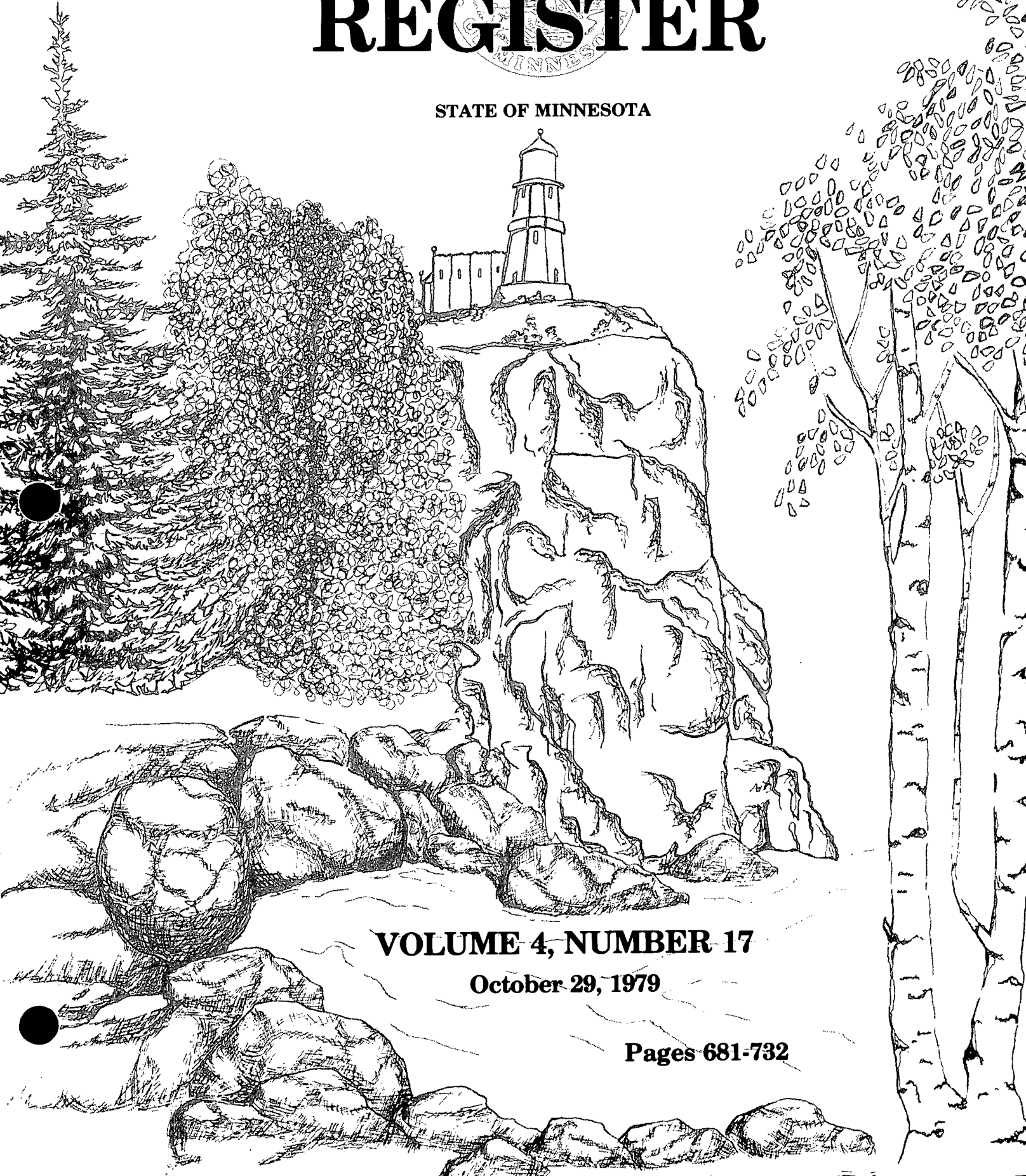


P182

STATE REGISTER

STATE OF MINNESOTA



VOLUME 4, NUMBER 17

October 29, 1979

Pages 681-732



Volume 4 Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices.	Issue Date
SCHEDULE FOR VOLUME 4			
18	Monday Oct 22	Monday Oct 29	Monday Nov 5
19	Monday Oct 29	Monday Nov 5	Monday Nov 12
20	Monday Nov 5	Tuesday Nov 13	Monday Nov 19
21	Tuesday Nov 13	Monday Nov 19	Monday Nov 26

*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

**Notices of Public Hearings on proposed rules are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the Office of the State Register, Suite 415, Hamm Building, 408 St. Peter Street, St. Paul, Minnesota 55102.

The *State Register* is published by the State of Minnesota, Office of the State Register, Suite 415, Hamm Building, 408 St. Peter Street, St. Paul, Minnesota 55102, pursuant to Minn. Stat. § 15.0411. Publication is weekly, on Mondays, with an index issue in August. In accordance with expressed legislative intent that the *State Register* be self-supporting, the subscription rate has been established at \$110 per year, and \$85 per year for additional subscriptions, postpaid to points in the United States. Second class postage paid at St. Paul, Minnesota, Publication Number 326630. (ISSN 0146-7751) No refunds will be made in the event of subscription cancellation. Single issues may be obtained at \$2.25 per copy.

Subscribers who do not receive a copy of an issue should notify the *State Register* Circulation Manager immediately at (612) 296-0931. Copies of back issues may not be available more than two weeks after publication.

The *State Register* is the official publication of the State of Minnesota, containing executive orders of the governor, proposed and adopted rules of state agencies, and official notices to the public. Judicial notice shall be taken of material published in the *State Register*.

Albert H. Quie
Governor

Carol Anderson Porter
Editor

James J. Hiniker, Jr.
Commissioner
Department of Administration

Paul Hoffman, Robin PanLener, Jean M. Walburg
Editorial Staff

Stephen A. Ordahl
Manager
Office of the State Register

Roy Schmidtke
Circulation Manager

Cindy Riehm
Secretarial Staff

CONTENTS

MCAR AMENDMENTS AND ADDITIONS	684
--	-----

RULES

Department of Natural Resources	
Adopted Amendments to the Rules Governing Snowmobiles	685
Adopted Rules Concerning Dam Safety	685

Department of Public Safety	
Safety Administration Division	
Adopted Rules Governing Minimum Standards for Wheelchair Securement Devices	699

Department of Public Welfare	
Medical Assistance Division	
Adopted Temporary Rule Governing Payment for Abortion Services as Part of the Medical Assistance Rule	701

Department of Public Welfare	
Support Services Bureau	
Adopted Rule Governing Per Diem Rates for Nursing Home Providers under the Title XIX Medical Assistance Program, Rule 49	703

PROPOSED RULES

Public Hearings on Agency Rules	
November 5-10, 1979	704

Housing Finance Agency	
Proposed Rules Relating to the Accessibility Improvement Assistance Program	704

State Board for Vocational Education

Department of Education	
Vocational-Technical Division	
Proposed Rules for Vocational Education Governing Post-Secondary Vocational-Technical (5 MCAR §§ 1.0100-1.01102) and Adult Vocational-Technical Education (5 MCAR §§ 1.0111-1.0118)	708

Department of Health	
Manpower Division	
Proposed Amendments to Rules Governing the Procedures for Determining Regulation of Human Services Occupations	718

SUPREME COURT

Decisions Filed Friday, October 19, 1979	722
---	-----

STATE CONTRACTS

Department of Economic Security	
Office of Economic Opportunity	
Notice of Request for Proposals for a Study of Poverty in Minnesota	723

Iron Range Resources and Rehabilitation Board	
Grants Division	
Notice of Request for Proposals for Architectural-Engineering Services	723

Department of Labor and Industry	
Workers' Compensation Division	
Notice of Request for Proposals for Court Reporter Services	724

Department of Transportation	
Bridges and Structures	
Notice of Availability of Contract for Minnesota Consulting Engineers	724

OFFICIAL NOTICES

Department of Agriculture	
Agronomy Services Division	
Notice of Special Local Need Registration for Top-Side Dipel	725

Department of Commerce	
Banking Division	
Bulletin No. 2136: Maximum Lawful Rate of Interest for Mortgages for the Month of November 1979	725

Department of Commerce	
Board of Barber Examiners	
Notice and Order for Hearing Regarding the Application of Joseph Francis To Expand the Minneapolis Barber School	725

Department of Commerce	
Insurance Division	
Notice of Meeting, Actuarial Committee, Minnesota Comprehensive Health Association	726
Notice of Meeting, Board of Directors, Minnesota Comprehensive Health Association	726

Department of Health	
Emergency Medical Services Section	
Notice of Filing of Application for Emergency Ambulance Services License, and Notice of Hearing	726

Department of Transportation	
Notice of Application and Opportunity for Hearing Regarding Authority to Retire and Remove ICC Track No. 41 Located at Chaska, MN	727

MCAR AMENDMENTS AND ADDITIONS

All adopted rules published in the *State Register* and listed below amend rules contained in the Minnesota Code of Agency Rules (MCAR). Both proposed temporary and adopted temporary rules are listed here although they are not printed in the MCAR due to the short-term nature of their legal effectiveness.

The *State Register* publishes partial and cumulative listings of all proposed and adopted rules on the following schedule: issues 1-13, inclusive; issues 14-25, inclusive; issue 26, cumulative for 1-26; issues 27-38, inclusive; issue 39, cumulative for 1-39; issues 40-51, inclusive; and issue 52, cumulative for 1-52. The listings are arranged in the same order as the table of contents of the MCAR.

TITLE 5 EDUCATION

Part 1 Education Department

EDU 641 (proposed)	573
5 MCAR §§ 1.0100-1.0105, 1.01051, 1.0106-1.0118, 1.01101-1.01102 (proposed)	708
5 MCAR §§ 1.0800, 1.0805 (proposed temporary)	707
5 MCAR §§ 1.0900-1.904 (proposed)	573

Part 3 Teaching Board

5 MCAR §§ 3.001, 3.060, 3.102-3.103, 3.108, 3.114 (proposed)	543
5 MCAR § 3.002 (withdrawn)	572
5 MCAR § 3.106 (adopted)	540
5 MCAR § 3.142 (adopted)	572

TITLE 6 ENVIRONMENT

Part 1 Natural Resources Department

6 MCAR §§ 1.0057-1.0058, 1.5030-1.5034 (adopted)	685
--	-----

Part 4 Pollution Control Agency

SW 11 (proposed)	579
6 MCAR §§ 4.0033, 4.0040 (proposed)	622

TITLE 7 HEALTH

Part 1 Health Department

7 MCAR §§ 1.210-1.211, 1.217-1.224 (adopted)	601
7 MCAR §§ 1.327-1.328 (proposed)	577
7 MCAR §§ 1.536-1.538 (proposed)	719

TITLE 10 PLANNING

Part 1 State Planning Agency

10 MCAR §§ 1.300-1.305 (adopted)	541
--	-----

TITLE 11 PUBLIC SAFETY

Part 1 Public Safety Department

11 MCAR §§ 1.0188-1.0196 (adopted)	699
--	-----

TITLE 12 SOCIAL SERVICE

Part 2 Public Welfare Department

12 MCAR § 2.047 (adopted temporary)	701
12 MCAR § 2.049 (adopted)	703

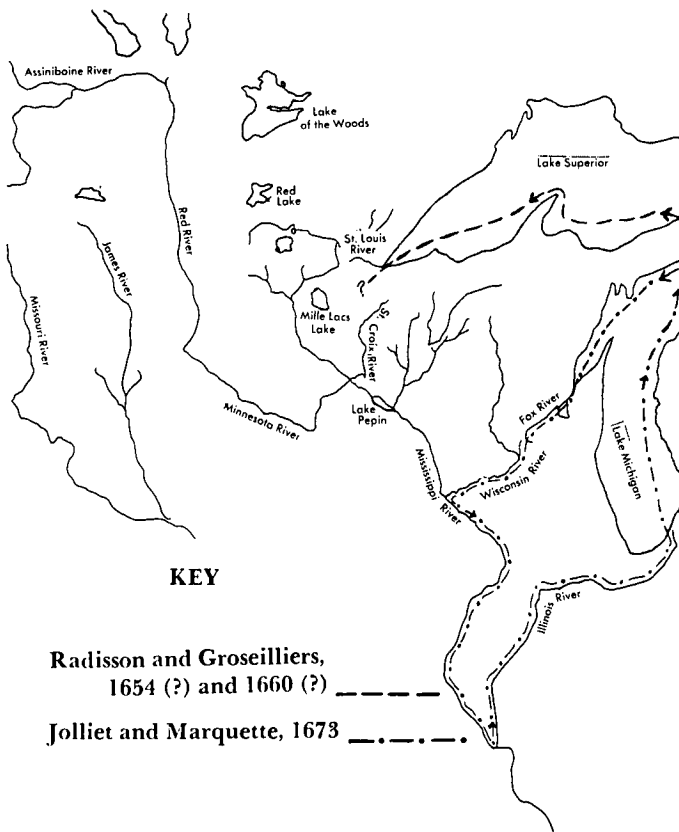
Part 3 Housing Finance Agency

12 MCAR §§ 3.002, 3.052, 3.063, 3.070-3.074 (proposed)	704
--	-----

TITLE 14 TRANSPORTATION

Part 1 Transportation Department

14 MCAR §§ 1.3001-1.3043 (proposed)	628
---	-----



FRENCH EXPLORERS were the first Europeans to reach what is now Minnesota. Samuel de Champlain staked out the colony of New France at Quebec, Canada, in 1608, and sent Jean Nicolet to explore west from Lake Huron. After Champlain's death in 1635, exploration was carried on by fur traders Radisson and Groseilliers, who reached the western end of Lake Superior and perhaps into Minnesota between 1654 and 1660. In 1673 Jolliet and Marquette discovered the Mississippi River. Their routes are shown in this map. (Courtesy of the Minnesota Historical Society)

RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 15.0412, subd. 4, 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 strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

A temporary rule becomes effective upon the approval of the Attorney General as specified in Minn. Stat. § 15.0412, subd. 5. Notice of his decision will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under subd. 4.

Department of Natural Resources

Adopted Amendments to the Rules Governing Snowmobiles

The rules published at *State Register*, Volume 3, Number 39, April 2, 1979 (3 S.R. 1815) are now adopted, with the following changes.

Amendments as Adopted

6 MCAR § 1.0057 E. 4.a. No snowmobile manufactured on or after April 1, 1975, ~~in Minnesota~~, except a snowmobile designed for competition purposes only, shall be sold, offered for sale, or operated in Minnesota unless it is so equipped that overall noise emission does not exceed and has been certified by the manufacturer ~~as being able~~ to conform to a sound level limitation of not more than 78 decibels on the A scale at 50 feet as originally equipped.

6 MCAR § 1.0057 E. 5. In certifying that a new snowmobile complies with the noise limitation requirements of this rule, a manufacturer shall make such a certification based on measurements made in accordance with the SAE Recommended Practice J192(a), ~~as amended or with such other standards for measurement of sound level as the department may adopt~~, as set forth in the Report of the Vehicle Sound Level Committee, as approved by the Society of Automotive Engineers September 1970 and revised November 1973.

6 MCAR § 1.0057 F. 6. No snowmobile shall be sold or offered for sale in Minnesota unless its maker shall have previously furnished the Commissioner with a certificate of compliance certifying that all such snowmobiles made by that maker meet or exceed the applicable noise level restrictions established by these rules. The certification of compliance required in the foregoing shall be in the form of either a "Snowmobile Safety Certification Committee" label conspicuously attached to the machine showing certification by the Snowmobile Safety and Certification Committee, Inc., or

a letter with test results showing an evaluation of the noise levels by a ~~competent independent testing laboratory~~. Snowmobiles intended for competition purposes only shall be exempt from this rule provided a separate placard identifying that such snowmobile is not so equipped is conspicuously and permanently affixed thereto.

6 MCAR § 1.0057 E. 7. Except for organized events as authorized by Minn. Stat. § 84.871, no snowmobile shall be modified by any person in any manner that shall amplify or otherwise increase total noise level above that emitted by the snowmobile as originally equipped, regardless of date of manufacture.

6 MCAR § 1.0058 Penalties.

A. Any person who shall violate any of the provisions of these regulations shall be guilty of a misdemeanor.

B. A manufacturer who certifies that a new snowmobile can meet the sound level limitations imposed by these rules shall be subject to the penalty provisions of subsection A. for each machine so certified which does not meet the applicable sound level limitation.

Department of Natural Resources

Adopted Rules Concerning Dam Safety

The proposed rules published at *State Register*, Volume 3, Number 28, pp. 1398-1412, January 15, 1979 (3 S.R. 1398), are adopted as printed below, with additions and deletions from the proposed rules indicated.

Rules as Adopted

6 MCAR § 1.5030 General provisions.

A. Purpose. The purpose of these rules is to regulate the construction and enlargement of dams, as well as the repair, alteration, maintenance, operation, transfer of ownership and

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

RULES

abandonment in such a manner as to best provide for public health, safety and welfare. In the application of these rules, the Department shall be guided by the policies and requirements declared in Minn. Stat. ch. 105 and ~~§ 116.04, ch. 116D.~~

The rules are pursuant to Laws of 1978, ch. 779, § 8 and are intended to be consistent with the goals and objectives of applicable federal and state environmental quality programs and policies including, but not limited to, mineland reclamation, and the management of: shoreland management, shorelands, flood plain plains management, water surface use management, boat and water safety, wild and scenic rivers management, critical areas management, recreational or wilderness areas management, scientific and natural areas managements and protected vegetative species management.

B. Scope. To achieve ~~the this purpose declared in 6 MCAR § 1.5030,~~ the Commissioner hereby sets forth minimum standards and criteria for dam classification and identification ~~of risk and of hazards to health, safety and welfare. These rules further establish minimum standards and criteria for the review, issuance and denial of and for permits for proposed new and existing dam projects for water and waste impoundments in and adjacent to public waters of the state and for ordering repairs. This also includes dams for impoundment of waste containing water not specifically requiring a change in public waters.~~

C. Jurisdiction. These rules shall apply to all ~~existing and proposed dams defined below other than those owned by the United States or those that do not meet the size criteria (Section D; below), unless otherwise excluded in other sections of the rules. These rules~~ They are supplementary and complimentary to the rules which establish standards and criteria for granting permits to change the course, current or cross-section of public waters. (6 MCAR §§ 1.5020-1.5023, 1.5025 and 1.5026)

~~With the exception of dams not subject to Where these rules; in situations where the provisions of these rules are in conflict with other appropriate rules and requirements, these provisions which are the most restrictive provision shall apply.~~

All provisions of 6 MCAR § 1.5024 are superceded by these rules as they relate to dams as defined herein, ~~not including except the section relating to water level controls.~~

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

These definitions are in addition to those contained in 6 MCAR § 1.5020 D, except where the same word is contained in both lists of definitions in which case the definitions in these rules shall apply in respect to dam safety administration.

"Alteration" means any activity which will affect the safety of a dam and/or which will result in a change in the course, current or cross-section of public waters.

"Commissioner" means the Commissioner of the Department of Natural Resources and any duly authorized representative ~~of the department who may be assigned responsibilities and authorities for dam safety.~~

"Cost" ~~for the purpose of this clause,~~ includes labor and materials ~~entering into the project;~~ preliminary investigations and surveys; ~~the cost of construction plant properly chargeable to the cost of the project; and any and all other items entering directly into the cost of the project.~~ "Cost" ~~for the purposes of this clause, does not include excluding costs of right-of-way, detached powerhouses, electrical generating machinery, and roads and railroads unrelated to the construction of the project affording access to the project.~~

"Dam" means any artificial barrier, together with appurtenant works, which does or may impound water and/or waste materials containing water ~~except:~~

1. Dams which are less than 25 feet in height and have storage capacity at maximum storage elevation of less than 50 acre feet, which shall be exempt from dam safety permit requirements if they do not have potential for loss of life resulting from failure or misoperation and which is greater than six (6) feet in height and has a storage capacity of more than fifteen (15) acre feet at maximum storage elevation;

2. any Any artificial barrier which is not in excess of six (6) feet in height regardless of storage capacity or which has a storage capacity not in excess of fifteen (15) acre-feet regardless of height; shall not be considered a dam.

