appearance is generally not consistent with the natural environment and their construction and maintenance cost is generally greater than riprap.

The issuance of permits ~~shall be~~ is contingent on the following conditions:



A. existing or expected erosion problems ~~shall~~ preclude the use of riprap shore protection, ~~or there shall be~~ is a demonstrated need for direct shoreland dockings, ~~or the~~

~~B.~~ design ~~shall be~~ is consistent with existing uses in the area. Examples are: riverfront commercial-industrial areas having existing structures of this nature, dense residential shoreland areas where similar retaining walls are common, resorts where floating docks may be attached to such a bulkhead, or where barges are utilized to transport equipment and supplies; ~~and~~

~~C.~~ B. adequate engineering studies ~~shall be~~ are performed of foundation conditions, tiebacks, internal drainage, construction materials, and protection against flanking; ~~and~~

~~D.~~ C. the facility ~~shall is~~ not be an aesthetic intrusion upon the area and is consistent with all applicable local, state, and federal management plans and programs for the water body; and

~~E.~~ D. encroachment below the ordinary high water ~~mark shall be~~ level is held to the absolute minimum necessary for construction.

Subp. 6. **Boat launching ramp.** A permit ~~shall be~~ is required for the construction or reconstruction of any boat launching ramp not covered under part 6115.0210, subpart 4, item ~~C B.~~ and shall be granted ~~provided if:~~

A. the applicant ~~shall demonstrate~~ demonstrates a need for a launching facility;

B. the proposed ramp ~~shall be~~ is of the minimum dimensions necessary for launching of watercraft;

C. the proposed ramp ~~shall~~ does not obstruct flowing water; and

D. construction ~~shall~~ does not necessitate alteration of shoreland ~~which that~~ could result in substantial erosion and sedimentation.

Subp. 6a. **Boathouses.** A permit is required for the construction, reconstruction, relocation, removal, or repair of a boathouse. The permit shall be granted if the following conditions are met:

A. the boathouse is located in an area of historic boathouse use. "Historic boathouse use" shall be determined by the commissioner and shall be based on a review of factual information such as photographs, local government comments, newspaper accounts, or other relevant information;

B. the boathouse is approved by the local unit of government by means of a resolution with supporting documentation that identifies the owner, length, width, height, number of rooms, and sanitary facilities of the boathouse; and

C. the boathouse was located on public waters before January 1, 1997.

Subp. 6b. **Energy exchangers.** A permit is required for the construction, reconstruction, relocation, or repair of energy exchangers located on the bed of a public water. The permit shall be granted if the following general conditions and the additional listed specific conditions are met:

A. there are no other feasible and practical alternative sites for the project that would have less environmental impact;

B. a closed loop design is utilized;

C. the facility is designed in accordance with sound engineering practices;

D. the facility is not located in a designated trout stream or lake, a designated wild and scenic river, or an outstanding resource value water as defined in part 7050.0180;

E. the facility is designed in a fashion and located so as not to cause a navigation hazard;

F. the facility will not exceed more than a minimum encroachment, change, or damage to the environment, particularly the ecology of the waters;

G. the facility will not take threatened or endangered species identified in chapter 6134 without authorization by the commissioner according to parts 6212.1800 to 6212.2300; and

H. the facility will not contain substances, if released into public waters, that would be detrimental to water quality or plant or animal life forms.

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Subp. 7. **Other facilities.** A permit ~~shall be~~ is required for the construction, reconstruction, relocation, removal, repair, and abandonment of all other offshore structures, boat storage structures, cables other than utility crossings, pilings, or other ~~facilities~~ structures not covered by specific regulations.

A. Permits for structural repair, relocation, or modification, other than minor maintenance work such as reroofing, painting of structures, or similar work, shall be issued ~~provided~~ if all of the following conditions are met:

[For text of subitems (1) to (3), see M.R. 1999]

- (4) the structure being repaired has appropriate permits from the local land use or sanitary authority; and
- (5) the degree of obstruction or structure size is not increased.

[For text of item B, see M.R. 1999]

C. The construction, relocation, or reconstruction of privately owned structures, other than docks and mooring facilities, shall be permitted only when a governmental agency or local unit of governmental unit accepts responsibility for future maintenance of the structure or its removal.

[For text of subp 8, see M.R. 1999]

### **6115.0215 RESTORATION OF PUBLIC WATERS.**

Subpart 1. Goals. It is the goal of the department to encourage the restoration of public waters to:

- A. improve and protect fish and wildlife habitat and the diversity of the habitat;
- B. preserve the natural character of public waters and their shoreline zones;
- C. encourage the use of natural materials for shoreline zone protection and restoration;
- D. limit the removal of natural materials from the beds of public waters; and
- E. prevent erosion and siltation of public waters, while maintaining natural processes.

Subp. 2. Scope. This part applies to placement, construction, reconstruction, repair, relocation, abandonment, or other work needed to restore or protect public waters or to removal of any materials, structure, fill, water level control, excavation, or drainage device placed on or in public waters. For purposes of this part, "restoration" means the repair, reconstruction, or recreation of essentially natural or native conditions of a public water and its shoreline or banks. This part does not apply to restoration orders issued by the commissioner consistent with part 6115.0255.

Subp. 3. Prohibited work. Public waters alteration, protection, or restoration work is prohibited when the work:

- A. is detrimental to publicly owned habitats without obtaining the permission or rights of the interested owners and there are no feasible, practical, or ecologically acceptable means to mitigate the effects;
- B. takes threatened or endangered species listed in chapter 6134 without authorization by the commissioner according to parts 6212.1800 to 6212.2300;
- C. obstructs navigation or creates a water safety hazard, as determined by the commissioner;
- D. violates the regulations of any local zoning authority or water management agency;
- E. results in the creation of land above the ordinary high water level that is not deemed essential by the commissioner as part of the project;
- F. uses materials that are not clean and free of pollutants, nutrients, and exotic species sources;
- G. manipulates water levels solely to satisfy private interests; or
- H. will adversely impact public infrastructure, particularly roads and drainage systems.

Subp. 4. No permit required. No permit is required for the following activities, unless prohibited elsewhere in parts 6115.0150 to 6115.0280:

A. to perform bank or shoreline zone restoration work using willow wattles, willow posts, brush matting, brush layering, fiber roll breakwaters, plant carpets, root wads, and other natural materials installed by hand for the purpose of shoreline zone restoration work, if:

(1) the project is approved by the commissioner and designed or reviewed by the local soil and water conservation district or the local watershed district;

(2) the design does not interfere with navigation or other riparian uses of the waterbody;

(3) the project is done during times of the year when it will not interfere with fish spawning or the nesting of protected bird species;

(4) local origin native plant species, adapted for the site, are used;

(5) an aquatic plant management permit is obtained, when aquatic macrophytes are used;

(6) the waterward encroachment is the minimum necessary for the purpose of the project; and

(7) a maintenance plan is developed for the project and a copy submitted for review to the department area fisheries office;

B. to remove or grade an ice ridge, if all of the following conditions are met:

(1) the ice ridge resulted from ice action within the last year;

(2) the project is either exempt from local permits or is authorized by issuance of a local government permit;

(3) the total length of shoreline zone to be affected does not exceed 200 feet;

(4) all ice ridge material that is composed of muck, clay, or organic sediment is deposited and stabilized at an upland site above the ordinary high water level of any public water;

(5) all ice ridge material that is composed of sand or gravel is removed as provided in subitem (4) or graded to conform to the original cross-section and alignment of the lakebed, with a finished surface at or below the ordinary high water level;

(6) no additional excavation or placement of fill material occurs on the site;

(7) all exposed areas are immediately stabilized as needed to prevent erosion and sedimentation; and

(8) local zoning officials, the watershed district, if applicable, and the soil and water conservation district are given seven days' prior notice;

C. to construct, reconstruct, or abandon a water level control structure on a public watercourse with a contributing watershed of 300 acres or less, except on officially designated trout streams, if the structure does not qualify as a dam under parts 6115.0300 to 6115.0520;

D. to excavate or place fill for the purpose of planting or collecting native aquatic plants for restoration purposes, if the work is authorized by an aquatic plant management permit; and

E. to install natural rock riprap and associated filter materials where there is a demonstrated need to prevent erosion or to restore eroded shoreline, when there is a demonstrated need for such work, except along the shores of Lake Superior and officially designated trout streams, if:

(1) the rock is sized appropriately with the erosion potential of the wave or current action of the particular water body, but in no case shall the rock average less than six inches in diameter or more than 30 inches in diameter;

(2) the rock is placed so that it conforms to the natural alignment of the shoreline zone;

(3) the finished slope, as measured on top of the rocks, is not steeper than three to one (horizontal to vertical);

(4) no materials are placed more than six feet waterward of the ordinary high water level, unless the commissioner determines that this dimension may be measured from another point due to the particular nature of water levels of the public water;

(5) the total length of shoreline to be affected does not exceed 200 feet for public waterbasins or public water wetlands or five times the width of the public watercourse measured at bank full conditions;

(6) the riprap does not cover emergent vegetation, unless authorized by an aquatic plant management permit;

(7) the riprap does not obstruct navigation or the flow of water;

(8) a filter, consisting of crushed rock, gravel, or suitable filter fabric material is placed underneath the rock; and

(9) the rock and any filter material are free from organic material, soil, clay, debris, trash, or any material that may cause siltation or pollute the waterbody.

Subp. 5. **Permit required; criteria.** A permit is required for the restoration of public waters, except as provided under subpart 4, and shall be granted if all of the following conditions are met:

A. the proposed project represents the minimal impact solution to a specific need with respect to all other reasonable alternatives;

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B. the proposed project is intended to achieve one or more of the following purposes:

- (1) improve navigational or recreational uses;
- (2) improve or restore fish or wildlife habitat;
- (3) expose sediment to remove or eliminate nutrients or contaminants;
- (4) restore shorelines or watercourse channels to more natural conditions;
- (5) improve or restore natural hydrologic conditions; or
- (6) improve or restore water quality;

C. the project does not exceed more than a minimum encroachment, change, or damage to the environment, particularly the ecology of the waters;

D. adverse effects of the proposed project on the physical or biological character of the waters are avoided when possible and are subject to feasible and practical measures to mitigate the effects;

E. the proposed project is consistent with applicable floodplain, shoreland, and wild and scenic rivers management standards and ordinances for the waters involved;

F. the proposed project is consistent with water and related land management plans and programs of local and regional governments, provided the plans and programs are consistent with state plans and programs; and

G. projects that involve the placement of fill to recover shoreland lost by erosion or other natural forces are subject to part 6115.0191, subpart 4, except that part 6115.0191, subpart 4, does not preclude the issuance of a permit to place riprap materials or use other structural and vegetative means for protection of the shoreline zone to prevent continuing erosion.

### **6115.0216 SPECIFIC STANDARDS; RESTORATION.**

Subpart 1. In general. In addition to compliance with the general standards in part 6115.0215, subparts 2 to 5, specific requirements apply to the activities described in subparts 2 to 6.

Subp. 2. Riprap shore protection. The protection of shoreline from continued erosion by placement of natural rock riprap along the shore shall be approved if:

A. the riprap materials are of sufficient size, quality, and thickness to withstand ice and wave action. The riprap must be placed with a minimum amount of space between the larger materials and the space between them must be filled with firmly seated smaller rocks or gabion baskets to procure a uniform surface;

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

C. when site conditions warrant, the toe end of the riprap is installed in a trench excavated into the bed of the public water to anchor the riprap from ice and wave action, with all excavated materials either used to back fill behind the riprap or removed from the bed of the public water;

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

E. adequate engineering studies are done to certify the adequacy of the design of the riprap project, if deemed necessary by the area hydrologist.

Subp. 3. Bioengineering projects. The grading or filling of materials below the ordinary high water level to facilitate the installation or use of willow wattles, willow posts, brush mattresses, brush layering, fiber roll breakwaters, plant carpets, root wads, and other natural materials for erosion protection and shoreline zone restoration purposes shall be approved if:

A. the methods and materials used are designed in consultation with department or local government staff experienced in the use of such materials;

B. excavation and fill placement needed in conjunction with bioengineering projects are minimized and are subject to all requirements related to fill and excavation in parts 6115.0190, 6115.0191, 6115.0200, and 6115.0201; and

C. a separate aquatic plant management permit is obtained whenever the project involves planting aquatic plants other than willow and dogwood.

Subp. 4. Structural erosion control projects. Installation of rock gabions, A-jacks, cable concrete, bendway weirs, interlocking concrete blocks, eddy rocks, deflectors, gravel riffles, or other structural methods of erosion control or bank stabilization shall be approved if:

A. adequate engineering studies are performed to determine the suitability for use of any of these types of erosion control projects, as determined by the department;

B. the project is not an aesthetic intrusion upon the area and is consistent with all applicable local, state, and federal management plans, programs, and ordinances relating to the affected waterbody;

C. encroachment below the ordinary high water level is limited to the minimum necessary for the construction project;

D. when the project involves the removal of aquatic plants, a separate aquatic plant management permit is obtained;

E. the project does not adversely impact native plants, trees, or animals; and

F. any retaining wall complies with requirements for structures under parts 6115.0210 and 6115.0211.

Subp. 5. **Wave breaks.** Grading, filling, or excavation to install rock, silt fence, or any other material or device designed solely for the purpose of protecting native aquatic plants from wave or current action during their establishment shall be approved if:

A. the materials do not obstruct navigation or the flow of water;

B. the project is done in conjunction with an issued aquatic plant management permit; and

C. temporary (less than two years) wave breaks are preferred over permanent structures, which must also meet the requirements of parts 6115.0210 and 6115.0211.

Subp. 6. **Other erosion control projects.** Using a structure, material, fill, excavation, or other technique that is not covered under subparts 2 to 5 and that is designed primarily to control erosion of the shoreline zone or to restore the shoreline zone to a more natural condition or altering the shoreline zone in any way that is not covered by specific regulations shall be approved if:

A. the intended purpose of the project is reasonable with respect to all other alternatives;

B. any method of erosion control that is not widely accepted as being effective is used only as a temporary or experimental project, provided that the project sponsor must totally repair the shoreline zone if the project proves to be unsuccessful within five years. A public entity must be a cosponsor of the temporary or experimental project and accept responsibility for maintenance, repair, and removal of the project;

C. the project complies with all other federal, state, and local regulations and ordinances; and

D. the project adequately protects public safety and promotes the public welfare.

Subp. 7. **Contaminated site restoration projects.** Restoration of a site contaminated with materials or water determined to be hazardous or toxic through a publicly funded study or site cleanup process shall be approved if:

A. the study includes a discussion of alternative approaches to restore the contaminated site; and

B. the commissioner, in consultation with the Minnesota Pollution Control Agency, participated in either the development of the site restoration plan or study and concurs with the site restoration plan or study recommendations or participated in the development of the site restoration funding initiative and concurs with the funded initiative.

#### **6115.0217 APPLICATION OF OTHER STANDARDS; RESTORATION.**

Unless otherwise specified in other parts, parts 6115.0215 and 6115.0216 apply to projects proposed as part of any other activity or activities including, but not limited to:

A. filling, parts 6115.0190 to 6115.0192;

B. excavations, parts 6115.0200 to 6115.0202;

C. structures, parts 6115.0210 to 6115.0212;

D. water level controls, parts 6115.0220 to 6115.0222;

E. bridges and culverts, parts 6115.0230 to 6115.0232;

F. drainage of public waters, parts 6115.0270 to 6115.0272; and

G. alterations of public waters for mining, part 6115.0280.

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### 6115.0220 WATER LEVEL CONTROLS.

Subpart 1. **Goals.** It is the goal of the department to manage ~~protected public~~ waters ~~in order~~ to:

A. maintain ~~or restore~~ natural flow and natural water level conditions to the maximum feasible extent;

B. encourage the construction of small ~~upstream off-channel~~ retarding structures for the conservation of water in ~~altered,~~ natural waterbasins ~~and watercourses~~, consistent with any overall plans for the affected watershed area; and

C. limit the artificial manipulation of water levels, except ~~where~~ when the balance of affected public interests clearly warrants the establishment of appropriate controls and it is not proposed solely to satisfy private interests.

Subp. 2. **Scope.** The construction, repair, reconstruction, or abandonment of any structure intended to impound, divert, or control the level or flow of ~~protected public~~ waters ~~shall be~~ is subject to the provisions of this part.

Subp. 3. ~~Nonallowed Prohibited~~ **water level control facilities.** Construction or reconstruction of water level control facilities ~~shall not be allowed where~~ is prohibited when it is intended to manipulate water levels solely to satisfy private interests.

Subp. 4. **No permit required.** No permit ~~shall be~~ is required to construct, reconstruct, or abandon a water level control structure on ~~protected public~~ watercourses with a contributing watershed of 300 acres or less, except on officially designated trout streams, provided the structure does not qualify as a dam under the rules for dam safety.

Subp. 5. **Permits required.** Permits ~~shall be~~ are required for the construction, repair, reconstruction, or abandonment of any water level control structure, except as provided in subparts 3 and 4, and ~~shall~~ a project must meet the following general criteria:

A. the project will involve a minimum of encroachment, change, or damage to the environment, including but not limited to fish and wildlife habitat, navigation, water supply, storm water retention, and agricultural uses;

B. adverse effects on the physical or biological character of the waters ~~shall be~~ are subject to feasible and practical measures to mitigate the effects;

C. the proposed project ~~shall be~~ is consistent with applicable floodplain, shoreland, and wild and scenic rivers management standards and ordinances for the waters involved;

D. the proposed project ~~shall be~~ is consistent with water and related land management plans and programs of local and regional governments, provided such plans and programs are consistent with state plans and programs;

E. the construction or reconstruction ~~shall comply~~ complies with parts 6115.0300 to 6115.0520 with respect to dam safety for the protection of human life and property;

F. the construction or reconstruction of water level control structures or changing the level of an existing structure ~~may affect-~~ ing public waterbasins shall be permitted approved only to:

[For text of subitems (1) to (6), see M.R. 1999]

(7) establish, improve, or maintain the generation of hydroelectric power; ~~or~~

(8) restore the existing control elevation to a historic natural water elevation if detailed engineering surveys establish that the proposed control elevation does not exceed the estimated natural control elevation; and

G. the construction or reconstruction of water level control structures or changing the level of an existing structure on water- courses shall be approved only to:

(1) control and store flood waters;

(2) improve water-based recreation;

(3) create, improve, and maintain water supplies;

(4) establish, improve, or maintain the generation of hydroelectric power; or

(5) create, improve, or maintain aquatic habitat for fish and wildlife species.

### 6115.0221 SPECIFIC STANDARDS; WATER LEVEL CONTROLS.

Subpart 1. Specific requirements. In addition to the general standards in part 6115.0220, subparts 2 to 5, specific requirements for water level control structures shall be met ~~as follows:~~ according to this part.

Subp. 2. Permanent lake level control facilities.

A. Permanent lake level control facilities shall be approved when the commissioner initiates proceedings for the purpose of conserving or utilizing the water resources of the state and assumes responsibility for operation and future maintenance, or when all of the following conditions are met:

(1) the ordinary high water ~~mark level~~ and runout elevation of the water body have been determined by a detailed engineering survey, or by order of the commissioner following a public hearing;

(2) the proposed facilities ~~shall be~~ are “reasonably consistent with natural conditions:”

(a) where a functioning outlet existed in a state of nature or for a long period of time following lawful creation or alteration of an outlet by the activities of people or animals, or cataclysmic events, the proposed outlet is at essentially the same control elevation;

(b) where no natural or artificial outlet exists and the lake is for all practical purposes “landlocked,” the control elevation shall not be more than 1-1/2 feet below the ordinary high water ~~mark; level, unless the commissioner finds that:~~

i. the control is necessary to prevent adverse impacts to the lake or adjoining property;

ii. other reasonable or cost-effective alternatives are not available;

iii. natural resource or hydrologic conditions exist in the watershed that would limit the potential for continuous discharge of excess waters from the lake; and

iv. the outlet and discharge of excess waters is addressed in an approved water management plan under *Minnesota Statutes*, chapter 103B or 103D; and

(c) the commissioner may issue a permit to restore the existing control elevation to a historic natural water elevation if detailed engineering surveys establish that the proposed control elevation does not exceed the estimated natural control elevation;

(3) the project is sponsored by a governmental unit, which assumes responsibility for operation and future maintenance, except ~~where~~ when:

(a) the majority of the riparian owners sign the permit application;

(b) appropriate easements or other property interests have been obtained from all affected owners;

(c) a title-registration type permit ~~shall be~~ is issued to the owner or owners of the property upon which the proposed water level control structure will be located; and

(d) the structure will further public interests in navigation, propagation of fish or wildlife, or other beneficial public uses of the water;

(4) justification has been made of the need in terms of public and private interests and the available alternatives, including the impact on receiving waters and public uses thereof, through a detailed hydrologic study; and

(5) a detailed plan is developed for operation and control including:

(a) manner and time of operation;

(b) frequency of maintenance;

(c) appropriate monitoring of water levels, water quality, and other factors; and

(d) management of excess waters.

B. In addition to the requirements of item A, subitem (2), unit (b), if the proposed control elevation is more than 1-1/2 feet below the ordinary high water level, the permit applicant must serve a copy of the application on each county and municipality within which any portion of the lake is located and the lake improvement district, if one exists. The commissioner must not issue a permit to establish a control elevation more than 1-1/2 feet below the ordinary high water level of a lake if a county, municipality, watershed district, or lake improvement district required to be served under this item or *Minnesota Statutes*, section 103G.301, subdivision 6, files a written objection to the issuance of the permit with the commissioner within 30 days after receiving a copy of the application.

~~B-~~ Subp. 3. Fish and wildlife management. Fish and wildlife management proposals made pursuant to *Minnesota Statutes*, section 97A.101, or other appropriate authority shall be approved ~~where~~ when:

(+) A. the ~~protected~~ public water has been designated for wildlife management purposes;

(-) B. there is a specific water level management plan for the lake basin;

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(3) C. any drawdown of the lake is only temporary and the management plans include a permanent facility for restoration of water levels following such drawdowns;

(4) D. any alteration of a watercourse included in the plan follows the requirements specified in part 6115.0201, subpart 7;

(5) E. appropriate easements or fee title ~~have been~~ is obtained; and

(6) F. specified management personnel are required to establish a lake level gauge and keep a record of water levels with a specified frequency during seasons of active water level manipulation and with a lesser frequency during all other open water seasons.

C. Subp. 4. Certain landlocked waterbasins. Plans for landlocked waterbasins less than 25 acres in surface area and contained completely within the municipal boundaries of a single city shall be approved ~~where~~ when:

(1) A. a municipal drainage plan for the affected tributary watershed is prepared by a qualified engineer or hydrologist and is approved by the affected watershed district and the city;

(2) B. the city has a field survey made of the waterbasin after consultation with the department, including but not limited to:

(a) (1) the elevation of the aquatic vegetation fringe;

(b) (2) the elevation of the tree line and a description of the location, type, and size of representative trees;

(c) (3) groundwater elevations, if appropriate; and

(d) (4) other information as requested by the department;

(3) C. control elevations and associated physical parameters are approved by the department and the city; and

(4) D. the city holds a public hearing on the proposal and provides a transcript of the proceedings to the department. Provision of a transcript may be waived by the department.

D. Subp. 5. Other controls. Permits for the construction, reconstruction, and abandonment of ~~all other~~ water level control structures not covered under subparts 2 to 4 shall be issued ~~provided if~~:

(1) A. the need is established in terms of quantifiable benefits;

(2) B. the structural design ~~shall be~~ is done by a professional engineer or by a qualified engineer of the Soil Natural Resources Conservation Service or the Corps of Engineers and ~~must include~~ includes the following considerations:

(a) (1) gravity forces;

(b) (2) hydrostatic pressure;

(c) (3) uplift forces;

(d) (4) overturning moment;

(e) (5) resistance to sliding;

(f) (6) ice pressures;

(g) (7) earthquake forces;

(h) (8) slope stability, including consolidation and pore pressures;

(i) (9) seepage collection or prevention;

(j) (10) foundation conditions, including appropriate borings and determination of the strength of foundation materials;

(k) (11) specifications for materials of construction and their placement or installation;

(l) (12) adequate construction inspection to assure conformance with design assumptions; and

(m) (13) adequacy of the cofferdam or diversion during construction, if any; and

(3) C. adequate assurances ~~shall be~~ are made for future maintenance of new water level control structures:

(a) (1) for water level control structures 25 feet or more in structural height or having a maximum storage capacity of 50 acre-feet or more, permits ~~will~~ shall be issued only to governmental agencies, public utilities, or corporations having authority to construct and maintain such projects, except that a title-registration type permit may be issued to the owner or owners of the private property upon which the proposed water level control structure will be located ~~where~~ when the provisions of subpart 2, item A, subitem (3), are met;

~~(b)~~ (2) for other water level control structures, title-registration type permits ~~may~~ shall be issued to the owner or owners of the private property upon which the water level control structure will be located ~~which shall run if the permit runs with the land and require~~ requires breaching or removal if ~~it~~ the structure ever falls into a state of disrepair or becomes unsafe; and

~~(c)~~ (3) periodic engineering inspections of authorized water level control structures may be made by the department or its designee.

### **6115.0230 BRIDGES AND CULVERTS, INTAKES AND OUTFALLS.**

[For text of subpart 1, see M.R. 1999]

Subp. 2. **Scope.** The construction or reconstruction of any bridge, culvert, intake, outfall, or other crossing of ~~protected~~ public waters ~~shall be~~ is subject to ~~the provisions of~~ this part. Abandonment or removal of all crossings and structures governed by this part ~~shall require~~ requires a permit ~~pursuant~~ according to part 6115.0211, subpart 8.

Subp. 3. **Nonpermitted Prohibited crossings.** Crossings ~~shall not be permitted where~~ are prohibited when the project:

A. will obstruct navigation or create a water safety hazard;

B. will cause or contribute to significant increases in flood elevations and flood damages either upstream or downstream;

C. ~~would involve~~ involves extensive channelization above and beyond minor stream channel realignments to improve hydraulic entrance or exit conditions, except ~~where~~ when a separate permit is obtained ~~pursuant~~ according to part 6115.0201, subpart 7; ~~or~~

D. will be detrimental to water quality; or significant fish and wildlife habitat, ~~or protected vegetation;~~

E. will take threatened or endangered species listed in chapter 6134 without authorization by the commissioner according to parts 6212.1800 to 6212.2300; or

F. will provide private access to an island.

Subp. 4. **No permit required.** No permit ~~shall be~~ is required to construct the following types of crossings on ~~protected~~ public waters, unless prohibited in subpart 3:

A. to construct or reconstruct a bridge or culvert on a public watercourse with a total drainage area, at its mouth, of five square miles or less, except on officially designated trout streams;

B. to construct or reconstruct a low-water ford type crossing ~~provided that, if:~~

[For text of subitems (1) to (6), see M.R. 1999]

(7) the crossing is not placed on an officially designated trout stream, on a wild, scenic, or recreational river, or on an officially designated canoe and boating route;

C. to construct or reconstruct a temporary bridge ~~provided that, if:~~

[For text of subitems (1) to (3), see M.R. 1999]

(4) the bridge is firmly anchored at one end and so constructed as to swing away ~~in order~~ to allow flood waters to pass;

(5) the lowest portion of the bridge ~~shall be~~ is at least three feet above the ordinary high water ~~mark~~ level on navigable streams; and

(6) the bridge is consistent with state and local rules and regulations for floodplain, shoreland, and wild, scenic, or recreational rivers management standards and ordinances;

D. to maintain the hydraulic adequacy of any storm sewer or agricultural drain tile outfall or ditch ~~which that~~ has been functioning within the previous five years, if such work does not alter the original course, current, or cross-section of the ~~protected~~ public waters; ~~or~~

E. to install an agricultural drain tile outletting into ~~protected~~ public waters ~~provided, if~~ the bank is restored to the original cross-section or contour; and no permanent structure is placed below the ordinary high water ~~mark~~ level, except for the drain tile.

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Subp. 5. **Permits required.** Permits ~~shall be~~ are required for the construction or reconstruction of any bridge, culvert, intake, outfall, or other crossing of ~~protected public~~ waters, except as provided in subparts 3 and 4, and ~~shall a project must~~ meet the following general criteria:

A. the project ~~will involve~~ must not exceed more than a minimum ~~of~~ encroachment, change, or damage to the environment ~~including but not limited to fish and wildlife habitat, navigation, water supply, and storm water retention.~~ particularly the ecology of the waters;

B. adverse effects on the physical or biological character of the waters ~~shall be~~ are subject to feasible and practical measures to mitigate the effects;

C. the proposed crossing ~~shall be~~ is consistent with applicable floodplain, shoreland, and wild and scenic rivers management standards and ordinances for the waters involved;

D. the proposed crossing ~~shall be~~ is consistent with water and related land management plans and programs of local and regional governments, provided such plans and programs are consistent with state plans and programs; and

E. crossings of ~~protected public~~ waterbasins or public water wetlands ~~shall be~~ are allowed only ~~where~~ when there is no feasible and practical alternative ~~which that~~ does not require filling, excavating, or the placement of a structure in ~~protected public~~ waters.

### **6115.0231 SPECIFIC STANDARDS; BRIDGES, CULVERTS, INTAKES, AND OUTFALLS.**

**Subpart 1. Specific requirements.** In addition to the general standards in part 6115.0230, subparts 2 to 5, specific requirements for bridges, culverts, intakes, outfalls, and other crossings of ~~protected public~~ waters shall be met ~~as follows:~~ according to this part.

**A. Subp. 2. Bridges, culverts, and other crossings.** The construction, reconstruction, or relocation of all bridges, culverts, or other crossings over ~~protected public~~ waters shall be ~~permitted provided~~ approved if all of the following criteria are met:

(+) ~~A.~~ the hydraulic capacity of the structure ~~must be~~ is established by a competent technical study. The sizing shall not be based solely on the size of existing upstream and downstream structures. If a state or federal floodplain information study exists for the area, or a United States Geological Survey gaging station is located nearby on the stream, the hydraulics of the proposed bridge/culvert design must be consistent with these data. The department may waive this requirement if:

(+) (1) the department has performed a hydraulic study based upon available information and reasonable assumptions;

(+) (2) the department has made a field investigation of the project site; and

(+) (3) the project will not cause flood-related damages or problems for upstream or downstream interests;

(+) ~~B.~~ new crossings and replacements of existing crossings ~~must~~ comply with local floodplain management ordinances ~~and,~~ with provisions of part 6120.5700, subpart 4, item A-. and with the following:

(+) (1) for new crossings, no approach fill for a crossing ~~can~~ shall encroach upon a community designated floodway. ~~Where~~ When a floodway has not been designated or ~~where~~ when a floodplain management ordinance has not been adopted, increases in flood stage in the regional flood of up to one-half of one foot shall be ~~permitted~~ approved if they will not materially increase flood damage potential. Additional increases may be permitted if: a field investigation and other available data indicate that no significant increase in flood damage potential would occur upstream or downstream, and any increases in flood stage are reflected in the floodplain boundaries and flood protection elevation adopted in the local floodplain management ordinance;

(+) (2) for replacement of existing crossings, if the existing crossing has a swellhead of one-half of one foot or less for the regional flood, the replacement crossing shall comply with the provisions for new crossings in ~~unit (a) subitem (1).~~ If the existing crossing has a swellhead of more than one-half of one foot for the regional flood, stage increases up to the existing swellhead ~~may~~ shall be allowed ~~provided~~ if field investigation and other available data indicate that no significant flood damage potential exists upstream from the crossing based on analysis of data submitted by the applicant. The swellhead for the replacement crossing may exceed the existing swellhead if it complies with the provisions for new crossings found in ~~unit (a) subitem (1); and~~

(+) (3) the decks and approaches to bridges or culverts on major transportation routes and on roads that provide access to development at urban densities shall be no lower than two feet below the flood protection elevation as defined in part 6120.5700, subpart 5, unless it can be shown that alternative routes or access can be provided during the regional flood;

(+) ~~C.~~ the structure ~~shall provide~~ provides for game fish movement, unless the structure is intended to impede rough fish movement or the stream has negligible fisheries value;

(+) ~~D.~~ the structure will not obstruct reasonable public navigation. For bridges over ~~protected public~~ watercourses, three feet above the calculated 50-year flood stage ~~will~~ ordinarily satisfy ~~satisfies~~ navigational clearance requirements. For bridges over ~~protected public~~ waterbasins or public water wetlands, and all culverts, three feet of clearance above the ordinary high water ~~mark~~ will level ~~ordinarily~~ satisfy ~~satisfies~~ navigational requirements;



~~(5) E.~~ any project proposed near an existing or proposed segment of the state trails system should be consistent therewith; and

~~(6) Footbridges~~ F. bridges and walkways to islands comply with the following:

~~(a)~~ (1) bridges and walkways over watercourses - to islands must be designed to cause negligible backwater effects during floods; and must be securely anchored or otherwise capable of withstanding the dynamic forces of flowing water, ice, and debris; ~~Approaches must not be raised above the adjacent floodplain lands; and~~

~~(b) New walkways across any portion of protected waters to provide private access to an island will be prohibited~~ (2) permits for reconstruction of existing bridges or walkways or for the construction of new walkways over public waterbasins and public water wetlands to islands that are intended to provide public access will shall be issued only if: the walkway existing crossing provides the only existing land access to the island; there is existing development thereon; on the island, and the design will provide provides for any public navigational needs and is consistent with the natural surroundings.

**B. Subp. 3. Intakes and outfalls.** The construction, reconstruction, or relocation of all water intake and sewer outfall structures placed in ~~protected~~ public waters shall be ~~permitted provided~~ approved if all of the following criteria are met:

~~(1) A.~~ adequate attention is given to methods of screening the structure from view as much as possible from the surface of the protected public water through the use of existing vegetation or new plantings;

~~(2) B.~~ the project is not detrimental to public values, including but not limited to fish and wildlife habitat, navigation, water supply, water quality, or storm water retention;

~~(3) C.~~ no site conditions will require frequent future disruption of the beds of protected public waters;

~~(4) D.~~ adequate precautions must be are planned during and after construction to prevent silt, soil, and other suspended particles from being discharged into protected public waters;

~~(5) E.~~ adjacent to the intake structure, the banks and bed of the protected public water must be are protected from erosion and scour by placement of suitable riprap shore protection;

~~(6) F.~~ the banks must be are revegetated by seeding and/or sodding;

~~(7) G.~~ the structure must be is designed by a professional engineer;

~~(8) H. for~~ intake structures, excavation must be is detailed in the application and on design plans. Where When necessary, a water appropriation permit must be obtained from the department prior to operation of the intake structure. An appropriate sized screen must be used to prevent fish intake; and

~~(9) I.~~ outfall structure design shall:

~~(a) where~~ (1) when necessary, incorporate incorporates a stilling-basin, surge-basin, energy dissipator, or other device or devices to minimize disturbance and erosion of natural shoreline and bed resulting from peak flows;

~~(b) where~~ (2) when feasible, utilize utilizes discharge to natural wetlands stormwater treatment ponds, natural or artificial stilling or sedimentation basins, or other devices for entrapment of floating trash and litter, sand, silt, debris, and organic matter prior to discharge to public waters; and

~~(c) where~~ (3) when feasible, maximize maximizes use of natural or artificial ponding areas to provide water retention and storage for the reduction of peak flows into protected public waters.

#### **6115.0240 APPLICATION FOR PROTECTED PUBLIC WATERS WORK PERMITS.**

[For text of subpart 1, see M.R. 1999]

Subp. 2. **Who may apply.** Applications shall be submitted by the riparian owner of the land on which a project is proposed, except:

A. a governmental agency, public utility, or corporation authorized by law to conduct the project may apply if the property rights acquired or to be acquired are fully described in the application;

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B. a holder of appropriate property rights such as a lease or easement may apply ~~provided that~~ if the application is countersigned by the owner and accompanied by a copy of the lease or other agreement. A permit ~~may shall~~ be issued for the term of the lease only, subject to cancellation prior to the termination date of the agreement if the agreement is canceled; ~~and~~

C. a prospective lessee of state-owned lands may apply for a permit in the applicant's own name after requesting a lease from the departmental official responsible for the affected lands. Both the lease request and the permit application ~~will shall~~ be processed concurrently with appropriate coordination.

Subp. 3. **Information required.** Pursuant to *Minnesota Statutes*, section ~~405.44, subdivision 4~~ 103G.305, an application ~~shall be considered~~ is complete when:

A. it includes all of the information specified in ~~the appropriate section or sections of these standards;~~ parts 6115.0150 to 6115.0280;

B. it is accompanied by appropriate photographs, maps, sketches, drawings, or other plans ~~which that~~ adequately describe the proposed project; ~~;~~

C. it includes a brief statement regarding the following points:

(1) anticipated changes in water and related land resources;

(2) unavoidable anticipated detrimental effects on the natural environment;

(3) alternatives to the proposed action; ~~;~~

(4) that the proposed project is reasonable and practical and will adequately protect public safety and promote the public welfare; and

(5) a demonstration by the applicant that the proposed activity authorized by part 6115.0190, subpart 5; 6115.0200, subpart 5; 6115.0210, subpart 5; 6115.0215, subpart 5; 6115.0220, subpart 5; 6115.0230, subpart 5; 6115.0270, subpart 4; or 6115.0280, subpart 4, complies with all the following principles in descending order of priority:

(a) avoids direct or indirect impacts to public waters that may destroy or diminish the public waters;

(b) minimizes the impact to the public water by limiting the degree or magnitude of the public water activity and its implementation;

(c) rectifies the impact by repairing, rehabilitating, or restoring the affected public water;

(d) reduces or eliminates the impact to the public water over time by preservation and maintenance operations; and

(e) for a major change in the resource, replaces unavoidable impacts to the public water by restoring degraded or impacted public waters having equal or greater public value or, if public waters restoration opportunities are not reasonably available, creating and protecting additional replacement water areas having greater public value;

D. application fees ~~have been~~ are paid. ~~Note that~~ Final permits ~~cannot shall not~~ be issued until any field inspection fees are paid; ~~and~~

[For text of item E, see M.R. 1999]

[For text of subp 4, see M.R. 1999]

### 6115.0250 PERMIT REVIEW.

[For text of subpart 1, see M.R. 1999]

Subp. 1a. Effect on environment and mitigation. The commissioner may not issue a permit that causes pollution, impairment, or destruction of the air, water, land, or other natural resources so long as there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare. If the commissioner determines that a major change in public waters is justified and can be authorized by parts 6115.0190, subpart 5; 6115.0200, subpart 5; 6115.0210, subpart 5; 6115.0215, subpart 5; 6115.0220, subpart 5; 6115.0230, subpart 5; 6115.0270, subpart 4; or 6115.0280, subpart 4, the permit must include provisions to compensate for the detrimental aspects of the change. Compensation for the identified detrimental aspects of the permitted project include:

A. restoring degraded or impacted public waters having equal or greater public value;

B. creating or restoring additional replacement water areas having equal or greater public value; or

C. any other measures approved by the commissioner that compensates for the detrimental aspects of the change.

[For text of subp 2, see M.R. 1999]

Subp. 3. **Procedure upon decision.** The commissioner may grant permits, with or without conditions, or deny them. In all cases, the applicant, the managers of the watershed district, the board of supervisors of the soil and water conservation district, or the mayor of the city may demand a hearing in the manner specified in *Minnesota Statutes*, section ~~105.44, subdivision 3~~ 103G.311, within 30 days after receiving mailed notice outlining the reasons for denying or modifying an application. Any hearing shall be conducted as a contested case hearing before an administrative law judge from the independent Office of Administrative Hearings ~~in accordance with~~ according to *Minnesota Statutes*, chapter 14 and ~~sections 105.44 and 105.45~~ section 103G.311.

Subp. 4. **General permits.** The commissioner is authorized to issue general permits to a governmental subdivision or to the general public for classes of activities having minimal impact on public waters under which more than one activity may be conducted with a single permit.

Subp. 5. **Public water wetland permit processing.**

A. Public waters work permit applications submitted to the commissioner for proposed projects in public water wetlands shall be granted if authorized by parts 6115.0190 to 6115.0232 or parts 6115.0270 to 6115.0280 and if the public water wetland is:

(1) assigned a shoreland classification;

(2) classified as lacustrine wetland or deepwater habitats according to the document under item C; or

(3) where the state or federal government has become titleholder to any of the beds or shores of the public water wetlands, subsequent to the preparation of the public waters inventory maps on file with the auditor of the county and where the responsible state or federal agency declares that the water is necessary for purposes of public ownership.

B. All other public waters work permit applications for proposed projects in public water wetlands shall be:

(1) granted, with or without conditions, if authorized by parts 6115.0190 to 6115.0232 or 6115.0270 to 6115.0280 and if the permit application complies with provisions for sequencing under part 8420.0520, replacement provisions under parts 8420.0540 to 8420.0630, and wetland banking under part 8420.0720, subpart 2, or denied; or

(2) waived pursuant to item D.

C. The following documents are incorporated by reference:

(1) *Classification of Wetlands and Deepwater Habitats of the United States*, Lewis M. Cowardin et al., United States Department of the Interior, Fish and Wildlife Service (1979); and

(2) *Guidelines for Ordinary High Water Level (OHWL) Determinations*, John Scherek and Glen Yakel, Minnesota Department of Natural Resources, Division of Waters (June 1993).

These documents are available through the Minitex interlibrary loan system and are not subject to frequent change.

D. Public waters work permits in public water wetlands:

(1) notwithstanding parts 6115.0150 to 6115.0280, the authority of the commissioner to require a permit for activities within public water wetlands is waived to the local unit of government under chapter 8420 when the commissioner has received notice or application from the landowner or project sponsor and when the commissioner has provided the applicant or project sponsor and the local unit of government a notice within 15 days of receipt of the notice or permit application that the department will waive public waters work permit jurisdiction to the local unit of government; or

(2) the commissioner shall not waive the requirement for a public waters work permit in a public water wetland for activities:

(a) allowed under part 8420.0122, subparts 1 to 8 and 10;

(b) in public water wetlands assigned a shoreland classification;

(c) in public water wetlands classified as lacustrine wetland or deepwater habitats according to the document under item

C; or

(d) in public water wetlands where the state or federal government has become titleholder to any of the beds or shores of the public water wetlands, subsequent to the preparation of the public waters inventory maps on file with the auditor of the county and where the responsible state or federal agency declares that the water is necessary for purposes of public ownership.

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## Proposed Rules

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E. Notwithstanding parts 6115.0150 to 6115.0280, the authority of the commissioner to require a permit for public road activities that are associated with the repair, rehabilitation, reconstruction, or replacement of currently serviceable existing public roads is waived to the public road authority under chapter 8420:

(1) for projects that affect less than 10,000 square feet of public water wetlands, upon receipt of a copy of the state, city, county, or town public road authority report that is submitted to the Board of Water and Soil Resources in compliance with part 8420.0544, item D, except for projects in public water wetlands:

(a) assigned a shoreland classification;

(b) classified as lacustrine wetland or deepwater habitats according to the document under item C, subitem (1); or

(c) when the state or federal government has become titleholder to any of the beds or shores of the public water wetlands, subsequent to the preparation of the public waters inventory maps on file with the auditor of the county and when the responsible state or federal agency declares that the water is necessary for purposes of public ownership; or

(2) for projects that affect 10,000 square feet or more of public water wetlands, when the commissioner has provided the public road authority notice of the waiver within 15 days of receipt of a copy of the state, city, county, or town public road authority report that is submitted to the Board of Water and Soil Resources in compliance with part 8420.0544, item D, except for projects in public water wetlands:

(a) assigned a shoreland classification;

(b) classified as lacustrine wetlands or deepwater habitats according to the document under item C, subitem (1); or

(c) when the state or federal government has become titleholder to any of the beds or shores of the public water wetlands, subsequent to the preparation of the public waters inventory maps on file with the auditor of the county and when the responsible state or federal agency declares that the water is necessary for purposes of public ownership.

### **Subp. 6. Wetland areas of public waters affected by public road permit projects.**

A. For purposes of this subpart, "wetland areas of public waters" means areas within public waterbasins that are contiguous with the ordinary high water level of the public waterbasins and that generally exhibit emergent vegetation.

B. Public waters work permit applications submitted by a public road authority to the commissioner for proposed projects in wetland areas of public waters shall be granted if authorized by parts 6115.0190 to 6115.0232 or 6115.0270 to 6115.0280.

C. The classification of lacustrine wetlands and deepwater habitats found in *Classification of Wetlands and Deepwater Habitats of the United States*, Lewis M. Cowardin et al., United States Department of the Interior, Fish and Wildlife Service (1979) is incorporated by reference. This document is available through the Minitex interlibrary loan system and is not subject to frequent change.

D. Notwithstanding parts 6115.0150 to 6115.0280, the authority of the commissioner to require a permit for public road activities in, on, or over wetland areas of public waters according to the document under item C is waived for:

(1) all activities authorized by the local government unit under chapter 8420 when the commissioner has received notice or application from the public road authority and when the commissioner has notified the public road authority and the local unit of government of the waiver within 15 working days of receipt of the notice or application; or

(2) activities authorized by the public road authority having jurisdiction under chapter 8420 for public road activities that are associated with the repair, rehabilitation, reconstruction, or replacement of currently serviceable existing public roads when the commissioner has notified the public road authority of the waiver within 15 working days of receipt of a copy of the state, city, county, or town public road authority report that is submitted to the Board of Water and Soil Resources in compliance with part 8420.0544, item D.

### **Subp. 7. Written agreements with local government units.**

A. For projects affecting both public waters and wetlands, the local government may, by written agreement with the commissioner, waive the requirement for a replacement plan or a no-loss or exemption determination if a public waters work permit is required and the commissioner includes provisions of *Minnesota Statutes*, sections 103A.201, 103B.3355, 103G.222, and 103G.2372, and rules adopted thereunder, in the public waters work permit.

B. The written agreement may be done on a project-by-project basis when:

(1) the agreement identifies the parties having authority to make the agreement and the proposed project subject to the agreement;

(2) the commissioner requires an individual public waters work permit for the proposed project;

(3) the majority of the proposed project impacts on public waters and wetlands are to public waters;

(4) the proposed wetland impacts are subject to approval of a wetland replacement plan or a no-loss or exemption determination by the local unit of government according to part 8420.0210, 8420.0220, or 8420.0230;

(5) the local government unit provides the commissioner with specific language addressing no-loss or exemption determinations or allowable wetland impacts and required wetland replacement for incorporation into the commissioner's public waters work permit; and

(6) the local government unit agrees to assist the commissioner should appeals be brought against the commissioner based on the language impacting the wetlands covered in the public waters work permit.

C. The written agreement may be done on a local unit of government basis, a watershed basis, a waterbody basis, or a project activity basis when:

(1) the written agreement identifies the parties having authority to enter into the agreement, the location of agreement application, and the scope of proposed activities subject to the agreement;

(2) the commissioner requires an individual public waters work permit for the proposed project;

(3) the majority of the proposed project impacts to public waters and wetlands are to public waters;

(4) the wetland impacts are subject to approval of a wetland replacement plan or a no-loss or exemption determination by the local unit of government according to part 8420.0210, 8420.0220, or 8420.0230;

(5) the local government unit provides the commissioner with specific language addressing no-loss or exemption determinations or allowable wetland impacts and required wetland replacement for incorporation into the commissioner's public waters work permit;

(6) the local government unit agrees to assist the commissioner should appeals be brought against the commissioner based on the language impacting the wetlands covered in the public waters work permit; and

(7) the agreement addresses enforcement procedures and procedures for the commissioner or the local government unit to terminate the written agreement.

Subp. 8. **Local plan implementation.** Notwithstanding parts 6115.0150 to 6115.0280, the commissioner may authorize alternative regulation of public waters activities that are specifically identified in a local plan, ordinance, or other similar written document approved by the commissioner and subject to the following:

A. the proposed activities are subject to the following principles in descending order of priority:

(1) avoid direct or indirect impacts to the public water that may destroy or diminish the public water;

(2) minimize the impact to the public water by limiting the degree or magnitude of the public water activity;

(3) rectify the impact by repairing, rehabilitating, or restoring the affected public water;

(4) reduce or eliminate the impact to the public water over time by preservation and maintenance operations; and

(5) replace unavoidable impacts to the public water when a major change in the resource is justified, by including provisions to compensate for the detrimental aspects of the change according to subpart 1a;

B. the proposed activities, their dimensional standards, the criteria used to issue or deny applications, and allowable locations are identified in the local plan;

C. adverse effects of the proposed activity on the physical and biological character of the area are subject to mitigation measures identified in the local plan;

D. the proposed activities are consistent with locally adopted controls;

E. the plan addresses enforcement procedures;

F. the plan includes procedures for the commissioner to reassume the permit authorities in parts 6115.0150 to 6115.0280 upon notice, if determined necessary by the commissioner or plan sponsor;

G. the local plan sponsor publishes a notice in the State Register identifying;

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## Proposed Rules

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(1) the local plan sponsor that is developing an alternative plan for regulation of public waters;

(2) the scope of activities and the location of the public waters impacted by the plan;

(3) the groups the local plan sponsor has been working with in the development of the plan;

(4) the name and address of the local plan sponsor who can be contacted for copies of the plan, and the name and address of the plan contact for the department; and

(5) a statement that the interested public has a time period of no less than 30 days in which to forward comments to the plan sponsor and the department plan contact for consideration before the plan sponsor submits the draft plan to the commissioner for approval;

H. when considering whether the plan should be approved, the commissioner shall determine that:

(1) the proposed plan, when not in conformity to parts 6115.0150 to 6115.0280, provides an explanation of how the proposed changes are justified;

(2) the public values provided by public waters subject to the plan are maintained or improved; and

(3) the proposed plan provides a mechanism for a periodic review of the plan contents and a procedure to revise the plan, if determined necessary by the commissioner and plan sponsor, or to terminate the plan upon notice being provided by either the plan sponsor or commissioner; and

I. nothing in the review of local plans proposed under this part shall be construed as prohibiting or discouraging a local plan from creating standards that are more restrictive than parts 6115.0150 to 6115.0280.

### **6115.0255 PUBLIC WATERS ENFORCEMENT PROCEDURES.**

Subpart 1. Enforcement options. Parts 6115.0150 to 6115.0280 may be enforced through one or any combination of the following authorities:

A. criminal proceedings under *Minnesota Statutes*, section 103G.141, subdivision 1;

B. orders of the commissioner under *Minnesota Statutes*, sections 103G.251 and 103G.315; and

C. cease and desist orders, restoration orders, and replacement orders under *Minnesota Statutes*, section 103G.2372.

The choice of enforcement authorities is dependent on the scope of the activity conducted without a public waters work permit.

Subp. 2. Enforcement authorities. The commissioner, conservation officers, and other peace officers may issue cease and desist orders and restoration and replacement orders according to *Minnesota Statutes*, section 103G.2372.

Subp. 3. Cease and desist orders.

A. Cease and desist orders may be issued when the enforcement authority has probable cause to believe that any activity is being or has been conducted in public waters without a valid permit from the commissioner.

B. A cease and desist order must not be issued if a landowner has documentation of a valid public waters work permit from the commissioner authorizing the work that was done or if a landowner has documentation proving that no permit is required.

C. The cease and desist order shall direct a landowner to:

(1) stop all work, conduct no further work, and take immediate corrective action to stabilize the site from imminent erosion or restore water flow if ordered by the enforcement authority; and

(2) immediately submit a written project application form to the area hydrologist.

D. The enforcement authority issuing a cease and desist order shall promptly submit copies of the order to the commissioner.

E. The commissioner or agent shall review the evidence, including any evidence produced by a landowner, inspect the site if necessary, and determine:

(1) whether the area in question is a public water;

(2) whether a public waters work permit is required; and

(3) whether a public waters work permit application should be submitted or whether a restoration order or replacement order should be issued immediately, if it is determined that a public waters work permit application submitted in response to the cease and desist order would be denied in its entirety for being inconsistent with parts 6115.0150 to 6115.0280.

F. Pending a resolution of any criminal proceedings, if it is determined that the activity does not require a permit or if a permit is issued, the commissioner or agent shall request that the enforcement authority rescind the cease and desist order, pending the outcome of any decision that is appealed, and notify the soil and water conservation district, the commissioner, and the landowner.

If the application is denied, the commissioner shall immediately notify the soil and water conservation district, the enforcement authority, and the landowner.

G. A cease and desist order must advise the landowner that violation of the order is a misdemeanor.

**Subp. 4. Restoration and replacement orders.**

A. If the commissioner or agent, with the concurrence of the enforcement authority, determines that restoration may not restore all the loss caused by the drain, excavate, structure, or fill activity, the enforcement authority may order restoration, a combination of restoration and replacement, or replacement rather than restoration.

B. The enforcement authority shall issue a restoration order or replacement order if:

(1) a cease and desist order has been issued and the landowner has not submitted a written project notification form to the area hydrologist within three weeks; or

(2) the commissioner has denied a permit application, determined that a permit application submitted for the activity subject to a cease and desist order would be denied in its entirety for being inconsistent with parts 6115.0150 to 6115.0280, or determined that some combination of restoration of the site and off-site restoration or replacement is necessary.

C. Promptly upon being informed of the need, the commissioner or agent shall inspect the site and prepare a plan for restoring the site. Restoration shall be ordered unless the commissioner or agent, with the concurrence of the enforcement authority, concludes that restoration would cause additional impairment or further degradation of the public water. The commissioner or agent shall incorporate the restoration plan into a restoration order and send it to the enforcement authority for service in person or by certified mail to the landowner.

D. A restoration order must specify a date by which the landowner must restore the public waters according to the commissioner's plan and obtain a certificate of satisfactory restoration from the commissioner or agent.

E. A replacement order must specify a date by which the landowner must submit a replacement plan to the commissioner and a subsequent date by which the landowner must replace the public waters and obtain a certificate of satisfactory replacement from the commissioner or agent.

F. A restoration or replacement order must advise the landowner that violation of the order is a misdemeanor.

G. If, as part of a misdemeanor proceeding, the court orders restoration or replacement, the commissioner or agent, with the concurrence of the enforcement authority, shall determine which is appropriate, and if it is restoration, the method of restoration. If the court orders replacement, the landowner must follow the replacement plan ordered by the commissioner or agent.

H. If a landowner seeks approval of a public waters work permit after the proposed project has already impacted the public water, the commissioner may require the landowner to replace the impacted public water at a ratio not to exceed twice the replacement ratio otherwise required.

**Subp. 5. Appeals of replacement and restoration orders.**

A. A landowner may appeal the terms and conditions of a restoration or replacement order issued under subparts 2 to 4, to the commissioner, within 30 days of receipt of written notice by filing a written request for review. If the written request is not submitted within 30 days, the restoration or replacement order becomes final. The commissioner shall review the request and supporting evidence and render a decision within 60 days of the request for review.

B. If a landowner wishes to appeal the decision of the commissioner after review under item A, the landowner must file a written request within 30 days for a contested case hearing under *Minnesota Statutes*, chapter 14. The demand for hearing must be accompanied by a bond as required under *Minnesota Statutes*, section 103G.311, subdivision 6.

**6115.0260 STATUTORY REQUIREMENTS.**

Further provisions for the administration of ~~these rules~~ parts 6115.0150 to 6115.0280 are found in *Minnesota Statutes*, chapter ~~105~~ 103G, including but not limited to sections ~~105.44 to 105.463, 105.541, and 105.55~~ 103G.135, 103G.141, 103G.241, 103G.251, 103G.295, 103G.301, 103G.305, 103G.311, and 103G.315.