3. No circular tank or tank Underground or elevated tanks above the ground to store water and/or waste shall be considered a dam. In addition, the following shall not be considered as a dam for the purposes of these rules;

4. Earthen impoundment structures formed by construction of federal, state or local government state aid roads which are primarily intended for transportation purposes;

4. 2. Any artificial barrier constructed solely for the purpose of containment of sewage or biological treatment of wastewater which is under the jurisdiction of the Minnesota Pollution Control Agency.

5. United States owned dams.

6. Dikes and levees constructed for flood control purposes to divert flood waters and which are not intended to act as impoundment structures.

This does not preclude the need for any permits from the Commissioner which may be required under applicable provisions of 6 MCAR §§ 1.5020 through 1.5026; as further explained in the 6 MCAR § 1.5031, section on "Classification of Dams."

"Enlargement" means any change ~~in or addition to an existing dam,~~ which ~~raises or may raise the maximum storage elevation of the water or waste impounded by the dam.~~

"Height" means the vertical distance from the natural bed of the stream or watercourse measured at the downstream toe

RULES

of the dam or from the lowest elevation of the outside limit of the dam, if it is not across a stream channel or watercourse, to the maximum storage elevation.

“Maintenance” means any work which will not result in a change in the hydraulic capacity of the structure or entail any changes in the structural character of the dam.

“Maximum Storage Elevation” means the maximum highest elevation to which the dam will be constructed or to which water or waste materials can be effectively stored behind the dam on either a temporary or permanent basis, whichever is greater.

“Owner” means the owner or lessee of the property to which the dam is attached, unless dam if the dam is not sponsored by a governmental agency. If the dam is sponsored by an agency of the state, a political subdivision of the state, or the federal government, and if the sponsoring agency has an agreement under which it will be responsible for operation and maintenance of the dam, then in which case that sponsoring agency shall be considered the “Owner.”

“Reconstruction” means the rebuilding or renovation of an existing structure.

“Repair” shall include means any work which will change the hydraulic capacity of the structure a dam or entail any changes in the structural character of a dam.

“Shall” is mandatory and not permissive.

“Surface” shall be determined by multiplying total dam length by average dam height.

“Total dam length” means length the maximum horizontal distance between the outer limits of all artificial containment structures, including the length of any artificially constructed dike, abutment or other structural additions appurtenant to the dam, which are part of, and essential to, the containment structure, but does not include the length of emergency spillways which are located outside the abutments of the dam.

“Verifying” means the development of data in the ordinary course of the construction and operation of the project.

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

6 MCAR § 1.5031 Classification of dams.

In order to safeguard the public health, safety and welfare, all All existing and proposed new dams shall be classified by the Commissioner into the following three (3) hazard classes with respect to the potential hazard.

Class I dams shall include those Those dams where failure, misoperation, ~~overtopping~~ or other occurrences or conditions

may would probably result in;

Class I — any loss of life or serious hazard, or damage to: health, main highways, ~~homes~~, high-value industrial or commercial properties, major public utilities or serious direct, or indirect, economic loss to the public.

Class II — dams shall include those dams where failure, misoperation, ~~over topping~~ or other occurrences or conditions may result in possible health hazard or probable loss of high-value property, damage to ~~major~~ secondary highways, railroads or other public utilities or limited direct, or indirect, economic loss to the public other than that described in Class III.

Class III — dams shall include those dams where failure, misoperation, ~~over topping~~ or other occurrences or conditions may result in property losses restricted mainly to rural buildings and local county and township roads which are an essential part of the rural transportation system serving the area involved.

Any dam whose failure, misoperation or other occurrences or conditions would result only in damages to the owner and would not otherwise affect public health, safety and welfare as described in Classes I, II and III, shall not be subject to this hazard classification.

Permits for a A dam which is not classified as a Hazard Class I, II, or III dam, and those which are not included in the 6 MCAR § 1.5030 D, definition of dam, shall be subject ~~only~~ to applicable provisions of 6 MCAR §§ 1.5020 through 1.5026 and shall not be subject to these dam safety rules.

Changes in development in the vicinity of the dam may result in future reclassification.

6 MCAR § 1.5032 Procedure for Existing dams.

A. Applicant’s responsibilities. General procedures for alteration, repair or removal. This section identifies the procedures to be followed for existing dams, excluding dams being enlarged.

1. Application. Before commencing action ~~the repair or alteration of a dam, or removal of a dam so that it no longer impounds water or waste~~, the owner shall make a separate application to the Commissioner for each existing dam proposed to be changed upon forms provided by the Commissioner, except as provided in Section A.2. for emergencies. The application shall contain the following:

a. ~~1. The name~~ Name and address of owner(s); the owner or owners, or the sponsoring agency responsible for operation, maintenance and repair of the dam.

b. ~~2. The proposed~~ Proposed changes; in the existing dam.

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

RULES

c. 3. Maps, plans and specifications which set forth pertinent details and including location, type, dimensions of the dam as the Commissioner may require; 4. The and storage capacity; of the impoundment; and 5. The location, type size and height of the dam and any appurtenant structures; 6. Other pertinent information concerning the dam as may be required by the Commissioner and any information appropriate to a thorough consideration of the safety of the change to the dam.

d. 7. The proposed Proposed date of start and completion of construction the repair, alteration or removal.

A filing fee of \$15.00 shall accompany the application in the form of a check or money order payable to the State Treasurer.

The Commissioner may waive any of these requirements if found unnecessary. Work described herein is subject to the "Fees" provision of 6 MCAR § 1.5034 B.6.

2. Emergency work. B. Emergency Work

a. 1. Actions by the owner: In the event of an emergency where Where immediate action is necessary for public health, safety and welfare, repairs may be started immediately, but the owner shall notify the Commissioner at once of the emergency repairs. As soon as practicable, the owner shall apply for a permit for the emergency repairs and any necessary permanent repairs.

b. 2. Commissioner's Requirements: actions. The Commissioner shall immediately require any repairs or remedial action Where necessary to protect public health, safety and welfare, if either: a. The the condition of any dam or impoundment is so imminently dangerous to the safety or life or property as not to permit time for the issuance and enforcement of an order relative to maintenance or operation; or b. Imminent imminent floods threaten the safety of a dam or impoundment. 3. Commissioner's Actions: The the Commissioner may, in an emergency, require and enforce any of the following actions: a. Lowering lowering or completely emptying of the water level by releasing water from the impoundment behind the dam; b. Completely emptying the impoundment; c. Taking and taking any other steps as may be essential to safeguard life and property.

3. Removal. C. Removal of dams:

1. Applications:

Before commencing removal, the Any owner of a dam seeking its removal must apply to the Commissioner for permission and shall comply with the application requirements of Section A.1. above. all required procedures the Commissioner may prescribe.

2. Evidence of removal:

a. Upon completion of the After removal of a dam, the owner shall submit evidence as to the manner in which the work was performed and the conditions obtained after the removal; shall be filed with the Commissioner; b. The evidence shall show The Commissioner shall inspect to determine that a sufficient portion of the dam has been removed to

eliminate the hazard directly attributable to the presence of the dam.

3. Final Inspection

Before final approval of the removal of a dam is issued, the Commissioner shall inspect the work and determine that danger to public health, safety and welfare has been eliminated.

B. D. Inspections of existing dams by the Commissioner.

1. Hazard classification Inspections.

The Commissioner shall make initial inspections of each dam in the state to determine the appropriate hazard classification or exemption according to criteria in NR 5034 6 MCAR § 1.5031.

2. Dam safety Inspections.

a. The Commissioner shall make, or cause to be made, an initial detailed systematic technical inspection and evaluations of every Class I, II, or III dam in order to assess the general condition of the dam with respect to safety; conditions. The inspection will include: including a

(1) a review and analysis of available data on the design, construction and operation of the dam;

(2) a visual inspection of the dam, appurtenant structures and downstream and upstream areas;

(3) a report shall be made of the general condition of the dam including, when possible, an assessment of hydraulic and hydrologic capabilities, structural stabilities and identification of any other conditions which constitute hazards to health, safety and welfare. Such report shall also include:

(a) a determination of any need for emergency measures or actions;

(b) a determination of the need for corrective actions relating to the design, construction and operation of the dam and appurtenant structures; and

(c) a determination of the need for additional detailed studies, investigations and analyses.

b. Technical areas to be investigated as part of the field inspections:

(1) Engineering data: Engineering data may include, but are not limited to; any data listed in Appendix I of "Recommended Guidelines for Safety Inspection of Dams," Appendix D, Department of Army, Office of the Chief of Engineers.

(a) To the extent feasible, engineering data relating to the design, construction and operation of the dam and appurtenant structures shall be collected from all available sources, including records of the owner.

(b) When necessary engineering data are unavailable or inadequate or invalid in respect to protection of health, safety and welfare, a list of deficiencies shall be made by the Commissioner, and the Commissioner may require that such information be provided by the owner.

RULES

(2) Visual field inspections: ~~Visual inspections shall be made of the dam, appurtenant structures, impoundment area and downstream channel in the vicinity of the dam including~~

(a) an examination of significant structural, geotechnical, hydraulic and hydrologic features including, where applicable, electrical and mechanical equipment for the operation of control facilities that affect the safety of a dam; ~~Visual inspections shall include, but are not limited to, detecting~~

(b) evidence of leakage, erosion, seepage, slope instability, undue settlement, displacement, tilting, cracking, deterioration and improper functioning of drains and relief wells; ~~The inspection shall also include an examination of the and~~

(c) adequacy and quality of maintenance and operating equipment and procedures as they relate to safety of the dam. Other areas of inspection may include, but not limited to, any of those listed in Appendix H "Recommended guidelines for safety inspection of dams." "Appendix D," Department of the Army, Office of the Chief of Engineers.

(3) Evaluation of hydraulic and hydrologic features: ~~The evaluation of hydraulic and hydrologic features is required to determine the capability of the discharge and storage capacity of the dam for safely handling recommended design floods based on the size and hazard potential class of the dam. The safety evaluations involve constraints on water control such as blocked entrances, restrictions on operation of spillway and outlet gates, if any, inadequate energy dissipators or restrictive channel conditions, significant reduction in impoundment capacity by sediment deposits and other factors and material balance of the impoundment. Where essential design data are lacking, evaluations of watershed characteristics, rainfall and impoundment records may be used to evaluate effects of the dam.~~

(4) Evaluations of structural stability: ~~The structural stability evaluations are made to determine the existence of conditions which are hazardous or which might develop into hazards and to formulate recommendations regarding the need for additional studies, investigations or analyses.~~

(3) report on general condition including, when possible, an assessment of storage capacity, hydraulic and hydrologic capabilities, structural stabilities, and any other conditions which constitute a hazard based upon current prudent design considering the size and hazard class of the dam. The safety evaluations involve constraints on water control such as blocked entrances, restrictions on operation of spillway and outlet gates, if any, inadequate energy dissipa-

tors or restrictive channel conditions, significant reduction in impoundment capacity by sediment deposits and for waste impoundments, the material balance. Where essential design data are lacking, evaluations of watershed characteristics, rainfall and impoundment records may be used to evaluate effects of the dam.

The report shall determine the need for:

(a) emergency measures or actions;

(b) corrective actions relating to design, construction and operation; and

(c) additional detailed studies, investigations and analyses.

b. e. Timing of dam safety inspections:

(+) Subject to the availability of staff and funds;

(1) ~~†The Commissioner shall make or cause to be made;~~ initial inspections of all Class I, II and III hazard dams as soon as reasonably possible based on the degree of hazard involved.

(2) ~~After the initial detailed inspections and subject to the availability of funds and staff, the Commissioner shall make, or cause to be made,~~ periodic inspections of dams based on the following schedule in order to determine their adequacy and their proper Hazard Classification:

(a) Class I dams, at least one time every year;

(b) Class II dams, at least one time every two years; and

(c) Class III dams, at least one time every four years; ~~provided that for such dams which were built in cooperation with a governmental sponsoring agency responsible for operation and maintenance the~~ The Commissioner shall utilize the services of the governmental sponsoring agency agencies to the maximum extent possible and feasible to provide for periodic inspections.

3. Reports on inspections. Upon completion of the each inspection of a dam, the Commissioner shall notify the owner of the dam, in writing, of the results and findings of the inspection and if a the dam is unsafe or needs repair or corrective action, the Commissioner shall notify the owner and order such remedial action.

4. Need for further dam safety investigations: If the Commissioner determines that additional engineering investigations are necessary in order to determine the safety of a dam and the extent of needed repairs or alterations, he shall notify the owner thereof to cause such investigations to be made at the owner's expense and to file the results with the Commis-

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

RULES

sioner for use in determining the conditions of dams and the degree and nature of repair, alteration or possible other action needed.

C. E. Transfer of dams ownership. The owner shall not transfer the ownership of any Class I or II Hazard dam without a permit from the Commissioner. For Class III hazard dams, the owner, or the party to whom a dam is transferred, shall apply to the Commissioner for a permit for the transfer of ownership within thirty (30) days after the ownership changes. Permits shall be issued based on evaluation of the hazard class, the conditions and the financial capabilities of the transferee.

No state ~~department or agency and no county, city, town or political subdivision~~ other governmental entity may purchase or accept as a gift any privately owned dam subject to Department permit requirements until after: (1) the Commissioner has examined the dam; (2) the Commissioner has prepared a report of his examination and filed it with the legislature and (3) the legislature has had an opportunity to consider the report and has not prohibited the purchase or gift during the legislative session in which the report is filed; or if the report is filed when the legislature is not in session, the legislature has not prohibited the gift or purchase at the next succeeding session; compliance with the Commissioner and legislative action provided in Minn. Stat. § 105.521.

D. F. Operation and maintenance.

1. Responsibilities: The owner shall operate and maintain the dam. Regulation of the maintenance and of the operation of the dam throughout its existence, insofar as necessary for public health, safety and welfare, is vested with the Commissioner.

2. Reports and records. ~~The Commissioner may require owners~~ Owners may be required to keep records of, and to report on maintenance, operation, staffing and engineering and geologic investigations and any other data necessary to secure maintenance and operation and to require staffing and engineering and geologic investigations in the interests of protect the public health, safety and welfare. In addition, the owner shall fully and promptly advise the Commissioner of any sudden or unprecedented flood or unusual or alarming circumstance or occurrence affecting the dam.

3. Inspections and Work Requirements: The Commissioner, from time to time, shall make inspections of dams for the purpose of making safety determinations, but shall require owners to perform at their own expense work necessary to disclose information sufficient to enable the department to determine conditions of dams in regard to their safety and to perform at their own expense other work necessary to secure maintenance and operation which will safeguard life and property.

E. G. Termination of operations and perpetual maintenance.

1. Unless the dam is removed, the owner shall perpetually maintain the dam and appurtenances so as to ensure the

integrity of the structure in order to achieve its intended and authorized functions and to protect public health, safety and welfare.

2. The Commissioner may impose such requirements as may be necessary, prior to the ultimate termination of the owner's operations, to insure that the owner will be financially responsible for carrying out the activities required for perpetual maintenance, and that adequate funding will exist.

3. In respect to dams utilized for waste disposal purposes, the owner shall prepare and submit to the Commissioner plans for termination of operations and perpetual maintenance which will address the owner's plans for both an unanticipated or premature termination of operations and for the ultimate intended termination of operations. The plans for termination of operations and perpetual maintenance shall, at a minimum, address the following issues, where applicable.

a. Perpetual maintenance and safety of the dam including adequate monitoring programs.

b. Disposal and treatment of ponded and channelled waters.

c. Monitoring and mitigation of surface water and groundwater pollution.

d. Silt, sedimentation and erosion control.

e. Vegetation and landscaping.

H. Investigations and studies. Relative to construction, operation, maintenance, enlargement, repair, alteration and abandonment of dams, the Commissioner shall require information of such nature and extent as to enable him to make a proper review and determination of the various features of the project as they relate to public health, safety, and welfare.

I. Permit cancellation, suspension or alteration. Subject to all existing rights and remedies at law and subject to the rights of appeal in the manner provided by Minn. Stat. §§ 105.37-105.64 (1976):

1. As provided in Minn. Stat. § 105.44 (1976), the Commissioner may cancel or modify a permit at any time if the Commissioner deems it necessary for any cause for the protection of the public interests.

2. As provided in Minn. Stat. § 105.52, whether or not a dam is under permit, if the Commissioner determines that it is unsafe or needs repair or alteration, he shall notify the owner to repair, alter or remove the dam as the exigencies of the case may require.

3. As provided in Minn. Stat. § 105.64 for dams associated with the mining of iron ore, taconite, copper, copper nickel or nickel, the Commissioner may:

a. Cancel or modify a permit at the request of or with the consent of the permittee.

b. Cancel, modify or suspend a permit, if any of its terms, or any law pertaining to the project is violated or necessary to protect the public health, safety or welfare, or to prevent substantial injury not authorized by the permit to

RULES

public interests in lands or waters, or to persons or property.

e. For the same purposes as b. above, in an emergency suspend operations forthwith and require the owner or permittee to take any measures necessary to prevent or remedy the situation which has caused the emergency or imminent danger.

4. An order issued under paragraph 1, 2, 3 a., b. above is subject to the hearing provisions of Minn. Stat. §§ 105.44 and 105.462. An order issued under paragraph 3 e. above is effective on the date thereof, but shall not be in effect for more than thirty (30) days from that date unless the permittee is on the same date mailed written notice of the order which includes notice of a Minn. Stat. § 105.44 public hearing on a date not more than thirty (30) days from the date of the notice.

5. If situations occur in the construction or operations authorized here under which may endanger the public health, safety and welfare, the owner/permittee shall notify the Commissioner immediately and shall immediately take corrective measures and cease construction or operations if the situation so requires.

6. If the Commissioner, pursuant to the terms of a permit, suspends or cancels a permit or orders the Permittee to cease operations permitted hereunder, the Permittee shall do so immediately.

F. J. Reports to the legislature on publicly owned dams. As required by Laws of 1978, ch. 779, § 7, (Minn. Stat. § 105.482) the Commissioner shall make an annual report to the legislature on the status of dams owned by the state or local governmental units which shall include the following:

1. A listing of dams in need of repair or reconstruction.
2. The probable degree of severity of the need of repair or reconstruction.
3. The hazard classification of the dam.
4. The priority ranking of the need for action to repair or reconstruct a dam based on evaluation of items 2. and 3. above.
5. Recommendations recommendations for action including any requests for state share of or matching funds for grants-in-aid to local governments as provided by Minn. Stat. § 105.482.

6 MCAR § 1.5033 Procedure for nNew dams or enlargements of Dams.

A. General outline of permit process. Class III dams, waivers.

1. Construction of a new dam or enlargement of an existing dam shall include the following sequence of events for Hazard Class I & II dams:

tt. A permit application; preliminary report outlining the proposed project and filing fees.

b. Certification that a professional engineer has been assigned to the project.

e. A final design report.

d. Detailed plans and specifications.

e. Other essential supporting data which the Commissioner may request.

f. Payment of dam inspection fees, where applicable.

g. Commissioner's Approval and Issuance of Permit.

h. Work Inspection and Construction Reports.

i. As Built Plans and Data.

j. Statement of Completion, and the Affidavit of Cost, where applicable.

k. Receipt of Impoundment Approval by Commissioner, where applicable.

l. Performance Report.