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## Proposed Rules

### 6115.0270 DRAINAGE OF ~~PROTECTED~~ PUBLIC WATERS.

Subpart 1. **Goals.** It is the goal of the department to protect and preserve ~~protected~~ public waterbasins and public water wetlands from damage or destruction by drainage.

Subp. 2. **Scope.** Parts 6115.0270 to 6115.0272 relate to the partial drainage or temporary drawdown of ~~protected~~ public waterbasins and public water wetlands for all purposes except mining of metallic or nonmetallic minerals which are subject to provisions of part 6115.0280.

Subp. 3. **Nonpermitted Prohibited activity.** ~~Except as provided in Minnesota Statutes, section 105.391, subdivision 3, The per-~~ man or total drainage of ~~protected~~ public waterbasins and public water wetlands ~~shall not be permitted~~ is prohibited.

Subp. 4. **Permits required.** A permit ~~shall be~~ is required for the partial drainage or temporary drawdown of ~~protected~~ public waterbasins and public water wetlands and shall be granted ~~provided~~ if all of the following conditions are met:

A. the proposed project is intended to achieve one or more of the following purposes:

(1) improve navigational or recreational uses;

(2) improve or restore fish or wildlife habitat;

(3) expose sediment in order to remove or eliminate nutrients or contaminants;

(4) alleviate flooding of agricultural lands caused by artificial obstruction of downstream drainage or increased upstream discharge; or

(5) allow the mining of iron ore, taconite, copper, copper-nickel, or nickel under ~~the provisions of Minnesota Statutes, section 105.64, 103G.297;~~

B. the project will involve a minimum of encroachment, change, or damage to the environment, including but not limited to fish and wildlife habitat, navigation, water supply, water quality, and storm water retention;

C. adverse effects on the physical or biological character of the waters ~~shall be~~ are subject to feasible and practical measures to mitigate the effects;

D. the proposed project ~~shall be~~ is consistent with applicable floodplain, shoreland, and wild and scenic rivers management standards and ordinances for the waters involved; and

E. the proposed project ~~shall be~~ is consistent with water and related land management plans and programs of local and regional governments, provided such plans and programs are consistent with state plans and programs.

### 6115.0271 SPECIFIC STANDARDS; DRAINAGE.

In addition to compliance with the general standards in part 6115.0270, subparts 2 to 4, specific requirements for drainage or drawdown activities shall be met as follows:

A. the drainage or diversion of ~~protected~~ public waters for mining iron ore, taconite, copper, copper-nickel, or nickel shall be ~~permitted~~ approved only ~~where~~ when all of the provisions of *Minnesota Statutes*, section ~~105.64~~ 103G.297 and part 6115.0280 have been met;

B. the drainage or diversion of ~~protected~~ public waters for mining all other metallic and nonmetallic minerals shall be ~~permitted~~ approved only when the ~~protected~~ public waters being drained are replaced by ~~protected~~ public waters ~~which~~ that will have equal or greater public value, subject to provisions of part 6115.0280; and

C. all other drainage or diversion of ~~protected~~ public waters allowed in part 6115.0270, subparts 2 to 4, shall be ~~permitted~~ ~~pro-~~ vided approved if all of the following specific criteria are met:

(1) for ~~protected~~ public waterbasins and public water wetlands, permits ~~will~~ shall be issued only to governmental agencies having the authority to undertake such projects. In addition, a public need for the partial drainage or temporary drawdown shall be established by specifying the public interests to be enhanced;

(2) written consent for the partial drainage or temporary drawdown of ~~protected~~ public waterbasins and public water wetlands ~~has been~~ is obtained from all riparian owners ;

(3) partial drainage or temporary drawdown of ~~protected~~ public waterbasins and public water wetlands shall be ~~permitted~~ approved only ~~where~~ when the applicant has submitted data to confirm:

(a) that the partial drainage will improve navigation or recreational uses;

(b) that the partial drainage will improve or restore fish and wildlife habitat; or

(c) that agricultural lands have been flooded due to artificial obstruction of downstream drainage or increased upstream discharge;

- (4) any proposed temporary drawdown shall not exceed two years in duration under normal climatic conditions;
- (5) there are no feasible and practical means to attain the intended purpose without drainage; and
- (6) the proposal ~~will~~ adequately ~~protect~~ protects public safety and ~~promote~~ promotes the public welfare.

**6115.0280 ALTERATIONS OF ~~PROTECTED~~ PUBLIC WATERS FOR MINING.**

[For text of subs 1 and 2, see M.R. 1999]

Subp. 3. **Permits required for alterations of ~~protected~~ public waters.** Permits ~~shall be~~ are required for any alterations of ~~protected~~ public waters to facilitate mining of iron ore, taconite, copper, copper-nickel, or nickel minerals or reclamation of mining areas provided that:

A. permits to mine ~~shall be~~ are obtained when required by *Minnesota Statutes*, ~~section~~ sections 93.44 to 93.51; and

B. permits for alterations in ~~protected~~ public waters shall be granted ~~in accordance with provisions of~~ according to *Minnesota Statutes*, section ~~105.64~~ 103G.297. Applications for permits for alterations in ~~protected~~ public waters shall include an analysis showing why underground mining without drainage, diversion, or control of ~~protected~~ public waters is not feasible or economical.

Subp. 4. **Permit required for mining of certain minerals and peat.** Permits ~~shall be~~ are required for mining of nonmetallic minerals, peat, and other metallic minerals not regulated in *Minnesota Statutes*, section ~~105.64~~ 103G.297, or reclamation of mining areas ~~provided that~~ and shall be granted if the applicant provides evidence that:

[For text of items A to G, see M.R. 1999]

H. whenever ~~protected~~ public waterbasins and public water wetlands are allowed to be drained to facilitate mining, and such drainage is justified and legally permitted, compensation for the loss of the basin ~~must be~~ is provided for by either:

(1) immediate replacement of the ~~protected basin~~ public waterbasins and public water wetlands with waters of equal or greater value; or

(2) submission of acceptable plans for the eventual replacement of the ~~protected basin~~ public waterbasins and public water wetlands with waters of equal or greater value upon cessation of mining activities; and

[For text of item I, see M.R. 1999]

[For text of subp 5, see M.R. 1999]

**TERM CHANGES.** The term “protected water” or “protected waters” shall be changed to “public water” or “ public waters” wherever it appears in *Minnesota Rules*, parts 6115.0150 to 6115.0280. The term “protected watercourse” shall be changed to “public watercourse” wherever it appears in *Minnesota Rules*, parts 6115.0150 to 6115.0280. The term “protected waterbasin” shall be changed to “public waterbasin” wherever it appears in *Minnesota Rules*, parts 6115.0150 to 6115.0280.

**REPEALER.** *Minnesota Rules*, parts 6115.0170, subparts 26 and 36; 6115.0191, subpart 2; and 6115.0211, subpart 2, are repealed.

**EFFECTIVE DATE.** The amendments to *Minnesota Rules*, parts 6115.0150 to 6115.0280, and the repealer are effective August 1, 2002.

**INCORPORATION BY REFERENCE:** Part 6115.0250, subpart 5: *Classification of Wetlands and Deepwater Habitats of the United States*, Lewis M. Cowardin et al., United States Department of the Interior, Fish and Wildlife Service (1979); and *Guidelines for Ordinary High Water Level (OHWL) Determinations*, John Scherek and Glen Yakel, Minnesota Department of Natural Resources, Division of Waters (June 1993). Available through Minitex interlibrary loan system.

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## Proposed Rules

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### Department of Public Safety

#### Driver and Vehicle Services Division

#### Proposed Permanent Rules Relating to Driver Examinations, and

#### Proposed Permanent Rules Relating to Loss of Driving Privilege

**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 a Hearing are Received**

**Proposed Permanent Rules Relating to Driver Examination, *Minnesota Rules*, Parts 7410.4000 to 7410.5600**

**Proposed Amendments to Permanent Rules Relating to Loss of Driving Privilege, *Minnesota Rules*, Chapter 7409 and Repeal of Parts 7409.0400, subparts 1 and 2; 7409.0500; 7409.2400, subpart 3; 7409.3000, subparts 2, 3 and 4; 7409.3100; 7409.3200; and 7409.4600, subpart 5**

**Introduction.** The Minnesota Department of Public Safety, Driver and Vehicle Services Division intends to adopt rules without a public hearing following the procedures set forth in the Administrative Procedures 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 within 30 days or by 4:30 p.m. on June 19, 2002, a public hearing will be held in Room 5 of the State Office Building, 100 Constitution Avenue, St. Paul, Minnesota, starting at 9 a.m. on July 1, 2002. To find out if the rules will be adopted without a hearing or if the hearing will be held, contact the agency contact person after June 19, 2002 and before July 1, 2002.

**Agency Contact Person.** Comment or questions on the proposed rules and written requests for a public hearing on the proposed rules must be submitted to the agency contact person. The agency contact person is: Jane A. Nelson, Minnesota Department of Public Safety, Driver and Vehicle Services Division, 445 Minnesota Street, Suite 196, St. Paul, Minnesota 55101-5196. **Phone:** (651) 296-2608. **Fax:** (651) 296-3141. **TTY** users may call the Department of Public Safety at (651) 282-6555.

**Subject of rules and statutory authority: Driver examination, parts 7410.4000 to 7410.5600.**

The proposed rules in parts 7410.4000 to 7410.5600 make known the generally-applied examination procedures of DVS and the generally-applied test waiver procedures and criteria. The proposed rules:

- describe the driving tests administered by the agency;
- delineate what is generally required for knowledge, skill and road tests and endorsements;
- specify that proper identification is required at the time of test administration;
- indicate what tests are required and which are waived for license reinstatement after the loss of driving privileges;
- address the use of reference materials and interpreters, test review, passing scores, events resulting in test failure, and repeating tests,
- delineate vehicle requirements and condition for taking road or skills tests,
- specify when tests will be waived or a variance granted for a case-specific waiver.

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 on request from the agency contact person listed above.

Statutory authority for the proposed amendments is found in *Minnesota Statutes*, section 14.06, 171.13, 171.04, 171.13, 171.165 and 299A.01.

**Subject of Rules and Statutory Authority: Chapter 7409 Loss of Driving Privileges.** Chapter 7409 pertains to the loss of driving privileges when the incident resulting in the loss does not involve the use of alcohol or a controlled substance. Most of the amendments reflect current agency practice.

The proposed amendments:

- allow for the electronic transmission of information and notices;
- make rule terms consistent with terms used in state law or federal regulations;
- implement recent changes in state driving law; and place into rule longstanding agency practices of general applicability that could be subject to petition.

The proposed amendments to Chapter 7409 address:

- commercial drivers licensure where the federal mandate imposes a withdrawal period with a range;



- penalties for class D licensed drivers;
- vehicular homicide or injury resulting from the operation of a motor vehicle;
- revocation and fleeing from a peace officer in a motor vehicle;
- felony convictions where a motor vehicle was used;
- multiple offenses, license withdrawals and habitual violators;
- insurance-related offenses;
- violations resulting in fatality or personal injury;
- suspension for school bus violations;
- limited licenses; waivers and variances and
- reinstatement after revocation, suspension or cancellation.

The proposed repealer consolidate the criteria and procedures for administrative hearings and reviews and eliminate the requirement for license surrender. In addition part 7409.2400, subpart 3 is repealed because it is not consistent with the minimum revocation periods in statute. Part 7409.3000, subparts 2, 3 and 4 because the issue of concurrent withdrawal periods is generally addressed in subpart 1. Parts 7409.3100 and 7409.3200 are proposed for repeal because the standards are now addressed in statute. Part 7409.4600, subpart 5 is proposed for repeal because the concept of a driver improvement agreement is addressed under new proposed part 7409.4700.

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 on request from the agency contact person listed above.

Statutory authority for the proposed amendments is found in *Minnesota Statutes*, section 14.06, 169.792, 169.795, 169.798 and 299A.01.

**Comment.** You have until 4:30 p.m. on June 19, 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 comment 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 comment 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 comment, 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 June 19, 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 for 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 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 comment on this action. If a public hearing is required, the agency will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20.

**Accommodation.** If you need an accommodation to make the 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 the proposed rules unless the procedures under part 1400.2110 has been followed. 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 July 1, 2002 on these rules will be cancelled if the agency does not receive requests from 25 or more persons that a hearing be held on these 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) 296-2608 after June 19, 2002 to find out whether the hearing will be held.

<p><b>KEY: PROPOSED RULES SECTION</b> — <u>Underlining</u> indicates additions to existing rule language. <del>Strike outs</del> indicate deletions from existing rule language. If a proposed rule is totally new, it is designated “all new material.” <b>ADOPTED RULES SECTION</b> — <u>Underlining</u> indicates additions to proposed rule language. <del>Strike outs</del> indicate deletions from proposed rule language.</p>
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## Proposed Rules

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**Notice of Hearing.** If 25 or more persons submit written requests for a public hearing on these 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 Barbara Neilson is assigned to conduct the hearing. Judge Neilson can be reached at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota 55401-2138, **phone:** (612) 341-7604, 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 response period during which the agency and any interested person may respond in writing to any new information submitted. No additional evidence may be submitted during the five-day response period. All 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. 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 response period also submit a copy of the written views or data to the agency contact person at the address stated above.

**Statement of Need and Reasonableness.** A statement of need and reasonableness is now available from the agency contact person. This statement 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 about this requirement may be directed to the Campaign Finance and Public Disclosure Board at: First Floor South, Centennial Building, 658 Cedar Street, St. Paul, Minnesota, 55155, **phone:** (651) 296-5146 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: 6 May 2002

Charles R. Weaver, Jr. Commissioner  
Minnesota Department of Public Safety

### DRIVER EXAMINATIONS GENERALLY

#### **7410.4000 DRIVER'S TESTS; PURPOSE AND SCOPE.**

The purpose of parts 7410.4000 to 7410.5600 is to specify the driver's tests and standards for administering the driver's tests as required to issue a Minnesota driver's license, instruction permit, or license endorsement.

#### **7410.4100 DEFINITIONS.**

Subpart 1. Scope. The terms used in parts 7410.4000 to 7410.5600 have the meanings given them in this part.

Subp. 2. Commercial motor vehicle. "Commercial motor vehicle" has the meaning given in *Minnesota Statutes*, section 171.01, subdivision 22.

Subp. 3. Commissioner. “Commissioner” means the commissioner of the Minnesota Department of Public Safety or authorized examiners or agents of the commissioner.

Subp. 4. Department. “Department” means the Minnesota Department of Public Safety, Driver and Vehicle Services Division.

Subp. 5. Knowledge test. “Knowledge test” means a written, electronic, digital, audio, or oral form of examination used for evaluating a person’s understanding of specific subject matter.

Subp. 6. License. “License” has the meaning given in *Minnesota Statutes*, section 171.01, subdivision 14.

Subp. 7. Motorcycle. “Motorcycle” has the meaning given in *Minnesota Statutes*, section 171.01, subdivision 17.

Subp. 8. Motorized bicycle. “Motorized bicycle” has the meaning given in *Minnesota Statutes*, section 171.01, subdivision 20.

Subp. 9. Motor vehicle. “Motor vehicle” has the meaning given in *Minnesota Statutes*, section 171.01, subdivision 3.

Subp. 10. Record of examination. “Record of examination” means the prescribed format used by the commissioner to score and record test results.

Subp. 11. Road test or skills test. “Road test” or “skills test” means the actual physical demonstration of the ability to exercise ordinary and reasonable control in the operation of a motor vehicle.

Subp. 12. School bus. “School bus” has the meaning given in *Minnesota Statutes*, section 171.01, subdivision 21.

Subp. 13. State. “State” has the meaning given in *Minnesota Statutes*, section 171.01, subdivision 15, except that for the issuance of a license to drive a commercial motor vehicle, state has the meaning given in *Code of Federal Regulations*, title 49, section 387.5.

#### **7410.4200 EXAMINATION REQUIREMENTS GENERALLY; CONTENTS.**

Subpart 1. Authorized examiners. Each applicant for a Minnesota driver’s license must be examined by the commissioner according to *Minnesota Statutes*, section 171.13.

Subp. 2. Examining applicants for every driver’s license. The driver examination must test or demonstrate the applicant’s:

A. eyesight;

B. ability to read and understand highway signs regulating, warning, and directing traffic;

C. knowledge of Minnesota traffic laws;

D. knowledge of the effects of alcohol and drugs on a driver’s ability to operate a motor vehicle safely and legally, and the legal penalties and financial consequences resulting from violations of laws prohibiting the operation of a motor vehicle while under the influence of alcohol or drugs;

E. knowledge of railroad grade-crossing safety;

F. knowledge of slow-moving vehicle safety;

G. knowledge of traffic laws related to bicycles;

H. ability to exercise ordinary and reasonable control in operating a motor vehicle; and

I. safe driving practices.

#### **7410.4220 SCHOOL BUS ENDORSEMENTS.**

Applicants for a school bus endorsement on the driver’s license must be examined according to chapter 7414.

#### **7410.4240 COMMERCIAL DRIVER’S LICENSE AND COMMERCIAL LICENSE ENDORSEMENT.**

An applicant for a commercial driver’s license used to operate a commercial motor vehicle and an applicant for the commercial endorsements of hazardous materials, double or triple trailers, passenger, and tanker must be examined according to *Code of Federal Regulations*, title 49, part 383.

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## Proposed Rules

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### **7410.4300 IDENTIFICATION REQUIRED.**

Subpart 1. Documentation required. The applicant for a driver's license must present documentation of proof of full name, date of birth, and identity as specified in part 7410.0400 to the commissioner before taking any knowledge test, road test, or skills test.

Subp. 2. Failure to present complete documentation for testing. If the applicant fails to present complete identification at the time of initial examination but has at least a primary identity document as described in part 7410.0400, subpart 2, the commissioner shall administer the test and hold it for up to 30 days at the examination site until the applicant provides complete identification indicating full name, date of birth, and identity.

Subp. 3. Failure to present complete documentation within 30 days. If the applicant does not present complete documentation within 30 days, the commissioner shall void the test.

### **7410.4400 DETERMINING DRIVER ABILITY OR FITNESS.**

Subpart 1. Additional examination; reexamination. The commissioner is authorized to administer other competency, physical, and mental examinations according to this part and *Minnesota Statutes*, section 171.13, as the commissioner finds necessary to determine the applicant's fitness to operate a motor vehicle safely upon the streets or highways.

Subp. 2. Physical and mental examinations. Physical and mental examinations are required according to parts 7410.2100 to 7410.3000.

Subp. 3. Reasonable cause for reexamination. The commissioner may, on a case-specific basis, require reexamination of a licensed driver to determine the individual's ability to exercise reasonable and ordinary control over a motor vehicle upon streets and highways if the commissioner has reasonable cause to believe the individual does not have knowledge of Minnesota traffic laws or cannot exercise reasonable and ordinary control over a motor vehicle.

Subp. 4. Equivalent examination from another state. If the commissioner determines or has reasonable cause to believe an applicant has not passed an equivalent examination in another state, the commissioner shall require examination of the applicant's ability to understand highway signs that regulate, warn, and direct traffic, ability to understand traffic laws, and ability to operate a motor vehicle safely and legally.

## **KNOWLEDGE TESTING**

### **7410.4500 KNOWLEDGE TESTS; GENERAL REQUIREMENTS.**

Subpart 1. Knowledge test specific for specific vehicle. A knowledge test must examine an applicant's understanding of traffic laws, signs, and procedures specific to each type of vehicle for which the applicant desires to be licensed or to receive endorsement.

Subp. 2. Class D driver's license. A class D knowledge test must be passed to obtain a class D instruction permit or driver's license, or to reinstate a license that was revoked for offenses other than alcohol- or controlled substance-related offenses.

#### Subp. 3. Commercial driver's license.

A. A commercial driver's license general knowledge test must be passed to obtain a commercial driver's license.

B. Depending on the type and class of vehicle to be driven and endorsements desired, additional commercial license knowledge tests include:

- (1) a pretrip knowledge test;
- (2) an air brake knowledge test;
- (3) a combination vehicle knowledge test;
- (4) a double or triple trailer knowledge test;
- (5) a passenger knowledge test;
- (6) a tanker knowledge test;
- (7) a school bus knowledge test; and
- (8) a hazardous materials knowledge test.

Subp. 4. Motorcycle endorsement or instruction permit. A motorcycle knowledge test must be passed to obtain a motorcycle instruction permit or motorcycle endorsement on the driver's license.

Subp. 5. Motorized bicycle permit. A motorized bicycle knowledge test must be passed to obtain a 30-day motorized bicycle operator's instruction permit or a motorized bicycle operator's permit.

**7410.4520 KNOWLEDGE TEST FOR DRIVER'S LICENSE REINSTATEMENT.**

An applicant who applies for license reinstatement after a loss of driving privileges for an alcohol- or controlled substance-related offense under former or current *Minnesota Statutes*, section 169.121, 169.123, 169A.20, 169A.52, 169A.54, or 171.17, must pass a test of the applicant's knowledge of:

- A. the effects of alcohol and other drugs on the driver's ability to operate a motor vehicle safely and legally; and
- B. the legal penalties and financial consequences resulting from violations of laws prohibiting the operation of a motor vehicle while under the influence of alcohol or other drugs.

**7410.4540 KNOWLEDGE TEST ADMINISTRATION.**

Subpart 1. Uniform practices. The commissioner shall practice the same testing procedures at all examination sites.

Subp. 2. Application identification required. All applicants must present identification before taking a knowledge test as required in part 7410.4300.

Subp. 3. Classroom completion required for minor.

A. Before taking a knowledge test, all previously unlicensed applicants under the age of 18 must provide proof to the commissioner of having completed the classroom phase of a department-approved driver's education program.

B. Proof of having completed the classroom course is satisfied by presenting a fully completed, department-authorized certificate of enrollment, with the signature of an authorized official of a department-approved or -licensed driver's education program, or presenting proof of completion in an electronic format specified by the commissioner.

C. If the applicant completed driver's education in another state, an official letter or written or electronically transmitted form attesting to completion of training comparable to Minnesota's requirements and verified by a public, private, or commercial school authority is acceptable proof of completion.

D. If an applicant under the age of 18 already has a permit from another state, the knowledge test may be taken to convert the permit to a Minnesota permit and proof of completion of both the required classroom and behind-the-wheel training must be presented to the commissioner before the road test may be taken.

E. After passing the knowledge test, applicants who are required or desire to obtain an instruction permit shall apply as required by *Minnesota Statutes*, section 171.06.

**7410.4560 COMMERCIAL DRIVER'S LICENSE KNOWLEDGE TEST.**

Subpart 1. Identification required. An applicant may take a commercial driver's license knowledge test only after presenting to the commissioner the identification required in part 7410.4300.

Subp. 2. Additional requirement for instruction permit. An applicant who passes the required knowledge tests and desires a Minnesota commercial motor vehicle instruction permit must have an accompanying valid Minnesota driver's license of a class lower than the class of driver's license required to operate the vehicle for which a permit is desired.

Subp. 3. Federal requirements for instruction permit.

A. A Minnesota record of examination marked as a commercial motor vehicle instruction permit requires additional validation as described in *Code of Federal Regulations*, title 49, section 383.73.

B. The permit is not valid until a check is completed of national driver license information system records.

C. An applicant must provide the department with the information in this item to initiate the records check:

- (1) full name and date of birth;
- (2) Minnesota driver's license number, if available; and
- (3) social security number.

**7410.4580 MOTORCYCLE KNOWLEDGE TEST.**

Subpart 1. General requirement. A motorcycle knowledge test must be given to an applicant for a motorcycle endorsement if the applicant satisfies the requirements in this part.

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## **Proposed Rules**

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Subp. 2. Prerequisite. The applicant must have either a valid out-of-state driver's license or a valid Minnesota driver's license.

Subp. 3. Additional requirement for minor. An applicant under the age of 18 shall provide proof of having completed a department-approved, two-wheeled vehicle driver's safety course. Proof is satisfied by presenting a fully completed, department-authorized certificate of enrollment with a signature of an authorized official of a licensed or approved driver education program or proof in an electronic format approved by the commissioner.

### **7410.4600 MOTORIZED BICYCLE OPERATOR'S PERMIT.**

Before taking a knowledge test:

A. An applicant for the motorized bicycle operator's permit must provide to the commissioner proof of having completed a department-approved motorized bicycle safety course. Proof is satisfied by presenting a fully completed, department-authorized certificate of completion with an authorized signature of an authorized official of a licensed or approved driver education program, or by presenting proof of course completion in an electronic format specified by the commissioner.

B. An applicant shall also provide, if the applicant is under the age of 18, a completed affidavit for motorized bicycle operator's permit signed by the applicant's parent or guardian. The signature must either be witnessed by the commissioner or be notarized.

### **7410.4700 USE OF REFERENCE MATERIAL PROHIBITED.**

Except for an unmarked dictionary, no reference materials, notes, consultations, or electronic devices are allowed during a test. Tests must not be distributed as practice samples. An applicant may not take notes during a test.

### **7410.4720 TEST REVIEW.**

A. An applicant's test may be seen and reviewed only by the applicant and the commissioner.

B. An applicant's test may not be seen or reviewed by a parent, teacher, or other person, except as provided in part 7410.4740.

C. Tests may not be copied, duplicated, or distributed.

D. An applicant's test may be reviewed at a time convenient to the commissioner.

### **7410.4740 USE OF INTERPRETER.**

A. A foreign language interpreter may be used to facilitate an examination under the following conditions:

(1) the interpreter is approved by the commissioner;

(2) the interpreter is provided at the request and expense of the applicant;

(3) the interpreter only translates information authorized by the commissioner; and

(4) the interpreter does not retain a copy of any test nor marks a test paper for the applicant.

B. Upon request, the commissioner shall arrange for an interpreter for a hearing-impaired applicant.

### **7410.4760 PASSING SCORE.**

A knowledge test is satisfactorily passed if a score of at least 80 percent is obtained.

### **7410.4780 REPEAT TESTING.**

Any type of knowledge test may be attempted only once per day by an applicant with a minimum wait time between tests of not less than one calendar day.

## **ROAD OR SKILLS TESTING**

### **7410.4800 ROAD AND SKILLS TESTS GENERALLY.**

Road and skills tests must be administered on road or range conditions and encompass a variety of driving situations as specified by the commissioner.

### **7410.4820 CLASS D MOTOR VEHICLE ROAD TEST.**

The road test for a class D vehicle, as defined in *Minnesota Statutes*, section 171.02, must include a demonstration of the applicant's ability to:

A. perform a vehicle equipment check that includes seatbelt, emergency brake, headlights, hazard warning lights, horn, windshield wipers, windshield defroster and fan, mirrors, window glass, and the location of proof of insurance;

B. start, control, and stop the vehicle, including a correct use of transmission;

- C. parallel park;
- D. park and start on a hill;
- E. back up the vehicle;
- F. observe and respond to traffic and road conditions, traffic signs, and signals;
- G. signal and use lanes correctly for right and left turns;
- H. move between lanes and use marked and unmarked lanes correctly; and
- I. yield the right-of-way to other drivers and pedestrians when required.

**7410.4840 COMMERCIAL MOTOR VEHICLE ROAD TEST.**

A. The road test in a commercial motor vehicle for a commercial driver's license must include a pretrip vehicle inspection, a demonstration of basic vehicle control skills, and a demonstration of street driving skills.

B. The type of pretrip vehicle inspection depends on the vehicle used for the road test.

(1) An applicant testing in a class A or B vehicle that is not a school bus must pass a pretrip knowledge test.

(2) A pretrip vehicle inspection is not required for an applicant testing in a class C motor vehicle that is not a school bus; however, the commissioner shall conduct a vehicle inspection to determine if the test vehicle meets the safety standards in part 7410.5140, 7410.5160, 7410.5180, or 7410.5200, as applicable.

(3) An applicant for a school bus endorsement must pass a complete walk-around vehicle inspection of the school bus during which the operation of all warning, safety, and major mechanical systems must be accurately demonstrated.

(4) If the test vehicle is equipped with air brakes, the pretrip vehicle inspection described in *Code of Federal Regulations*, title 49, section 383.113, must be passed.

C. The basic vehicle control skills portion of the commercial driver's license road test must include a forward stop for accuracy, straight-line backing up, and a loading dock maneuver that tests the driver's ability to execute a sight-side backup and to turn the vehicle.

D. The street driving skills portions of the commercial driver's license road test must include a demonstration of the same skills required for class D testing specified in subpart 2. Additionally, the applicant must demonstrate visual search and speed and space management techniques necessary for the safe operation of large and heavy commercial motor vehicles.

**7410.4860 MOTORCYCLE ENDORSEMENT SKILLS TEST.**

The skills test required to add a motorcycle endorsement to a Minnesota driver's license is subject to the approval of the commissioner. The test must consist of exercises that measure basic vehicle control and hazard-response skills.

**7410.4880 SKILLS TEST FOR MOTORIZED BICYCLE OR THREE-WHEEL MOTORCYCLE.**

Subpart 1. Basic skills demonstrated. The skills test required to obtain a motorized bicycle operator's permit must consist of maneuvers that demonstrate basic vehicle control and street riding skills.

Subp. 2. Required for three-wheel motorcycle restriction. The skills test must also be used for applicants testing to add a three-wheeled motorcycle restriction to a Minnesota driver's license.

Subp. 3. Abilities required. The test must include the ability to:

- A. start and stop the vehicle, and quickly stop the vehicle in an emergency situation;
- B. turn complete circles to both the left and right within the confines of a single traffic lane;
- C. signal and use lanes correctly for right and left turns;
- D. change lanes safely and legally;
- E. observe and respond to traffic and road conditions, traffic signs, and signals; and
- F. yield the right-of-way to other drivers and pedestrians when required.

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## Proposed Rules

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### **7410.4900 ROAD OR SKILLS TEST ADMINISTRATION; GENERAL REQUIREMENTS.**

Subpart 1. Uniform practices. The commissioner shall practice the same testing procedures at all examination sites.

Subp. 2. Appropriate vehicle required.

A. A road or skills test must be administered in a motor vehicle representative of the class, as defined in *Minnesota Statutes*, section 171.02, for which the applicant seeks licensure or endorsement.

B. The road test for a school bus endorsement must be administered in the type of school bus described in the endorsement category in part 7414.0350 that the applicant wants to obtain.

Subp. 3. Identification required. All applicants, when reporting for a road or skills test, must provide identification as required in part 7410.4300, to an authorized examiner of the commissioner.

Subp. 4. Proof of satisfactory vision. All applicants, when reporting for a road or skills test, must provide proof of satisfactory vision as described in part 7410.2400. Proof is either:

A. presentation of a record of examination with successful vision screening results issued within the last two years;

B. passing a vision screening at a Minnesota examination site;

C. presenting a completed, department-approved vision certificate; or

D. proof in an electronic format specified by the commissioner.

### **7410.4920 ROAD TEST FOR CLASS D LICENSE.**

Subpart 1. Proof required before taking test.

A. When reporting for the class D driver's license road test, the applicant must provide proof of having passed the class D knowledge test.

B. Proof is satisfied by presenting:

(1) a Minnesota instruction permit that is either currently valid or is expired for less than one year;

(2) a record of examination issued within the last two years;

(3) a duplicate copy of the record of examination from the original examination location; or

(4) proof in an electronic format specified by the commissioner.

C. Photocopies are not acceptable unless they have an examination site verification and are signed by personnel from the issuing examination station.

D. Facsimile copies are acceptable only if sent by fax from one examination station to another.

Subp. 2. When proof not required. Proof of having passed a knowledge test is not required if:

A. the applicant has a letter or notice from the department stating that only the road test is required;

B. the currently licensed applicant takes a voluntary road test; or

C. a road test is required to remove a physical or area restriction.

Subp. 3. Additional proof required for minor.

A. A person under the age of 18 reporting for the class D driver's license road test shall also provide proof of having completed a full course of a department-approved or -licensed driver's education program.

B. Proof is satisfied by presenting a fully completed, department-authorized certificate of completion, with the signature of the program's authorized official, or by an electronic format specified by the commissioner.

C. If an applicant under the age of 18 completed the driver's education program in another state, the commissioner shall accept an official letter, written or in electronic form, attesting to completion of training comparable to Minnesota's requirement and verified by a public, private, or commercial school authority.

Subp. 4. Additional proof required for novice driver.

A. A novice driver reporting for the class D driver's license road test shall also provide proof of having possessed an instruction permit for the time requirement stated in *Minnesota Statutes*, section 171.05.

B. The applicant shall provide an instruction permit showing it was held for the minimum period of time specified in *Minnesota Statutes*, section 171.05.

C. If the permit does not indicate compliance with the minimum time periods required, then the commissioner shall verify the length of time the permit was held.

D. If the commissioner is not able to verify the time the permit was held, then the novice driver shall provide a certified copy of a driving record that proves the original permit issue date.

E. A certified driving record from the previous state is required at the time of the road test if any portion of the permit waiting period includes time using an out-of-state permit for practice.

#### **7410.4940 AFFIDAVIT FOR RESTRICTED LICENSE FOR FARM WORK.**

If testing for a restricted farm work driver's license, the applicant shall provide the commissioner with a copy of a property tax statement or rental agreement, and a written statement verifying the necessity for a license as required in *Minnesota Statutes*, section 171.041. A farm work license affidavit, signed by the applicant's parent or guardian and either signed in the presence of the commissioner or notarized, must be used as the statement verifying the necessity for licensure under *Minnesota Statutes*, section 171.041.

#### **7410.4960 ROAD TEST FOR RESTRICTED LICENSE FOR MEDICAL REASON.**

If an applicant is testing for a restricted driver's license for a medical reason as described in *Minnesota Statutes*, section 171.042, the applicant must present authorization from the department authorizing the road test and stating the driving limitations. The commissioner shall authorize testing after receiving:

A. a written statement from the applicant's parent or guardian that is signed in the presence of the commissioner or notarized, indicating a medical need; and

B. a written doctor's statement indicating a need for a restricted medical license.

#### **7410.4980 PROOF REQUIRED FOR MOTORCYCLE SKILLS TEST.**

Subpart 1. Proof of knowledge test. When reporting for the motorcycle skills test, an applicant must provide proof of having passed a motorcycle knowledge test. Proof is satisfied by the presentation of a written or electronically transmitted record of examination issued within the last two years, or a motorcycle instruction permit that is valid or expired less than one year.

Subp. 2. Additional requirement for minor. If under the age of 18, a person applying to take the motorcycle skills test shall also provide a completed, department-authorized certificate of completion, signed by an authorized official of a department-approved or -licensed driver's education program motorcycle course, or the certificate of completion in an electronic format specified by the commissioner.

#### **7410.5000 PROOF REQUIRED FOR MOTORIZED BICYCLE SKILLS TEST OR THREE-WHEEL MOTORCYCLE RESTRICTION.**

##### Subpart 1. Proof of knowledge test.

A. When reporting for the motorized bicycle skills test or to add a three-wheel motorcycle restriction to a Minnesota driver's license, the applicant shall provide proof of having passed either:

(1) a motorcycle knowledge test according to part 7410.4980; or

(2) the motorized bicycle knowledge test.

B. Proof is satisfied by the presentation of a motorized bicycle operator's instruction permit that is valid or expired less than one year, or a record of examination that was issued within the last two years.

Subp. 2. Additional requirement for minor. If under the age of 18, a person applying to take the motorized bicycle skills test shall also provide a completed affidavit for a motorized bicycle operator's permit signed by the applicant's parent or guardian in the presence of the commissioner or notarized.

Subp. 3. Fee. If previously issued a motorized bicycle operator's instruction permit, a person applying to take the motorized bicycle skills test shall pay the examination and permit fee required by *Minnesota Statutes*, section 171.02. An applicant who has paid an examination fee but was not issued a motorized bicycle operator's instruction permit is not required to pay the operator's permit fee at the time of the skills test.

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Subp. 4. Restriction on driver's license for minor. An applicant shall also provide a certificate of completion of an approved motorcycle course if:

A. the applicant is under the age of 18; and

B. the motorized bicycle skills test is being administered for the purpose of adding a three-wheeled motorcycle operator restriction to a Minnesota driver's license.

### **7410.5020 PROOF REQUIRED FOR COMMERCIAL DRIVER'S LICENSE ROAD TEST.**

When reporting for a commercial driver's license road test, the applicant must provide a record of examination issued within the last two years as proof of having passed all knowledge tests required for the type and class of motor vehicle driven for the test.

### **7410.5100 REQUIREMENTS AND PROHIBITIONS WHILE TAKING ROAD TEST.**

Subpart 1. Motor vehicle requirements and conditions. The applicant shall:

A. provide the motor vehicle to be used for the road or skills test, which must:

(1) be insured according to *Minnesota Statutes*, chapter 65B;

(2) be registered according to *Minnesota Statutes*, section 169.79; and

(3) be safe for both the driver and the authorized examiner; and

B. ensure that the motor vehicle interior is such that:

(1) the clothing of an authorized examiner will not become soiled; and

(2) the interior does not appear unsanitary to the point of causing a health concern.

Subp. 2. Distractions prohibited. Smoking, eating, drinking a beverage, or using a cellular phone or any other electronic device is prohibited during the test.

Pets or loose objects that may distract, injure, or break are not allowed in the motor vehicle during the road test.

Subp. 3. Presence of unnecessary person prohibited. No one is allowed in a test vehicle during an actual road test except the driver and any authorized examiners.

### **7410.5120 PERMIT HOLDER NOT ACCOMPANIED BY LICENSED DRIVER.**

A. If a permit holder subject to *Minnesota Statutes*, section 171.05, drives to an initial road test without an accompanying licensed driver in the motor vehicle, the commissioner shall administer an initial road test that day.

B. If the permit holder fails the road test, the commissioner shall advise the permit holder that state law prohibits the permit holder from driving alone and that a second or subsequent road test will be administered only if the permit holder returns on another day accompanied by a licensed driver.

C. The commissioner shall not administer a second or subsequent road test to a permit holder who continues to drive to the test site without an accompanying licensed driver in the motor vehicle.

D. The commissioner shall report to law enforcement a permit holder who fails an initial road test and attempts to drive away without an accompanying licensed driver in the motor vehicle or who shows up for a second or subsequent road test without an accompanying licensed driver in the motor vehicle.

### **7410.5140 VEHICLE SAFETY CHECK.**

A. The commissioner shall conduct a vehicle safety check at the time of the road test.

B. Seatbelts must be provided if required by law and must work properly.

C. Turn signals and brake lights must be in working condition, except that the driving examiner shall allow one road test to be given when only one brake light is not working. A second test will not be given until the defective brake light is repaired.

D. Headlights must be used during the test.

(1) One test without working headlights is allowed, unless headlight use is required by law.

(2) A second test will not be given until all defective headlights are repaired.

E. All front doors must be operable from both inside and outside the vehicle.

F. The test vehicle must be free of dangerous vehicle conditions or defects such as damaged glass that obstructs vision, tire separation or exposed cord, the absence of a front bumper, excessive play in the steering wheel, exhaust leaks, or inadequate service brakes.



G. Missing items or defects that in the judgment of the commissioner do not pose an imminent safety hazard such as an inoperable horn, inoperable emergency brake, or hazard warning lights, must be listed on the record of examination, but the commissioner shall allow an initial test.

H. Valid, unexpired proof of insurance must be presented at the time of test administration.

I. The commissioner shall not give a second or subsequent test if the equipment listed on the initial record of examination is still missing or defective.

#### **7410.5160 COMMERCIAL VEHICLE EQUIPMENT SAFETY STANDARDS.**

Commercial motor vehicles:

A. must be equipped as required by *Code of Federal Regulations*, title 49, section 392.7 or 392.8 or part 393;

B. must have proof of a current annual inspection as required by *Code of Federal Regulations*, title 49, section 396.17, and, in the case of a commercial vehicle as defined in *Minnesota Statutes*, section 169.781, and registered in Minnesota, must display a current Minnesota inspection decal as required in *Minnesota Statutes*, section 169.781, subdivision 2;

C. must have an operable parking brake, either hydraulic or air supplied, capable of holding the vehicle; and

D. if equipped with air brakes, must have operable air brake systems that meet the safety standards specified in subitems (1) through (3):

(1) an air loss of no more than three pounds per square inch in a single-unit vehicle, or four pounds per square inch in a combination vehicle, as determined by a one-minute, applied-pressure test;

(2) a low-air warning device that activates before pressure drops below 60 pounds per square inch; and

(3) an emergency brake system that activates before pressure drops below 20 pounds per square inch.

#### **7410.5180 SCHOOL BUS EQUIPMENT SAFETY STANDARDS.**

A school bus must:

A. meet the commercial motor vehicle brake safety standards specified in part 7410.5160;

B. be equipped with all headlights, turn signals, and brake lights in working condition and without broken lenses;

C. have an eight-lamp system without defect;

D. have useable side and crossover mirrors;

E. be equipped with an operable emergency door with a working buzzer; and

F. have a first aid and body fluids clean-up kit.

#### **7410.5200 MOTORCYCLE AND MOTORIZED BICYCLE EQUIPMENT SAFETY STANDARDS.**

Subpart 1. Motorcycle.

A. Motorcycles must be free of obvious defects that could cause accident or injury during the skills test.

B. The commissioner may not inspect the vehicle for equipment necessary to legally operate on the street or highway if the skills test is not conducted on a public street or highway.

C. The applicant shall wear a motorcycle helmet approved by the United States Department of Transportation and eye protection.

Subp. 2. Motorized bicycle.

A. Motorized bicycles and three-wheeled motorcycles are tested on the street and must meet the equipment requirements of *Minnesota Statutes*, section 169.223.

B. Equipment necessary for the motorized bicycle to legally operate on the street includes a headlight, taillight, brake light, horn, mirror, and muffler.

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C. The driving examiner shall allow one skills test to be given if the horn or muffler is present, but not operable.

D. The applicant shall wear a helmet approved by the United States Department of Transportation or American National Standards Institute for bicycle riding, and eye protection.

E. An applicant taking a three-wheeled motorcycle test shall wear a helmet and eye protection as specified in subpart 1.

### Subp. 3. Physical aids.

A. If an applicant's physical condition requires special equipment on the motor vehicle to operate the motor vehicle, the road test vehicle must be so equipped.

B. If the road test is being taken to remove an equipment restriction, the equipment need not be present on the motor vehicle.

C. An initial examination may be given without special equipment to determine equipment needs.

### **7410.5300 ROAD TEST SCORING CONSIDERATIONS GENERALLY.**

Road and skills tests must be scored on the basis of point values assigned to specific driving maneuvers, on the ability of the applicant to perceive risks within the driving environment, and the ability of the applicant to react safely and obey traffic laws.

### **7410.5320 EVENTS RESULTING IN TEST FAILURE.**

The commissioner shall consider a test failed if any event described in items A to L occurs:

A. The commissioner shall immediately discontinue a test if the applicant misses three or more items of the class D motor vehicle equipment demonstration.

B. The commissioner shall immediately discontinue a test if the applicant misses eight or more items of the school bus pretrip inspection, is not able to operate a school bus safety system, or fails to locate the first aid or body fluids clean-up kit.

C. The commissioner shall immediately discontinue a test in a commercial motor vehicle equipped with air brakes if the applicant misses all three of the in-cab air brake inspection items required by *Code of Federal Regulations*, title 49, section 383.113.

D. A test is failed if the applicant accumulates a point deduction of more than 20 on a class A, B, C, or D road test.

E. A test is failed if the applicant incurs more than three perceived risk errors on a class A, B, C, or D road test.

F. A test is failed if the applicant accumulates a point deduction of more than ten on the motorcycle skills test.

G. A test is failed if the applicant incurs more than three errors scored on the motorized bicycle skills test.

H. A test is failed if the applicant is involved in an accident or crash that could have been prevented by the applicant, regardless of who was responsible. An accident or crash includes contact with another vehicle, a pedestrian, a fixed object, or a parking flag.

I. A test is failed if the applicant violates a traffic law for which a driver might normally be ticketed or arrested.

J. A test is failed if the applicant operates the vehicle in such a way as to commit an action that may endanger people or property. Dangerous actions include:

(1) driving the vehicle over a curb or onto a sidewalk;

(2) forcing another driver or pedestrian to react defensively to avoid an accident;

(3) an inability to control the vehicle;

(4) stopping on a railroad track;

(5) driving in the wrong lane when lanes are clearly marked;

(6) turning from the wrong lane when lanes are clearly marked;

(7) an inability to back up a commercial motor vehicle in a straight line or to back it up to a loading dock; or

(8) committing an error that requires the commissioner to control the vehicle or aid the driver to avoid an accident.

K. A test is failed if the applicant does not cooperate with the commissioner or the applicant refuses to perform a maneuver.

L. A test is considered failed if the test is not completed because vehicle failure, applicant illness, or weather conditions prevent completion, or the vehicle is disabled in an accident or crash that could not have been prevented.

### **7410.5340 ONE ROAD TEST PER DAY.**

Any type of road or skills test may be attempted just once per day by an applicant, except in the case of an incomplete test.

**7410.5360 ROAD TEST FAILURE; MANDATORY PRACTICE, RETRAINING.**

A. A minimum mandatory practice period is required after each road or skills test failure, except when an applicant is required to be reexamined under *Minnesota Statutes*, section 171.13, subdivision 3, or for a school bus road test or test conducted by a third party testing program.

B. A first equipment-demonstration failure is not considered a road test failure and no practice period is required.

C. A one-week practice period is required after the first failure of a completed road test.

D. A two-week practice period is required after the second, third, or fourth failure of a completed road test.

E. Pursuant to *Minnesota Statutes*, section 171.04, subdivision 1, an applicant who fails four road tests must complete six hours of behind-the-wheel training with a department-approved or -licensed driver's education program.

F. The practice periods in items C and D are subject to variance under *Minnesota Statutes*, section 14.055.

**7410.5380 ROAD TEST FOLLOWING EXPIRED PERMIT.**

A. A permit expired less than one year constitutes proof of having passed the required knowledge test, but the expired permit may not continue to be used throughout a sequence of tests, practice periods, or driver's training.

B. One road or skills test is allowed using a permit that has been expired for less than one year.

C. If the road test is failed, the applicant shall renew the instruction permit before practice driving begins.

D. The practice time begins at the time the permit is renewed.

**TEST WAIVERS****7410.5400 GENERAL WAIVER AUTHORITY.**

Pursuant to *Minnesota Statutes*, section 171.13, subdivision 1a, the commissioner may waive the requirement that an applicant for a Minnesota driver's license demonstrate the ability to exercise ordinary and reasonable control in operating a motor vehicle if the commissioner determines the applicant possesses a valid driver's license issued by a state that requires an equivalent demonstration for license issuance and endorsements.

**7410.5420 GENERAL WAIVER FOR CLASS D LICENSE TEST.**

Subpart 1. **Minnesota license holder.** If an applicant for a Minnesota class D driver's license has a Minnesota class D driver's license that has:

A. expired less than one year, then the applicant is not required to pass the class D knowledge test or class D road test; or

B. expired more than one year but less than five years, then the applicant is not required to pass the class D road test.

Subp. 2. **Out-of-state license holder.** If an applicant for a Minnesota class D driver's license or permit has a class D driver's license from another state that is valid or not expired more than one year, then the applicant is not required to pass the road test for a Minnesota class D driver's license.

**7410.5440 GENERAL WAIVER FOR LICENSE WITH MOTORCYCLE ENDORSEMENT.**

Subpart 1. **Holder of Minnesota motorcycle endorsement.** If an applicant for a Minnesota driver's license with a motorcycle endorsement has a Minnesota driver's license with a motorcycle endorsement that has:

A. expired less than one year, then the applicant is not required to pass the class D driver's license knowledge test, class D driver's license road test, motorcycle knowledge test, or motorcycle skills test; or

B. expired more than one year but less than five years, then the applicant is not required to pass the class D driver's license road test or motorcycle skills test.

Subp. 2. **Holder of out-of-state motorcycle endorsement.** If an applicant for a Minnesota driver's license with a motorcycle endorsement has a driver's license with a motorcycle endorsement from another state that is valid or not expired more than one year, then the applicant is not required to pass the Minnesota class D driver's license road test or motorcycle endorsement skills test.

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### **7410.5460 GENERAL WAIVER FOR COMMERCIAL DRIVER'S LICENSE TEST.**

Subpart 1. Minnesota commercial license holder. If an applicant for a commercial driver's license has a Minnesota commercial driver's license that has:

A. expired less than one year, then the applicant is not required to pass the class D knowledge test, commercial driver's license general knowledge test, class D road test, or commercial driver's license road test, although:

(1) if a hazardous materials endorsement is requested on the commercial license, then the applicant is required to pass the hazardous materials knowledge test or demonstrate that a hazardous materials endorsement is currently valid;

(2) if a school bus endorsement is requested, then the applicant is required to pass the school bus endorsement knowledge test and the school bus endorsement road test as required in chapter 7414; and

(3) if other endorsements for double or triple trailers, passenger, or tanker are not current and valid, then the applicant is required to pass the applicable test for any of those endorsements; or

B. expired more than one year but less than five years, then the applicant is not required to pass the road test for either a class D driver's license or a commercial driver's license.

**Subp. 2. Holder of out-of-state commercial license.**

A. If an applicant for a Minnesota commercial driver's license has a commercial driver's license from another state that is valid or not expired more than one year, then the applicant is not required to pass the commercial knowledge test, Minnesota class D driver's license road test, or Minnesota commercial driver's license road test for the same class of commercial license.

B. If a hazardous materials endorsement is requested on the commercial license, then the applicant is required to pass the hazardous materials knowledge test.

C. If a school bus endorsement is requested, then the applicant is required to pass the school bus endorsement knowledge test and the school bus endorsement road test as required in chapter 7414.

D. If other endorsements for double or triple trailers, passenger, or tanker are not current and valid, then the applicant is required to pass the applicable test for any of those endorsements.

### **7410.5480 GENERAL WAIVER FOR SCHOOL BUS ENDORSEMENT FOR OUT-OF-STATE COMMERCIAL LICENSE HOLDER.**

If a school bus endorsement on a Minnesota commercial driver's license is requested by an applicant who has a commercial driver's license with a school bus endorsement from another state that is valid or not expired more than one year, then the applicant is not required to pass the Minnesota class D road test or Minnesota commercial driver's license road test. The application, however, must be for the operation of a bus of comparable size.

### **7410.5500 OUT-OF-STATE LICENSE HOLDER WITHOUT DRIVING PRIVILEGES.**

**Subpart 1. Driving privileges withdrawn in Minnesota.**

A. If an applicant with a driver's license from any other state who has driving privileges withdrawn in Minnesota applies for a Minnesota driver's license, then the applicant is required to meet all conditions for license reinstatement in Minnesota, including payment of all applicable reinstatement fees specified in *Minnesota Statutes*, sections 171.20 and 171.29, before the waivers in parts 7410.5400 to 7410.5600 apply.

B. If the driving privileges of the out-of-state license holder were withdrawn in Minnesota and the out-of-state license is expired for one year or less, then the road test for a class D driver's license is waived.

C. The applicant is required to pass the class D driver's license knowledge test unless the applicant has a Minnesota driver's license that is current or expired less than one year.

D. If driving privileges are withdrawn for a violation under *Minnesota Statutes*, chapter 169A, or former *Minnesota Statutes*, section 169.121, 169.123, or 171.17, the applicant must pass a knowledge test on the effects of alcohol and drugs as described in part 7410.4520.

**Subp. 2. Driving privileges withdrawn in any other state.** If an applicant's driving privileges are withdrawn in any other state and the applicant applies for a driver's license in Minnesota, then the applicant's driving privileges must be reinstated in all other states before the applicant is eligible for driving privileges in Minnesota and for a waiver of the test requirements specified in parts 7410.5400 to 7410.5600.

**7410.5520 TEST WAIVERS FOR LICENSE REVOKED FOR DWI-RELATED OFFENSE.**

If an applicant for a Minnesota driver's license has a Minnesota driver's license that has been revoked under *Minnesota Statutes*, chapter 169A, or former or current *Minnesota Statutes*, section 169.121, 169.123, or 171.17, then the applicant is required to pass a test on the effects of alcohol and drugs as described in part 7410.4520, and pay all applicable license reinstatement fees specified in *Minnesota Statutes*, section 171.29, before a waiver is applicable. If the applicant's driver's license has been revoked, and the license is expired:

A. less than one year, then the applicant is not required to pass the:

- (1) class D driver's license knowledge test;
- (2) class D driver's license road test;
- (3) commercial driver's license general knowledge test;
- (4) commercial driver's license road test;
- (5) motorcycle endorsement knowledge test; or
- (6) motorcycle endorsement skills test; or

B. more than one year but less than five years, then the applicant is not required to pass the:

- (1) class D driver's license road test;
- (2) commercial driver's license road test; or
- (3) motorcycle endorsement skills test.

**7410.5540 LICENSE WITH MOTORCYCLE ENDORSEMENT REVOKED FOR NON-DWI-RELATED TRAFFIC OFFENSE.**

If an applicant for a Minnesota driver's license with a motorcycle endorsement has a Minnesota license with a motorcycle endorsement and driving privileges that have been revoked for a traffic offense other than one specified in *Minnesota Statutes*, chapter 169A, or former or current *Minnesota Statutes*, section 169.121, 169.123, or 171.17, then the applicant is required to pay the license reinstatement fee specified in *Minnesota Statutes*, section 171.29, before a waiver is applicable. If the applicant's driver's license has been revoked, and the license is expired:

A. less than one year, then the motorcycle endorsement knowledge test, the class D driver's license road test, and the motorcycle endorsement skills test are waived; or

B. more than one year but less than five years, then the class D driver's license road test and motorcycle endorsement skills test are waived.

**7410.5560 COMMERCIAL LICENSE REVOKED.**

**Subpart 1. License revoked for alcohol or drug-related offense.**

A. If an applicant for a Minnesota commercial driver's license has a Minnesota commercial driver's license that has been revoked for a violation of *Minnesota Statutes*, chapter 169A, or former or current *Minnesota Statutes*, section 169.121, 169.123, or 171.17, then the applicant is required to pass a test on the effects of alcohol and other drugs as specified in part 7410.4520, and pay the license reinstatement fees specified in *Minnesota Statutes*, section 171.29, before a waiver is applicable.

B. If the applicant also has a hazardous materials endorsement, then the applicant is required to pass the hazardous materials knowledge test.

C. If the applicant's commercial driver's license has been revoked, and the license is expired less than one year, then the class D driver's license road test, commercial driver's license road test, and all knowledge tests, except the hazardous materials endorsement knowledge test and school bus endorsement knowledge test, are waived.

D. If the applicant's commercial driver's license has been revoked and the license is expired more than one year but less than five years, then the commercial driver's license road test is waived.

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Subp. 2. License or endorsement revoked for non-DWI-related offense. If an applicant for a Minnesota commercial driver's license or endorsement has a Minnesota commercial driver's license or endorsement that has been revoked for a traffic offense other than one specified in *Minnesota Statutes*, chapter 169A, or former or current *Minnesota Statutes*, section 169.121, 169.123, or 171.17, then the applicant is required to pay the reinstatement fee in *Minnesota Statutes*, section 171.29, before a waiver is applicable. If the applicant's commercial driver's license or endorsement has been revoked and the license is expired:

A. less than one year, then the class D driver's license road test, commercial driver's license road test, and all knowledge tests, except the hazardous materials endorsement and school bus endorsement knowledge tests, are waived; or

B. more than one year but less than five years, the class D driver's license road test and commercial driver's license road test are waived.