2. For Hazard Class III dams the applicant (the owner or sponsoring agency where applicable) shall complete an application form and furnish a preliminary report, certification that a professional engineer has been assigned to the project, design data, plans and specifications, work inspection and construction reports and as built plans and data as specified in 6 MCAR § 1.5033 Sections B1, B2, B3, B4, B5, B6, (where applicable), B8, B9, and B10 (where applicable) with the following exception:

For Class III Hazard dams which are sponsored by an a governmental agency of the state, a political subdivision of the state or the federal government which has an agreement under which it will be responsible for operation and maintenance of the dam and also for Class III Hazard dams or for which the design, construction supervision, and inspection is performed by a federal agency in accordance with provisions of the National Dam Safety Act PL 92-367 and applicable federal guide-lines standards and requirements related to that act, the Commissioner may waive certain details of the required submittals, provided that the federal agency will furnish the Commissioner with adequate facts on the design and construction inspection to allow the Commissioner to adequately evaluate the permit and approvals in respect to public health, safety and welfare.

B. Specific procedural requirements.

1. The permit application, preliminary report, and filing fees.

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

RULES

a. The permit application. A separate application, including a preliminary report for each new dam proposed to be constructed or each existing dam proposed to be enlarged, shall be filed with the Commissioner upon forms provided by the Commissioner and which shall contain the following:

- (1) The name and address of the owner(s) or prospective owner-;
- (2) The purpose for the dam-;
- (3) The location, type, size and height of the dam and any appurtenant structures-; and
- (4) The storage capacity of the impoundment.
- (5) Other pertinent information as may be required by the Commissioner.

For waste impoundment dams, the permit application shall include facts necessary for the issuance of a permit which extends throughout the life of the impoundment project.

b. The preliminary report. The preliminary report shall consist of:

(1) A general description of the dam and all appurtenances-; A statement of the purpose for which the dam is to be used and a statement setting forth the effect on the environment of such dam-.

(2) Maps showing the location of the proposed dam-; the County, Township and Section lines; the outline of the impoundments; the location of state, county and township roads; the locations of utilities, e.g. pipelines, transmission, telegraph and telephone lines; the topography; and other structure or facility facilities including human habitations dwellings affected by the proposed dam. State, county and U.S.G.S. maps and aerial photographs may be used for this purpose.

(3) A written report of surface conditions, i.e. geology, topography and culture, which is based on a field examination by the applicant's engineer and other qualified personnel.

(4) Typical cross-sections of the dam accurately showing elevations, proposed impoundment levels and top width.

(5) Logs of borings in the foundation and in the borrow areas, and results of seismic and resistivity subsurface investigations, when they are readily available.

(6) Preliminary design assumptions, operational aspects, tentative conclusions and references. The design assumptions shall pertain to such hydrologic features as drainage area, rainfall data, runoff, inflow, area-capacity-elevation data and flood routing, in addition to structural, geologic and geotechnical assumptions.

(7) A preliminary cost estimate of the structure and appurtenances thereto.

(8) Where applicable, future plans on ultimate project size including dams and impoundments.

(9) A general description of all other activities and elements which are related to and part of the total dam project, such as operational plans and details of smaller dams, dikes, diversions, reclaim water facilities and other facility and utility lines including pipelines, roads and railroads. Separate permit applications will be required for The report shall identify each element or activity of a the total dam project in accordance with appropriate which would require a permit under the provisions of 6 MCAR §§ 1.5020-1.5026 and will be submitted with the application for the dam.

c. Filing fees. Each application for a permit must include a \$15.00 fee in the form of a check or money order payable to the State Treasurer.

2. Professional engineer's requirements. The applicant must engage professional engineer(s) registered in the State of Minnesota or professional engineers acting solely as officers or employees of the United States as provided in Minn. Stat. § 326.13(3), who are proficient in dam engineering to prepare the engineering documents, plans and specifications, and to inspect the construction, or enlargement, and to establish operation and maintenance procedures for the structure of the dam.

All submitted material shall be certified for adequacy by a professional engineer, who shall not be an employee of the owner or of the construction contractor.

3. Final design requirements. Upon acceptance and agreement by the Commissioner of the preliminary report, the applicant shall submit to the Commissioner, for his approval, a final design report, together with plans and specifications and the initial inspection fee required fees. The final design report shall include, but not limited to, the following:

a. General description of the project, such as its function and service life, production rates, required storage and area(s); geological considerations such as physiography, topography, geology, seismicity, groundwater conditions and maps; hydrologic studies such as physical features, climatology, design, storm and design flood characteristics, flood routing, water-material balance, freeboard requirements, dam-break flood; geotechnical information, such as rock-soil sampling and logging, geophysical investigations, field and lab testing, instrumentation data; considerations of construction materials and their properties, such as quantities required, borrow and aggregate locations and volumes, field and lab work and investigations, concrete, waste materials generation and placement techniques, investigation of the stored waste materials such as generations, transportation, mechanical/chemical/special testing, disposal practice.

b. Analytical determinations, such as seepage and underseepage studies, stability, deformation and settlement analysis; analytical and design details of facilities, such as dam, foundation, impoundment, abutments, spillways (for the purpose of these rules, spillway means any facility appurtenant to the dam available to discharge excess water and/or waste from the impoundment) or decant facilities, diversions, outlet works, instrumentation; operational aspects, such as

RULES

impoundment operating criteria, initial filling criteria, responsibility and coordination, emergency procedures and warning systems; air, water and solid pollution controls, sedimentation and erosion controls; operational and post-operational maintenance and abandonment considerations; surveillance and inspection programs.

c. A detailed cost estimate of the structure and appurtenances.

d. Waiver of requirements.

(1) In instances wherein the physical conditions involved and the size of the dam or reservoir are such as to render the requirements as to drainage areas, rainfall, streamflow and drilling or prospecting of site unnecessary, the Commissioner may waive any of the requirements.

(2) Based on discussions between the applicant and the Commissioner and on evaluation of the hazards and risks involved, the Commissioner may waive any of the design requirements if they are found to be unnecessary.

4. Plans and specifications.

a. Plans. The plans shall consist of a bound portfolio of the drawings with all sheets being of the same size, and shall be of such scale that specifications can be drafted, and construction accomplished.

b. Specifications. These Specifications shall contain:

(1) The general provisions, specifying the rights, duties, responsibilities of the owner, designer, contractor; and the prescribed order of work; and

(2) The technical provisions describing approved work methods, equipment materials and desired end results; and

(3) special conditions.

5. Other information. The applicant shall also provide any other information or data concerning the dam, which is pertinent to the consideration of public health, safety and welfare, as may be required by the Commissioner.

6. Payment of dam inspection fees.

a. Fees required.

(1) Initial Dam Inspection fees:

(a) Payment of fees: An initial dam inspection fee shall accompany all applications for permits for dam construction, reconstruction, removal or any change in the dam with the following exception:

No initial dam inspection fee shall be charged to any state agencies, political subdivisions of the state and federal agencies nor to owners of any Class I, II, or III dams which are

sponsored by a state agency, political subdivision of the state or federal agencies who are responsible for operation and maintenance of the dams or for any Class III Hazard dam for which the design, construction supervision, and inspection is provided by a federal agency in accordance with provisions of the National Dam Safety Act PL-92-367 and applicable federal guidelines, standards and requirements related to that act.

(b) The initial dam inspection fee shall be based on the formula and system established by these rules, and no field inspection fees for dams pursuant to 6 MCAR § 1-5000 shall be charged to the applicant, unless the actual cost of the field inspection of a dam as itemized and certified by the Commissioner, is greater than the amount of money collected under provisions of 6 MCAR § 1-5033 B-6.

(c) In the event that the actual costs of field inspection of a dam by the Commissioner exceeds the amount paid by the applicant under 6 MCAR § 1-5033 B-6.b., the Commissioner shall provide an itemized and certified listing of the costs of field inspection of the dam and may charge the applicant sufficient fees pursuant to provisions of 6 MCAR § 1-5000 for the additional costs incurred, but not compensated for by the initial dam inspection fees levied under 6 MCAR § 1-5033 B-6.b.

(2) Periodic inspection fees. Each owner of a dam, except those exempted under Section 1-5033 B-6.b.(1)(a) shall be charged periodic field inspection fees for each year an inspection is made pursuant to Section 1-5032 D-2.e., for the purpose of providing funds for periodic inspection of dams according to the following schedule:

(a) A minimum fee of \$30.00 per dam plus an additional fee based on surface of the dam as follows:

(i) For the first 1,000 square feet of surface \$0.01 per square foot.

(ii) For each square foot in excess of 1,000 square feet of surface \$0.001 per square foot.

The periodic inspection fee, for each year in which an inspection is made, is payable at the end of each state fiscal year, beginning July 1 and ending the following June 30. The first fee is payable on or before June 30, 1980 for any periodic inspections made during July 1, 1979 and June 30, 1980.

b. Procedure for determining initial dam inspection fees:

(1) With the exception of the exemptions noted in Section 1-5033 B-6.a.1.(a), the following dam inspection fee shall accompany each application for a permit required under Chapter 105, for a new dam or for enlargement or repair of an existing dam:

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

RULES

(a) For the first \$100,000 of estimated cost, a fee of two and one-half percent.

(b) For the next \$400,000 of estimated cost, a fee of one and one-half percent.

(c) For the next \$500,000 of estimated cost, a fee of one percent.

(d) For all costs in excess of \$1,000,000 a fee of one-half of one percent.

(2) For all dams, subject to initial dam inspection fees, which will be totally constructed to a maximum storage elevation within 5 years of the date construction begins the applicant shall submit a certified estimate of the cost with his application together with the appropriate fee based on cost. Upon completion of the project, the applicant shall file, with the Commissioner, an affidavit of the final total costs of construction. If the final total cost exceeds the estimate, the applicant shall pay the difference between the fee paid and the fee required based on the final total cost according to the schedule of 6 MCAR § 1-5033 B-6.b.(1) and 6 MCAR § 1-5033 B-6.e.

(3) For dams, subject to initial dam inspection fees, which will not be totally constructed to maximum storage elevation within 5 years of the date construction begins, such as dams for storage of mining waste materials, the applicant shall provide the Commissioner a work schedule outlining the proposed staging of dam construction and shall submit a certified estimate of costs based on staging of dam construction or based on an estimate of costs at construction intervals not exceeding 5 years in duration. At the end of each stage of dam construction, or at construction intervals not exceeding 5 years in duration, throughout the period of total construction until the maximum storage elevation is reached, the applicant shall file with the Commissioner an affidavit of costs for each stage of construction interval not exceeding 5 years in duration. If the actual cost, at the end of a stage or construction interval, exceeds the estimate the applicant shall the difference between the fee paid and the fee required, based on the actual cost, according to the schedule of 6 MCAR § 1-5033 B-6.b.(1).

Commissioner's approval and issuance of permits.

5. Permit standards.

a. In reviewing proposals for new dams, the Commissioner will evaluate Approval or denial shall be based on the potential hazards and risks to the health, safety and welfare of the public and to the environment in the vicinity of the proposed dam. Probable including probable future development of the area downstream or upstream from the dam will be considered in evaluating potential hazard and risks. The applicant may be required to take measures to reduce risks, and the Commissioner shall furnish information and recommendations to local governments for present and future land use controls to minimize risks to downstream areas.

The Commissioner shall determine if the proposal is adequate with respect to:

a. (1) Permits to construct dams which would be in Hazard Class I shall not be approved unless there is justification for the construction of the dam at the proposed location. Such justification shall include but is not limited to, For Class I, a showing of lack of other suitable feasible and practical alternative sites, and economic hardship which would have a major adverse effect on population and socio-economic base of the area involved. affected.

b. (2) Permits to construct dams which would be in Hazard Class II shall not be approved unless there is justification for the construction of the dam at the proposed location. Such justification shall include, but is not limited to, For Class II, a showing of lack of other suitable feasible and practical alternative sites and that the dam will benefit the population or socio-economic base of the area involved.

(3) In the event that justification is provided for construction of any Hazard Class dam, the applicant may be required by the Commissioner to take measures to reduce risks.

(4) The Commissioner shall furnish information to local governments which have legal authority to control land use, regarding the classification together with recommendations for present and future land use controls which should be implemented to insure that risks to downstream areas will be minimized.

b. In considering the issuance of a permit, the Commissioner shall determine if the proposal is adequate with respect to the following:

c. (1) The need in terms of quantifiable benefits.

d. (2) The stability of the dam, foundation, abutments and impoundment under all conditions of construction and operation. An adequate margin of safety must be provided against including consideration of liquefaction, shear failure, or seepage failure, overturning, sliding, overstressing and excessive deformation, under all loading conditions including earthquake. These conditions This determination must be based on current, prudent engineering practice, and the degree of conservatism employed must depend on hazards and risks as outlined in 6 MCAR § 1-5021.

e. (3) The discharge capacity Discharge and/or storage capacity of the dam, appurtenances and impoundment shall be capable of handling the design flood which must be based on current, prudent engineering practice and the hazard potential classification as provided in 6 MCAR § 1-5021.

f. (4) The project in its totality must be in compliance Compliance with prudent, current environmental practice throughout its existence. In particular, the project must meet the State's pollution standards for ground water, surface water, and air quality throughout its existence. The Commissioner shall consider the effects and impacts on the natural environment based on state and federal environmental laws, rules and requirements.

RULES

(5) The cost of that portion of engineering evaluations and studies relating to the safety of dams which is also part of the final design report outlined in 6 MCAR § 1.5033, performed for the applicant by professional engineers, and which were included with Environmental Impact Statements required under applicable State and Federal Environmental Laws shall be subtracted from the total cost determined under 6 MCAR § 1.5033 B.6., provided that the applicant provides the Commissioner with a notarized statement which includes a detailed accounting of expenditures for such dam safety related professional engineering evaluations and studies.

(6) The Commissioner shall keep annual records of the costs incurred in inspection and monitoring of new or enlarged dams and repairs to existing dams before, during and after construction and such cost record shall be provided upon request of any applicant who paid inspection fees.

6. 8. Work inspection and construction reports.

a. Conformity with approved designs, plans and specifications.

(1) The permittee, in cooperation with its designer, shall be responsible for providing adequate controls of construction and operation activities and for the development of data in the ordinary course of those activities on and for verifying design, construction and operation assumptions. The owner may engage a registered professional engineer to operate and inspect the construction of the project, but the designer should also periodically inspect the said structures, monitor construction.

(2) All construction shall be carried out in accordance with the approved design, plans and specifications. No alteration, modification or addition to the approved designs, plans and specifications that could adversely affect the safety or environmental impact and adequacy of the dam shall be made by the permittee without prior permission of the Commissioner. Such approvals shall be provided, if a proper margin of safety is maintained, as rapidly as possible to preclude interference with construction work schedules. Emergency short term revisions may be made by the permittee followed by prompt notice to the Commissioner. Records of alterations, modifications, or additions to the approved design, plans and specifications, for which written approval of the Commissioner was not required shall be submitted with the Construction Report (Section ~~1.5023, B8d~~, 1.5033 B.6.c.).

(3) If the permittee finds at any time during construction or operation that, in order to adequately protect public health, safety or welfare or the environment alterations to the approved design, plans and specifications are required, the permittee shall promptly notify the Commissioner of such

requirements and shall revise the designs, plans and specifications and submit the revisions to the Commissioner for approval. Emergency short term revisions may be made by the permittee followed by prompt notice to the Commissioner. If such short term revisions are to remain as permanent project features, they shall be subject to approval by the Commissioner.

(3) (4) During the construction or operation of a dam, the The Commissioner shall make inspections for the purpose of securing conformity with approved designs, plans and specifications and shall require the owner to perform, at the owner's permittee's expense, work or tests as found necessary to disclose sufficient information to enable the Commissioner to determine if there is conformity with approved designs, plans and specifications.

(4) (5) If, after any inspections, investigations or examinations or at any time as work progresses, the Commissioner finds that amendments, modifications or changes are necessary to protect health, safety, welfare and the environment, the Commissioner may he shall order the owner to revise designs, plans and specifications.

(6) In the event that conditions imposed by the Commissioner as part of the original designs, plans and specifications may be waived or made less burdensome without sacrificing a proper margin of adequacy and safety, the Commissioner may authorize an owner to revise designs, plans and specifications.

(7) If, at any time during construction, enlargement, repairs or alterations of a dam the Commissioner finds that the work is not being done in conformance with approved designs, plans and specifications, the Commissioner shall notify the owner and shall order immediate compliance.

(8) The Commissioner may order that no further work on a dam be done until such compliance has been effected and approved by the Commissioner.

(9) Failure to comply with the approved designs, plans and specifications shall render the approvals subject to revocation if compliance is not made.

(10) If conditions are revealed which will not permit the construction of a safe dam, the permit may be revoked.

(5) (11) At his discretion, the Commissioner may observe and approve foundation preparation and may approve construction material placement on an intermittent or continuing basis when field conditions dictate. The Commissioner shall be notified at least (3) days in advance of construction material placement, start of construction.

b. Acceptance of permit or approval. Initiating or undertaking any work or part thereof, by the permittee,

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

RULES

authorized in an issued permit or approval, constitutes acceptance of all terms and conditions contained therein.

b. e. Permanent markers. At least one (1) permanent marker for vertical and horizontal control shall be established in the natural ground by the permittee in the vicinity of each dam structure so as to be accessible and protected against disturbance throughout its existence. The permanent marker for vertical control must be based upon datum and degree of accuracy based upon considerations of the hazards involved and the size of the dam, as specified by the Commissioner.

Each marker shall be located so as to be accessible and protected against disturbance throughout the existence of the dam. The permittee shall submit to the Commissioner the locations of these permanent markers plotted on the best available maps or plans within time limits prescribed by the Commissioner in the permit.

c. d. Construction report. The permittee shall may be required to submit monthly to the Commissioner a reports on construction observation and quality control. The report shall include, but is not limited to, when construction is complex or hazardous, including: daily construction documentation; foundation preparation and treatment, construction quality control tests; maintenance of records and summaries of actual tests of foundation and construction materials, cut-off trench, grouting, etc; instrumentation installation and maintenance of instrumentation records and instrumentation readings; geologic mapping, if any, of exposed foundations; preparation of logs of drill holes and other exploration features, if any, completed during construction; review and evaluation of disclosed field conditions by the designer; and any other items which may be pertinent to a construction quality assurance program.

7. 9. As-built plans and data. Immediately upon completion of construction a new dam or reservoir or enlargement of a dam, the owner permittee shall file with the Commissioner supplementary drawings or descriptive matter showing or describing descriptions of the dam as actually constructed, or any other items which may be of permanent value and have a bearing on the adequacy and permanency of the dam.

In connection with the enlargements of a dam, the supplementary drawings and descriptive matter the data need apply only to the new work.

8. 40. Statement of completion and affidavit of cost.

a. Statement of completion. As soon as practicable Within 90 days following the completion of construction, the permittee shall notify the Commissioner, by certified mail. The notification shall include including a statement on the part of the designer of the or professional engineer in charge of the construction inspection that to the best of knowledge, the dam was completed in accordance with the approved designs, plans and specifications and any approved revisions thereof.

b. Affidavit of cost.

As soon as possible after giving notice of completion, the

owner practicable thereafter, the permittee shall file an affidavit with the Commissioner stating the actual cost of the dam in detail. In the event the owner of a new or enlarged dam or that the permittee is unable to report the actual cost of construction or enlargement, an affidavit to this effect shall be filed within thirty (30) days after written request by the Commissioner, stating the reasons therefor. In the latter event The the Commissioner shall then make at the owner's expense an appraisal of the cost of construction or enlargement and determine what further fee, if any, is required. If a further fee is required; the Commissioner shall notify the owner by certified mail of the amount of such fee within fifteen (15) days including notice that permittee and that the owner may appear within sixty (60) days thereafter before an authorized representative of the Commissioner to protest the amount of the fee, in whole or in part and the sufficiency of the appraisal upon which such determination was based.