### **7410.5600 VARIANCE FOR ADDITIONAL CASE-SPECIFIC TEST WAIVERS.**

A. The commissioner of public safety may grant a variance from the test requirements and waivers specified in parts 7410.4000 to 7410.5560 on a case-by-case basis only.

B. If an individual cannot comply with the test requirements for a driver's license, then the individual may request a variance. The request must be in writing, be submitted to the commissioner, and:

(1) contain the individual's full name, address, date of birth, the driver's license number of any driver's license issued in any other state or specify any state in which a driver's license was issued, and the date of expiration of any license or endorsement on a license;

(2) specify the type of Minnesota driver's license and any endorsements the applicant seeks;

(3) specify the class of vehicle the individual wants to drive;

(4) specify all test requirements from which the applicant seeks a waiver;

(5) describe the reason why a test waiver is requested, including proof of any equivalent tests the individual has passed in any other state; and

(6) be signed and dated by the individual requesting a test waiver.

C. The commissioner shall grant the variance request for a test waiver if:

(1) the waiver was requested as specified in item B;

(2) the waiver, if granted, would not have an adverse effect on public safety;

(3) the alternative tests or the tests passed in another state are equivalent to those administered by the commissioner; and

(4) granting the variance does not waive or vary a statute.

D. The commissioner shall notify the individual requesting a test waiver variance in writing of the commissioner's decision to grant or deny the variance within 60 days of receipt of the request. If the variance request is denied, the commissioner shall specify the reasons for the denial.

## Proposed Permanent Rules Relating to Loss of Driving Privilege

### **7409.0100 DEFINITIONS.**

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

Subp. 1b. **Certificate of insurance.** "Certificate of insurance" means ~~a letter, a signed~~ a signed policy of vehicle liability insurance as required by *Minnesota Statutes*, section 65B.48, or a completed insurance certificate form from the authorized representative of the insurance carrier authorized to do business in the state stating that the vehicle will be covered by a plan of reparation security as required by *Minnesota Statutes*, section 65B.48, for one calendar year or that the operator will be covered by a plan of reparation security for a period of ~~six months~~ one year.

Subp. 2. **Commercial motor vehicle.** "Commercial motor vehicle" has the meaning given it in *Minnesota Statutes*, section 171.01, subdivision 22.

A commercial motor vehicle does not include:

- A. a farm truck; as defined in *Minnesota Statutes*, section 171.01, subdivision 25;
- B. a fire truck or other emergency fire equipment; or
- C. recreational equipment operated by a person within the scope of *Minnesota Statutes*, section 171.02, subdivision 2, paragraph (a).

[For text of subs 3 to 6a, see M.R.]

Subp. 7. **License.** “License” means ~~an operator’s~~ a driver’s license or other license or permit to operate a motor vehicle issued or issuable by the commissioner including:

- A. a temporary license ~~or~~, instruction permit, or provisional license;
- B. the privilege of a person to drive a motor vehicle, whether or not that person holds a valid license; and
- C. a nonresident’s driving privilege; ~~and~~
- D. ~~the plastic or paper license certificates.~~

[For text of subp 7a, see M.R.]

Subp. 7b. **Personal injury.** “Personal injury” means a class A, incapacitating injury, other than a fatal injury, that prevents the injured person from walking, driving, or normally continuing the activities the person was capable of performing before the injury occurred, such as a severe laceration; ~~broken or distorted limb; or;~~ skull, chest, or abdominal injury; an injury resulting in unconsciousness at or when taken from the accident scene, due to the injury, by medical personnel or law enforcement; or an injury resulting in the person being unable to leave the accident scene without assistance.

[For text of subs 7c to 11, see M.R.]

#### **7409.0150 OFFENSE PERIOD.**

For purposes of this chapter and the administration of the statutes referenced in this chapter, the commissioner shall use the date of the driving incident to establish the number of violations within a period of time.

#### **7409.0200 COMMERCIAL DRIVER’S LICENSE DISQUALIFICATION.**

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

Subp. 4. **Manufacture, sale, or distribution of controlled substance.** Upon receiving a record of conviction, ~~the commissioner shall disqualify a person from holding a commercial driver’s license if the person is convicted under *Minnesota Statutes*, chapter 152, of the manufacture, sale, or distribution of a controlled substance or possession of a controlled substance with the intent to manufacture, sell, or distribute it, and it is found that a commercial motor vehicle was used in the commission of the felony; for an offense specified in *Minnesota Statutes*, section 171.165, subdivision 3, clause (3),~~ the disqualification period is for life.

Subp. 5. **Serious traffic violations violation.** Upon receiving a record of conviction, ~~the commissioner shall disqualify a person from holding a commercial driver’s license if the person was convicted of two or more serious traffic violations in a commercial motor vehicle within a three year period. “Serious traffic violations” includes any combination of the following offenses:~~

- ~~A. operating the commercial motor vehicle at a speed 15 miles per hour or more above the posted speed limit;~~
- ~~B. reckless or careless driving under *Minnesota Statutes*, section 169.13;~~
- ~~C. fleeing a peace officer under *Minnesota Statutes*, section 609.487; and~~
- ~~D. a violation of a moving traffic statute of Minnesota or another state, or an ordinance in conformity with a Minnesota statute, that arose in connection with a fatal accident.~~

~~The disqualification period is 60 days for two, or 120 days for three or more serious traffic violations occurring within a three-year period. The department shall use the date of the driving incident to establish the number of violations for a serious traffic violation as described in *Minnesota Statutes*, section 171.165, subdivision 4, the commissioner shall disqualify a person from holding a commercial driver’s license for the offenses and time specified in *Minnesota Statutes*, section 171.165, subdivision 4.~~

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Subp. 6. **Reduction of lifetime disqualification.** The commissioner shall reduce the lifetime disqualification period imposed under subpart 1, item C, subpart 2, item C, or subpart 3, item C, to a minimum of ten years disqualification if the person demonstrates rehabilitated driving practices in the ten-year period following the effective date of the lifetime disqualification. A person is considered rehabilitated if during that ten-year period there is no revocation or conviction resulting from the operation of any type of vehicle for an offense listed in *Minnesota Statutes*, section 171.165, subdivision 1, or if the person's license is not revoked under *Minnesota Statutes*, section 169A.52 or 169A.54, or a statute or ordinance from another state in conformity with it. ~~If rehabilitation is not so demonstrated during the initial ten-year period, the disqualification period remains lifetime.~~

Subp. 7. Lifetime disqualification without reduction. Following reinstatement of the commercial motor vehicle driving privileges under subpart 6, a person is subject to a lifetime disqualification, without reduction, if the person subsequently commits another disqualifying offense set forth in *Minnesota Statutes*, section 171.165, subdivision 1 or 2, or a statute of another state or ordinance in conformity with it, or any combination of those offenses.

Subp. 8. Grade crossing violations. The commissioner shall disqualify a person from holding a commercial driver's license if the person is convicted of a railroad crossing violation as specified in *U. S. Code of Federal Regulations*, title 49, section 383.51. A driver is disqualified for:

- A. 60 days if convicted of a first violation;
- B. 120 days if, during any three-year period, the driver is convicted of a second violation in separate incidents; and
- C. one year, if the driver is convicted of a third or subsequent violation in separate incidents in any three-year period.

Subp. 9. Out-of-service order violations. The commissioner shall disqualify a person from holding a commercial driver's license on receipt of a conviction issued pursuant to *U.S. Code of Federal Regulations*, title 49, section 383.51, for violating an out-of-service order while driving a commercial motor vehicle. A driver is disqualified for:

- A. 90 days for the first violation;
- B. one year for the second violation in a separate incident within ten years; or
- C. three years for the third or subsequent violation in a separate incident within ten years.

Subp. 10. Hazardous materials and passenger out-of-service order violations. The commissioner shall disqualify a driver from holding a commercial driver's license if notified of a conviction of an out-of-service order while transporting hazardous materials required to be placarded under the Hazardous Materials Transportation Act, *United States Code*, title 49, chapter 51, or while operating a motor vehicle designed to transport more than 15 passengers, including the driver, for:

- A. 180 days for the first violation; and
- B. three years for any subsequent violation arising out of a separate incident within ten years.

### 7409.0300 NOTICE OF LICENSE ACTION.

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

Subp. 2. **Notice of disqualification.** The commissioner shall notify a person who is disqualified under *Minnesota Statutes*, section 171.165, subdivision 1, clause (2), (3), or (4); subdivision 3; or subdivision 4, or when requirements from a previous disqualification have not been satisfied. The disqualification will be effective when all available possibilities of administrative review under *Minnesota Statutes*, section 171.166, have been completed. The notification must be in writing and sent by first class mail to the address shown on department records. The notice must contain the following information specified in this subpart and may contain other information provided by the commissioner that the commissioner considers appropriate:

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

- G. the length of the disqualification period; and
- H. a statement that by the effective date of disqualification, the person must surrender all license certificates or submit a sworn statement if a license was lost, stolen, or destroyed; and
- I. a statement informing the person of the requirements to reinstate the commercial driver's license.

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

### 7409.0400 ~~DRIVER'S LICENSE SURRENDER~~ **CLASS D LICENSE ELIGIBILITY DURING DISQUALIFICATION.**

Subpart 1. [See repealer.]

Subp. 2. [See repealer.]

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

Subp. 5. **Class A, B, or C license status.** The commissioner shall issue to the disqualified person ~~will receive~~ the original class A, B, or C license when the person has fulfilled the reinstatement requirements under ~~part parts~~ 7409.0600, ~~unless the license has expired and more than one year has elapsed since the expiration date.~~ If the license has expired and more than one year has elapsed, the person must reapply and retest for a class A, B, or C license and 7410.4000 to 7410.5600.

**7409.1000 VEHICULAR HOMICIDE OR INJURY; MANSLAUGHTER.**

The commissioner shall revoke the driver's license of a person upon receiving a record of conviction, for a period of:

A. ~~five~~ 15 years, if the person is convicted under *Minnesota Statutes*, section 609.20, manslaughter in the first degree, resulting from the operation of a motor vehicle;

B. ten years, if the person is convicted under:

(1) *Minnesota Statutes*, section 609.21, subdivision 1, clause (1) ~~or (7)~~, or subdivision 3, clause (1) ~~or (7)~~; or

(2) ~~*Minnesota Statutes*, section 609.20, manslaughter in the first degree, resulting from the operation of a motor vehicle; or~~

(3) ~~*Minnesota Statutes*, section 609.205, manslaughter in the second degree, resulting from the operation of a motor vehicle; or~~

~~B. three~~ C. five years, if the person is convicted under *Minnesota Statutes*, section 609.21, subdivision 2, clause (1); ~~subdivision 2a, clause (1); or (7)~~, or subdivision 4, clause (1) ~~or (7)~~;

D. three years, if the person is convicted under *Minnesota Statutes*, section 609.21, subdivision 2a, clause (1) or (7); or

E. one year, if the person is convicted under *Minnesota Statutes*, section 609.21, subdivision 2b, clause (1) or (7).

**7409.1100 REVOCATION; FLEEING IN MOTOR VEHICLE FROM PEACE OFFICER.**

The commissioner shall revoke the driver's license of a person upon receiving a record of conviction under *Minnesota Statutes*, section 609.487, subdivision 3 or 4, or an ordinance in conformity with those subdivisions pertaining to use of a motor vehicle to flee a peace officer as specified in *Minnesota Statutes*, section 171.174. The commissioner shall revoke for:

A. one year for the first offense under *Minnesota Statutes*, section 609.487, subdivision 3;

B. three years for the second offense under *Minnesota Statutes*, section 609.487, subdivision 3;

C. ten years for an offense under *Minnesota Statutes*, section 609.487, subdivision 4, paragraph (a);

D. seven years for an offense under *Minnesota Statutes*, section 609.487, subdivision 4, paragraph (b); and

E. five years for an offense under *Minnesota Statutes*, section 609.487, subdivision 4, paragraph (c).

**7409.1200 FELONY WITH MOTOR VEHICLE.**

The commissioner shall revoke the driver's license of a person for a period of ~~180 days~~ one year upon receiving a record of conviction of a felony in the commission of which a motor vehicle was used, ~~other than felony manslaughter with a motor vehicle under *Minnesota Statutes*, sections 609.20 and 609.205; criminal vehicular homicide and injury under *Minnesota Statutes*, section 609.21; or fleeing a peace officer in a motor vehicle under *Minnesota Statutes*, section 609.487.~~

**7409.1500 ~~MANY ONE OR MORE~~ MISDEMEANOR, GROSS MISDEMEANOR OFFENSES.**

Subpart 1. Offenses within 12-month period. Except for the school bus offenses specified in subparts 2, 3, and 4, the commissioner shall revoke the driver's license of a person upon receiving a record of a certified misdemeanor or gross misdemeanor conviction under *Minnesota Statutes*, chapter 169, for a period of:

A. 30 days, if the person has been convicted of three misdemeanor or gross misdemeanor offenses under ~~that~~ *Minnesota Statutes*, chapter 169, occurring within a 12-month period;

B. 90 days, if the person has been convicted of four misdemeanor or gross misdemeanor offenses under ~~that~~ *Minnesota Statutes*, chapter 169, occurring within a 12-month period; or

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C. one year, if the person has been convicted of five or more misdemeanor or gross misdemeanor offenses under ~~that~~ *Minnesota Statutes*, chapter 169, occurring within a 12-month period.

**Subp. 2. Revocation for school bus-related misdemeanors.** The commissioner shall revoke the driver's license of a person upon receiving a record of a conviction for a school bus-related misdemeanor under *Minnesota Statutes*, section 171.17, subdivision 1, paragraph (a), clause (7), or 169.444, subdivision 2, paragraph (a), for:

- A. 30 days for the second offense within five years;
- B. 90 days for the third offense within five years;
- C. 180 days for the fourth offense within five years; and
- D. one year for the fifth and subsequent offense within five years.

**Subp. 3. Revocation for school bus-related gross misdemeanors.** The commissioner shall revoke the driver's license of a person upon receiving a record of a conviction for a school bus-related gross misdemeanor under *Minnesota Statutes*, section 171.17, subdivision 1, paragraph (a), clause (8), or 169.444, subdivision 2, paragraph (b), for:

- A. 90 days for the first offense on the driver's record;
- B. 180 days for the second offense on the driver's record; and
- C. one year for the third and subsequent offense on the driver's record.

**Subp. 4. Revocation of school bus endorsement.** Pursuant to *Minnesota Statutes*, section 171.17, subdivision 1, paragraph (b), the commissioner shall revoke the school bus endorsement of a person to drive a school bus upon receipt of a record of a conviction under *Minnesota Statutes*, section 169.443, for:

- A. 90 days for the first offense on the driver's record; and
- B. one year for the second or any subsequent offense on the driver's record.

### **7409.1600 INSURANCE-RELATED OFFENSES.**

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

**Subp. 2. Failure to produce proof of insurance.** The commissioner shall revoke the driver's license of a person who fails to produce proof of insurance under *Minnesota Statutes*, section 169.791 or 169.792. The revocation period is ~~30 days or until the person files proof of insurance, whichever period is longer;~~

- A. 30 days or until the person files proof of insurance held at the time of the incident if the person has no other violations of *Minnesota Statutes*, section 169.791, 169.792, or 169.797, within five years;
- B. 90 days or until the person files proof of insurance held at the time of the most recent incident if the person has two violations of any combination of *Minnesota Statutes*, section 169.791, 169.792, or 169.797, within five years;
- C. 180 days or until the person files proof of insurance held at the time of the most recent incident if the person has three violations of any combination of *Minnesota Statutes*, section 169.791, 169.792, or 169.797, within five years; and
- D. one year or until the person files proof of insurance held at the time of the most recent incident if the person has four or more violations of any combination of *Minnesota Statutes*, section 169.791, 169.792, or 169.797, within a five-year period.

### **7409.2000 CRIMINAL VEHICULAR HOMICIDE ~~OR~~ AND INJURY; MANSLAUGHTER; FLEEING FROM PEACE OFFICER.**

**Subpart 1. Record of Suspension for criminal charge.** The commissioner shall suspend for one year the driver's license of a person upon receiving a record of a criminal charge arising out of the operation of a motor vehicle for:

- A. criminal vehicular homicide and injury ~~or~~;
- B. manslaughter arising out of the operation of a motor vehicle. The license must be suspended for a period of not more than one year; or
- C. fleeing a peace officer.

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

**Subp. 3. Converted to revocation.** If the person is later convicted of criminal vehicular homicide and injury ~~or~~, manslaughter, ~~then~~ or fleeing a peace officer, the commissioner shall convert the suspension to a revocation. Time accrued under the suspension period must be credited toward the revocation period imposed upon conviction of criminal vehicular homicide and injury ~~or~~, manslaughter, or fleeing a peace officer.



**7409.2100 VIOLATION RESULTING IN FATALITY OR PERSONAL INJURY.**

The commissioner shall suspend the driver's license of a person upon receiving a record of conviction, other than a petty misdemeanor, under *Minnesota Statutes*, chapter 169 or an ordinance regulating traffic, except traffic laws specifically excluded from the driving record by statute, and department records show that the violation contributed in causing an accident resulting in the death or personal injury of another. Unless otherwise recommended by the court, the driver's license must be suspended for a period of:

- A. 90 days, if the violation upon which the conviction was based resulted in the personal injury of another person; and
- B. 180 days, if the violation upon which the conviction was based resulted in the death of another person; ~~or~~
- C. ~~as recommended by the court, when made in connection with the prosecution of the licensee.~~

**7409.2200 HABITUAL VIOLATORS.**

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

Subp. 2. **License, permit, and endorsement violations.** The commissioner shall suspend the driver's license of a person for a period of 30 days upon receiving a record of conviction of two or more violations of *Minnesota Statutes*, section 169.974, subdivision 2; 171.02; 171.05; or 171.321, ~~if the two violations are more than 60 days apart.~~

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

Subp. 4. **Driving after withdrawal.** The commissioner shall suspend the driver's license of a person upon receiving a record of conviction ~~of a traffic law under *Minnesota Statutes*, chapter 169, 171, or other statutes regulating the operation of motor vehicles on streets or highways, except traffic laws specifically excluded from the driving record by statute, committed while the person was driving under a period of withdrawal~~ section 171.24. The driver's license must be suspended for a period of:

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

**7409.2250 SUSPENSION FOR SCHOOL BUS VIOLATIONS.**

The commissioner shall suspend the driver's license of a person on receipt of a second conviction within five years of a prior conviction under *Minnesota Statutes*, section 169.444, subdivision 2, paragraph (a), or 171.18, subdivision 1, clause (8), for:

- A. 30 days for the second offense within five years;
- B. 90 days for the third offense within five years; and
- C. one year for the fourth or any subsequent offense within five years.

**7409.2400 FAILURE TO MAINTAIN INSURANCE.**

Subpart 1. **Authority; suspension periods.** Under *Minnesota Statutes*, section 169.797, subdivision 4a, the commissioner shall suspend the driver's license of ~~an operator~~ a driver upon a showing by department records, including accident reports or other sufficient evidence, that a plan of reparation security had not been provided and maintained at the time of the incident. The driver's license must be suspended for a period of:

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

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

Subp. 3. [See repealer.]

**7409.2800 CANCELLATION; GROUNDS.**

The commissioner shall cancel the driver's license of a person on determining that the person:

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

- D. at the time of cancellation, would not have been entitled to receive a license under *Minnesota Statutes*, section 171.04; ~~or~~
- E. has failed to submit to an examination under *Minnesota Statutes*, section 171.13; or
- F. has a visual acuity of 20/80 or greater and the person is convicted of a traffic violation or is involved in a motor vehicle accident in which the commissioner determines the person was at fault.

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### 7409.3000 MULTIPLE LICENSE WITHDRAWALS.

Subpart 1. ~~Consecutive, generally~~ **Concurrent withdrawals.** When a person is subject to more than one withdrawal period under this chapter, the withdrawal periods shall run ~~consecutively~~ concurrently with all other withdrawals under this chapter and chapter 7503, except as otherwise provided in this part.

Subp. 2. [See repealer.]

Subp. 3. [See repealer.]

Subp. 4. [See repealer.]

[For text of subs 5 and 6, see M.R.]

### 7409.3600 LIMITED LICENSE.

Subpart 1. General procedures for obtaining limited license. In accordance with part 7503.1800, except as specified in subparts 2 and 3 of this part 7409.3600, the commissioner shall issue a limited license following a revocation under Minnesota Statutes, section 169.792, 169.797, or 171.17, or suspension under Minnesota Statutes, section 171.18, only when the person has met the following conditions specified in this part:

A. The person ~~has demonstrated~~ must demonstrate a need and ~~has met~~ meet the requirements for a limited license under Minnesota Statutes, section 171.30;

B. The person ~~has paid~~ must pay the reinstatement fee required by statute;

C. ~~the person has surrendered the license issued by the department, as required by Minnesota Statutes, section 171.20;~~

~~D. If the person's driver's license was revoked, the person has passed the driver's license examination, has applied~~ must apply for a new license, ~~and has paid~~ pay the application fee for the class of license involved, as required for issuing an original license, ~~if the person's driver's license was revoked; and pass the examination and tests required under parts 7410.4000 to 7410.5600, and Minnesota Statutes, section 171.13.~~

~~E. D.~~ One-half of the revocation or suspension period ~~has~~ must be expired; if the person has ~~been issued~~ had a limited license within the previous ~~12~~ 24 months;

~~F. E.~~ The person ~~requests~~ must request a limited license by written correspondence, ~~facsimile, or e-mail~~, by personal appearance at the department, or by telephone ~~if the person resides outside the seven county metropolitan area; and.~~

~~G. F.~~ The person ~~has~~ must have fulfilled all outstanding requirements for all other driver's license withdrawals.

Subp. 2. No limited class D license issuance. The commissioner shall not issue a limited class D driver's license:

A. if the license is suspended for criminal vehicular homicide, manslaughter with a motor vehicle, or fleeing a peace officer with a motor vehicle under part 7409.2000;

B. to operate a class A school bus, child care bus, Head Start bus, or activity bus as described in Minnesota Statutes, section 169.01; or

C. to operate a special transportation service vehicle as described in Minnesota Statutes, section 221.011, subdivision 49, or 473.386.

Subp. 3. No limited commercial license following disqualification. The commissioner shall not issue a limited class A, B, or C commercial driver's license during the period the individual is disqualified from holding a class A, B, or C commercial driver's license.

Subp. 4. Hour and day limitations.

A. The commissioner shall not issue a limited driver's license that would allow a person to potentially operate a motor vehicle for more than 60 hours per week and six days a week.

B. Except for the driving time for chemical dependency treatment specified in subpart 5, the potential driving time must fall within the total hours and day limits specified in item A.

C. "Livelihood" as the term is used in Minnesota Statutes, section 171.30, means gainful employment for wages or salary.

Subp. 5. Chemical dependency treatment or counseling.

A. Upon request of the driver, the commissioner shall issue a limited driver's license for a person to:

(1) attend chemical dependency treatment as defined in part 7503.0100, subpart 5;

(2) participate in a generally recognized support group based on ongoing abstinence; or

(3) attend a court-ordered alcohol intervention program.

B. Counseling must be provided by a program described in item A.

C. Driving time to attend the support group in item A, subitem (2), is authorized for no more than twice a week.

Subp. 6. **Homemaker educational needs.** Upon request of the driver, the commissioner shall issue a limited driver's license to transport any dependent to child care or to an elementary or secondary school to attend classes for graduation if:

A. the driver demonstrates that lack of driving privileges would substantially disrupt the dependent's education; and

B. the driver is the individual primarily responsible for providing the transportation to school or child care.

Subp. 7. **Homemaker medical needs.** Upon request of the driver, the commissioner shall issue a limited driver's license to take a dependent under the age of 18 or other dependent living in the homemaker's household to a medical or dental appointment or to obtain medical supplies for the dependent if:

A. the driver demonstrates that lack of driving privileges would substantially disrupt a dependent's medical needs; and

B. the driver is the individual primarily responsible for providing the transportation for medical needs.

Subp. 8. **Homemaker nutritional needs.** Upon request of the driver, the commissioner shall issue a limited driver's license to obtain food for any and all dependents within the household for a three-hour period no more than once a week if:

A. the driver demonstrates that lack of driving privileges would substantially disrupt a dependent's nutritional needs; and

B. the driver is the individual primarily responsible for providing the transportation for nutritional needs.

Subp. 9. **Out-of-state license holder.** Upon application for a Minnesota limited driver's license by a person with a state license other than one issued by Minnesota, the commissioner shall issue a limited license in Minnesota if:

A. the out-of-state license is valid and the applicant is in possession of a driver's license card;

B. the applicant submits a certified copy of the applicant's driving record in all states of current and previous licensure so the commissioner can determine whether to issue a limited license; and

C. the commissioner determines that the provisions of this part and *Minnesota Statutes*, section 171.30, are met.

#### **7409.4100 REINSTATEMENT AFTER REVOCATION, GENERALLY.**

Except as provided in parts 7409.3800 and 7409.4000, the commissioner shall reinstate the driver's license of a person whose license is revoked when the ~~following conditions have been satisfied~~ specified in this part are met:

A. the revocation period has expired;

B. no withdrawal of the person's driver's license is outstanding;

C. the person has paid the reinstatement fee ~~as required at the time of payment by statute~~ *Minnesota Statutes*, section 171.29; and

D. ~~the person's driver's license was surrendered under *Minnesota Statutes*, section 171.20; and~~

~~E. the person has applied for a new license, paid the application fee for the class of license involved, and has passed the driver's license examination, as and tests required for issuing an original license by parts 7410.4000 to 7410.5600, and *Minnesota Statutes*, section 171.13.~~

The notice of reinstatement must be issued by the commissioner before reinstatement of the subject's driver's license occurs.

#### **7409.4200 REINSTATEMENT AFTER SUSPENSION, GENERALLY.**

Except as provided in part 7409.3900, the commissioner shall reinstate the driver's license of a person whose driver's license is suspended when the ~~following conditions have been satisfied~~ specified in this part are met:

A. the suspension period has expired or the person has satisfied the requirements of suspension;

B. no withdrawal of the person's driver's license is outstanding;

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C. the person has paid the suspension reinstatement fee as required at the time of payment by statute Minnesota Statutes, section 171.20; and

D. ~~the person's driver's license was surrendered under Minnesota Statutes, section 171.20~~ the notice of reinstatement has been issued by the commissioner.

### **7409.4250 REINSTATEMENT OF NONRESIDENT DRIVING PRIVILEGES.**

When an applicant who resides in another state applies for or has an out-of-state driver's license, and the applicant's driving privilege is under revocation or suspension in Minnesota, the applicant must comply with the requirements for reinstatement of driving privileges as specified in part 7409.4100, items A, B, and C or 7409.4200, items A, B, and C. The commissioner shall not waive the fees for reinstatement of the license as specified in Minnesota Statutes, sections 171.20 and 171.29.

### **7409.4300 REINSTATEMENT AFTER CANCELLATION.**

The commissioner shall reinstate the driver's license of a person whose license is canceled when the ~~following conditions have been satisfied~~ specified in this part are met:

A. no withdrawal of the person's license is outstanding;

B. ~~the person's driver's license was surrendered under Minnesota Statutes, section 171.20;~~

C. the person has applied for a new license, has paid the application fee for the class of license involved, and has passed the driver's license examination, as required for issuing an original license the conditions with respect to the cancellation have been met; and

~~D. C.~~ the person is otherwise eligible for a driver's license under *Minnesota Statutes*.