9. 44. Issuance of impoundment approval by the Commissioner. Impoundment approvals may be are necessary for Class I and Class II Hazard Dams dams to provide assurances that the dam has been constructed as safely as possible in accordance with detailed plans and specifications and to allow adequate time for inspection of the completed dam and its foundations before actual impoundment begins.

The type of dam, the location, the hazard involved, and the purpose served by the dam will be considered in respect to the degree and nature of impoundment approval needed. Certain waste disposal dams which will not be constructed to maximum storage elevation in five years ever a considerable period of years and will require a series of impoundment approvals for various stages of construction.

Upon request by the owner, an Impoundment Approval shall be issued upon a finding by the Commissioner that the dam is adequate to impound water and/or waste within the limitations prescribed. Pending issuance of an Impoundment Approval (or reissuance in the event of termination) by the Commissioner, where required the owner of the dam shall not, through action or inaction, allow an impoundment upstream of the dam.

a. Each The Impoundment Approval issued by the department may shall contain such terms and conditions as the Commissioner may prescribe.

b. The Commissioner may also revoke or any Impoundment Approval if it is determined that the dam becomes a danger to public health, safety and welfare. When ever action is necessary to protect public health, safety and welfare, the Commissioner may also amend the terms and conditions of any Approval by issuing a new Approval containing revised terms and conditions.

e. The owner of a dam for which an Impoundment Approval has been issued shall not, through action or inaction, cause the dam to impound water and/or waste after the Approval terminates unless a new Approval is issued for the dam. A new Approval shall be issued upon a finding by the

RULES

Commissioner that the dam is adequate to impound water and/or waste within the limits prescribed in the Approval.

10. 42. Performance reports. The permittee shall may be required in the case of complex or hazardous dams to submit yearly to the Commissioner a Performance Report detailing the instrumentation data and analysis and interpretation of these data as they relate to the safety of the dam and design assumptions. The frequency of submission of this report may be modified if field conditions so dictate.

6 MCAR § 1.5034 Miscellaneous provisions.

A. Limited State liabilities. The granting of a permit for a dam shall not impose any liability upon the State of Minnesota, for its officers, employees, agents or consultants, for any damage or injury to any persons or property resulting from the activities of the permittee under the permit. Any permit shall be permissive only and shall not be construed as estopping or limiting any legal claims of persons other than the State against the permittee, its agents or contractors, for any damage or any injury to any persons or property, or to any public water supply resulting from such operations, or as estopping or limiting any legal claims of the State against the permittee for violation of any of the terms or conditions of the permit. No action shall be brought against the State or the Commissioner for the recovery of damages caused by the partial or total failure of any dam or through the operation of any dam upon the ground that such defendant is liable by virtue of any of the following:

1. Any approval of the dam or appurtenant facilities.
2. The issuance or enforcement of orders relative to maintenance or operation of the dam.
3. Control and regulation of the dam.
4. Measures taken to protect against failure during an emergency.

B. Owner's responsibilities. Liability of owner and permittee. Nothing in these rules shall be construed to relieve an owner of a dam or permittee of the legal duties, obligations or liabilities incident to the ownership or operation of the dam.

C. Liability of permittee. The permittee and owner shall assume all legal risks and liabilities, including without limitation those for damages or any injury to persons or property, arising from the construction, operation, maintenance, alteration or abandonment of the dam and impoundments and other activities authorized under permit relating to dams.

C. ~~D.~~ Owner's rights. Nothing in these rules shall be construed to deprive any owner of such recourse to the courts as he may be entitled to under the laws of this State.

D. ~~E.~~ Inspections. Owners of dams shall allow the Commissioner prompt access to and inspection of all records,

plants, structures, facilities and operations at all reasonable times as may be necessary to monitor compliance with the terms of existing permits and to insure protection of the public health, safety and welfare. Entry for the purposes indicated is subject to reasonable compliance with the owner's safety rules and avoidance of unreasonable impairment of or interference with construction and operation of the dam. The Commissioner's ~~inspection~~ Inspection shall be limited to testing and observing, rather than supervising the construction, operation, maintenance, alteration or abandonment of the dam. The Commissioner's ~~inspections~~ inspections and shall not relieve the owner, or the designer, or the professional engineer in charge of construction, operation, maintenance, alteration or abandonment, from the full responsibility of providing adequate inspection and supervision.

E. ~~F.~~ Compliance with other laws. The owner of a dam shall comply with all other state and federal laws and regulations relating to any structures, facilities or operations under the permit and shall obtain such other permits from federal authorities as may be required therefor. The owner shall comply with all state laws and regulations in effect now or adopted hereafter relating to such structures, facilities and operations, including but not limited to, particularly any laws and rules regarding mineland reclamation subject to the provisions of a permit.

G. Other permits and approvals. Although it is the intent of the Commissioner to maintain consistency with the permits of other agencies, nothing in any permit shall waive or abrogate any other state or federal approvals or permits which may be necessary for the project involved. Any permit conditions for dams shall not waive or abrogate any conditions, whether similar or more stringent, which may appear in any other permit or approval.

F. ~~H.~~ Acquisition of property. In all cases where the Where activities authorized by a permit shall involve the taking, using or damaging of any property, rights, or interests of any other persons or persons, or of any publicly owned lands or improvements thereon or public interests therein, the permittee, before proceeding, shall acquire all necessary property, rights, interests or permissions. In case the authorized activities shall include including paying the costs of the alteration, relocation or replacement of any public highway or other publicly owned facility, the permittee shall pay the cost thereof as may be required by the appropriate public authority.

G. ~~I.~~ Assignment. Permits for dams may be assigned in whole or in part, but no assignment shall be effective until written notice thereof is filed in the office of the Commissioner, only if the Commissioner is notified and the Commissioner approves the assignment in writing.

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

RULES

~~J. Successors.~~ Provisions of the issued permit shall extend to and bind the successors in authority of the Commissioner and the legally assigned successors in interest of the permittee.

~~H. K.~~ Warning systems and emergency procedures.

~~1. In the event that an existing or new dam is classified as a Class I or H Hazard dam, the owner owners shall prepare and file with the Commissioner, for approval, a contingency plan for notifying any persons whose lives, property or health may be endangered by failure, misoperation or other circumstances or occurrence affecting the dam. The contingency plan shall include:~~

~~a. The identifying most practical and expeditious means for warning downstream property owners and residents.~~

~~b. Consideration of considering the time factor involved in providing warning based on the proximity of the dam to affected parties who may be affected.~~

~~2. In the event If there is no feasible or practical means to provide for adequate evacuation warning due to insufficient time before if a catastrophe occurs and downstream parties can be notified to evacuate, the owner shall be responsible for giving appropriate notification to any notifying affected downstream property owners that there is no practical and feasible means for warning in emergency situations, of that fact.~~

~~These rules, 6 MCAR §§ 1.5030-1.5034, are subject to the public hearing provisions of Minn. Stat. §§ 105.44-105.462.~~

~~1. Permit and hearing procedures. These rules, 6 MCAR §§ 1.5030-1.5034, are subject to the permit and public hearing provisions of Minn. Stat. §§ 105.44-105.462 and 105.64, including:~~

~~1. The Commissioner must act on permit applications within thirty (30) days of the time that all required data and fees are filed in his office.~~

~~2. The Commissioner may cancel or modify a permit at any time if the Commissioner deems it necessary for any cause for the protection of the public interests.~~

~~3. Whether or not a dam is under permit, if the Commissioner determines that it is unsafe or needs repair or alteration, he shall notify the owner to repair, alter or remove the dam as the exigencies of the case may require.~~

~~4. An order requiring immediate action is effective on the date thereof, but shall not be in effect for more than thirty (30) days from that date unless the permittee is on the same date mailed written notice of the order which includes notice of a Minn. Stat. § 105.44 public hearing on a date not more than thirty (30) days from the date of the notice.~~

~~5. If at any time during construction of a project, the Commissioner finds that the work is not being done in conformance with approved designs, plans and specifications, except as provided in 6 MCAR § 1.5033 B.6.a. (2), the Commissioner shall notify the permittee and shall order immediate~~

~~compliance and may order that no further work be done until such compliance has been effected and approved.~~

~~6. If the permittee fails to comply with approved designs, plans and specifications or if conditions are revealed which will not permit the construction of a safe dam, the permit may be revoked.~~

~~7. Acceptance of permit or approval. Initiating any work by the permittee, authorized in an issued permit or approval, constitutes acceptance of all terms and conditions contained therein.~~

~~J. Required information and waivers. When necessary to assess the safety of a dam or proposed project, the applicant or owner may be required to submit additional information at his own expense. Whenever information or conditions required by these rules is unnecessary, the Commissioner shall waive those provisions and shall allow appropriate revisions to make the requirements less burdensome.~~

~~K. Inspection fees.~~

~~1. Exemption. No inspection fee shall be charged for dams owned or sponsored by a governmental agency or for any Class III dam for which the design, construction supervision, and inspection is provided by a federal agency.~~

~~2. The initial fee required by 6 MCAR § 1.5033 B.3. shall be based on the following formula and no fees pursuant to 6 MCAR § 1.5000 shall be charged.~~

~~a. For the first \$100,000 of estimated cost (as defined in 6 MCAR § 1.5030 D., that portion of engineering evaluations and studies relating to safety which is also part of the final design report performed for the applicant which were included with environmental assessment worksheets and with Environmental Impact Statements required by law shall be subtracted provided that the applicant provides a notarized detailed accounting of expenditures), a rate of two and one-half percent.~~

~~b. For the next \$400,000, one and one-half percent.~~

~~c. For the next \$500,000, one percent.~~

~~d. One-half of one percent of all costs in excess of \$1,000,000.~~

~~e. If the final total cost exceeds the estimate, the difference as provided in 6 MCAR § 1.5033 B.8.~~

~~For dams which will not be constructed to maximum storage elevation within five years of the date construction begins (such as dams for storage of mining waste materials) computation will be based on applicant's work schedule outlining proposed staging and a certified estimate of costs based on staging and a certified estimate of costs based on staging intervals not exceeding five years in duration. At the end of each stage, or at intervals not exceeding five years in duration, until completion, the applicant shall file an affidavit of actual costs for each stage or interval not exceeding five years. Whenever the actual cost exceeds the estimate the applicant shall pay the difference.~~

RULES

3. Periodic fees shall be charged to owners for each year an inspection is made pursuant to § 1.5032 B.2.b., of \$30.00 per dam plus an additional fee based on surface (as defined in 6 MCAR § 1.5030 D.) of \$0.01 per square foot for the first 1,000 and \$0.001 for each square foot in excess of 1,000; payable on or before the end of the state fiscal year, June 30.

4. The Commissioner shall keep annual records of inspection costs which shall be provided upon request of any applicant who paid inspection fees.

Department of Public Safety Safety Administration Division

Adopted Rules Governing Minimum Standards for Wheelchair Securement Devices

The rules proposed and published at *State Register*, Volume 3, Number 41, pp. 1901-1904, April 16, 1979 (3 S.R. 1901) are now adopted, with the following amendments:

Chapter 21: Standard for Wheelchair Securement Devices

11 MCAR 1.0188 Purpose, and authority and scope.

A. Purpose. The purpose of these rules is to establish minimum standards for approval of wheelchair securement devices in vehicles and approval of seat belt assemblies and anchorages used to protect persons in wheelchairs while transported in vehicles.

B. Authority. These rules are promulgated pursuant to the authority granted by Laws of 1978, ch. 752.

C. Scope.

1. These rules apply to the transportation by motor vehicle of any sick, injured, incapacitated or handicapped person while occupying a wheelchair, which transportation is offered or provided by an operator to the public or to its employees or in connection with any other service offered by the operator including schooling or nursing homes, convalescent or child care services.

2. These rules do not apply to any school bus subject to regular school bus inspection pursuant to Minn. Stat. 169.451 nor do they apply to incidental transportation of an

occupied wheelchair under circumstances other than as provided in Paragraph (1) above.

11 MCAR § 1.0189 Definitions. For the purpose of these rules, the following terms shall have the meanings ascribed to them:

A. Anchorage. The provision for transferring wheelchair securement loads to the vehicle structure.

B. Commissioner. The Commissioner of Public Safety or his duly authorized agent.

C. Interior paneling. Material used to finish the interior of a vehicle, not including the floor.

D. Occupant restraint. A seat belt assembly and/or upper torso restraint intended to hold the occupant of a wheelchair in a generally seated position during transportation by motor vehicle.

E. Wheelchair. A chair mounted on wheels to facilitate the mobility of a sick, injured, invalid or handicapped person in a generally seated position. The term includes a device generally recognized as a wheelchair even though equipped with reclining backrest or special apparatus. The term does not include any device not equipped with wheels, nor does it include an ambulance stretcher or cot whether equipped with wheels or not.

F. Operator. Any person, firm, partnership, corporation, service club, public or private agency, city, town or county.

G. ~~Ø~~. Wheelchair securement device or securement device. An apparatus installed in a motor vehicle for the purpose of securing an occupied wheelchair into a location in the vehicle.

11 MCAR § 1.0190 Wheelchair securement.

A. An occupied wheelchair transported in a vehicle shall be secured with a securement device of sufficient strength to prevent forward, backward, lateral or vertical movement of the wheelchair when the device is engaged and the vehicle is in motion, accelerating or braking.

B. Each wheelchair securement device shall attach to the frame of the wheelchair without damaging the frame. "Damage" includes effects harmful to the strength, integrity or serviceableness of the wheelchair, but does not include minor dents, scratches or other cosmetic blemishes not materially affecting serviceableness.

C. A wheelchair securement device shall not be attached to a wheel of a wheelchair.

11 MCAR § 1.0191 Minimum standards. Each wheelchair securement device shall:

A. Attach to the wheelchair frame on at least three (3) points. The three (3) points of contact shall be spaced to provide effective securement. Alternatively, a securement

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

RULES

device meeting all other requirements of these rules may attach to two widely spaced points on the wheelchair frame if the wheel tires or the wheelchair frame abuts an unyielding surface in a manner which meets the approval requirements of 11 MCAR § 1.0192.

B. Consist of at least two (2) webbing-type belts described in clause one or at least two all-metal devices described in clause (2) or one or more of each such device.

1. Webbing-type devices shall be assemblies that meet or exceed Type 2 pelvic restraint seat belt requirements as specified in Section S4.2 (2) (b) of Federal Motor Vehicle Safety Standard No. 209, 49 Code of Federal Regulations, Part 571.209 (1977 edition) or be certified by the manufacturer that such device meets or exceeds assembly strength of 5,000 pounds in loop fashion or 2,500 pounds on each anchorage leg.

a. Certification may be the specification listed in catalogs or publications by the manufacturer.

b. All new construction of such securement devices and repairs to webbing shall conform with standards established by the manufacturer of the webbing.

2. All metal securement devices shall be of a design and construction which provides wheelchair securement strength at least equal to the strength of a webbing-type device comprised of three separate attachments and anchorages.

C. Be free of sharp edges, corners and jagged projections to minimize injury to persons in the event of unintentional contact.

D. Be capable of retraction, and be readily removable or otherwise suitably storable when not in use.

E. Be anchored to the vehicle at not less than two separate points with bolts, nuts and lock washers or self-locking nuts.

1. Bolts used shall be not less than 3/8 inch in diameter and of National Fine Thread S.A.E. grade 5 designation or equivalent.

2. Where anchorage bolts do not pierce the vehicle frame, subframe, bodypost or equivalent metal structure, a metal reinforcement plate or washer not less than 1/16 inches thick by 2 1/2 inches in diameter is required.

3. In no event shall interior paneling constitute anchorage for a point of securement.

4. A metal track, rail or similar device permitting attachment of the securement device at optional points thereon may be used to anchor the securement device, provided:

a. The track, rail or other device is secured to the vehicle in compliance with anchorage requirements of this rule.

b. The attachment of the securement device to the anchor point is by means of a positive attachment metal fitting.

F. The method or device which provides attachment of the securement device to the wheelchair frame and the method or

device locking the securement device in the load-holding mode shall each be of a strength and design which will assure performance of their intended function until the securement device is intentionally released.

G. Buckles, anchorage fittings and other components essential to the functioning of the securement device shall be integrated into the securement device in accordance with recognized practices and in a manner which preserves the overall strength of the securement device.

11 MCAR § 1.0192 Approval procedure.

A. Application for approval of a wheelchair securement device shall be made to the Commissioner and shall be accompanied by the manufacturer's actual or proposed written installation instructions and photographs or drawings clearly depicting the construction of the device and its physical characteristics, including all mounting hardware.

B. The applicant shall furnish a vehicle with the securement device installed therein and demonstrate the device by attaching it to a wheelchair furnished by the applicant. ~~The wheelchair shall not be modified to accommodate the securement device.~~ The Commissioner may load the wheelchair to 140 pounds and require the vehicle be accelerated, driven around corners and subjected to hard braking at speeds of thirty miles per hour or less. Movement of the wheelchair more than (1) inch in any direction, including vertically, during such test shall be grounds for refusal of approval. Measurement of movement shall be at the points where wheelchair wheels contact the floor. Damage to the wheelchair or any other property during such test shall be the responsibility of the applicant.

C. Upon determining that the securement device meets the requirements of these rules, the Commissioner shall issue a certificate of approval authorizing use of the device. ~~The approval shall expire five years from the date of issuance. A securement device installed in a vehicle during the life of the approval may be used throughout its useful life in any vehicle.~~

D. The Commissioner may revoke any approval granted hereunder upon a showing that the securement device does not meet a requirement of these rules.

E. Each wheelchair securement device shall be permanently labeled with the name, initials or trademark of the manufacturer and the model designation of the device. The label shall be readily visible and legible from the outside of the device when it is properly mounted to the vehicle and in use.

11 MCAR § 1.0193 Seat belts Occupant restraint.

A. ~~Each vehicle equipped with a wheelchair securement device installed after October 1, 1979, shall be equipped with a type 2 seat belt assembly with a detachable upper torso portion at each such wheelchair position in the vehicle. The seat belt assembly, the upper torso restraint, and the anchorages for both shall meet the requirements of applicable Federal Motor Vehicle Safety Standards. Each vehicle equipped with a wheelchair securement device shall be equipped with a~~

RULES

Type 2 seat belt assembly with a detachable upper torso portion at each wheelchair position in the vehicle or, in the alternative, shall be equipped with a Type 1 pelvic restraint assembly and a length of Type 1 or Type 2 seat belt webbing, with buckle, adequate to encircle the chest of the wheelchair occupant and the backrest of the wheelchair.

B. Each vehicle equipped with a securement device installed prior to October 1, 1979, shall be equipped with a type 1 or type 2 seat belt assembly at each such wheelchair position in the vehicle. The seat belt assembly, and the upper torso restraint if so equipped, and their respective anchorages shall meet the requirements of applicable Federal Motor Vehicle Standards. Type 1 and Type 2 seat belt assemblies shall meet the requirements of Sections S 1 through S 4.4 of Federal Motor Vehicle Safety Standard No. 209.49 Code of Federal Regulations, Part 571.209 (1977 edition).

C. Type 1 and Type 2 seat belt assemblies and the detachable upper torso restraint, if a detachable upper torso restraint is installed in lieu of using a length of seat belt webbing to encircle the chest of the occupant and the backrest of the wheelchair, shall be installed and anchored in accordance with Sections S 1 through S 4.3.2 of Federal Motor Vehicle Safety Standard No. 210, 49 Code of Federal Regulations, Part 571.210 (1977 edition).

11 MCAR § 1.0194 Securement. It shall be the responsibility of the driver of any vehicle equipped with a wheelchair securement device to:

A. Properly secure an occupied wheelchair prior to moving the vehicle unless the wheelchair occupant is capable of securing the device and does so.