The notice of reinstatement must be issued by the commissioner before reinstatement of the subject's driver's license occurs.

### **7409.4350 WHEN REINSTATEMENT IS EFFECTIVE.**

When a person's driving privileges have been withdrawn, the commissioner shall reinstate them at a time and date when the commissioner determines that the reinstatement requirements have been met.

A. Reinstatement is effective on the date and time specified in the notice of reinstatement issued by the commissioner.

B. The commissioner shall issue the notice of reinstatement by first class mail to the person subject to reinstatement.

C. The subject's driving record must reflect reinstatement at the time and date the notice of reinstatement is issued.

### **7409.4500 PRELIMINARY HEARING.**

Subpart 1. **Preliminary hearing required.** ~~The commissioner shall require~~ A person ~~to~~ must attend a preliminary hearing when the commissioner has sufficient cause to believe ~~that~~ the person:

A. has committed a violation under *Minnesota Statutes*, section 171.22, for an unlawful or fraudulent act regarding a driver's license or Minnesota identification card;

B. has committed a second violation under *Minnesota Statutes*, section 171.09, except for total abstinence restrictions, for a violation of a restriction imposed on the person's driver's license; or

C. ~~has committed a violation under Minnesota Statutes, section 171.30, of a condition or limitation of a limited license; or~~

~~D.~~ was not previously sent a warning letter under part 7409.2200, subpart 1, and is convicted of:

[For text of subitems (1) to (3), see M.R.]

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

Subp. 3. **Suspension period.** If, after reviewing the evidence presented at the preliminary hearing, the commissioner has sufficient cause to believe that the person has committed an offense listed in:

A. subpart 1, item A or B, the commissioner shall suspend the driver's license or driving privilege for 30 days; or

B. subpart 1, item C, the commissioner shall suspend the driver's license of the person for a minimum period of 30 days or in accordance with the number of traffic convictions accumulated, as set forth in part 7409.2200, subpart 1, unless the person agrees to enter into a driver improvement agreement, as set forth in part ~~7409.4600~~ 7409.4700, subpart 5 2.

Subp. 4. **Failure to attend preliminary hearing.** The commissioner shall:

A. cancel the driver's license or driving privilege of a person who fails to attend a preliminary hearing under subpart 1, item A or B, which remains in effect until the preliminary hearing has been held; or

B. suspend the driver's license of a person who fails to attend a preliminary hearing under subpart 1, item C, for ~~a minimum~~ period of 30 days or in accordance with the number of traffic convictions accumulated, as set forth in part 7409.2200, subpart 1.

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

#### **7409.4600 ADMINISTRATIVE HEARING OR REVIEW.**

Subpart 1. **Right to hearing or review.** The commissioner shall grant ~~a~~ an administrative hearing to a person whose driver's license has been withdrawn or is subject to withdrawal.

Subp. 2. **Procedure for requesting hearing.** A hearing is initiated by submitting a written request for review ~~at~~ to the department. The hearing may be held by written correspondence, ~~by telephone,~~ or by a personal appearance. The person requesting the review must inform the department of the person's full name, date of birth, driver's license number, ~~and~~ the date of the incident for which review is being requested, and provide a written statement of the factual basis for which the person seeks to have the department's action rescinded.

Subp. 3. **Scope of review or hearing.** On receiving a request for a review or hearing, the commissioner shall review the order, the evidence upon which the order was based, and any other material information brought to the attention of the commissioner to determine whether sufficient cause exists to sustain the order.

The commissioner may seek additional information from the person requesting the review or hearing or from an agency or person believed to have information relating to the facts underlying the order of withdrawal. The person requesting the review or hearing may present additional information to the commissioner at the hearing.

Subp. 4. **Decision.** Upon reviewing the evidence, the commissioner shall sustain the withdrawal order if there is sufficient cause to believe that the withdrawal is authorized by law or rule.

A. If the commissioner finds that there is not sufficient cause to believe the withdrawal order is authorized by law or rule, the order must be rescinded.

B. The commissioner shall give a prompt decision to the person ~~and shall issue a copy of the decision to the person upon request~~ by first class mail within 15 days after the commissioner receives a completed request.

C. The review is final and no subsequent administrative review shall be granted.

Subp. 5. [See repealer.]

#### **7409.4700 WAIVER AND VARIANCES.**

Subpart 1. **Waiver.** The commissioner may waive department action on the person's driver's license if:

A. the person's driver's license has been suspended under *Minnesota Statutes*, section 171.09 or 171.18;

B. after reviewing the person's entire driving record, the commissioner has sufficient cause to believe that the person will improve the person's driving conduct or has demonstrated improved driving conduct; and

C. the person agrees to enter into a driver improvement agreement with the commissioner.

Subp. 2. **Driver improvement agreement.** A driver improvement agreement is an agreement between a driver and the commissioner in which the driver agrees to improve driving conduct in consideration for the department taking no action on the suspension that the person currently has pending.

A. The driver improvement agreement must not be for a period less than the period of suspension that the person currently has pending.

B. If the person commits a violation arising out of the operation of a motor vehicle while a driver improvement agreement is in effect, the commissioner shall withdraw the person's driver's license for 30 days or according to this chapter, chapter 7503, or *Minnesota Statutes*, whichever is the longer period.

C. The commissioner shall not issue a limited license as provided by *Minnesota Statutes*, section 171.30, to the person for violations committed during the period an agreement is in force.

Subp. 3. **Variations.** Unless otherwise specifically provided for in this chapter, the provisions of this chapter are not subject to variance under another rule or statute.

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**REPEALER.** *Minnesota Rules*, parts 7409.0400, subparts 1 and 2; 7409.0500; 7409.2400, subpart 3; 7409.3000, subparts 2, 3, and 4; 7409.3100; 7409.3200; 7409.3400; and 7409.4600, subpart 5, are repealed.

## Department of Public Safety Driver and Vehicle Services Division

### Proposed Permanent Rules Relating to Incidents for License Withdrawal for Driving While Impaired

#### NOTICE OF HEARING

**Proposed Amendments to Permanent Rules Relating to Incidents for License Withdrawal for Driving While Impaired, *Minnesota Rules*, Chapter 7503; and Repeal of Parts 7503.0100, Subpart 7; 7503.1000, Subparts 2, 3, 4, 5 and 6; 7503.1300, Subpart 3; 7503.1700, Subpart 4a; 7503.1750; 7503.1900; 7503.2000, Subpart 4; 7503.2300; 7503.2400, Subpart 1; and 7503.2700**

**Public Hearing.** The Minnesota Department of Public Safety, Driver and Vehicle Services Division, intends to adopt rules after a public hearing following the procedures set forth in the rules of the Office of Administrative Hearings, 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 Room 5 of the State Office Building, 100 Constitution Avenue, St. Paul, Minnesota, starting at 9 a.m. on July 1, 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 Barbara Neilson, Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota 55401-2138, **phone:** (612) 341-7604, and **fax:** (612) 349-2665. The rule hearing procedures are 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 about the rule hearing procedures should be directed to the administrative law judge.

**Subject of Rules.** The amendments to the existing rules in chapter 7503 address the withdrawal and reinstatement requirements for driving privileges where the use of alcohol or a controlled substance is involved. The proposed rule amendments:

- Incorporate reference to the new impaired law contained in *Minnesota Statutes*, Chapter 169A while maintaining reference to renumbered law where necessary.
- Place agency policy and procedures being generally applied into rule. Because of new law, effective July 1, 2002 that allows for petition over unpromulgated policy, the agency must ensure that all policy and procedures generally applied are in rule.
- Facilitate the electronic transfer of information and notices. Law enforcement should be able to download and generate standardized notices from the squad car. The public will be able to download information and transmit requests.

The proposed repealers consolidate procedures for administrative reviews and hearings to provide for a single, uniform set of procedures. In addition, the repeal of part 7503.1300, subpart 3 is necessary because the requirements are contained in part 7503.1700. The repeal of subpart 4a of part 7503.1700 is designed to eliminate confusion for drivers when a restriction is removed from the face of a license but maintained on the driving record. Part 7503.1750 is proposed for repeal because it has not been used since 1996. Part 7503.2000, subpart 4 is obsolete. Part 7503.2300 and part 7503.2400, subpart 1 are duplicative of requirements now in statute.

A copy of the proposed rules are published in the *State Register* and attached to this notice as mailed. A free copy of the rules are available from the agency contact person.

**Statutory Authority.** The proposed rules are authorized by *Minnesota Statutes*, sections 14.06, 169A.75, 169.798, 171.165, and 299A.01.

**Agency Contact Person.** The agency contact person is Jane A. Nelson, Minnesota Department of Public Safety, Driver and Vehicle Services Division, 445 Minnesota Street, Suite 196, St. Paul, Minnesota 55101-5196. **Phone:** (651) 296-2608. **Fax:** (651) 296-3141. **TTY** users may call the Department of Public Safety at (651) 282-6555.

**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.

**Accommodation.** 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 unless the procedure under part 1400.2110 has been followed. If the proposed rule affects you in any way, you are encouraged to participate.

**Adoption Procedure After 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 this request 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 Campaign Finance and Public Disclosure Board. Questions about this requirement may be directed to the Campaign Finance and Disclosure Board at 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: 6 May 2002

Charles R. Weaver, Jr. Commissioner  
Minnesota Department of Public Safety

## 7503.0100 DEFINITIONS.

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

Subp. 2. ~~Alcohol problem~~ **Chemical use assessment.** An A “~~alcohol problem~~ chemical use assessment” is a report prepared under Minnesota Statutes, section 169A.54, subdivision 11, or 169A.70 to evaluate a person's driving ability in relation to possible chemical abuse.

Subp. 3. ~~Alcohol- or controlled-substance-related incident.~~ An “alcohol- or controlled-substance-related incident” is a violation or license revocation under current or former Minnesota Statutes, section 169.121; 169.1211; 169.123, subdivisions 2, 2a, 2b, 2c, and 4; 169.127; 169.129; 169A.20; 169A.51, subdivision 1, 2, 3, 4, 5, or 6; 169A.52, subdivision 1, 2, 3, 4, or 5; 169A.54; 171.245; or 609.21, subdivision 1, clauses (2), (3), and (4), subdivision 2, clauses (2), (3), and (4), subdivision 3, clauses (2), (3), and (4), and subdivision 4, clauses (2), (3), and (4); or a statute from another state in conformity with one of these provisions.

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Subp. 4. **Cancellation and denial.** “Cancellation and denial” is the commissioner’s withdrawal of a person’s driver’s license and privilege to drive in Minnesota pursuant to current or former Minnesota Statutes, section 169.121; 169A.54; 171.04, subdivision 1, clause (6), (10), (11), or (12); 171.13, subdivision 4; or 171.14.

[For text of subps 5 to 6b, see M.R.]

Subp. 7. [See repealer.]

Subp. 8. **Personal injury.** A “personal injury” ~~is~~ means either:

A. “bodily harm” as defined in Minnesota Statutes, section 609.02, subdivision 7;

B. “substantial bodily harm” as defined in Minnesota Statutes, section ~~609.04~~ 609.02, subdivision 7a, ~~or~~;

C. “great bodily harm” as defined in Minnesota Statutes, section ~~609.04~~ 609.02, subdivision 8; or

D. “personal injury” as defined in part 7409.0100, subpart 7b.

Subp. 9. **Revocation.** “Revocation” is the commissioner’s withdrawal of a person’s driver’s license and privilege to drive in this state for a specific ~~minimum~~ period under either current or former Minnesota Statutes, section 169.121, 169.123, 169A.52, 169A.54, or 171.17.

Subp. 10. **Special review and notice.** “Special review and notice” means the notice given to the driver and the written acknowledgment received from a driver under part 7503.1250.

[For text of subp 11, see M.R.]

Subp. 12. **Suspension.** “Suspension” is the commissioner’s temporary withdrawal of a person’s driver’s license and privilege to drive in this state under current or former Minnesota Statutes, section 169.121, subdivision 8; 169A.54, subdivision 11, or 171.18.

### 7503.0200 ALCOHOL- OR CONTROLLED-SUBSTANCE-RELATED SUSPENSION.

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

Subp. 2. **Failure to complete ~~alcohol problem~~ chemical use assessment.** The commissioner shall suspend the driver’s license or driving privilege of any person who fails to complete ~~an alcohol problem~~ a chemical use assessment as required by this chapter and either current or former Minnesota Statutes, section 169.121, subdivision 8, or 169A.54, subdivision 11, ~~and this chapter~~, or who fails to complete any action required by the assessment.

### 7503.0300 SUSPENSION PERIODS.

Subpart 1. **For revocable offenses.** The commissioner shall suspend for one year the driver’s license ~~or driving privilege~~ of a person ~~who commits an offense for which mandatory revocation of a driver’s license is required upon conviction for the revocation period that is imposed for conviction of the offense in Minnesota, up to a maximum period of one year. upon receiving a record of a criminal charge arising out of the operation of a motor vehicle for:~~

A. criminal vehicular homicide or injury; or

B. manslaughter.

Time accrued under the suspension period must be credited toward the revocation period imposed upon conviction.

However, if the suspension is based on a criminal charge and the commissioner receives notice that the criminal charge was dismissed or that the person was acquitted of the criminal charge, the commissioner shall terminate the suspension period.

Subp. 2. **For failure to complete assessment.** The commissioner shall suspend the driver’s license or driving privilege of a person who fails to complete ~~an alcohol problem~~ a chemical use assessment or any requirement imposed at the assessment for a period of 90 days or until the assessment or requirement is completed, whichever occurs first.

### 7503.0500 HEARING FOLLOWING SUSPENSION.

The commissioner shall provide a hearing under the procedures in part 7409.4600, subparts 1 to 4, and Minnesota Statutes, section 171.18, to any person whose driver’s license or driving privilege has been suspended under this chapter or current or former Minnesota Statutes, ~~sections~~ section 169.121, subdivision 8; 169A.54, subdivision 11; or 171.18 ~~or this chapter~~.

### 7503.0600 REINSTATEMENT FOLLOWING SUSPENSION.

Except as stated in part 7503.1800, the commissioner shall not reinstate the driver’s license or driving privilege of a person whose license or privilege was suspended under current or former Minnesota Statutes, section 169.121, subdivision 8; 169A.54, subdivision 11; or 171.18 as a consequence of an alcohol- or controlled-substance-related incident, unless:

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

C. the person has paid a reinstatement fee as required by *Minnesota Statutes*, section 171.20 or 171.29.

### **7503.0700 ALCOHOL- AND CONTROLLED-SUBSTANCE-RELATED REVOCATION.**

Subpart 1. **Following conviction.** The commissioner shall revoke the driver's license or the nonresident driving privilege of any person convicted under current or former *Minnesota Statutes*, section 169.121, 169.129, 169A.20, or 609.21.

Subp. 2. **Following test for intoxication or refusal to take test.** The commissioner shall revoke the driver's license or the nonresident driving privilege of any person who violates current or former *Minnesota Statutes*, section 169.123 or 169A.51.

Subp. 3. **Following a conviction reported by another state.** The commissioner shall revoke the driver's license or the nonresident driving privilege of any person convicted under a statute from another state in conformity with current or former *Minnesota Statutes*, section 169.121, 169.129, 169A.20, or 609.21.

### **7503.0800 REVOCATION PERIODS.**

Subpart 1. **Statutory periods.** The commissioner shall revoke driver's licenses or nonresident driving privileges for the minimum periods prescribed in current or former *Minnesota Statutes*, sections 169.121, 169.123, 169A.52, and 169A.54. The revocation period for a DWI conviction with three or more prior impaired driving incidents is two years unless the violation involved an alcohol concentration of 0.20 or more in which case the revocation period is four years.

Subp. 2. **For criminal vehicular operation.** Upon receiving a record of conviction, the commissioner shall revoke the driver's license or driving privilege of a person convicted under:

A. *Minnesota Statutes*, section 609.21, subdivision 1, clause (2), (3), ~~or (4), (5), or (6)~~, or subdivision 3, clause (2), (3), ~~or (4), (5), or (6)~~, for a period of five ten years. ~~The commissioner shall revoke the driver's license or driving privilege of a person convicted under~~

B. *Minnesota Statutes*, section 609.21, subdivision 2, clause (2), (3), ~~or (4), (5), or (6)~~, or subdivision 4, clause (2), (3), (4), (5), or (6), for a period of five years.

C. *Minnesota Statutes*, section 609.21, subdivision 2a, clause (2), (3), ~~or (4), (5), or (6)~~, or subdivision 4, clause (2), (3), or (4), (6), for a period of three years ~~from the date the record of conviction is received.~~

D. *Minnesota Statutes*, section 609.21, subdivision 2b, clause (2), (3), (4), (5), or (6), for a period of one year.

Subp. 3. **For aggravated violations.** Upon receiving a record of conviction of a person under former *Minnesota Statutes*, section 169.129, or under a statute of another state in conformity with it, the commissioner shall revoke the driver's license or driving privilege of that person for a period of 30 days, 90 days, or one year. The length of the revocation period depends on the number of previous convictions for violations of current or former *Minnesota Statutes*, section 169.129 or 171.24, or a statute of another state in conformity with either of them, on the person's driving record during the three-year period preceding the date of the latest conviction. The revocation period must be:

- A. 30 days, if there are no previous convictions;
- B. 90 days, if there is one previous conviction; or
- C. one year, if there are two or more previous convictions.

A revocation ordered for a conviction under former *Minnesota Statutes*, section 169.129, runs consecutively with any other revocation imposed as a consequence of the same incident upon which the revocation for conviction under former *Minnesota Statutes*, section 169.129, is based.

Subp. 4. **Out-of-state convictions.** The period of revocation for incidents occurring outside this state ~~shall~~ must be the period of revocation that would be imposed if the incident had occurred and the person were convicted in Minnesota.

Subp. 5. **For personal injury or fatality.** When the commissioner has sufficient cause to believe that a personal injury or fatality occurred in connection with an alcohol- or controlled-substance-related incident upon which a revocation under current or former *Minnesota Statutes*, section 169.121, subdivision 4, or 169A.54, is based, the period of revocation must be increased as follows:

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

[For text of subp 6, see M.R.]

Subp. 7. **Terminating revocation after assessment action completed.** The commissioner shall terminate a revocation period in accordance with current or former Minnesota Statutes, section 169.123, subdivision 10, or 169A.55, subdivision 1.

A. The amount of the termination must be 30 days or the length of time remaining in the revocation period, whichever is shorter.

B. Termination of the revocation period under current or former Minnesota Statutes, section 169.123, subdivision 10, or 169A.55, subdivision 1, does not apply to persons with more than one alcohol- or controlled-substance-related incident on record or to persons who have outstanding licensure requirements.

C. Termination of the revocation period applies only in the following circumstances:

A. when the commissioner is notified by the court in writing or by electronic means that a driver has undergone ~~an alcohol problem~~ a chemical use assessment and ~~that the driver is not required by the court to complete a driver improvement course, alcohol awareness program, or treatment for chemical dependency and that the court indicates either:~~

(1) no further action is required or the driver has no identifiable chemical abuse problem, ~~the commissioner shall terminate the revocation period. The person may inform the commissioner of the court's decision by telephone to the department's driver evaluation office in Saint Paul.~~

B. When notified that a driver has undergone an alcohol problem assessment and that, or

(2) the driver is required to complete a driver improvement course, has completed a court-approved alcohol or controlled substance awareness program, or treatment for chemical dependency; treatment.

D. The commissioner shall terminate the revocation period if there is no conviction resulting from the incident, a chemical use assessment is completed, and the individual has completed an alcohol or controlled substance awareness program or chemical dependency treatment.

E. The commissioner shall terminate the revocation period upon receipt of the information specified in item C or D and the person's completed application written request for early reinstatement. ~~The application must be made in writing and must be accompanied by documents showing attendance at the required driver improvement course, alcohol awareness program, or chemical dependency treatment, and the anticipated completion date of the course, program, or treatment. Within ten days of the completion of the driver improvement course, alcohol awareness program, or chemical dependency treatment, the driver shall provide to the department a written document from the course, program, or treatment attesting that the person has completed it. If the driver fails to notify the department within the ten-day period, the commissioner shall revoke the driver's license for a period of 30 days or for the remainder of the revocation period, whichever is shorter.~~

### 7503.0900 NOTICE OF REVOCATION, ISSUING TEMPORARY LICENSES.

Subpart 1. **Temporary driver's licenses.** Notice of revocation served by a court or by a peace officer is valid as a temporary driver's license for the same class and with the same restrictions, limitations, and certifications of the original driver's license. Notice of revocation ~~shall~~ does not serve as a temporary driver's license if the person does not have a valid driver's license or driving privilege when the notice of revocation is served.

If the notice of revocation and temporary driver's license is issued by a court, the temporary driver's license period expires on the final day on which an appeal of the conviction can be taken from the court. If the notice of revocation and temporary driver's license is issued by a peace officer, the temporary driver's license expires on the seventh day after notice was served.

Subp. 2. **Notice served by court.** Notice of license revocation is served by the court when a person is convicted of violating current or former Minnesota Statutes, section 169.121 or 169A.20. The commissioner shall provide ~~forms~~ a format to the court for serving the notice of revocation and issuing a temporary license. ~~These forms~~ A completed notice must contain ~~space for the following~~ information specified in this subpart and may contain other information provided by the commissioner that the commissioner considers appropriate:

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

B. the date notice is served and the revocation is effective;

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

F. ~~a statement that the person must surrender to the court all license certificates in the person's possession, unless the person is not a resident of Minnesota;~~

G. ~~a statement informing the person that failing to surrender all driver's licenses may subject the person to criminal prosecu-~~



tion under *Minnesota Statutes*, sections 171.22 and 171.241, and suspension of the driver's license under *Minnesota Statutes*, section 171.18, clause (8);

~~H.~~ H. a statement advising the person that all driving privileges are revoked upon expiration of the temporary license period and the expiration date of any temporary license;

~~I.~~ G. a statement indicating that no temporary driver's license was issued if the person did not have valid driving privileges at the time of the incident;

~~J.~~ a statement indicating that the driver's license cannot be surrendered because the license is lost, stolen, already surrendered, or otherwise unavailable; and

~~K.~~ H. the signature of the judge issuing the revocation notice.

Subp. 3. **Notice served by peace officer.** Notice of license revocation is served by a peace officer when a person is subject to revocation under current or former *Minnesota Statutes*, section 169.123 or 169A.52. ~~The issuing peace officer shall forward to the commissioner on the same or next business day a copy of the notice of revocation together with any license certificates surrendered by the person, the peace officer's incident reports, and the implied consent advisory and peace officer's certificate.~~

A. The commissioner shall provide the ~~forms for~~ peace officer with the notice of revocation and ~~issuing~~ temporary licenses license. ~~These forms~~

B. A completed revocation notice must contain ~~space for the following information and may contain other information that the commissioner considers appropriate~~:

~~A.~~ (1) the person's full name, date of birth, driver's license number, height and weight, and ~~current~~ residential address on the driver's record including street number, city and state, and zip code;

~~B.~~ (2) the date that notice is served and when the revocation is effective;

~~C.~~ (3) the date of the incident;

~~D.~~ (4) the traffic ~~citation~~ case number;

~~E.~~ (5) the name, ~~signature,~~ and ~~business telephone number~~ agency name of the peace officer serving the notice;

~~F.~~ (6) the reason for the revocation;

~~G.~~ (7) the ~~minimum~~ length of the revocation period;

~~H.~~ a statement that the person must surrender to the peace officer all driver's license certificates in the person's possession, ~~unless the person is not a resident of Minnesota~~;

~~I.~~ (8) a statement advising the person that all driving privileges are revoked in seven calendar days or ~~upon expiration of a seven-day temporary license period~~ specifying the date any temporary license expires;

~~J.~~ a statement informing the person that failing to surrender all driver's licenses may subject the person to criminal prosecution under *Minnesota Statutes*, sections 171.22 and 171.241, and suspension of the driver's license under *Minnesota Statutes*, section 171.18, clause (8);

~~K.~~ (9) a statement indicating that no temporary license was issued, if the person did not have valid driving privileges at the time of the incident;

~~L.~~ a statement indicating that the driver's license cannot be surrendered because the license is lost, stolen, already surrendered, or otherwise unavailable;

~~M.~~ (10) a statement informing the person that the person has a right to:

(a) an administrative review under part 7409.4600, subparts 1 to 4, and *Minnesota Statutes*, section 169A.53, subdivision 1;

and

(b) a judicial review of the revocation order under *Minnesota Statutes*, section 169A.53, subdivision 2;

~~N.~~ (11) information explaining that:

(a) an administrative review of the revocation order may be obtained by submitting a written request for an administrative

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review to the commissioner in accordance with part 7409.4600, subparts 1 to 4, and Minnesota Statutes, section 169A.53, subdivision 1, and this chapter; and ~~that~~

~~(b) a~~ judicial review may be obtained by filing a petition for a judicial review within 30 days of receipt of the notice of revocation and otherwise in accordance with *Minnesota Statutes*, section 169A.53, subdivision 2; ~~and~~

~~Ⓔ (12)~~ a statement informing the person that failing to petition for a judicial review in compliance with *Minnesota Statutes*, section 169A.53, subdivision 2, forfeits the person's right to judicial review of a revocation order under that section.

Subp. 4. **Notice served by commissioner.** Notice of license revocation ~~may~~ **must** be served by the commissioner when a person is subject to revocation under *Minnesota Statutes*, section 169A.52, and valid notice is not served by a peace officer; when a person is convicted of violating current or former Minnesota Statutes, section 169.121 or 169A.20, and notice is not served by a court; when an additional revocation period is imposed under current or former Minnesota Statutes, section 169.121, subdivision 4, or 169A.54, in the case of a personal injury or fatality; or when requirements imposed from a previous revocation have not been satisfied.

~~A.~~ The commissioner shall establish ~~a form~~ the format for serving the notice of revocation, ~~that contains space for,~~

~~B.~~ A completed notice must contain the following information specified in this item and may contain other information provided by the commissioner that the commissioner considers appropriate:

~~A:~~ (1) the person's full name, date of birth, driver's license number, and current residential address obtained from the person's driver's license record, including the street number, city and state, and zip code;

~~B:~~ (2) the date the notice of revocation is issued;

~~C:~~ (3) the effective date of the revocation order;

~~D:~~ (4) the reason for the revocation;

~~E:~~ (5) the minimum length of the revocation period;

~~F:~~ (6) license reinstatement requirements;

~~G:~~ ~~a demand for surrender of all license certificates issued to the person or submission of a sworn statement from the person that an outstanding certificate was lost, stolen, or destroyed;~~

~~H:~~ (7) if the person is subject to revocation under *Minnesota Statutes*, section 169A.52, a statement informing the person that the person has a right to an administrative review under part 7409.4600, subparts 1 to 4, and Minnesota Statutes, section 169A.53, subdivision 1, and to a judicial review of the revocation order under Minnesota Statutes, section 169A.53;

~~I:~~ (8) if the person is subject to revocation under *Minnesota Statutes*, section 169A.52, information explaining:

(a) that an administrative review of the revocation order issued under *Minnesota Statutes*, section 169A.52, may be obtained by submitting a written request for an administrative review in accordance with part 7409.4600, subparts 1 to 4, and Minnesota Statutes, section 169A.53, subdivision 1; and ~~this chapter, and~~

(b) that judicial review may be obtained by petitioning for judicial review within 30 days after receiving notice of revocation and otherwise in accordance with *Minnesota Statutes*, section 169A.53, ~~subdivision 2;~~

~~J:~~ (9) if the person is subject to revocation under *Minnesota Statutes*, section 169A.52, a statement informing the person that failing to petition for a judicial review in compliance with *Minnesota Statutes*, section 169A.53, subdivision 2, forfeits the person's right to a judicial review of a revocation order under that section.