B. Fasten the seat belt assembly, and upper torso restraint if so equipped, around the occupant of the wheelchair unless the occupant is capable of fastening same and does so. The driver shall not fasten the seat belt assembly or the upper torso restraint if doing so would aggravate a physical condition of the occupant. if the occupant or other responsible person advises the driver that to do so would aggravate a physical condition of the occupant. In the event the physical condition would be aggravated by the use of but one of the devices, the device which would have no effect on the physical condition shall be fastened in the required manner.

C. Retract, remove or otherwise store securement devices and seat belt assemblies when not in use to prevent tripping of persons and damage to devices.

11 MCAR § 1.0195 Inspection. The Commissioner may order the removal or ~~corrective action~~ correction of any securement device upon determining that any wheelchair securement the device, without regard to date of installation:

A. Is not capable of sustaining loads imposed thereon in restraining an occupied wheelchair, or

B. The securement device permits excessive movement of an occupied wheelchair.

11 MCAR § 1.0196 Effective dates. ~~These rules apply to all securement devices installed in a vehicle after October 1, 1979, and to any securement devices used in any vehicle after December 31, 1980.~~

A. Wheelchair securement devices and occupant restraint systems installed in vehicles after December 31, 1979 must be of a type approved in accordance with these rules. After December 31, 1980, every vehicle included within the scope of these rules must be equipped with an approved wheelchair securement device and occupant restraint system at each wheelchair position.

B. From the effective date of these rules and until an approved wheelchair securement device is installed in a vehicle, no person shall transport an occupied wheelchair in a vehicle unless the wheelchair is secured to prevent forward, backward, lateral or vertical movement when the vehicle is in motion, accelerating or braking, and the occupant is restrained by at least one belt or strap.

Department of Public Welfare Medical Assistance Division

Adopted Temporary Rule Governing Payment for Abortion Services as Part of the Medical Assistance Rule

The proposed temporary rule (12 MCAR § 2.047) published at *State Register*, Volume 4, Number 8, p. 218, August 27, 1979 (4 S.R. 218) was approved with the following amendments by the Office of the Attorney General on October 10, 1979. Such amendments shall become effective only upon order of the Honorable Donald D. Alsop, United States District Court Judge. Until that time, claims meeting the standards set forth in this rule shall be accepted by the Department and will be processed, but no payment will be made.

Temporary Rule as Adopted

12 MCAR § 2.047 E.2.1. The cost of abortion services shall be paid only when the conditions under (1), (2), (3), (4), or (5) are met:

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

RULES

(1) The abortion is necessary to prevent the death of the mother. The cost of the abortion shall be covered only if the following documentation accompanies the provider's invoice to the state agency:

(a) The signed written statement of two physicians that it was their professional judgment that the abortion was necessary to prevent the death of the mother; and

(b) The signed written statement of the recipient that she voluntarily consented to the abortion. In the event that the recipient is physically or legally incapable of providing informed consent, consent may be obtained as is otherwise provided by law.

(2) The abortion is to terminate a pregnancy which is the result of a sexual assault. The cost of the abortion shall be covered only if a report of the assault was made to a valid law enforcement agency within 48 hours of the time the assault occurred and a signed statement from the law enforcement agency accompanies the provider's invoice to the state agency. In the event the recipient was physically unable to make the report within 48 hours of the assault, the report must have been made within 48 hours after the recipient became physically able to make the report. The statement of the law enforcement agency shall include the following information:

(a) The name of the victim; and

(b) The date of the alleged incident; and

(c) The date the report was made to the law enforcement agency; and

(d) The name and address of the person who signed the report to the law enforcement agency; and

(e) A statement by the law enforcement agency that the report alleges at least one of the following:

(i) Circumstances existing at the time of the assault caused the recipient to have a reasonable fear of imminent great bodily harm to herself or to another.

(ii) The assailant was armed with a dangerous weapon or an article used or fashioned in a manner which led the recipient to reasonably believe it to be a dangerous weapon, and used or threatened to use the weapon or article to cause the complainant to submit.

(iii) The assailant caused personal injury to the complainant and used force or coercion to accomplish sexual penetration.

(iv) The assailant was aided or abetted by one or more accomplices and either:

(aa) An accomplice used force or coercion to cause the recipient to submit; or

(bb) An accomplice was armed with a dangerous weapon or an article used or fashioned in a manner to lead the complainant reasonably to believe it to be a dangerous weapon and used or threatened to use the weapon or article to cause the recipient to submit.

The provider's invoice shall also be accompanied by a statement, signed by the recipient, that her pregnancy resulted from the sexual assault reported, and a statement, signed by the recipient's physician, that in his/her professional opinion the length of the pregnancy at the time of the abortion was not inconsistent with the recipient's statement.

(3) The abortion is to terminate a pregnancy which is the result of incest. The cost of the abortion shall be covered only if a report of incest was made to a valid law enforcement agency prior to the time of the abortion and a signed statement from the law enforcement agency accompanies the provider's invoice to the state agency. The statement shall include the following information:

(a) The name of the victim; and

(b) The date of the alleged incident; and

(c) The date the report was made to the law enforcement agency; and

(d) The name and address of the person who signed the report to the law enforcement agency; and

(e) A statement by the law enforcement agency that the name of the relative who allegedly committed incest with the victim appears in its report.

The provider's invoice shall also be accompanied by a statement, signed by the recipient, that her pregnancy resulted from the incest reported, and a statement, signed by the recipient's physician, that in his/her professional opinion the length of the pregnancy at the time of the abortion was not inconsistent with the recipient's statement.

(4) The abortion is medically necessary, to terminate a pregnancy for therapeutic reasons due to severe and long-lasting damage to physical health of the mother if the following documentation accompanies the provider's invoice to the state agency:

(a) The signed written statement of two physicians (one of which must specify that he/she is not an "interested physician" as defined in E.2.t. (6) (e) of this rule) certifying that on the basis of their professional judgment, severe and long-lasting physical health damage to the mother would result if the pregnancy were carried to term.

(5) The abortion is medically necessary, ~~as certified by the same method as in (4) (a) above,~~ to terminate a pregnancy for therapeutic reasons due to other diagnosed medical conditions such as, but not limited to, the following:

(a) Chronic lung disease

(b) Essential hypertension

(c) Diabetes

(d) Kidney disease

(e) Heart disease

(f) Sickle cell anemia

(g) Pulmonary emboli

RULES

- (h) Depression
- (i) Hepatitis
- (j) Fetal deformity
- (k) Phlebitis
- (l) Abnormal conditions diagnosed by amniocentesis
- (m) Obesity

Provided that the invoice submitted by the provider is accompanied by the signed written statement of two physicians (one of which must specify that he/she is not an "interested physician" as defined in E.2.t. (6) (e) of this rule) certifying that, on the basis of their professional judgment the abortion is medically necessary.

(6) For the purposes of this subsection E.2.t. only, the following definitions apply:

(a) "Abortion services:" medical service performed for the purpose of terminating a pregnancy. This shall not be construed to include:

- (i) drugs or devices which prevent implantation of the fertilized ovum; or
- (ii) medical procedures necessary for the termination of an ectopic pregnancy.

(b) "Assailant:" person who allegedly committed the sexual assault reported to the law enforcement agency.

(c) "Incest:" sexual intercourse with another nearer in kin than first cousin, of the whole or half-blood.

(d) "Valid law enforcement agency:" an agency charged under applicable law with enforcement of the general penal statutes of the United States, or of any state or local jurisdiction.

(e) "Interested physician" is one:

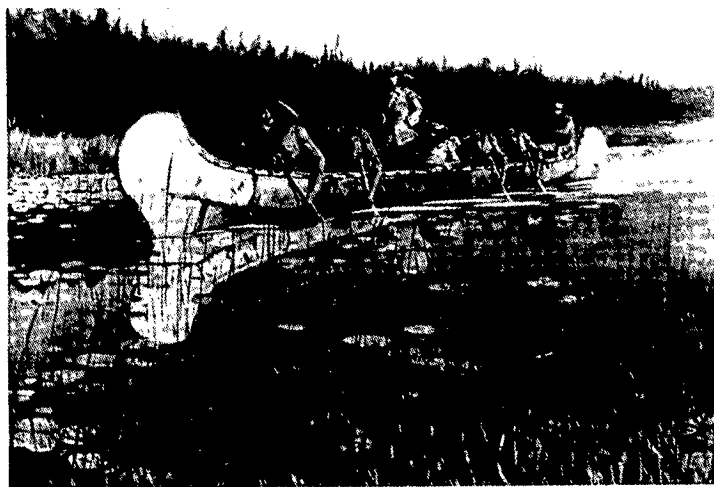
(1) Whose income is directly or indirectly affected by the fee paid for the performance of the abortion, or

(2) Who is the spouse of, or another relative who lives with, a physician whose income is directly or indirectly affected by the fee paid for the performance of the abortion.

Department of Public Welfare Support Services Bureau

Adopted Rule Governing Per Diem Rates for Nursing Home Providers under the Title XIX Medical Assistance Program, Rule 49

The rule proposed and published at *State Register*, Volume 3, Number 48, pp. 2113-2114, June 4, 1979 (3 S.R. 2213) is now adopted as proposed.



Radisson and Groseilliers expedition on Great Lakes in 1654. (Painting by Frederic Remington, Courtesy of Minnesota Historical Society)

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

PROPOSED RULES

Pursuant to Minn. Stat. § 15.0412, subd. 4, agencies must hold public hearings on proposed new rules and/or proposed amendment of existing rules. Notice of intent to hold a hearing must be published in the *State Register* at least 30 days prior to the date set for the hearing, along with the full text of the proposed new rule or amendment. The agency shall make at least one free copy of a proposed rule available to any person requesting it.

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Public Hearings on Agency Rules November 5-10, 1979

Date	Agency and Rule Matter	Time & Place
Nov. 5	Health Department Collection of Information from Health-related Manpower	9:00 a.m., Health Bldg., 717 S.E. Delaware St., Minneapolis, MN
Nov. 10	Board of Teaching Elementary, Secondary, and Middle School Counselors Requirements for Issuance and Renewal of Licenses, Secondary School Coaches of Interscholastic Sports Hearing Examiner: Jon Lunde	9:00 a.m., Auditorium, State Office Bldg., 435 Park Street St. Paul, MN 55155

Housing Finance Agency Proposed Rules Relating to the Accessibility Improvement Assistance Program

Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held pursuant to Minn. Stat. § 15.0412, subd. 4, at 500 Rice Street, St. Paul, Minnesota, on November 28, 1979 commencing at 9:30 a.m. and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition whether or not an appearance is made at the hearing, written statements or material may be submitted to the Hearing Examiner, Natalie L. Gaull, c/o Office of Hearing Examiners, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104 (296-8114), either before the hearing or within five (5) working days after the close of the hearing. The hearing examiner may extend the time for receipt of comments for a period not to exceed twenty (20) calendar days.

The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rule, you are urged to participate in the

hearing process. If you have any questions about the procedure, call or write the hearing examiner.

The proposed rules, if adopted, would establish guidelines for the Accessibility Improvement Assistance Program as authorized by Minn. Stat. § 462A.05, subd. 15a, as amended by Laws of 1979, ch. 327, § 3.

A copy of the proposed rules is attached hereto and one additional free copy may be obtained by writing to the Minnesota Housing Finance Agency, 333 Sibley, St. Paul, Minnesota 55101. Additional copies will be available at the door at the date of the hearing.

Notice is hereby given that twenty-five (25) days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the Agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include the evidence presented by the Agency to justify both the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge either before the hearing, or free of charge at the hearing. As the Agency intends to present only a short summary of the Statement of Need and Reasonableness at the hearing, and answer questions raised by interested persons, you are urged to read the Statement of Need and Reasonableness before the hearing.

In addition, please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.02, subd. 11, as any individual:

a. Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than \$250, not including *his own* travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

b. Who spends more than \$250, not including *his own* traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone: (612) 296-5615.

PROPOSED RULES

Any person may request notification of the date on which the hearing examiner's report will be available, after which date the Agency may not take any final action on the rules for a period of five (5) working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the Agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner (in the case of the hearing examiner's report), or to the Agency (in the case of the Agency's submission or resubmission to the Attorney General).

October 11, 1979.

James Solem, Executive Director
Housing Finance Agency

Rules as Proposed

12 MCAR § 3.002 Definitions.

O. "Persons and families of low and moderate income" means:

4. with respect to Home Improvement Loans and Accessibility Improvement Assistance pursuant to Chapters Six and Seven-A of these rules, those persons and families whose Adjusted Income does not exceed \$16,000.

12 MCAR § 3.052 Eligible improvements.

Improvements made with Home Improvement Loan proceeds shall satisfy the following requirements:

A. Improvements may be made in order:

1. to comply with applicable state, county, and municipal health, housing, building, fire prevention, and housing maintenance codes, or other public standards applicable to housing, or

2. to make the property more desirable to live in, or

3. to increase the market value of the property, or

4. to make the property more habitable, or

5. to make the property more accessible to a Handicapped Person as provided in Chapter Seven-A.

12 MCAR § 3.063 Amount of grant. The amount of the rehabilitation grant shall not exceed the lesser of:

A. \$5,000, or in the case of an Accessibility Improvement Grant, \$7,500, or

B. the actual cost of the work performed, or

C. that portion of the cost of rehabilitation which the Agency determines cannot otherwise be paid by such person

or family without spending an unreasonable portion of the income of such person or family thereon.

If a grant is made both for Accessibility Improvements and for other eligible improvements pursuant to these Rules, then the portion of the grant which is for such eligible improvements shall not exceed \$5,000, and the total amount of the grant for such other eligible improvements and the Accessibility Improvements shall not exceed \$7,500.

12 MCAR § 3.070 Accessibility Improvement Fund. With funds appropriated by the Legislature from time to time for that purpose, the Agency may establish an Accessibility Improvement Fund from which Home Improvement Grants may be made to eligible applicants for the purpose of making Accessibility Improvements to dwelling units occupied by Handicapped Persons of low or moderate income, as defined in 12 MCAR § 3.0020.3. Grants from the Accessibility Improvement Fund shall be made pursuant to the procedures set forth in Chapter 7 of these Rules, provided, however, that the Accessibility Improvement Grant Fund shall not be subject to the reservation and allocation requirements of 12 MCAR § 3.061.

Chapter Seven-A: Accessibility Improvement Assistance

12 MCAR § 3.071 Maximum grant.

A. No property shall be eligible for a Home Improvement Grant if it has been improved by such a grant within the five-year period next preceding the date on which application for such grant is made, except (i) for rehabilitation necessitated by damage to the property as a result of unforeseen events beyond the control of the applicant or the failure of plumbing, heating, or electrical systems, as determined by the Agency in its sole discretion, or (ii) for Accessibility Improvements to aid a Handicapped Person who became handicapped or established residency in the dwelling after the date of approval of the initial Home Improvement Grant.

B. A dwelling which was occupied by a Handicapped Person and improved prior to September 1, 1977, by Home Improvement Grant Funds shall be eligible for an Accessibility Improvement Grant within the five-year period following receipt of the original Home Improvement Grant, provided that the cumulative total of all grants for Accessibility Improvements for a single dwelling permitted under this subsection shall not exceed \$7,500 within such five-year period.

12 MCAR § 3.072 3.071 Definitions.

A. With respect to Accessibility Improvement Assistance pursuant to Chapter Seven-A of these Rules "Handicapped Person" means a person who has a permanent physical condition which is not correctable and which substantially reduces such person's ability to function in a residential setting. A

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

PROPOSED RULES

person with a physical condition which does not require the use of a device to increase mobility shall be deemed a Handicapped Person only upon the written certification of a licensed physician that the physical condition substantially limits such person's ability to function in a residential setting.

B. "Accessibility Improvement" means an interior or exterior improvement or modification to a residential dwelling in Minnesota which is necessary to enable a Handicapped Person to function in a residential setting.

C. As used in this chapter "Percent Indebted" means the percent of monthly gross income that a person or family is obliged to pay each month towards all fixed non-business debt which the recipient in good faith has incurred the obligation to pay over a period of more than three months for goods and/or services already provided. Personal debt includes mortgage or contract for deed payments related to the purchase of residential property, but does not include debts incurred solely for the recipient's business or farm operations. The recipient shall have the burden of demonstrating that any debt incurred within six months of the date of application for Accessibility Improvement assistance has been incurred in good faith. The Agency shall not include in the calculation of percent indebtedness any debt which the recipient cannot demonstrate has been incurred in good faith. A finding that a recipient has incurred a debt in order to defraud the Agency will be grounds for exclusion from all Agency-financed assistance.

12 MCAR § 3.072 Eligibility. The Agency may make funds available for the purpose of making Accessibility Improve-

ments and for technical assistance in the design and construction of such Accessibility Improvements under the following conditions:

A. To be eligible the recipient of Accessibility Improvement assistance shall be a Person or Family of Low or Moderate Income as defined in 12 MCAR § 3.002-0-4 and shall comply with the ownership and occupancy requirements of 12 MCAR § 3.062.

B. The structure to be improved shall be an existing dwelling located within the State of Minnesota, shall be used primarily for residential purposes, and shall contain no more than two dwelling units, one of them occupied by the recipient.

C. The beneficiary of Accessibility Improvement assistance shall be a Handicapped Person of low or moderate income, as defined in 12 MCAR § 3.002 0.4., who shall occupy or intend to occupy the dwelling unit to be improved as his or her primary residence.

12 MCAR § 3.073

Accessibility Improvement assistance shall be made available in the following manner:

A. Accessibility Improvement assistance shall be in the form of a grant, a Home Improvement Loan pursuant to Chapter Six of these rules, or a combination of such grant and loan, depending upon the Adjusted Income and proportion of existing indebtedness of the recipient. The proportion of assistance to be given in grants shall be determined according to the following table:

Table — **PERCENTAGE AVAILABLE ACCESSIBILITY GRANT ASSISTANCE**
(Income stated in thousands of dollars)

Income	\$0-5	5-6	6-7	7-8	8-9	9-10	10-11	11-12	12-13	13-14	14-15	15-16
Percent Indebted												
35												
30						69%	65%	64%	61%	60%	57%	57%
25	100%			74%	70%	51%	30%	28%	22%	20%	14%	13%
20	GRANT		76%	48%	40%	5%						
15		80%	52%	22%	10%							
10	60%	28%								NO GRANT		
5		52%	4%									
0		20%										

B. When an Accessibility Improvement assistance grant is combined with assistance from Agency loan or grant programs, the requirements of those programs shall be met, provided however that the structure to be improved need not meet the requirements of 12 MCAR § 3.051 D.

C. In no case shall the grant for Accessibility Improvements and technical assistance inclusively exceed \$10,000 for a single structure nor shall the total assistance for a single structure, including loans and grants from other Agency programs, exceed a total of \$15,000.

D. No property shall be eligible for Accessibility Improvement assistance if it has been improved through such assis-

tance within the five year period next preceding the date on which the application for such assistance is made, except in extraordinary circumstances relating to damage to the property as a result of events beyond the control of the recipient.

12 MCAR § 3.074 Data on accessible housing.

The Agency shall maintain a public list of dwellings improved under the Accessibility Improvement assistance program in order to improve the marketability of such accessible dwellings and assist Handicapped Persons to find housing containing Accessibility Improvements. Recipients of Accessibility Improvement assistance shall inform the Agency as

PROPOSED RULES

soon as practical of any intent to sell the improved dwelling so that the Agency may make such information available to interested Handicapped Persons.

Department of Education Special Services Division

Proposed Temporary Rules Governing Multi-County Multi-Type Library Cooperation Planning Grants Program

Request for Public Comment

Notice is hereby given that the Department of Education has proposed the following temporary rule for the purpose of implementing the provisions of Laws of 1979, ch. 334, art. IX, §§ 9-10, Multi-County Multi-Type Library Systems.

All interested persons are hereby afforded the opportunity to submit their comments on the proposed rules for 20 days immediately following publication of this material in the State Register by writing to:

William G. Asp
Office of Public Libraries and Interlibrary Cooperation
301 Hanover Building
480 Cedar Street
St. Paul, Minnesota 55101

The temporary rules may be revised on the basis of comments received.

Any written material received shall become part of the record and the final adoption of the temporary rule.

October 10, 1979

Howard B. Casmey
Commissioner of Education

Temporary Rules as Proposed

Chapter Forty: Libraries

5 MCAR § 1.0800 Grant application and review procedures.

A. Who may apply. Regional library systems designated as eligible under provisions of Laws of 1978, ch. 546, § 5, subd. 3, may apply for establishment grants as specified in 5 MCAR § 1.0801 and for regional library basic system support grants as specified in 5 MCAR § 1.0802 and for special project grants as specified in 5 MCAR § 1.0803. County and city public libraries which are participating in the aforementioned re-

gional library systems may also apply for special project grants as specified in 5 MCAR § 1.0803. The Minnesota Department of Corrections and the Minnesota Department of Welfare may apply for grants for institution library service for library service for the blind and physically handicapped as specified in 5 MCAR § 1.0804. Multi-county multi-type library systems designated by the State Board of Education as eligible under provisions of Laws of 1979, ch. 334, art. IX, § 9, subd. 1, may apply for planning grants as specified in 5 MCAR § 1.0805.

B. Application forms. All applications for grants shall be made on application forms provided by the Office of Public Libraries and Interlibrary Cooperation (OPLIC), Division of Special Services, Minnesota Department of Education. Content of application form varies with each type of grant and is specified in 5 MCAR §§ 1.0801-1.0805.

C. Application dates. All grant applications shall be filed on or before July 1 to be considered for funding during the succeeding state fiscal year provided that applications for establishment grants shall be filed by regional library systems either on or before July 1 or on or before January 1, to be considered for funding for the succeeding twelve-month period. Applications for special project grants shall be filed on a date established annually by the State Board of Education and published in the newsletter of OPLIC not less than 90 days before such date. Applications for planning grants for multi-county multi-type library cooperation shall be filed on or before January 31, 1980.

Rule as Proposed (all new material)

5 MCAR § 1.0805 Multi-county multi-type library cooperation planning grants.

A. Application. Multi-county multi-type library systems organized under provisions of Laws of 1979, ch. 334, art. IX, § 9, may apply for one one-year planning grant as authorized by Laws of 1979, ch. 334, art. IX, § 10. Applicants shall submit the following information:

1. name, address and telephone number of applicant multi-county multi-type library system;
2. name of contact person in multi-county multi-type library system;
3. names of participating libraries, identification of each as a public, academic, school or special library, and the name of the contact person in the participating library and governing board chair of the participating library where applicable;
4. copies of agreements required by Laws of 1979, ch. 334, art. IX, § 3;

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

PROPOSED RULES

5. purposes for which grant funds are requested, including a statement of program objectives and results to be accomplished;

6. proposed expenditures to be made from grant funds.

B. Criteria for eligibility. Multi-county multi-type library systems organized under provisions of Laws of 1979, ch. 334, § 9, shall be designated as eligible, by the State Board of Education as authorized in Laws of 1979, ch. 334, § 9, subd. 1, provided they meet the following criteria:

1. Geographic boundaries for a multi-county multi-type library shall coincide with those identified in Governor's Executive Orders 8, dated September 1, 1971, and 59, dated May 29, 1973, issued pursuant to the regional development act of 1969, Minn. Stat. §§ 462.381-462.397, with the following exceptions:

a. Development regions one, two with the exception of Lake of the Woods County, four, and five with the exception of Todd County and Morrison County shall form a single multi-county multi-type library system.

b. Development region three with the exception of Aitkin County and with the addition of Lake of the Woods County shall form a single multi-county and multi-type library system.

c. Development regions six west, six east and eight shall form a single multi-county multi-type library system.

d. Development regions seven east with the addition of Aitkin County and seven west with the addition of Todd County and Morrison County shall form a single multi-county multi-type library system.

2. Each public library participating in a multi-county multi-type library system shall also participate in its regional public library system, and a public library which has remained independent of its regional public library system shall not participate in a multi-county multi-type library system.

3. Proposed expenditures stated under provisions of 5 MCAR § 1.0805 A.6, shall be for costs incurred in planning the services required by the organizational agreement as specified in Laws of 1979, ch. 334, art. IX, § 9, subd. 3, and for the costs of planning any additional cooperative services agreed to by participating libraries and consistent with provisions of Laws of 1979, ch. 334, art. IX, § 9.

C. Calculation of planning grant amounts. A base grant of \$20,000 shall be paid to each eligible multi-county multi-type library system submitting a qualifying application. Of the remaining available grant funds, 50 percent shall be distributed to provide all such systems an equal amount per capita and 50 percent shall be distributed to provide all such systems an equal amount per square mile.

State Board for Vocational Education Department of Education Vocational-Technical Division

Proposed Rules for Vocational Education Governing Post- Secondary Vocational-Technical (5 MCAR §§ 1.0100-1.01102) and Adult Vocational-Technical Education (5 MCAR §§ 1.0111- 1.0118)

Notice of Hearing

Notice is hereby given that a public hearing will be held in the above entitled matter in Room 716, Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota 55101, on November 30 and December 1, 1979, commencing at 9:00 a.m. and continuing until all interested or affected persons have had an opportunity to participate.

All representatives of associations or other interested groups and all interested or affected persons will have an opportunity to be heard concerning the adoption of the proposed rules captioned above by submitting either oral or written data, statements or arguments. Statements or briefs may be submitted by mail without personally appearing at the hearing to: Peter C. Erickson, Office of Hearing Examiners, at Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, telephone (612) 296-8118. For those wishing to submit written statements or exhibits, it is requested that at least three (3) copies be furnished. In addition, it is suggested to save time and avoid duplication, that those persons, organizations or associations having a common viewpoint or interest in these proceedings join together where possible and present a single statement on behalf of such interests. All such statements will be entered into and become part of the record. The conduct of the hearing will be governed by the rules of the Office of Hearing Examiners, 9 MCAR §§ 2.101-2.112 and by Minn. Stat. §§ 15.0411-15.417 and § 15.042.

Notice is hereby given that 25 days prior to the hearing a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rule/rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

PROPOSED RULES

After the public hearing, written material may be submitted to the hearing examiner and recorded in the hearing record for five working days, or for a longer period not to exceed 20 calendar days if so ordered by the hearing examiner.

Notice: Any person may request notification of the date on which the hearing examiner's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing you may request notification by sending a written request to the hearing examiner (in case of the hearing examiner's report) or to the agency (in the case of the agency's submission or resubmission to the Attorney General).

The Board proposes to adopt rules relating to the implementation of Laws of 1979, ch. 334, art. V and make other changes affecting Chapter Six: Post-Secondary Vocational-Technical and Chapter Six-A: Adult Vocational-Technical Education, and to replace the temporary rules on the same subject which were published in Volume 4, *State Register*, at pp. 215-217.

Notice: The proposed rules are subject to change as a result of the rule hearing process. The agency therefore strongly urges those who are potentially affected in any manner by the substance of the proposed rules to participate in the rule hearing process.

A copy of the proposed rules is attached hereto. One free copy may be obtained by writing to Robert P. Van Tries, Assistant Commissioner of Vocational-Technical Education, 564 Capitol Square, 550 Cedar Street, St. Paul, Minnesota 55101. Additional copies will be available at the door on the date of the hearing.

The Board's statutory authority to promulgate the proposed rules is provided by Minn. Stat. § 121.21, subd. 6 as amended by Laws of 1979, ch. 334, art. V, § 1 and by Minn. Stat. § 15.0412.

Under Minn. Stat. § 10A.01, subd. 11 (1978), as amended by Laws of 1979, ch. 59, § 3, a lobbyist must register with the State Ethical Practices Board within five (5) days after he commences lobbying. According to the statute:

Lobbyist means any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than \$250, not including *his own* travel expenses and membership dues, in any year, for the purpose of attempting to influence legisla-

tive or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than \$250, not including *his own* traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

Lobbyist does not include any:

(a) Public official or employee of the state or any of its political subdivisions or public bodies acting in his official capacity;

(b) Party or his representative appearing in a proceeding before a state board, commission or agency of the executive branch unless the board, commission or agency is taking administrative action;

(c) Individual wholly engaged in selling goods or services to be paid for by public funds;

(d) News media or their employees or agents while engaged in the publishing or broadcasting of news items, editorial comments or paid advertisements which directly or indirectly urge official action;

(e) Paid expert witness whose testimony is requested by the body before which he is appearing, but only to the extent of preparing or delivering testimony; or

(f) Stockholder of a family farm corporation as defined in § 500.24, subd. 1, who does not spend over \$250, excluding his own travel expenses, in any year in communicating with public officials; or

(g) Party or his representative appearing to present a claim to the legislative and communicating to legislators only by the filing of a claim form and supporting documents and by appearing at public hearings on the claim.

Questions regarding only lobbying should be directed to the State Ethical Practices Board, Room 41, State Office Building, Wabasha Street, St. Paul, Minnesota 55155, telephone (612) 296-5615.

September 11, 1979

Howard B. Casmey, Secretary
State Board for Vocational Education

Rule As Proposed

Chapter Six: Post-Secondary Vocational-Technical Education

5 MCAR § 1.0100 Application. A school district desiring to be designated as an area vocational-technical institute district shall make written application to the State Board for Vocational Education (State Board of Education).

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

PROPOSED RULES

5 MCAR § 1.0101 Basis for approval. The State Board for Vocational Education in considering a request for designation of a school district as an area vocational-technical institute district shall consider such a request based on the following criteria: geographic location; population density; and whether such school district possesses sufficient financial resources to establish, operate, and maintain the proposed area vocational-technical institute. Districts designated by the State Board for Vocational Education shall be eligible to receive post-secondary vocational-technical aids. ~~All post-secondary vocational-technical aids and levies must be expended only for approved programs within the budget approved by the state board for vocational education.~~ Assignments of publication or production rights shall be determined cooperatively between the area vocational-technical institute district and the state of Minnesota.

5 MCAR § 1.0102 Program approval. The following requirements will apply to all requests for initial and annual program approval. Only approved programs can be a part of the district's budget request.

A. Appropriate work stations for each student shall be provided in all post-secondary supervised cooperative education or internship programs.

1. Training agreements and training plans shall be used by all supervised cooperative education and internship programs and shall be on file in the area vocational-technical institute.

2. Training assignments and work stations shall be evaluated by the students, the employers and the staff and these evaluations shall be in writing. All programs, including cooperative and internships, shall be supervised by the appropriate area vocational-technical institute instructional staff.

3. Length of internship shall be established by the local board after receiving the recommendation of the program advisory committee and approved by the Commissioner of Education, except when the internship program is regulated by the accrediting agencies related to that program.

B. A program's advisory committee shall include membership of persons employed in that occupation or at a supervisory level of that occupation and shall be appointed by the local board.

1. The program advisory committee shall choose from its membership a chairperson and other officers as it deems necessary.

2. Each program advisory committee shall meet at least once a year and more often if deemed necessary by the advisory committee or the director.

3. The program advisory committee shall review annually the following appropriate criteria and make recommendations to the local board and the administration:

- a. Curriculum;
- b. Facility and equipment;

- c. Staff recruitment;
- d. Student recruitment;
- e. Student placement;
- f. Job availability;
- g. Training stations.

4. Each program advisory committee membership list and minutes of each committee meeting shall be on file at the area vocational-technical institute and available for review by the Commissioner of Education.

C. All major program redirections shall be reviewed and approved by the Commissioner of Education prior to implementation.

D. The Commissioner of Education shall review and approve program title, length, and curriculum modifications.

E. The cost of the program shall be related to the benefits to students and business and industry.

F. Instructional programs shall have an enrollment of ten or more ~~students per program~~ average daily memberships (ADM) per each full-time equivalency (FTE) staff. When more than one program section is in operation an average may be used. ~~All vocational technical programs shall be limited to a maximum of 24 students per section.~~ Exemptions shall be given where licensure requirements are specifically established or on recommendation of other state industry groups. Exemption may be granted by the Commissioner of Education when adequately justified. Programs not meeting the minimum student requirement shall be placed on one-year probation during which enrollment must meet the ten student criteria in order to receive subsequent approval.

G. Post-secondary instruction shall be provided on either a full-time or part-time basis by the local district.

1. Full-time student day means six-clock hours per day or a total of 30 hours per week in laboratory and shop subjects, technical subjects, related subjects, and supervised on-the-job work experience of cooperative or internship programs.

2. An extended time student/program shall have a maximum ~~attendance~~ duration of nine hours per day or 45 hours per week.

3. Part-time instruction means less than six hours per day, based on the needs of the student and the occupation being served. Provision for part-time students shall be at the discretion of the local district subject to the program approval process with the State Board for Vocational Education.

4. A part-time student/program shall have a minimum ~~attendance~~ duration of five hours per week with a minimum of one hour in any one day.

5. Part-time student instructional hours shall be accumulative and computed to equal no less than six hours of instruction for one average daily membership equivalent for funding purposes. Foundation aid shall be paid on all part-

PROPOSED RULES

time students with their hourly enrollment converted to average daily membership.

6. Part-time students shall be dropped from aid eligibility records when they have been absent all scheduled days of attendance in a 15 day period of full time operation.

7. A part-time program shall have the same objectives and run in the same sequence as a full-time program.

8. AVTIs shall notify the Commissioner of Education in writing of the intent to begin a part-time offering of a program at least 30 days prior to commencing instruction in the program.

H. Annual student placement shall be 51 percent or greater of students who have completed their educational objectives and are available for employment. However, special needs students may be exempt from the placement criteria. Placement and enrollment reports shall be submitted to the Commissioner of Education upon request.

I. The State Board for Vocational Education may exempt students of certain programs from the 51 percent criteria if economic conditions, deemed to be temporary in character, are influencing placement.

J. The local district shall be responsive to current and projected manpower needs and the population groups to be served in the various geographic areas and communities of the state.

K. Each director of an area vocational-technical institute shall conduct an ~~annual~~ evaluation each calendar year based on the goals and objectives of the vocational-technical programs as approved by the State Board for Vocational Education for that local district. Those institutes with programs subject to review by national or state accrediting bodies shall 30 days prior to that review provide the date of the review and copies of all information required by the review body to the Commissioner of Education.

L. Evaluation visits shall be made by the Commissioner of Education at the rate of seven area vocational-technical institutes per year, or more, for the purposes of conducting on-site evaluations of the existing programs in each institute. A cycle of program evaluations by experts from business and industry will be completed every five years. Self-evaluations shall be submitted by the institutes to the Commissioner of Education in the intervening years.

5 MCAR § 1.0103 Administrative and support service requirements. The local board of education shall provide for:

A. Vocationally licensed administrative and supervisory staff as per the Minnesota State Plan for Vocational-Techni-

cal Education or if superseded, by state rules for vocational-technical education.

1. The director of an AVTI shall have an administrative advisory committee of representatives from the service area.

2. The total administrative/supervisory development staff shall not be more than one full-time equivalent (F.T.E.) for 12 F.T.E. instructors, except upon application for variance to the Commissioner of Education.

3. Staff whose function is business, purchasing, or personnel affairs of the school district shall not be included in the above ratios.

4. Upon written notification to the State Board for Vocational Education, additional staff may be added above the instructor and administrative/supervisor ratio, if funded from sources other than the State Department of Education.

5. For those local districts who employ differentiated staffing for their operation, the total staff ratio shall not be less than 1 to 10 students or a combination of some of, or all of the following ratios:

1 — supervisor	=	.1
1 — instructor	=	1.0
1 — instructor aide	=	.7
1 — clerical aide	=	.3
1 — student aide	=	.3

B. Student personnel services.

1. Student personnel staff employed shall meet licensure requirements in the Minnesota State Plan for Vocational-Technical Education or if superseded, by state rules for vocational-technical education.

2. Each institute shall have at least one student personnel staff person for each 400 average daily memberships.

3. The student personnel services shall provide for:

- Admission counseling;
- Career counseling;
- Personal counseling;
- Placement and follow-up program.

4. Student financial aid administrator shall be provided and not included in the ratio set forth in B.2. above.

5. Adjustments to the student personnel ratio based on special make up of the student body in a given location may be approved by the Commissioner of Education.

C. Secretarial and clerical staff shall be employed.

D. The business manager shall establish and manage a fiscal and statistical system in compliance with Minnesota

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

PROPOSED RULES

statutes affecting the governance of an area vocational-technical institute for all expenditures and revenue accounts.

5 MCAR § 1.0104 Foundation aid.

A. A school district operating an area vocational-technical institute shall be eligible to receive post-secondary vocational foundation aid for all students attending approved post-secondary vocational-technical programs.

B. Average daily membership estimates shall be included in the annual budget request. These estimates shall be derived from uniform student accounting reports and that shall be the basis for beginning foundation aid payments. Adjustments to estimated average daily membership shall be reported by each AVTI to the Division of Vocational-technical Education by the first of September, December, March and June.

C. Changes in estimates as authorized in Minn. Stat. § 124.11 shall be approved by the ~~assistant~~ Commissioner of ~~vocational-technical~~ Education before payment is authorized by the department.

D. Final adjustment data shall be submitted by August 15 of each year.

E. Only days in which school is open and students are under the supervision and guidance of teachers and for educational purposes are eligible for foundation aid. Snow days are not to be counted.

F. Tuition and fees.

1. Deductible fees shall include all charges that are uniformly assessed all students. Charges for materials or equipment that become the property of the student shall not be considered a fee.

~~2. All tuition paid in advance shall be refundable on a pro rata basis as of the day of official termination.~~

2. No tuition shall be charged to handicapped/disadvantaged students for the additional hours of instruction received beyond the approved program length as established by Minn. Stat. § 124.562, subd. 2, as amended by Laws of 1979, ch. 334, art. V, § 10.

3. Students shall have their tuition prorated for less than or more than the regular instructional schedule. Tuition shall be prorated for part-time or extended-time programs, for quarters more or less than 60 days and for programs utilizing individual instruction. Daily tuition shall be prorated by dividing the quarterly tuition by 60, (the standard number of days in the quarter), and rounded downward to the nearest cent. Hourly tuition shall be prorated by dividing the daily rate by 6, (the standard number of hours in a school day), and rounded downward to the nearest cent. This formula for prorating tuition shall apply to resident and nonresident tuition.

4. Collection of tuition shall be on the basis of four periods per year as determined by the local calendar. No single period shall exceed 65 school days. Tuition may not be demanded more than 15 consecutive school days in advance

of the time period but a student may pay in advance. Tuition may be delayed only upon initial application for tuition subsidy in any given year or guaranteed receipt from an agency.

5. A late penalty may be charged not to exceed \$10.00 per period established pursuant to F.4. of this rule. Penalty payments shall be deducted from foundation aid. The penalty assessment period is the period of time between the date tuition was demanded and the commencement of classes.

6. The total amount of tuition deducted from foundation aid shall be calculated on the total number of ADM's in the fiscal year. This calculation shall be made at the time of the final foundation aid adjustment, with tuition deficits being charged to local funds. Tuition loss due to deferment during student application for tuition subsidy shall not be deducted from foundation aid. Students shall not apply for a tuition subsidy more than once during a collection period.

7. Students on internships shall pay tuition for the time period claimed for foundation aid. Daily hours shall not exceed six unless the students are fully supervised under personnel provided by the institute.

8. Each district shall have an attendance policy. Students who notify the school of their withdrawal shall be dropped from the roll upon date of notification. Students absent for 15 consecutive school days shall be classified as withdrawn.

9. Students in continuous enrollment programs may be maintained on the roll for a vacation or a personal leave not to exceed 15 consecutive school days.