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

### **7503.1000 ADMINISTRATIVE REVIEW; OF REVOCATION, DISQUALIFICATION.**

Subpart 1. **Right to administrative review.** A person whose driver's license is revoked under *Minnesota Statutes*, section 169A.52, ~~or disqualified under Minnesota Statutes, section 171.165, subdivision 2,~~ has the right to an administrative review of the ~~revocation or disqualification~~ order under the procedure outlined specified in this chapter part 7409.4600, subparts 1 to 4, and Minnesota Statutes, section 169A.53, subdivision 1. ~~The review is final and no subsequent administrative review will be granted on the order of revocation or disqualification.~~

Subp. 2. [See repealer.]

Subp. 3. [See repealer.]

Subp. 4. [See repealer.]

Subp. 5. [See repealer.]

Subp. 6. [See repealer.]

**7503.1200 REINSTATEMENT FOLLOWING REVOCATION.**

Subpart 1. **Conditions.** Except as stated in part 7503.1800, the commissioner shall not reinstate a driver's license or nonresident driving privilege after revocation under current or former Minnesota Statutes, section 169.121, 169.123, 169A.52, 169A.54, or 171.17, unless:

- A. the revocation period has expired;
- B. the person has paid a reinstatement fee as required by Minnesota Statutes, section 171.29;
- C. the person has applied for a new license and paid the application fee for the class of license involved;
- D. the person has passed the driver's license examination required for issuance of ~~an original~~ a license as specified under parts 7410.4000 to 7410.5600 and Minnesota Statutes, section 171.13; and
- E. if the incident is a second conviction under current or former Minnesota Statutes, section 169.121 or, 169.129, or 169A.20, the person has submitted a certification from the court that:
  - (1) the court-ordered treatment or rehabilitation has been completed; or
  - (2) temporary reinstatement is agreed to by the petitioner and respondent because of a delay in hearing.

Subp. 2. **Notice of ~~reinstatement~~ expiration of revocation period.** The commissioner shall notify a person whose period of revocation has expired. The notice ~~shall~~ must be sent by first class mail, and shall contain a statement informing the person of the conditions of reinstatement and the consequences of driving prior to reinstatement.

Subp. 3. **Reinstatement order; time of reinstatement.** The driver's license of the subject of a reinstatement notice as specified in subpart 2, must be reinstated on the date and time the reinstatement notice is issued to the subject by the commissioner.

A. The reinstatement notice may be issued by first class mail to the residential address on file with the department, or transmitted by facsimile or electronic means.

B. Reinstatement of the subject's driver's license is not effective until the reinstatement notice is issued.

**7503.1250 SPECIAL REVIEW AND NOTICE.**

When a person incurs two alcohol- or controlled-substance-related incidents within ~~five ten~~ years or has three ~~or more~~ incidents on record in more than ten years, the commissioner shall require the person to complete, sign, and return a special review notice ~~form~~.

A. The special review notice must either be sent by the commissioner to the driver by first class mail to the driver's residential address listed on the driver's record or be included with the revocation notice served by the peace officer.

B. The special review notice must require the driver to ~~attest~~ acknowledge in writing that the driver understands that an alcohol- or controlled-substance-related incident not currently on the driver's Minnesota driving record may result in the cancellation and denial of driving privileges in Minnesota.

C. Completion of the special review notice by the driver must be notarized or witnessed by an authorized representative of the commissioner and placed on the driver's record.

**7503.1300 LICENSE CANCELLATION AND DENIAL.**

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

Subp. 2. **Multiple alcohol- or controlled-substance-related incidents.** The commissioner shall cancel and deny the driver's license or the driving privilege of a person who:

- ~~(1)~~ A. has incurred three alcohol- or controlled-substance-related incidents within the past ~~five ten~~ years; ~~(2)~~;
- B. has incurred three of these incidents and a special review has been ~~conducted~~ completed and entered in the driver's record within ten years of the third incident; ~~or~~
- ~~(3)~~ C. has four or more of these incidents on record.

Subp. 3. [See repealer.]

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## Proposed Rules

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### 7503.1500 ~~INFORMAL HEARING~~ ADMINISTRATIVE REVIEW FOLLOWING CANCELLATION AND DENIAL.

The commissioner shall grant an ~~informal hearing~~ administrative review according to the procedures in part 7409.4600, subparts 1 to 4, to review the order of cancellation and denial to any person whose license has been canceled or whose application for a license has been denied.

### 7503.1600 REINSTATEMENT FOLLOWING CANCELLATION.

The commissioner shall deny the application for a driver's license, including the application for a limited license, to a person whose license has been canceled, unless:

- A. no ~~revocation or suspension~~ withdrawal of the person's driver's license or driving privilege is outstanding;
- B. ~~the person has a~~ completed, signed, and returned the special review notice ~~form~~ is entered on the person's driving record; and
- C. if the incident is the third alcohol- or controlled-substance-related incident within a ~~five-year~~ ten-year period, or the third incident on record and a special review notice ~~form~~ was completed, signed, and ~~returned~~ entered in the driver's record within ten years of the third incident, or if the person has four or more of these incidents on record, the person has completed rehabilitation.

Reinstatements following rehabilitation must be conditioned upon continued abstinence from the use of alcohol and controlled substances.

### 7503.1700 REHABILITATION.

Subpart 1. **When applicable.** A person must complete rehabilitation whenever:

- A. the person's driver's license or driving privileges have been canceled and denied following involvement in three or more alcohol- or controlled-substance-related incidents within ~~five~~ the past ten years;
- B. a third alcohol- or controlled-substance-related incident occurs within ten years from the date the ~~person~~ completed, signed, and returned ~~the required~~ special review notice ~~form~~ is entered on the person's driving record; or
- C. there are four or more incidents on record.

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

Subp. 2a. **Variance to amount of treatment.** The commissioner may grant a variance from the durational amounts of chemical dependency treatment set forth in subpart 2, item A, subitems (2) and (3), and item B.

A. Variances must be requested by the person to whom the treatment applies and be approved on an individual basis.

B. If the subject obtains an assessment from a chemical dependency treatment program that treatment is not needed and the subject has abstained for one year past the minimum abstinence time required in subpart 5, then the treatment required in subpart 2, item A, subitems (3) and (4), may be waived.

(1) The assessment must contain the date of the assessment.

(2) The assessment must have occurred since the date of the last use of a controlled substance or alcohol.

(3) The assessment must specify the date of the last use of a controlled substance or alcohol.

(4) The assessment must demonstrate consideration of all controlled substance or alcohol-related violations on the subject's driving record.

(5) The assessment must specify that treatment will not be beneficial to continued abstinence.

C. No variance to the requirement for treatment will be granted if the commissioner has sufficient cause to believe that the subject has ever provided false documentation or information to the commissioner relative to rehabilitation.

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

Subp. 2d. **Notice of decision.** The commissioner shall notify the individual in writing of the commissioner's decision to grant or deny the variance.

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

C. If the variance is denied, the denial notice ~~shall~~ must specify the reasons for the denial and indicate that the individual may request a review of the commissioner's decision by the chemical abuse review panel established under part 7503.2200.

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

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

Subp. 4. **Abstinence documentation.** Every person applying for reinstatement after rehabilitation must sign a statement acknowledging the person's awareness that abstinence from the use of alcohol and controlled substances is a condition of licensure.

A. The commissioner shall provide ~~a form~~ the format for the statement to the person ~~which contains the~~ applying for license reinstatement.

B. The statement must contain an acknowledgment as well as an advisory that the commissioner shall cancel and deny the driver's license and driving privilege of the person if the commissioner has sufficient cause to believe that the person has consumed alcohol or a controlled substance, whether or not the circumstances involve the operation of a motor vehicle.

C. The restriction to abstain from the consumption of alcohol and abuse of controlled substances must be placed on the person's driver's license and driving record.

D. To substantiate abstinence, the person must sign a statement, on ~~the form~~ a format provided by the commissioner, attesting to the date on which the person applying for license reinstatement last consumed alcohol or a controlled substance ~~was last consumed~~. This statement must be notarized or completed in the presence of an authorized representative of the commissioner.

E. The person applying for license reinstatement also must furnish to the commissioner at least five supporting statements, signed and dated within 30 days of submission, from ~~unrelated~~ persons:

(1) who are not related to the person applying for license reinstatement by blood, marriage, or adoption;

(2) who are not an employee or employer of the person applying for license reinstatement;

(3) who do not have a significant relationship as defined in Minnesota Statutes, section 169A.60, subdivision 1, with the person applying for license reinstatement; and

(4) who have known the driver for the minimum required abstinence period.

F. ~~The statements~~ Each statement must:

(1) be signed and dated by the person attesting to the abstinence of the person applying for license reinstatement;

(2) include the full name, address, and telephone number of the person filing the supporting statement; ~~information as to how often they will be;~~

(3) indicate that the person providing the supporting statement has been in weekly contact during the abstinence period with the person; ~~what relationship they hold~~ applying for license reinstatement;

(4) certify that the person providing the supporting statement is not related to, is not an employee or employer of, or does not have a significant relationship to the person; applying for license reinstatement as specified in item E;

(5) indicate the period of time that the person providing the supporting statement can attest to abstinence; of the person applying for license reinstatement; and

(6) contain a pledge by the person providing the supporting statement to report promptly to the commissioner, in writing, any use of alcohol or a controlled substance by the person applying for license reinstatement.

Subp. 4a. [See repealer.]

[For text of subps 5 to 9, see M.R.]

#### **7503.1800 LIMITED LICENSES.**

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

Subp. 2. **Persons not eligible.** The commissioner shall ~~not~~ issue a limited license to a person ~~whose driver's license or driving privilege is canceled or denied. No limited license may be issued to a person incurring a second alcohol or controlled substance-related incident within five years or to a person with three alcohol or controlled substance-related incidents on record, unless one~~

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## Proposed Rules

half of the revocation period has expired. However, a license must be issued as required by *Minnesota Statutes*, section 171.30, ~~subdivision 3~~ only when the person complies with the waiting period and conditions specified in this part, part 7409.3600, and *Minnesota Statutes*, section 171.30.

Subp. 3. **Conditions of issuance.** Before a limited license may be issued under *Minnesota Statutes*, section 171.30, subdivision 1, the person must:

A. apply for a new license and pay the application fee for the class of license involved;

B. pass the driver's license ~~examination~~ examinations as required for issuance of an original license by parts 7410.4000 to 7410.5600, and *Minnesota Statutes*, section 171.13;

C. pay a reinstatement fee as required by *Minnesota Statutes*, section 171.29, at the time of payment; and

D. appear personally, by telephone, or by mail at one of the department's driver evaluation offices to request a limited license, ~~except that a person who has two alcohol or controlled substance related incidents within five years, or three of these incidents on record must appear personally to request a limited license; and~~

E. ~~demonstrate a need for a limited license for employment; attendance at chemical dependency treatment, counseling programs, or postsecondary education; or, as a homemaker, to prevent the substantial disruption of the educational, medical, or nutritional needs of the homemaker's family members residing in the homemaker's household. A person may demonstrate the need for a limited license using letters from the person's employer, proof of attendance at a chemical dependency treatment or counseling program, or proof of attendance at a postsecondary institution of education. The commissioner shall consider the particular circumstances and needs of the individual before issuing a limited license request a limited license by written correspondence, facsimile, or e-mail, by personal appearance at the department, or by telephone.~~

Subp. 3a. **Judicial review waiver.** The commissioner shall waive items A, B, and C if the person has filed a petition for judicial review in the appropriate court and has furnished a copy of the petition to the commissioner. If the revocation is sustained on judicial review, the requirements must be met before reinstatement of driving privileges.

~~If a limited license is issued, the conditions need not be repeated when seeking reinstatement, but any additional conditions must be satisfied.~~

Subp. 4. **Restrictions and limitations.** The commissioner shall ~~prescribe restrictions on~~ restrict and limit the time and use of a limited license as provided in part 7409.3600 and *Minnesota Statutes*, section 171.30, subdivision 1.

Subp. 4a. **No limited commercial license.** The commissioner shall not issue a limited class A, B, or C license under the provisions of *Minnesota Statutes*, section 171.30, during the period the individual is disqualified from holding a commercial class A, B, or C license under *Minnesota Statutes*, section 171.165.

Subp. 4b. **Limited class D license issuance exceptions.** The commissioner shall not issue a limited class D license under the provisions of *Minnesota Statutes*, section 171.30, to an individual:

A. if the license is suspended under part 7503.0200, suspended for criminal vehicular homicide or injury, or suspended for manslaughter with a motor vehicle;

B. for employment to operate a class A school bus or child care or activity bus as described in *Minnesota Statutes*, section 169.01 or 171.02; or

C. for employment to operate a special transportation service vehicle as described in *Minnesota Statutes*, sections 221.011, subdivision 49, and 473.386.

Subp. 4c. **Limited licensure to juveniles.** The commissioner shall not issue a limited license for 90 days under *Minnesota Statutes*, section 171.30, to any person who was:

A. under the age of 21 at the time of the violation; and

B. committed a second violation of *Minnesota Statutes*, section 169A.33.

Subp. 5. ~~**Informal hearing**~~ **Administrative review following denial of limited license.** The commissioner shall grant a person an ~~informal hearing~~ administrative review according to the procedures in part 7409.4600, subparts 1 to 4, to review a decision not to issue a limited license to that person.

### **7503.2000 CHEMICAL USE ASSESSMENTS REQUIRED BY COMMISSIONER.**

Subpart 1. **Chemical use assessment required after 0.07 test.** ~~When an evidentiary test administered under authority of *Minnesota Statutes*, section 169A.51, discloses an alcohol concentration of 0.07 percent or more, the result must be reported to the commissioner. If a second test of 0.07 percent or more occurs within two years, the commissioner shall require, under *Minnesota Statutes*, section 171.13, has reasonable cause to believe a person is unable to exercise ordinary and reasonable control in the opera-~~

~~tion of a motor vehicle due to the consumption of alcohol or a controlled substance, the commissioner shall determine the individual's fitness to operate a motor vehicle safely upon the highways, by requiring the person to appear for an~~ have a chemical use assessment. The commissioner shall notify the person by first class mail to the driver's residence address listed on the driver's record that the assessment is required.

Subp. 2. **By whom conducted.** ~~An alcohol problem~~ A chemical use assessment conducted under current or former *Minnesota Statutes*, section 169.121, subdivision 8, or 169A.54, subdivision 11, must be conducted by an agency approved by the county or ~~municipal~~ district court as outlined in *Minnesota Statutes*, section 169A.70.

Subp. 3. **Suspension for failure to complete chemical use assessment.** If a person required to submit to ~~an alcohol problem a~~ chemical use assessment under current or former *Minnesota Statutes*, section 169.121, subdivision 8, or 169A.54, subdivision 11, fails to submit ~~an~~ the assessment report to the commissioner or fails to appear for an assessment within 30 days after notification that ~~an~~ a chemical use assessment is required, the commissioner shall suspend the driver's license or driving privilege of that person.

A. If any treatment or action is required from the chemical use assessment, the commissioner shall establish a deadline based on the type of action or treatment required and the particular needs of the person, provided that the deadline shall not be less than 60 days from the date of the chemical use assessment.

B. If the action or treatment is not completed before the established deadline, the commissioner shall suspend the driver's license or driving privilege of the person for the period of time prescribed in part 7503.0300, subpart 2.

C. The commissioner shall not suspend any person's driver's license or driving privilege for failing to complete ~~an~~ a chemical use assessment required exclusively under section 169A.70.

Subp. 4. [See repealer.]

#### **7503.2400 DISQUALIFICATION PERIODS.**

Subpart 1. [See repealer.]

Subp. 2. **Three-year disqualification.** Upon receiving a record of conviction or revocation, the commissioner shall disqualify a person from holding a commercial driver's license for three years if the person was transporting hazardous materials at the time of the incident forming the basis for a conviction or revocation under *Minnesota Statutes*, section 171.165, subdivision 1, clause (1), or subdivision 2. The three-year disqualification period begins on the date ~~the record of conviction or revocation is received by the commissioner~~ specified on the notice of disqualification.

Subp. 3. **Not less than ten-year disqualification.** The commissioner shall disqualify a person from holding a commercial driver's license for life if the person is disqualified a second or subsequent time in 55 years under *Minnesota Statutes*, section 171.165, subdivision 1 or 2.

A. The lifetime disqualification period begins on the date ~~the record of conviction or revocation is received by the commissioner~~ specified on the notice of disqualification.

B. The lifetime disqualification period will be reduced to a minimum of ten years disqualification, except in the case of conviction under *Minnesota Statutes*, section 171.165, subdivision 3, clause (3), if the person demonstrates rehabilitated driving practices in the ten-year period following the effective date of the lifetime disqualification.

C. A person is considered rehabilitated if during that ten-year period there is no revocation or conviction resulting from the operation of any type of vehicle for an offense listed in *Minnesota Statutes*, section 171.165, subdivision 1, and if the person's license is not revoked under current or former *Minnesota Statutes*, section 169.123, 169A.52, or a statute or ordinance from another state in conformity with ~~these sections.~~ If rehabilitation is not so demonstrated during the initial ten year period, the disqualification period remains lifetime.

D. A person is disqualified from holding a commercial driver's license for life, without a reduction of the disqualification, if the person subsequently commits another disqualifying offense as set forth in *Minnesota Statutes*, section 171.165, subdivision 1 or 2, or a statute of another state or ordinance in conformity with it, or any combination of those offenses following reinstatement of the commercial motor vehicle driver's license under item B.

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## Proposed Rules

### 7503.2500 NOTICE OF DISQUALIFICATION OF COMMERCIAL DRIVING PRIVILEGE.

Subpart 1. **Notice served by peace officer.** Notice of disqualification is served by a peace officer when a person is subject to disqualification under *Minnesota Statutes*, section 171.165, subdivision 2.

~~A.~~ The issuing peace officer ~~shall~~ must forward to the commissioner on the same or next business day a copy of the notice of disqualification together with ~~the~~ any license certificates surrendered by the person, the peace officer's incident reports, and the implied consent advisory and peace officer's certificate.

~~B.~~ The commissioner shall provide the ~~forms~~ format for the notice of disqualification and issuing temporary licenses. ~~These forms~~

~~C.~~ A completed notice must contain ~~space for the following~~ information specified in this subpart and may contain other information provided by the commissioner that the commissioner considers appropriate:

~~A.~~ (1) the person's full name, date of birth, driver's license number, height and weight, and ~~current~~ residential address on the driver's record, including street number, city, state, and zip code;

~~B.~~ (2) the date ~~that~~ the notice of disqualification is served;

~~C.~~ (3) the date of the incident;

~~D.~~ (4) the traffic ~~citation~~ case number;

~~E.~~ (5) the type of vehicle being operated at the time of the incident;

~~F.~~ (6) the name, signature, and ~~business telephone number~~ agency name of the peace officer serving the notice of disqualification;

~~G.~~ (7) the reason for the disqualification;

~~H.~~ (8) the ~~minimum~~ length of the disqualification period;

~~I.~~ a statement that the person must surrender to the peace officer the driver's license certificates in the person's possession, ~~unless the person is not a resident of Minnesota;~~

~~J.~~ (9) a statement advising the person that the person is under an out-of-service order required under *Minnesota Statutes*, section 169A.54, subdivision 7, paragraph (c), for 24 hours;

~~K.~~ (10) a statement advising the person that the person is disqualified from operating commercial motor vehicles in seven days or upon expiration of a seven-day temporary license period or when the disqualification will be effective;

~~L.~~ a statement informing the person that failing to surrender all driver's licenses may subject the person to criminal prosecution under *Minnesota Statutes*, sections 171.22 and 171.241, and suspension of the driver's license under *Minnesota Statutes*, section 171.18, clause (8);

~~M.~~ (11) a statement that no temporary license was issued, if the person did not have valid driving privileges at the time of the incident;

~~N.~~ a statement that the driver's license cannot be surrendered, if the license is lost, stolen, already surrendered, or otherwise unavailable;

~~O.~~ (12) a statement informing the person that the person has a right to an administrative reconsideration of the disqualification order by the commissioner under *Minnesota Statutes*, section 171.166, subdivision 3, and to a judicial review of the disqualification order under *Minnesota Statutes*, section 169A.53, subdivision 2;

~~P.~~ (13) information explaining that an administrative review of the disqualification order under *Minnesota Statutes*, section 169A.52, may be obtained by submitting a written request for an administrative review to the commissioner under part 7409.4600, subparts 1 to 4, and *Minnesota Statutes*, section 169A.53, subdivision 1, and this chapter;

~~Q.~~ (14) information explaining that a judicial review of a disqualification order issued under *Minnesota Statutes*, section 169A.52, may be obtained by filing a petition for judicial review within 30 days of receipt of the notice of disqualification and otherwise for a violation of *Minnesota Statutes*, section 169A.52. The request must be made in accordance with *Minnesota Statutes*, section 169A.53, subdivision 2; and

~~R.~~ (15) a statement informing the person that failing to petition for judicial review in compliance with *Minnesota Statutes*, section 169A.53, subdivision 2, forfeits the person's right to judicial review of a ~~revocation~~ disqualification order issued under that *Minnesota Statutes*, section 169A.52.

Subp. 2. **Notice by commissioner.** Notice of disqualification ~~may~~ must be served by the commissioner when a person is subject to disqualification under *Minnesota Statutes*, section 171.165, subdivision 1, clause (1), and notice is not served by a court; a person

is subject to disqualification under *Minnesota Statutes*, section 171.165, subdivision 2, and notice is not served by a peace officer; or, when requirements imposed from a previous disqualification have not been satisfied.

A. The notice must be in writing and sent by first class mail to the residential address shown on the driver's record.

B. The commissioner shall establish a ~~form~~ format for serving the notice of disqualification.

C. ~~The form A completed notice~~ must contain ~~space for~~ the following information specified in this subpart and may contain other information provided by the commissioner that the commissioner considers appropriate:

~~A. (1)~~ the person's full name, date of birth, driver's license number, and current address obtained from the person's driver's license record, including the street number, city, state, and zip code;

~~B. (2)~~ the type of vehicle being operated at the time of the disqualifying incident;

~~C. (3)~~ the date the notice of disqualification is issued;

~~D. the effective date of (4) when~~ the disqualification order is effective;

~~E. (5)~~ the reason for the disqualification;

~~F. (6)~~ the length of the disqualification period;

~~G. (7)~~ reinstatement requirements;

~~H. a demand for surrender of the license certificates issued to the person or submission of a sworn statement from the person that an outstanding certificate was lost, stolen, or destroyed;~~

~~I. (8)~~ if the person is disqualified under *Minnesota Statutes*, section 171.165, subdivision 2, a statement informing the person that the person has a right to ~~administrative and judicial review~~ reconsideration by the commissioner under *Minnesota Statutes*, section 171.166, subdivision 3, of the disqualification order;

~~J. (9)~~ if the person is disqualified under *Minnesota Statutes*, section ~~169A.53, subdivision 1~~ 169A.52, information explaining:

~~(1) (a)~~ that an administrative review of the disqualification order issued under *Minnesota Statutes*, section ~~171.165, subdivision 2~~ 169A.52, may be obtained by submitting a written request for an administrative review in accordance with part 7409.4600, subparts 1 to 4, and *Minnesota Statutes*, section 169A.53, subdivision 1, and this chapter; and

~~(2) (b)~~ that judicial review may be obtained by petitioning for judicial review within 30 days after receiving the notice of disqualification ~~and otherwise for a violation of *Minnesota Statutes*, section 169A.52. The request must be made in accordance with *Minnesota Statutes*, section 169A.53, subdivision 2; and~~

~~K. (10)~~ if the person is disqualified under *Minnesota Statutes*, section 171.165, subdivision 2, a statement informing the person that failing to petition for judicial review in compliance with *Minnesota Statutes*, section 169A.53, subdivision 2, forfeits the person's right to judicial review of a disqualification order issued under *Minnesota Statutes*, section ~~171.165, subdivision 2; and~~

~~L. a statement informing the person that the person has a right to an informal hearing to review a disqualification order under *Minnesota Statutes*, section 171.165, subdivision 1, clause (1) 169A.52.~~

Subp. 3. **Notice to other states.** When a nonresident commercial vehicle driver is convicted of violating current or former *Minnesota Statutes*, section ~~169.1211~~, 169A.20, or 169A.31, the commissioner shall report that conviction to the driver's state of residence.

### **7503.2800 REINSTATEMENT FOLLOWING DISQUALIFICATION.**

Subpart 1. **Conditions of reinstatement.** The commissioner shall reinstate the commercial motor vehicle driving privileges of a person who has been disqualified under *Minnesota Statutes*, section 171.165, subdivision 1, clause (1), or subdivision 2, if the following requirements have been satisfied:

A. the disqualification period has been served and expired;

B. the person has paid the reinstatement fee as required by *Minnesota Statutes*, section 171.20;

C. the requirements imposed during this or any previous disqualification period have been satisfied; and

D. if issued, the class D license card has been ~~returned to~~ invalidated by the department.

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## Proposed Rules

Subp. 2. **Notice of reinstatement.** After the person fulfills the reinstatement requirements, the department will notify the person of reinstatement. Reinstatement of the subject's driver's license is not effective until the notice of reinstatement is issued by the commissioner.

Subp. 3. **When reinstatement is effective.** When a person's driving privileges have been withdrawn, they must be reinstated at the time and date the commissioner determines the reinstatement requirements have been met.

A. Reinstatement is effective on the date and time specified in the notice of reinstatement issued by the commissioner.

B. The notice of reinstatement must be issued by first class mail to the person subject to reinstatement.

C. The subject's driving record must reflect reinstatement at the time and date the notice of reinstatement is issued.

### ADMINISTRATIVE IMPOUNDMENT OF LICENSE PLATES

#### **7503.2900 SALE OF VEHICLE SUBJECT TO IMPOUND ORDER.**

A. For purposes of implementing *Minnesota Statutes*, section 171.60, any motor vehicle sold while its registration plates are subject to an impoundment order or during the time the vehicle's registration plates bear a special series number, must be sold for the value of similar motor vehicles.

B. "Sale for valid consideration" as used in *Minnesota Statutes*, section 171.60, subdivision 14, shall mean the average value of similar vehicles established by standards and guides used by the commissioner, whether paid in money or otherwise.

#### **7503.3000 VARIANCES.**

Unless otherwise specifically indicated in this chapter, the provisions of this chapter are not subject to variance.

**REPEALER.** *Minnesota Rules*, parts 7503.0100, subpart 7; 7503.1000, subparts 2, 3, 4, 5, and 6; 7503.1100; 7503.1300, subpart 3; 7503.1700, subpart 4a; 7503.1750; 7503.1900; 7503.2000, subpart 4; 7503.2300; 7503.2400, subpart 1; and 7503.2700, are repealed.

## Adopted Rules

A rule becomes effective after the requirements of *Minnesota Statutes* §§14.05-14.28 have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

#### **Expedited and Emergency Expedited Rules**

Provisions for the Commissioner of Natural Resources to adopt emergency expedited Game and Fish Rules are specified in *Minnesota Statutes* §§ 84.027. The commissioner may adopt emergency expedited rules when conditions exist that do not allow the Commissioner to comply with the requirements for emergency rules. The Commissioner must submit the rule to the attorney general for review and must publish a notice of adoption that includes a copy of the rule and the emergency conditions. Emergency expedited rules are effective upon publication in the *State Register*, and may be effective up to seven days before publication under certain emergency conditions. Emergency expedited rules are effective for the period stated or up to 18 months.

## Department of Human Services

### Adopted Permanent Rules Relating to Dental Coverage/Medical Assistance

The rules proposed and published at *State Register*, Volume 26, Number 24, pages 740-744, December 3, 2001 (26 SR 740), are adopted with the following modifications:

#### **9505.0270 DENTAL SERVICES.**

Subp. 2. **Covered dental services.** ~~The A covered 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 service is any dental service that meets the general requirements for~~

MA-covered services in part 9505.0210, subject to the limits in this part and the requirements in parts 9505.5010 and 9505.5030, that apply when ~~a service or procedure requires authorization~~ prior authorization is a condition of payment. ~~Services and procedures requiring that require~~ authorization are published in the *State Register* as required by *Minnesota Statutes*, section 256B.0625, subdivision 25. The list of services requiring authorization is continuously updated in the Minnesota Health Care Program (MHCP) providers' manual issued by the Minnesota Department of Human Services and is incorporated by reference. The manual is available on line at [www.dhs.state.mn.us](http://www.dhs.state.mn.us) under the bulletins, publications, and manuals selection. The Web site may be accessed through a computer at a public library. The services in items A to S indicate the scope of covered services but are not an exclusive or exhaustive list of covered services. When individual medical need requires a service that is not listed in this subpart, a provider has the option of seeking prior authorization for the service under parts 9505.5010 and 9505.5030 unless the service is an excluded dental service under subpart 10.

R. reline or rebase of a removable denture; and

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.

F. At least one of the following criteria must be met in order to receive payment for ~~coverage of~~ orthodontic treatment ~~to~~ apply:

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

~~(1) Except as medically necessary in conjunction with a fixed bridge covered by this part or an implant covered by this part, 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) in order to be covered.~~

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

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

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

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

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## 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.*

### 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 9:00 a.m., on Wednesday, May 22, 2002. The meeting will take place at 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.

### Department of Health

#### Bureau of Family and Community Health

#### Notice of Public Meeting Regarding the Minnesota Department of Health Application to the Federal Department of Health and Human Services for Federal Fiscal Year 2003 Maternal and Child Health Services Block Grant Funding

The Minnesota Department of Health will sponsor a public meeting to obtain comments on its application for continuation of Federal Maternal and Child Health Services Block Grant funding for the federal fiscal year starting October 1, 2002 and ending September 30, 2003. The draft application will be available for inspection upon request beginning June 7, 2002.

Discussion of the application will be conducted as part of the regularly scheduled meeting of the state Maternal and Child Health Advisory Task Force held Friday, June 21, 2002 at 1:00 p.m., at the Snelling Office Park, 1645 Energy Park Drive, St. Paul, Minnesota. The application discussion will be held in the Mississippi Room. Any person or group may submit either written or oral comments at the meeting.

Any person needing special accommodations for a disability should so indicate at the time of registration. Persons planning to attend and/or present comments are requested to register by June 14, 2002.

To register or obtain further information call (651) 215-8960.

### Minnesota Pollution Control Agency

#### Policy and Planning Division

#### Proposed Permanent Rules Relating to Stationary Sources

#### EXTENDING THE PUBLIC COMMENT PERIOD ON PROPOSED NEW RULES AND RULE AMENDMENTS GOVERNING AIR QUALITY

**Proposed New Rules Governing Conditionally Insignificant and Conditionally Exempt Air Emissions to be Codified in Minnesota Rules Chapter 7008, and Amendments to Rules Governing Permits and Offsets, Minnesota Rules Chapter 7007, Amendments to Rules Governing Air Quality Division Definitions and Abbreviations, Minnesota Rules Chapter 7005 and Amendments to Rules Governing Standards for Stationary Sources, Minnesota Rules Chapter 7011**

The Notice of Intent to Adopt Rules Without a Public Hearing published at *State Register*, Volume 26, Number 43, pages 1351- 1363, April 15, 2002 (26 SR 1351) is being amended by extending the public comment period an additional 30 days.

It was brought to the attention of the Minnesota Pollution Control Agency (MPCA) that a few interested parties did not receive notification of this rulemaking until two weeks before the end of the original comment period, which was May 15, 2002. In order to

allow all interested and affected parties the opportunity to review and comment on the proposed rules, the MPCA is extending the comment period to 4:30 p.m., June 19, 2002.

**Please review the Notice of Intent to Adopt and proposed rules published in the *State Register* on April 15, 2002, for information regarding the MPCA's contact person; MPCA's draft rules; how to comment on the proposed rules; how to request a hearing on the proposed rules; how to have the MPCA Board make the final decision on the proposed rules if no hearing is required; and other pertinent information required by the Administrative Procedure Act relating to rulemaking. You may also check the MPCA's web site for this information by clicking on to [www.pca.state.mn.us](http://www.pca.state.mn.us). Click on the News/Notices selection item to access the April 15, 2002, public notice that also contains the proposed rules and SONAR.**

**Comments:** You have until **4:30 p.m. on June 19, 2002**, to submit written comment in support of or in opposition to the proposed rules and any part or subpart of the rules. Comment is encouraged. Your comment should identify the portion of the proposed rules addressed and the reason for the comment. You are encouraged to propose any change desired. Any comments that you would like to make on the legality of the proposed rules must also be made during this extended comment period.

**Agency Contact Person:** The MPCA contact person is: Mike Mondloch at the Minnesota Pollution Control Agency, 520 Lafayette Road N., St. Paul, Minnesota, 55155-4194, **phone:** (651) 297-8593, **fax:** (651) 297-8717, and **email:** [michael.mondloch@pca.state.mn.us](mailto:michael.mondloch@pca.state.mn.us). TTYusers may call the MPCA at **TTY:** (651) 292-5332 or 1-800-657-3867.

Karen A. Studders  
Commissioner

## **Public Employees Retirement Association**

### **Finance Committee of the Board of Trustees, Notice of Meeting**

A Finance Committee meeting of the Board of Trustees of the Public Employees Retirement Association (PERA) will be held on Thursday, May 23, 2002, at 9:00 a.m., in the offices of the association, 60 Empire Drive, Room 117, St. Paul, Minnesota.

## **Department of Transportation**

### **Program Support Group**

### **Office of Investment Management**

### **Notice of Solicitation for Public Review and Comment on the Draft State Transportation Improvement Program (STIP) for State Fiscal Years 2003-2004-2005 (July 1, 2002 to June 30, 2004)**

The Minnesota Department of Transportation is offering an opportunity for public review and comment on a proposed State Transportation Improvement Program (STIP) for state fiscal years 2003-2004-2005 (July 1, 2002 to June 30, 2004). The program of transportation projects annually utilizes about \$530 million federal funds, \$275 million of state trunk highway funds, and funds from local and other sources. Projects include local road and bridge projects utilizing federal funds; transit capital investments; state highway road and bridge projects; enhancement projects; congestion mitigation and air quality projects; scenic byway projects; and other projects intending to utilize federal highway funds, federal transit funds, or state trunk highway funds. The proposed *State Transportation Improvement Program* is available for review at Department of Transportation District Offices:

**District 1** - Duluth, 1123 Mesaba Avenue, Duluth, MN 55811;

**District 2** - Bemidji, Box 490, 3919 Highway 2 West, Bemidji, MN 56619;

**District 3** - Baxter, 1991 Industrial Park Road, Baxter, MN 56425;

**District 4** - Detroit Lakes, 1000 Hwy. 10 West, Detroit Lakes, MN 56501;

**District 6** - Rochester, P.O. Box 6177, 2900 48th Street N. W., Rochester, MN 55903-6177;

**District 7** - Mankato, P.O. Box 4039, 501 South Victory Drive, Mankato, MN 56002-4039;



## Official Notices

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**District 8** - Willmar, P.O. Box 768, 2505 Transportation Road, Willmar, MN 56201;

**Metro Division** - Waters Edge Building, 1500 W. Co. Rd. B2, Roseville, MN 55113;

Or the Office of Investment Management, Mail Stop 440, 395 John Ireland Boulevard, Third Floor South, St. Paul, MN 55155.

You have 30 days to submit comments. Comments must be received by **4:30 p.m. on June 20, 2002**. Comments are encouraged and should identify the portion of the STIP addressed, reason for the comment, and any change proposed.

**Please direct all correspondence to:**

Shawn Chambers  
Office of Investment Management  
Minnesota Department of Transportation  
Mail Stop 440  
395 John Ireland Boulevard  
St. Paul, MN 55155  
**Phone:** (651) 296-1605  
**Fax:** (651) 296-3019

### State Contracts

**Informal Solicitations:** Effective March 1, 2002, 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, Materials Management Division web page ([www.mmd.admin.state.mn.us](http://www.mmd.admin.state.mn.us)) and access P/T Contracts.

**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

### Building Construction Division

#### Notice of Request for Proposals to Develop Sustainable Building Guidelines and Public Building Benchmarks

The Department of Administration, in cooperation with the Department of Commerce and other agencies, is issuing this request for proposals (RFP) for contract(s) with an organization, business entity, or entities, to manage a project that will develop sustainable building design guidelines and maximize energy efficiency in public buildings under *Minnesota Statutes* section 16B.325 and *Minnesota Laws 2001*, Article 1, Ch. 212, Section 3.

The State of Minnesota desires to build more efficient, productive structures, both materially and financially. Another goal in developing Sustainable Building Design Guidelines ("SBDG") and Public Building Benchmarking is to enhance Minnesota's environment and the future productivity of the inhabitants of these buildings. To emphasize that the five-year focus of this legislation is on buildings, benchmarks, and beyond, the RFP refers to the overall project as the "B3 Project."

This RFP seeks the completion of the three major tasks – project management; development of sustainable building design guidelines; and public building benchmarking. The performance under the contract or contracts resulting from this RFP will be completed by January 15, 2003.

Minnesota public utilities will be assessed, under *Minnesota Statutes*, Chapter 216B, up to \$500,000 each year, through June 30, 2006, to accomplish three major tasks: project management; development of SBDG; and implementation of public building benchmarking.

It is the goal of the first phase of the B3 project to design and initiate the benchmarking for approximately 10,000 existing public buildings and develop SBDG for state-funded buildings by January 15, 2003. Additional phases, beyond the scope of this RFP, are envisioned to implement the SBDG and public building benchmarking through June 30, 2006.

The B3 Project has the following objectives: a) development of the SBDG through an open process that provides for public comment; b) development of an on-going public input process that leads to continuous improvements in the SBDG over time; and c) creation of a database to house up-to-date energy data on all public buildings. The data will be used to set future energy efficiency and conservation goals and may enhance future versions of the SBDG.

This RFP seeks the completion of three major tasks:

1. Project Management
2. Sustainable Building Design Guidelines
3. Public Building Benchmarking

Responders are invited to respond to either:

1. Project Management and SBDG;
2. Public Building Benchmarking; or
3. Project Management, SBDG and Public Building Benchmarking

Criteria include, but may not be limited to, requiring the Responder to demonstrate: project understanding, comprehensive project plan, relevant expertise, and competitive pricing.

Details are contained in a complete Request for Proposals that may be obtained calling, writing or emailing:

Jim Jarvis  
Department of Administration  
Management Analysis Division  
G10 Administration  
50 Sherburne Avenue  
St. Paul, MN 55155  
**Phone:** (651) 297-3091  
**TTY:** 1-800-627-3529  
**Fax:** (651) 297-1117  
**Email:** *James.Jarvis@state.mn.us*

A list of all parties requesting a copy of the RFP will be made available to potential Responders so that they may identify potential partners in preparing their submissions. Procedures for obtaining this list will be provided in the complete RFP. No additional information will be added to this list after June 4, 2002.

All questions concerning this RFP should be **emailed** and should be submitted to: *James.Jarvis@state.mn.us* no later than June 4, 2002, CDT.

All answers to questions will be made by return email to the requesting party and all parties that have requested a complete copy of the RFP through the above outlined method.

Final date for submitting proposals is **June 13, 2002 at 3:00 p.m. Late proposals will not be considered.**

This RFP does not obligate the State of Minnesota to spend the estimated dollar amounts identified herein. Nor does it obligate the State to complete the proposed project. The State reserves the right to cancel the solicitation if it is considered to be in the State's best interest. All expenses incurred in responding to this RFP shall be borne by the responder.

## **Colleges and Universities, Minnesota State (MnSCU)**

### **Request for Proposals for Consultant to Conduct Internal Salary Review Study for Faculty in the State Universities**

**NOTICE IS HEREBY GIVEN** that proposals are being solicited to select a consultant to conduct campus-based studies of faculty salaries at the seven (7) State Universities within the Minnesota State Colleges and Universities (MnSCU) system to identify disparities in salaries among similarly situated faculty members, identify causative factors if such disparities exist, and recommend viable options for remediation of identified disparities.

The vendor will also prepare a summary report of the study findings and communicate the results to faculty at each university.

Proposals are due by **June 28, 2002, no later than 5:00 p.m.**

## State Contracts

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To request a copy of the full Request for Proposal, please contact:

Gary Janikowski  
System Director, Personnel  
Minnesota State Colleges and Universities (MnSCU)  
30 East 7th Street, Suite 600  
St. Paul, MN 55101  
**Email:** [gary.janikowski@so.mnscu.edu](mailto:gary.janikowski@so.mnscu.edu)  
**Fax:** (651) 297-3145

This request for proposals does not obligate the state to complete the proposed project, and the State reserves the right to cancel the solicitation if it is considered to be in its best interest.

## Colleges and Universities, Minnesota State (MnSCU)

### Dakota County Technical College

#### Sealed Bids Sought for Emergency Standby Generator

**NOTICE IS HEREBY GIVEN** that Dakota County Technical College will receive bids for an Emergency Standby Generator. Bid specifications will be available May 13, 2002 from Dakota County Technical College Purchasing Department, 1300 145th St. East, Rosemount, MN 55068, **phone:** (651) 423-8236.

Sealed bids must be received by Pat Adams at Dakota County Technical College, 1300 145th St. East, Rosemount, MN 55068 by **2:00 p.m., Tuesday, May 28, 2002.**

Dakota County Technical College reserves the right to reject any or all bids or portions thereof, or to waive any irregularities or informalities in bids received.

## Board of Electricity

### Notice of Request for Proposals for Providing Electrical Inspection Service for Fiscal Year 2003 (July 1, 2002 through June 30, 2003)

The Board of Electricity is requesting proposals to provide electrical inspection service for parts of Saint Louis and Lake counties and all of Cook county. In accordance with *Minnesota Statutes* section 326.241, subdivision 2(2), all individuals providing inspection service must be licensed as journeyman or master electricians.

A detailed Request for Proposals packet has been prepared by the Board that details this inspection area, minimum service requirements, and other related information. The packet is available by mail, or for pick-up at the board office. The packet cannot be faxed or emailed.

Prospective responders interested in submitting a proposal for this service should request the detailed Request for Proposals. Requests for the detailed Request for Proposals and related questions should be directed to the following person:

John I. Williamson, Assistant Executive Secretary  
Minnesota Board of Electricity  
Griggs-Midway Building, Suite S-128  
1821 University Avenue  
St. Paul, MN 55104  
**Phone:** (651) 642-0800  
**Fax:** (651) 642-0441  
**Email:** [john.williamson@state.mn.us](mailto:john.williamson@state.mn.us)

Proposals must be received at the Board office by **4:30 p.m. Central Time, Thursday June 6, 2002. Late proposals will not be considered.**

## Minnesota Historical Society

### Notice of Request for Proposals for Banking and Custodial Services

The Minnesota Historical Society is seeking proposals from banks interested in establishing a relationship with the Society for the purpose of: (1) providing general banking services for eleven to fifteen accounts; and (2) providing custody services for the Society's investment portfolio comprised of two accounts, one of which is managed by a third party investment manager. This Request for Proposal does not include management of these fund, but rather is restricted to providing custodial services for these funds.

The Request for Proposals is available by calling or writing Mary Green-Toussaint, Contracting and Procurement Technician, Minnesota Historical Society, 345 Kellogg Boulevard West. St. Paul, MN 55102. **Phone:** (651) 297-7007 or **email:** [mary.green-toussaint@mnhs.org](mailto:mary.green-toussaint@mnhs.org)

Proposals must be received no later than **2:00 p.m., Local Time, Wednesday, June 19, 2002**, and be submitted in the format provide for in the Request for Proposals. **Late proposals will not be accepted.**

Dated: 20 May 2002

## Department of Human Services

### Health Care Operations

### Notice of Request for Proposal for an Automated Solution for Eligibility and Access to Minnesota Health Care Programs (the "Health Care Automation" project)

The Minnesota Department of Human Services (DHS) is seeking professional and technical services to contract for the design and construction of an automated eligibility and access system for the Minnesota Health Care Programs (MHCP) it administers. The Department's end vision is to build a custom system for the automation of health care program eligibility and access including: data collection, eligibility determination, case maintenance, case retention, information assistance, information referral, and other business operations within the Department's computing architecture.

A pre-bid conference will be held on June 13, 2002 at 10:00 a.m., CST at the Metro State University auditorium, 700 East 7th Street, St. Paul, MN 55106. Attendance at the pre-bid conference is not mandatory but is highly recommended. Only written questions will be accepted prior to the conference, and they must be submitted by June 3, 2002.

An on-line library has been established that contains additional project and organizational related DHS information. Access to the library has been secured and will require access approval from DHS.

To obtain a full copy of the RFP, obtain access to the library, RSVP for the pre-bid conference, and/or submit questions, please contact Joyce Fischer via **email** at: [joyce.fischer@state.mn.us](mailto:joyce.fischer@state.mn.us) or in writing at: MN Department of Human Services, Ms. Joyce Fischer, 444 Lafayette Road N., St. Paul, MN 55155-3849. To contact Joyce Fischer by **phone**, call: (651) 296-6429.

Responses to the questions will be published in the on-line library by June 24, 2002. In addition, DHS will send copies of the question and answer summary to proposers who requested a copy of the RFP. This question and answer summary will be sent by June 24, 2002. No further substantive questions will be accepted after the completion of pre-bid conference.

All proposals must be received no later than **2:00 p.m., July 10, 2002**. Proposals must be submitted to:

Minnesota Department of Human Services  
Attention: Joyce Fischer  
C/O: Information Desk  
1st Floor  
444 Lafayette Road N.  
St. Paul, Minnesota 55155-3849

Proposals submitted after the proposal deadline will not be considered. Fax and email responses will not be considered. All costs incurred in responding to this Request for Proposal will be borne by the responders.

## State Contracts

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### Department of Human Services

#### Notice of Request for Proposals to Conduct Quality of Health Care Studies for the Minnesota 2002 Sexually Transmitted Diseases External Quality Review Study

The Minnesota Department of Human Services (DHS) is interested in contracting for professional and technical consulting services to assist in the design and management of an External Quality Review (EQR) study that assesses the quality of care provided to publicly funded managed care enrollees at risk of acquiring a sexually transmitted disease (STD). The services to be provided by the selected vendor will include multiple tasks and deliverables designed to plan, implement and report on various quality measurements of the health plans' performance. The EQR study will evaluate the care provided to enrollees at risk for STDs in relation to prevailing national and local clinical practice guidelines.

The EQR study project is expected to begin by September 24, 2002 and last through June 27, 2003. This independent, external quality review *must* be conducted by a Quality Improvement Organization (QIO), Peer Review Organization (PRO), an entity that is eligible to be a PRO (PRO-like), or by a private accreditation body.

A copy of the complete Request for Proposals and attached documents can be obtained from the DHS **website** at: <[www.dhs.state.mn.us](http://www.dhs.state.mn.us)> or a paper copy by contacting:

Sara Koppe  
Performance Measurement and Quality Improvement  
Minnesota Department of Human Services  
444 Lafayette Road  
St. Paul, MN 55155-3865  
**Fax:** (651) 215-5754  
**Phone:** (651) 215-6260  
**Email:** <[sara.koppe@state.mn.us](mailto:sara.koppe@state.mn.us)>

Proposals must be received no later than **3:00 p.m. on July 23, 2002.**

## Office of the Revisor of Statutes

### Notice of Request for Indexing Services

**NOTICE IS HEREBY GIVEN** that the Office of the Revisor of Statutes is seeking the following indexing services for the periods July 1, 2002 to June 30, 2003:

1. Indexing for the *Minnesota Statutes* publication.
2. Indexing for the *Minnesota Rules* publication.
3. Indexing for the *Laws of Minnesota* publication.

Statutory indexing experience, computer keyboarding facility, and familiarity with stand-alone indexing programs such as CINDEXTM are prerequisites to performing the services. Where current contractors have at least equal qualifications, they will be given preference in order to maintain program consistency and stability. Contractors are expected to provide their own computer equipment and stand-alone indexing software, which must be compatible with the Revisor's indexing system.

Responses must be received by the Office of the Revisor of Statutes by **Friday, June 14, 2002.**

Direct inquiries and responses to:

Maryann Corbett  
Office of the Revisor of Statutes  
700 State Office Building  
100 Constitution Avenue  
St. Paul, MN 55155  
**Phone:** (651) 296-2868  
**TTY** use State Relay Services: 1-800-627-3529

## Department of Trade and Economic Development

### Notice of Request for Proposal for Labor Liaison for the Dislocated Worker Programs

**Purpose of Project:** Labor Liaison for the Dislocated Worker Programs, Workforce Development Unit of the Department of Trade and Economic Development.

**Eligible Applicant:** Any private organization duly constituted to represent labor in collective bargaining. Organizations receiving state or federal dislocated worker resources to provide direct participant services are not eligible.

**Time Period:** The award of this contract will be for a one-year period from July 1, 2002 through June 30, 2003. An additional one year contract, based on performance may be available.

**To Receive a Copy of the complete Request for Proposal, please call Ed Retka at (651) 296-7918.**

**Deadline for Submission of Applications:** Proposals must be received by **3:00 p.m., Friday, June 14, 2002.**

## Department of Transportation

### Program Support Group

### Request for Proposals for General Engineering Consultant Services to Support the Management and Development of Mn/DOT's Design-Build Program

The Minnesota Department of Transportation ("Mn/DOT"), requests proposals for general engineering consultant ("GEC") services that would support Mn/DOT's evolving design-build initiative. GEC services could include work at both the program and project levels, partial or full responsibility for project delivery and organizational strategy development, project management, preliminary engineering, design and construction management and oversight, technical and management staff support, and other transportation engineering services as needed.

The Department has so far developed four design-build projects on an individual basis, but is now interested in developing a long-term programmatic approach that would potentially identify three or more transportation design-build projects per year over the next several years. Mn/DOT's Program Director and Program Manager will manage the direction and implementation of the design-build program. Rather than expanding its own internal staff to support this management team, Mn/DOT intends to establish a long-term relationship (three years plus the potential of one 2-year extension, for a total of up to five years) with one GEC to provide collaborative management support. The resulting master contract would serve as an umbrella contract for the period.

For projects determined to be appropriate for design-build, Mn/DOT's program management team will coordinate with the District and Metro Division project managers and the GEC to identify who is best able to complete the remaining project-related activities. From project to project, the responsible party(ies) may vary from District/Metro Division staff, a separate consultant contract procured by a District/Metro Division, or the GEC. Mn/DOT would negotiate a work order agreement with the GEC for project or program work to identify GEC responsibilities and clearly define tasks, schedules, deliverables, and appropriate costs. Mn/DOT has identified two projects and several program support activities in the request for proposals that the selected responder could be asked to support within the next twelve months.

Interested persons may contact or send questions to Paul Huston, P.E.; Mn/DOT Design-Build Program Manager, at either [paul.huston@dot.state.mn.us](mailto:paul.huston@dot.state.mn.us) or 395 John Ireland Boulevard, MS 670, St. Paul, MN, 55155. Only written communications will be accepted.

Proposals must be received by **12:00 noon, Monday, June 10, 2002.**

Design-build information is available on Mn/DOT's design-build **website:** [www.dot.state.mn.us/designbuild](http://www.dot.state.mn.us/designbuild) ; however, interested responders must submit a written request for the GEC RFP as noted above to be guaranteed notification of RFP-related addenda and information.



### Department of Transportation

#### Program Support Group

#### Notice Concerning Professional/Technical Contract Opportunities

**NOTICE TO ALL:** The Minnesota Department of Transportation (Mn/DOT) is now placing additional public notices for professional/technical contract opportunities on Mn/DOT's Consultant Services **website** at: [www.dot.state.mn.us/consult](http://www.dot.state.mn.us/consult)

New public notices may be added to the website on a daily basis and be available for the time period as indicated within the public notice.

### 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.

### Dakota County Community Services

#### Contract Unit

#### Notice of Request for Proposals to Provide Outpatient Alcohol and Drug Treatment for Juvenile Offenders

**NOTICE IS HEREBY GIVEN** that the Dakota County Community Corrections Department is seeking qualified vendors to provide licensed Rule 43 Outpatient Alcohol and Drug Treatment for Juvenile offenders. This contract will be in effect from November 1, 2002 through December 31, 2005. Proposals will be considered that provide services meeting parameters categorized below:

- |                |   |
|----------------|---|
| Target Group   | <ul style="list-style-type: none"><li>• Approximately 50 male offenders annually, ages 13-19, who are court ordered to the Dakota County Juvenile Services Center (JCS) in Hastings, Minnesota, and have completed an assessment for chemical dependency (CD).</li></ul>  |
| Client Profile | <ul style="list-style-type: none"><li>• Categorized as high risk, exhibiting two or more of the following traits: lack of motivation, cognitive deficits, poor family support systems, conduct disorders, history with the court system and general mental and physical health problems.</li></ul>  |
| Goals          | <ul style="list-style-type: none"><li>• To provide licensed Rule 43 outpatient CD treatment for clients aged 13-19, onsite at the Dakota County Juvenile Services Center in Hastings.</li><li>• To contract with a service provider who will secure a licensed CD counselor to work onsite at the JSC to provide chemical health case management service, which includes development and coordination of all treatment/care services including development of continuing care plans and obtaining payment for services.</li></ul>   |
| Service Design | <ul style="list-style-type: none"><li>• The primary treatment model should provide a blend of cognitive therapy and 12-step programming. However, the dominant philosophy guiding the juvenile corrections programming is cognitively based and a CD treatment model that strongly reflects this philosophy is favored.</li><li>• Programming needs to be developed for clients who will be available a minimum of 60 days; each client should receive 8 hours of treatment per week including group, individual or family treatment as outlined in the treatment plan.</li></ul> |

- Service provider will verify payment source for each client and collect payments directly.
- Funding Source • Coordinated Chemical Dependency Treatment Fund or private insurance. The successful bidder will have access to payment from a broad range of private insurers.
- Payment Rates • Submit hourly treatment rate and recommended length of program as a part of your response. Rates should be calculated for the full term of the contract.
- County Match • The county will provide group rooms and work station space, phone, office furniture including locking file cabinets, and access to a computer for word processing.

If you have an interest in providing this service a complete Request for Proposal may be obtained by contacting:

Therese J. Branby, Contract Manager  
 Dakota County Community Services Division  
 60 East Marie, Suite 214  
 West St. Paul, MN 55118  
**Phone:** (651) 450-2878  
**Email:** [therese.branby@co.dakota.mn.us](mailto:therese.branby@co.dakota.mn.us)

Deadline for proposals is **4:30 p.m., CDT on Wednesday, July 3, 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](http://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



**Sportsman's Connection Fishing Guides**

These spiral-bound books include lake depth maps and fishing information, access, fishing piers, stocking data and more.

Lake	Stock #	Price
Alexandria/Stearns Co. Area	20-79	\$19.95
Arrowhead/Boundary Waters	20-54	\$19.95
Bemidji/Grand Rapids Area	20-63	\$19.95
Brainerd/Aitkin Area	20-41	\$19.95
Duluth Area	20-58	\$16.95
Leech Lake	20-42	\$19.95
Metro West	20-52	\$19.95
Metro East	20-51	\$19.95
Ottertail Lake/Detroit Lakes Area	20-69	\$16.95
Southern Minnesota	20-64	\$19.95
St. Louis County	20-45	\$19.95
Willmar Area	20-60	\$ 9.95
NW Wisconsin South	20-70	\$19.95
NW Wisconsin North	20-71	\$19.95



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