G. Upon prior approval of the Commissioner of Education, a district may add additional hours for membership not to exceed ten percent of the approved hours of the program for disadvantaged or handicapped students. Handicapped students are those who are mentally retarded, hard of hearing, deaf, speech impaired, visually impaired, orthopedically impaired, or persons with specific learning disabilities, who by reason thereof require special education and related services, and who, because of their handicapping condition, cannot succeed in the regular vocational educational program without special education assistance or who require a modified vocational education program. Disadvantaged students are those who have academic or economic handicaps and who require special services and assistance in order to enable them to succeed in vocational education programs.

H. Unless otherwise exempt from tuition, students who begin during the quarter shall pay tuition as of the date of entry based upon the prorated formula established in 5 MCAR § 1.0104 F.3. For such students the 15 day refund established by Minn. Stat. § 124.565, subd. 3, as amended by Laws of 1979, ch. 334, art. V, § 20 shall commence with the date of scheduled entry.

5 MCAR § 1.0105 Capital expenditure aid.

A. Districts shall be eligible for capital expenditure aid when foundation aid, tuition, and fees, and mandatory levy

PROPOSED RULES

are insufficient to provide for capital purchases.

B. All equipment not approved in the budget review, purchases at a cost in excess of \$4,000.00 must be preapproved by the Commissioner of Education.

C. All equipment shall be accounted for by the standard inventory control system.

D. Repairs on facility, equipment, or improvement of grounds that exceed \$4,000.00 and not included in the budget review shall be included in B. for approval.

5 MCAR § 1.01051 Contingency fund.

A. Scope.

1. The contingency fund shall be utilized to promote new or expanding industry in Minnesota which creates ten or more new jobs in any consecutive six month period in one general work classification, such as production workers, office personnel or management.

2. For post-secondary program purposes the contingency fund shall be limited for start-up costs of new and unique programs and meet the requirement of program approval in 5 MCAR § 1.0102.

3. For adult vocational program purposes the contingency fund shall be limited to operational costs of programs. In addition to meeting the requirements of program approval in 5 MCAR § 1.0112 adult vocational programs utilizing the contingency fund shall also meet the criteria set forth in B. below.

B. Criteria.

The following criteria shall be met before approval will be granted:

1. The AVTI considering a program shall submit the proposal to the Department of Economic Development for their recommendation. The recommendation shall become part of the proposal submitted to the Division of Vocational-Technical Education.

2. All training will be conducted by an AVTI.

3. The company requesting a training program must first recall all personnel previously employed by the company who are qualified in the area for which training is to be provided. Training shall be made available, but not limited to, nonqualified individuals not recalled by the company.

4. The AVTI considering a program shall consult with the Department of Economic Security to:

a. ascertain that no trained persons are available to fill the positions requested by industry and

b. identify potential students for the training program.

The AVTI considering a program shall also ascertain that no current graduating AVTI students are available to fill the positions.

The above information shall be included in the proposal to the Division of Vocational-technical Education.

5. CETA prime sponsors shall be included in planning to provide for the utilization of CETA funds whenever the program or trainees qualify under CETA criteria.

6. The AVTI developing the program shall submit the proposal to the company for whom the training is being designed for their recommendation. A signed copy of the company's recommendation shall be included with the proposal to the Division of Vocational-technical Education.

7. Two or more companies which have similar training needs, with a combined training need of ten or more, are eligible applicants if they agree to a combined training program.

C. Eligible reimbursable costs to the AVTI's:

1. All instructor costs, including fringe benefits.

2. Supplies needed for training.

3. Equipment purchase, lease or rental including cost of installation. Purchased equipment shall become property of the AVTI subject to the right of the department of education to transfer the property to another AVTI to further the purpose of the contingency fund. If so transferred the AVTI shall not retain any interest in the equipment. If equipment belonging to a company is installed the cost of installation shall not be eligible for reimbursement.

4. Building rental or lease except properties of the company for whom training is provided.

5. Upon prior approval of the Commissioner of Education, project coordinators may be funded when the training project can not be satisfactorily handled by the adult vocational directors of the cooperating AVTI.

6. Secretarial costs directly related to the training program.

5 MCAR § 1.0106 Construction.

A. Expenditures for approved construction projects shall be eligible for aid to the extent allowable by law in the fiscal year in which monies are paid to retire the principal amount of bonded indebtedness relating to the projects, and monies expended from funds other than those acquired by incurring bonded indebtedness. In unusual situations in which federal funds become available without sufficient time to follow procedures set forth in the Minnesota State Plan for Vocational-Technical Education, the State Board of Education

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

PROPOSED RULES

may obligate funds for construction projects, with the concurrence of the U.S. Commissioner of Education.

B. Construction of area vocational-technical institute facilities eligible for aid from funds will be limited to eligible purposes and activities. Where an area vocational-technical institute includes construction for ineligible purposes, the cost of such ineligible facility will be determined by ascertaining the ratio that the cost of eligible facilities bears to the total cost for all facilities in the project.

C. When area vocational-technical institute construction becomes eligible for federal financial participation under acts other than 20 U.S.C. § 1262, eligible aid will be prorated.

5 MCAR § 1.0107 Categorical aid. ~~The distribution of eCategorical aid shall be made allocated on the following criteria for districts operating high cost programs which require expenditures in excess of funding available through foundation aid; and capital expenditure aid; and local mandatory levy:~~

- A. Preservation of the present plant and equipment.
- B. Development of programs for emerging business and industry.
- C. Unique programs designed to serve special populations.
- D. Educational services for special populations.
- ~~E. Services outside the regular geographic area.~~
- ~~F. High equipment costs.~~
- ~~E. G. High operating costs.~~
- ~~F. H. Rules and regulations imposed by other regulatory bodies which may affect the student teacher ratio as well as operating equipment costs.~~

5 MCAR § 1.0108 Debt service aid. Districts eligible for debt service aid shall receive the state portion not more than 30 days nor less than 15 days prior to payment date as certified to the commissioner of education in the budget request.

5 MCAR § 1.0109 Student eligibility.

A. The student shall be at least 16 years of age and shall have completed or terminated secondary education. Non-high school graduates less than 18 years of age shall, when possible, involve their secondary school administrators and/or counselors and parents or guardian in the application process.

B. Resident status shall be determined at the time of each registration according to the permanent residence of the student's parents or guardian for students under 18 years of age, and according to the permanent residence of the student if he/she is 18 years of age or older. In addition:

1. Any student who has graduated from a Minnesota high school and has not established legal residence in any other state shall be considered a resident of Minnesota. Ser-

vice in the armed forces of the United States shall not be considered a disruption of continuous residence.

2. Any student who has been employed full-time in Minnesota prior to the date of entrance to an area vocational-technical institute shall be granted resident status, provided all income derived from such employment was subject to taxation by the state of Minnesota and the person meets the residency requirements of a qualified voter in the state.

3. The spouse of a Minnesota resident shall be granted resident status provided:

- a. That he/she is living with his/her spouse.
- b. That the couple's place of residence is within the state of Minnesota.

This rule shall apply regardless of the age of either spouse.

5 MCAR § 1.0110 Reciprocity among states for vocational education.

A. Reciprocity is contingent upon the execution of a reciprocal agreement as prescribed by Minn. Stat. § 136A.08.

~~B. Full reimbursement of tuition for a Minnesota student attending in another state will be made to his home district providing:~~

~~1. that the director of the nearest area vocational technical school has indicated in writing that:~~

- ~~a. no training opportunity in the program the student desires is available within commuting distance;~~
- ~~b. the student has received counseling;~~
- ~~e. the area vocational-technical school will provide placement services;~~

~~2. that the home district has submitted a verified statement to the effect that the tuition in another state has been paid;~~

~~3. that approval from the Division of Vocational-Technical Education has been obtained prior to attendance;~~

~~4. that the home district certifies that no state foundation aid; transportation aid or other financial assistance from the state; has been claimed on behalf of the student;~~

~~5. that the student has completed and submitted to the Division of Vocational-technical Education, an application code F-51-3;~~

~~6. that the student is between ages 14 and 21 except for veterans as stipulated in Minn. Stat. § 121.21.~~

~~C. Persons arriving in Minnesota from another state will be accommodated as any other nonresident student is accommodated with the limitation:~~

~~1. that out of state students will not displace Minnesota students with regard to training opportunities in those instances wherein the applications from eligible Minnesota students exceed the capacity of the class.~~

PROPOSED RULES

B. A Minnesota student attending a vocational institute in another state shall be eligible to pay the same tuition charged to residents of the state in which the vocational institute is located. To qualify for tuition reciprocity under this section, the director or other authorized official of the area vocational-technical institute nearest the residence of the student shall grant approval on the prescribed form. In granting approval, the director or other authorized official shall certify that no training opportunity in the program that the student desires is currently available within a reasonable commuting distance.

C. Payment of the nonresident tuition differential that exceeds the resident tuition of that state shall be made as prescribed by statute or through agreements executed by the state directors of vocational education of the affected states.

D. Students arriving in Minnesota from another state as a result of reciprocity agreements will be accommodated provided that such students will not displace Minnesota students with regard to training opportunities in those instances wherein the applications from eligible Minnesota students exceed the capacity of the class.

5 MCAR § 1.01101 Student organizations.

A. Student professional organizations shall be an integral part of all program offerings when the organization is approved by the State Board of Education.

B. Costs related to state board for vocational education approved student organizations shall be considered instructional costs for student organizations in vocational-technical education.

~~5 MCAR § 1.01102 These rules shall become effective on July 1, 1978.~~

Chapter Six-A: Adult Vocational-technical Education

5 MCAR § 1.0111 Scope. These rules govern the operation of adult vocational-technical programs offered by the public schools of Minnesota. A school district or cooperative center desiring to offer adult vocational-technical programs for which state aids are to be received shall be in compliance with these rules.

5 MCAR § 1.0112 Instructional program approval. The following requirements shall apply to all requests for initial and annual program approval. Only approved programs can be a part of the district's budget request.

A. An overall adult vocational-technical advisory committee or program advisory committees for each occupational area shall be maintained which shall meet one or more times a year. Nothing shall prevent a district or center from having both. Local school personnel shall not be members of advisory

committees within the district or center except as ex officio nonvoting members.

B. Instructional staff shall hold a valid adult vocational-technical license in the area for which aid is claimed. Adult instructors serving over 500 clock hours on an annual basis shall meet full-time licensure requirements.

C. Administrative services shall be provided to administer the adult vocational-technical program needs.

D. Part-time programs shall have an enrollment of ten or more enrollees per program. When more than one program section is in operation, enrollment shall average ten or more enrollees.

E. Programs with full-time adult enrollees shall meet the following criteria:

1. Shall employ a minimum of a ~~forty~~ 40 percent instructor.

2. Adult farm management shall have a minimum enrollment of 42 cooperators, ~~who~~ 30 of whom shall have been enrolled six years or less. When more than one adult farm management education program is operated within a district, enrollment shall average 42 or more. Eighty percent or more of the cooperators who have been enrolled for one full year or more, as measured from July 1 of any calendar year, shall have an annual analysis of their farm accounts. For Pprograms not meeting the minimum enrollment prior to July 1, 1982, school districts may shall apply annually to the Commissioner of Education for an exception, ~~to this rule which~~ This exception may shall be granted if:

a. An exception would allow enrolled cooperators to complete their program of education, or

b. The instructional quality and efficiency would be improved by the exception.

3. New programs in adult farm management or an existing program with a new instructor shall reach minimum enrollment of 30 enrollees within four years. For programs not meeting the minimum requirements school districts shall apply annually to the commissioner of education for an exception to this rule which shall be granted if the school district provides evidence that:

a. An exception would allow enrolled cooperators to complete their program of education, or

b. The instructional quality and efficiency would be improved by the exception.

~~4. 3-~~ Small business management education programs shall have a minimum enrollment of 30 enrollees who have been enrolled three years or less. Eighty percent or more of the persons who have been enrolled for one full year or more, as measured from July 1 of any calendar year, shall have an

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

PROPOSED RULES

annual analysis of their business accounts. For ~~P~~ programs not meeting the minimum enrollment prior to July 1, 1981, school districts ~~may~~ shall apply annually to the Commissioner of Education for an exception, ~~to this rule in an annual basis which may~~ This exception shall be granted if:

a. An exception would allow enrolled cooperators to complete their program of education, or,

b. The instructional quality and efficiency would be improved by the exception.

5. New programs in adult small business management or an existing program with a new instructor shall reach minimum enrollment of 30 enrollees within three years. For programs not meeting the minimum requirements school districts shall apply annually to the Commissioner of Education for an exception to this rule which shall be granted if the school district provides evidence that:

a. An exception would allow enrolled cooperators to complete their program of education, or,

b. The instructional quality and efficiency would be improved by the exception.

6. 4- Full-time adult education programs except adult farm management and small business management shall have a minimum student enrollment of 14.

F. When an existing program does not meet the minimum enrollment, the program shall be placed on probation for one year.

G. The local district or center shall conduct an annual evaluation as prescribed by the Commissioner of Education. Programs subject to review by national or state accrediting bodies shall, 30 days prior to that review, provide the date of the review to the Department of Education and have on file copies of all information supplied to the review body.

5 MCAR § 1.0113 Nursing assistant programs. Nursing assistant education programs shall use the curriculum developed by the Commissioner of Education as reviewed and evaluated by the Board of Nursing. The program shall include an individual written/oral test and performance evaluation, which shall be administered on a monthly basis by the Department of Education, through public area vocational-technical institutes, and shall be 30 hours of planned learning activities, exclusive of the evaluation.

A. Definitions. For the purpose of this section, the following definitions shall apply:

1. Nursing assistant — an individual working in or employed by a nursing home, including, but not limited to, a nurse's aide or an orderly, who is assigned by the director of nursing to provide or assist in the provision of direct patient care services under the supervision of a registered nurse.

2. Curriculum — the aggregate of courses of study and planned learning activities developed by the commissioner of education to comply with Minn. Stat. § 144A.61, subd. 3.

3. Completion of the program — successful completion shall be defined as the obtainment of 70 percent on

the oral /written test and 70 percent on the performance evaluation.

4. Supplemental nursing service — an entity which recruits and employs nursing and ancillary health care personnel for temporary assignments to supplement the staff of health care institutions; and which is not an employment agency but the employer of all such personnel assigned.

5. Technical assistance — technical assistance by the department of education may include:

a. training of instructors;

b. utilization of the curriculum; and

c. instructional materials.

B. Instructional staff qualifications. Instructional staff for approved nursing assistant education programs offered in facilities other than the area vocational-technical institutes shall be exempt from 5 MCAR § 1.0112 B., and on January 1, 1979, shall meet the following qualifications.

1. A registered nurse with 2,000 hours of experience within the last five years, at least 500 hours of which must be in geriatric or rehabilitation nursing; or

2. A licensed practical nurse with 4,000 hours of experience within the last five years in geriatric or rehabilitation nursing.

3. As of January 1, 1982, the minimum requirement for instructional staff shall be a registered nurse with at least one year (2,000 hours) of experience, 500 hours of which must be in a geriatric or rehabilitation nursing setting. This section shall not apply to licensed practical nurses teaching this course in a nursing home as of January 1, 1979 who continue to teach this course in that same facility as of January 1, 1982.

C. Exempt categories. The following categories of nursing assistants shall not be required to comply with the education requirements of Minn. Stat. § 144A.61 (Supp. 1977).

1. Nursing assistants who began employment in a nursing home on or before December 31, 1978, and who continue employment in the same nursing home in which they were employed on December 31, 1978.

2. Nursing assistants who have successfully completed, since January 1, 1976, a training program for nursing assistant employed in nursing homes, which utilized a program endorsed by the State Department of Education, unless employment has been interrupted for greater than five consecutive years.

3. Nursing assistants who have successfully completed a state approved nursing education program which prepares an individual for licensure as a registered nurse or licensed practical nurse if completion occurred no more than five calendar years prior to employment.

4. Persons who have successfully completed the individual oral/written test and performance evaluation, even though the course has not been taken.

PROPOSED RULES

5. Registered nurses or licensed practical nurses holding current licensure in the state of Minnesota.

6. Nursing assistants who began employment in a supplemental nursing service on or before December 31, 1978 and who continue employment in that same nursing service in which they were employed on or before December 31, 1978, and who have worked a minimum of ~~twelve~~ (12) hours per week for that same supplemental nursing service in a nursing home prior to December 31, 1978. Supplemental nursing services shall provide to the State Department of Health by January 15, 1979, a list of all nursing assistants employed by the supplemental nursing services who have worked 12 hours in a nursing home on or before December 31, 1978.

5 MCAR § 1.0114 Administrative services. The district shall:

A. Designate one authorized local administrator as being in charge of adult vocational-technical programs for the district.

B. Be eligible for aid for the salary of one FTE adult vocational licensed administrative staff when either of the following ratios are met. The same ratios shall be applied for calculation of additional administrative staff.

1. The district enrolls two thousand or more adults annually in approved vocational programs. Adults enrolled in more than one program may be counted in each program in which they are enrolled.

2. The district, through the adult vocational administrator, provides supervision to all full-time adult instructors and maintains 2500 instructional hours of part-time adult vocational education. Adult programs with full-time adult enrollees shall earn 200 instructional hours toward this requirement.

3. Districts not meeting the minimum ratios in items 1 and 2 above may request an exception from the commissioner of education on an annual basis until July 1, 1982. An exception will be granted when instructional quality and efficiency would be improved by the exception.

5 MCAR § 1.0115 Vocational aid criteria. The school district shall:

A. Annually submit an adult vocational-technical program budget for the following fiscal year by January 1.

B. Expend adult vocational education revenue solely for the purpose of adult vocational education programs.

C. File an amended budget for overexpenditures exceeding ten percent and underexpenditures exceeding five percent of the total budget when such changes affect the state obligation for aids. To be eligible for aid for the overexpenditures,

the amended budget must be approved by the Commissioner of Education.

D. Obtain approval from the Commissioner of Education for changes in budget allocation between occupational program areas.

E. Submit budget adjustment data for the current fiscal year to the Commissioner of Education by February 15. Final budget data shall be submitted by August 15 following each completed fiscal year.

F. Be eligible to be paid aids for:

1. Seventy-five percent of salaries paid to essential licensed personnel. Costs derived from engaging the services of specialists, guest lecturers and resource personnel as a part of an approved program are eligible for aid if licensure requirements are met.

2. Fifty percent of necessary travel costs of essential licensed personnel between instructional sites.

3. That portion of time of essential licensed personnel allocated to adult vocational programs.

5 MCAR § 1.0116 Tuition and attributable costs.

A. The school district or center shall determine tuition and fees except where cited below.

B. Differential tuition rates may be charged for nonresidents versus residents of a district.

C. Attributable costs for individuals enrolled in a full-time adult farm management education program for more than six years, or a small business management education program for more than three years, shall be charged on an hourly basis. The hourly charge shall be determined by dividing the total direct cost of the program by the hourly assignment of the instructor. A full-time instructor load shall constitute 1200 contact hours. Record analysis fees are in addition to attributable costs.

D. Direct cost shall be determined by the sum of costs for instructional staff salary and travel between instructional sites.

5 MCAR § 1.0117 Student eligibility: To be eligible to enroll in adult vocational programs, the person shall be at least sixteen years of age and have completed or terminated secondary education.

5 MCAR § 1.0118 ~~These rules shall become effective on July 1, 1978.~~

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

Department of Health Manpower Division

Proposed Amendments to Rules Governing the Procedures for Determining Regulation of Human Services Occupations Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held pursuant to Minn. Stat. § 15.0412, subd. 4 (1978), in Room 105, Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota, on Friday, November 30, 1979, commencing at 9:30 a.m.

All interested or affected persons will have an opportunity to participate concerning the adoption of the proposed amendments to 7 MCAR §§ 1.536 to 1.540 captioned above. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted by mail to George Beck, Hearing Examiner, at Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104, telephone (612) 296-8108, either before the hearing or within five (5) working days after the close of the hearing or for a longer period not to exceed 20 calendar days if ordered by the hearing examiner at the hearing. All such statements will be entered into and become part of the record.

Testimony or other evidence to be submitted for consideration should be pertinent to the matter at hand. For those wishing to submit written statements or exhibits, it is requested that at least three (3) copies be furnished. In addition, it is suggested, to save time and avoid duplication, that those persons, organizations, or associations having a common viewpoint or interest in these proceedings join together where possible and present a single statement in behalf of such interests. The conduct of the hearing shall be governed by the rules of the Office of Hearing Examiners, 9 MCAR §§ 2.101-2.112.

The statutory authority to promulgate these amendments is contained in Minn. Stat. §§ 15.0414, subd. 3, and 214.13, subd. 1 (1978). If adopted, the proposed amendments would define the term "human services occupations" as it is meant to be used within the rules. The amendments also clarify the factors cited in Minn. Stat. § 214.001, subd. 2 and referenced in Minn. Stat. § 214.13, which are to be considered when making decisions as to the necessity for and advisability of regulating persons engaged in human services occupations. Finally, several minor editorial changes are also proposed.

Copies of the proposed amendments are now available and at least one free copy may be obtained by writing to Larry Woods, Minnesota Department of Health, Division of Manpower, 717 Delaware Street Southeast, Minneapolis, Minne-

sota 55440. Additional copies will be available at the door on the date of the hearing.

Notice: The proposed amendments are subject to change as a result of the rule hearing process. The Commissioner therefore strongly urges those who are potentially affected in any manner by the substance of the proposed amendments to participate in the rule hearing process.

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed amendments. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge. Additional copies will also be available in the hearing room on the day of the hearing.

In addition, please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1978) as amended by Minn. Laws of 1979, ch. 59 § 3, as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than \$250, not including *his own* travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than \$250, not including *his own* traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, telephone (612) 296-5615.

Notice: Any person may request notification of the date on which the hearing examiner's report will be available, after which date the agency may not take any final action on the amendments for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner (in the case of the hearing examiner's report), or to the agency (in the case of the agency's submission or resubmission to the Attorney General).

PROPOSED RULES

Promulgation of these proposed amendments will not result in the expenditure of public monies by local government units.

October 11, 1979.

George R. Pettersen, M.D.
Commissioner of Health

Amendments as Proposed

Chapter Thirty: 7 MCAR §§ 1.536-1.540 Human Services Occupations, Part I

7 MCAR § 1.536 General.

A. Declaration of purpose and scope. 7 MCAR §§ 1.536-1.540 establish the process to be used by the Commissioner of Health and the Human Services Occupations Advisory Council in carrying out the charges of Minn. Stat. §§ 214.001, 214.13 and 214.14 (1976). They specify the procedures by which human services occupations are identified and decisions are made regarding the State's need to regulate persons in specific occupations. This rule applies to all human services occupations that are not now credentialed by the State. ~~Determination of a mode of regulation if any, for an occupational group shall be based on the factors contained in Minn. Stat. § 214.001, subd. 2, at all levels of the recommendation decision process, to wit: subcommittee, Council and Commissioner.~~

B. Definitions. For the purposes of 7 MCAR §§ 1.536-1.540, the words, terms and phrases listed below in this subdivision shall have the meaning stated herein, unless the language or context clearly indicates that a different meaning is intended.

1. "Administrative authority" means the state agency responsible for administering the law and rules establishing a credential for a human services occupation.

2. "Applicant group" means an occupational group that has submitted a letter of intent to begin the ~~credentia~~ling regulatory process.

3. "Career progression" means opportunity to move up a career ladder or enter a related profession without loss of credit for previous education and experience.

4. "Commissioner" means the Commissioner of Health.

5. "Competence" means possession of requisite abilities to fulfill work obligations.

6. "Conflict of interest" means:

a. A direct or indirect financial or self-serving interest in the matter under consideration so that the member is not so free from personal bias, prejudice or preconceived

notion as to make it possible for the member to consider objectively the evidence presented and base a decision solely on such evidence.

b. Circumstances such that a member finds it difficult, if not impossible, to devote himself or herself to a consideration of the matter with complete energy, loyalty, and singleness of purpose to the general public interest.

7. "Continuing education" means education or training beyond the individual's pre-credentialing preparation for an occupation.

8. "Council" means the Human Services Occupations Advisory Council.

9. "Credentialing" means licensure or registration and the process by which they are obtained and administered.

10. "Department" means Minnesota Department of Health.

11. "Function" means a special task, duty or performance required in the course of work or activity.

12. "Functional differentiation" means those functions carried out by a particular occupational group that distinguish that group from others.

13. "Human Services Occupations" means an occupation whose principal functions are performed customarily for remuneration on behalf of individuals, families or groups to assist in achieving:

a. Optimal economic security through the provision of employment services, income security services and income maintenance and ancillary supportive services;

b. Optimal health through the provision of maintenance, diagnostic, treatment and ancillary supportive services in the area of physical health, environmental health, mental health and developmental disabilities;

c. Optimal knowledge and skills through the provision of formal educational services, supplementary educational services, and ancillary supportive services; or

d. Optimal social functioning through the provision of social adjustment services, social development services, protective services, correctional services, services to victims of abuse, neglect, exploitation or crime, and ancillary supportive services.

~~14. 13.~~ "Letter of intent" means an applicant group's written expression of aim to pursue ~~credentia~~ling regulation.

~~15. 14.~~ "Licensure" means a system whereby a practitioner must receive recognition by the state that he or she has met predetermined qualifications, and persons not so licensed are prohibited from practicing.

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

PROPOSED RULES

~~16. 45.~~ "Not now credentialed" means those occupations whose members are not currently licensed or registered by the state and those occupations whose members are currently licensed or registered by the state but who seek to expand or specialize their functions within that licensed or registered occupation such that the group members seek further state recognition by new, expanded or specialty licensure or registration.

~~17. 46.~~ "Occupational group" means a group of human service workers ~~that who~~ have common occupational functions, ~~practices, and roles in the delivery of human services.~~

~~18. 47.~~ "Public forum" means public meeting(s) called to obtain comments on an applicant group's questionnaire. The meeting is open to the public, but it is not a hearing and does not require the hearings notification procedures called for by Minnesota Statutes.

~~19. 48.~~ "Questionnaire" means document designed to provide information about an occupational group for purposes of aiding in making a regulatory determination.

~~20. 49.~~ "Registration" means a system whereby practitioners who will be the only persons permitted to use a designated title are listed on an official roster after having met predetermined qualifications.

C. Prohibition. A Council member may not be appointed to a subcommittee, may not participate in subcommittee or council discussions, and may not vote on any matter in which he or she has a conflict of interest.

D. Factors for determining the necessity of regulation. In the review of an applicant group questionnaire, the subcommittee, council, and Commissioner shall base their recommendation or decision as to whether or not the applicant group shall be regulated upon the factors contained in Minn. Stat. § 214.001, subd. 2.

1. In applying the factor of whether the unregulated practice of an occupation may harm or endanger the health, safety, and welfare of citizens of the state and whether the potential for harm is recognizable and not remote, at a minimum the relevance of the following shall be considered:

a. Harm shall be construed to be a condition representative of physical, emotional, mental, social, financial, or intellectual impairment resulting from the functions rendered or failed to be rendered by the applicant group.

b. Potential for harm may be recognizable when evidenced by at least one or more of the following:

- (1) Expert testimony;
- (2) Client, consumer, or patient testimony;
- (3) Research findings;
- (4) Legal precedents, financial awards, or judicial rulings;

(5) Inherently dangerous nature of the applicant group's functions;

(6) Dangerous nature of devices or substances used in performing applicant group's functions;

(7) Exercise by practitioners of the applicant group of an observable degree of independent judgment when:

(a) Identifying or evaluating a consumer's or client's symptoms;

(b) Formulating a plan for consumer or client care, service delivery or treatment; and/or

(c) Providing consumer or client care, delivering service or implementing a plan of treatment.

c. Potential for harm may be remote when evidenced by at least one or more of the following:

- (1) Infrequent or rare instances of impairment;
- (2) Impairment which is minor in nature; or
- (3) Secondary or tertiary effects of the applicant group's function.

2. In applying the factor of whether the practice of an occupation requires specialized skill or training and whether the public needs and will benefit by assurances of initial and continuing occupational ability, the existence of the following items shall be considered as indicating that specialized skill or training or their continuation is required:

a. That the functions performed by the practitioner are several and their performance necessitates a thorough understanding of the complex relationship between those functions;

b. That the one or more functions performed by the practitioner requires a detailed understanding of the specific components of the function and the relationship between the functions and the symptoms, problem or condition that function is intended to address or ameliorate;

c. That the absence of specialized skill or training is likely to increase the incidence and/or degree of harm as defined in 7 MCAR § 1.536 D.1. to the consumer as client.

d. That there occurs frequent or major changes in areas of skilled knowledge and technique of which the practitioner must keep informed in order to meet current standards.

3. In applying the factor of whether the citizens of this state are or may be effectively protected by other means, at a minimum the relevance of the following shall be considered:

a. Indicators of protection by other means shall include but not be limited to:

- (1) Supervision by practitioners in a regulated occupation;
- (2) Existence of laws governing devices and substances used in the occupation;
- (3) Existence of laws governing the standard of practice;
- (4) Existence of standards for professional performance;

PROPOSED RULES

(5) Employment in licensed human service facilities which are required to employ competent staff;

(6) Existence of federal licensing as credentialing mechanism;

(7) Existence of civil service procedures which effectively screen potential employees for competence;

(8) Graduation of members of the applicant group from an accredited educational institution or training program;

(9) Mandatory participation in on-the-job training programs which are required by law or by professional organization of the occupation;

(10) Existence of professional credentials and standards of performance which effectively sanction malpractice;

(11) Existence of a national certification process which effectively attests to the competency of recognized professionals.

b. Indicators of protection by other means shall be assessed and evaluated at least in view of the extent to which they:

(1) Address all practitioners within an occupational group;

(2) Appear sufficient to protect the general public from harm caused by the practice of the occupation in question;

(3) Appear to be permanent and ongoing mechanisms.

4. 7 MCAR § 1.536 D.1.-3. shall be considered non-limiting guidelines to be used in applying the statutory factors contained in Minn. Stat. § 214.001, subd. 2. Additional elements may be considered if necessary to permit a thorough review and evaluation of an applicant group questionnaire in light of the statutory factors; provided, however, that the

additional elements shall be identified during the course of the review and evaluation process and specifically addressed in the Commissioner's written decision required by 7 MCAR § 1.538 B.6.

7 MCAR § 1.537 A. Applicant initiated identification.

3. The applicant group shall submit the completed Questionnaire to the Commissioner within six months or shall make a written request for an extension of the time period. Failure to comply with either of those conditions during the six month period voids the original letter of intent and discontinues the regulatory decision process. The applicant group shall submit a new letter of intent if it desires to pursue ~~credentialing~~ regulation.

7 MCAR § 1.538 B. Immediate consideration.

5. Council action. The Council will review the subcommittee recommendation and approve or modify ~~them~~ it as necessary. A Council final report and recommendations, along with supporting documents, will be sent to the Commissioner for action. The Department report and recommendations, with supporting documents, will accompany the Council report.

7 MCAR § 1.538 B.6. Commissioner actions. The Commissioner, upon review of the Council report and recommendations, will take one of the actions listed below. The Commissioner's action will be accompanied by a report giving the reason for the decision. Notification of the action will be made in the same manner as that of the public forum as called for in 7 MCAR § 1.538 B.3.d.

c. If the Commissioner determines that an occupational group shall be ~~ereditialed~~ regulated by registration, with the Commissioner acting as administrative authority, the Commissioner shall establish procedures and adopt rules to implement the decision. The rules will include, if appropriate, but not be limited to, the items contained in 7 MCAR § 1.538 B.6.a.(1) through (9).

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

SUPREME COURT

Decisions Filed Friday, October 19, 1979

Compiled by John McCarthy, Clerk

50599/Sp. Minnesota Vikings Football Club, Inc., and Michael E. Lynn, III, and The City of Minneapolis, intervenor, vs. Metropolitan Council, Piper, Jaffrey & Hopwood, Inc., Nicholas D. Coleman, et al, Petitioner, Metropolitan Sports Facilities System. Ramsey County.

A stipulation to limit time for appeal, made by counsel in open court in the presence of and with the acquiescence of his clients, will be held binding. The supreme court, in its discretion, may allow a party to petition for extraordinary relief from such a stipulation upon a showing that relief can be accorded without prejudice to other affected persons and that there is a reasonable prospect of prevailing in the proposed appeal.

In this case, no appeal having been taken in the stipulated time period and no application for extraordinary relief having been made, the decision of the trial court becomes the law of the case. Sheran, C. J.

49071/168 Owen Regan, as trustee for the next of kin of Susan Stromberg, decedent, Appellant, vs. Gary Stromberg. Blue Earth County.

In an action for death by wrongful act where the alleged duty requires factual findings that the decedent was under a disability and that the person allegedly owing the duty was in charge of the decedent, the question is one for the jury.

Where the issue of superseding cause was a critical jury issue, the trial judge erroneously instructed that such a cause must be foreseeable rather than unforeseeable, and counsel, who did not object at trial, asserted the error in post-trial proceedings, the unusual jury verdict raises such serious doubt of the jury's understanding and correct application of the law that a new trial is required.

Reversed and remanded for a new trial on the issue of liability. Rogosheske, J. Took no part. Sheran, C. J.

48632/154 Mutual Service Casualty Insurance Company, Appellant, vs. Lumbermens Mutual Casualty Company, et al, David G. Ketchum, Charles M. Ketchum. Pine County.

Where the evidence indicated that a minor son operated a motorcycle with the prior acquiescence of the named insured, the trial court's of implied consent to operate another vehicle was not clearly erroneous.

Affirmed. Kelly, J. Took no part, Todd, J.

49246, 49397/365 State of Minnesota vs. Ronald Flom, Appellant. Crow Wing County.

Affidavit in support of application for search warrant contained sufficient information to establish probable cause to believe that stolen goods would be found at defendant's residence, and therefore trial court did not err in admitting testimony of police officer about a telephone conversation he overheard during the execution of the warrant in which defendant made an incriminating statement; since we determine the search to be legal, we need not decide whether, if the search were deemed illegal, the incriminating statement would be deemed an inadmissible fruit of that illegality.

Defendant, by failing to object to certain statements made by the prosecutor in his closing argument, is deemed to have forfeited his right to raise the issue on appeal.

Affirmed. Todd, J.

49038, 49080/311 William R. Kelley, et al., Appellants (49080)-Respondents (49038), City of St. Paul, et al., Respondents (49080)-Appellants (49038). Ramsey County.

Under Minn. Stat. § 466.07 (1978), a municipality may voluntarily indemnify an employee for tort judgments in excess of the statutory limits on municipal liability. In this case, the City of St. Paul agreed to indemnify its employee without limit.

Under the facts of this case, the trial court did not err in refusing to submit the question of the plaintiff's contributory negligence to the jury.

Affirmed in part, reversed in part and remanded. Yetka, J. Took no part, Otis, J.

49377, 49404, 49455/317 Northwestern State Bank of Luverne, Luverne, Minnesota, Respondent (49377 and 49455)-Appellant (49404), vs. Dwight Gangestad, Appellant (49377 and 49455)-Respondent (49404). Rock County.

Under our holding in *United Realty Trust v. Property Development and Research Co.*, 269 N.W.2d 737 (Minn. 1978), promissory notes carrying interest rates not usurious at the time of enforcement are valid and enforceable.

Under the facts of this case, the trial court did not err in directing a verdict on defendant's counterclaim for fraud.

Affirmed. Yetka, J. Took no part, Otis, J.

48978/367 State of Minnesota vs. Robert Eugene Carter, Appellant. St. Louis County.

Evidence that defendant used force or coercion to accomplish sexual penetration was legally sufficient.

Trial court did not err in admitting evidence of state of mind of complainant moments after act of coerced sexual penetration.

Although part of prosecutor's closing argument had potential for evoking sympathy for complainant, purpose of that argument was not to evoke sympathy but to counter anticipated argument of defense counsel and jury was properly cautioned against allowing sympathy for complainant to affect its deliberations.

Affirmed. Yetka, J.

48971/318 City of New Prague, County of Scott, Minnesota, petitioners, vs. Ralph W. Hendricks, et al., Thomas E. Topka, B. J. Novotny, Margaret E. Novotny and Eclipse Enterprises, Inc., Appellants, Richard J. Kratochvil. Scott County.

A collective body such as a city council may appropriately delegate authority to the city attorney to proceed with a condemnation action on behalf of the city.

The city followed the required statutory procedures for the acquisition of property by condemnation.

When the trial court finds that the taking of property for a roadway is reasonably necessary and for a public purpose, such findings should not be disturbed unless clearly erroneous.

Affirmed. Scott, J. Took no part, Otis, J.

**Decision Filed Monday,
October 15, 1979**

49729/306 **Marvin Eakman and Thomas McDonald, Appellants,
vs. Dan Brutger, Chairman of the Metropolitan
Sports Facilities Commission, John Boland, Chair-
man of the Metropolitan Council (and the full Com-
mission and Council), Hennepin County.**

Where plaintiffs failed to demonstrate irreparable harm while de-

fendants showed significant economic hardship the trial court did not abuse its discretion in denying a motion for a temporary restraining order.

The trial judge properly dismissed the complaint pursuant to defendants' motion where plaintiffs did not rebut defendants' showing that there was no genuine issue of material fact and defendants were entitled to judgment as a matter of law.

Issues not presented to the trial court will not be decided on appeal in the absence of clear and undisputed facts.

Affirmed. Sheran, C. J.

STATE CONTRACTS

Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over \$2,000.

Department of Administration procedures require that notice of any

consultant services contract or professional and technical services contract which has an estimated cost of over \$10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal.

**Department of Economic
Security
Office of Economic
Opportunity
Notice of Request for Proposals
for A Study of Poverty in
Minnesota**

Notice is hereby given that the Department of Economic Security, Office of Economic Opportunity, is requesting proposals for a study tracing the evolution of public attitudes and perceptions of poverty in Minnesota and projections of future trends in attitudes toward poverty. The final report will include a camera-ready copy of the printed material and a multi-media master for audio-visual presentation to a forum which will be held in early 1981.

Cost of study may not exceed \$9,500. Deadline for proposals will be 4:30 P.M., November 19, 1979.

Please direct all proposals and inquiries to:

Mary Pat Cain
Office of Economic Opportunity
690 American Center Building
150 E. Kellogg Blvd.
St. Paul, MN 55101

**Iron Range Resources and
Rehabilitation Board
Grants Division
Notice of Request for Proposals
for Architectural Engineering
Services**

The Iron Range Resources and Rehabilitation Board, Grants Division, is seeking proposals from architectural-engineering firms to make a comprehensive evaluation study of specified communities and townships on the Iron Range to evaluate present public facilities and to inventory basic needs for capital expenditures.

The IRRRB has estimated that the cost of this project shall not exceed \$40,000 and shall be completed by April 1, 1980.

Prospective responders may secure additional information and formal "Request For Proposal" by contacting:

Michael Gentile, Planning Grants Analysis
IRRRB
Box 678
Eveleth, Minnesota 55734

Deadline for submission of proposals is 4:30 p.m., Thursday, November 1, 1979.

**Department of Labor and
Industry
Workers' Compensation
Division**

**Notice of Request for Proposals
for Court Reporter Services**

Notice is hereby given that the Workers' Compensation Division of the Department of Labor and Industry will be contracting with qualified court reporters during the fiscal year of July 1, 1979 through June 30, 1980.

Request for proposals will be furnished to persons or associations who make a written request for same to:

Ray Adel, Assistant Commissioner
Department of Labor and Industry
444 Lafayette Road
St. Paul, Minnesota 55101

The written requests must be received by 4:30 pm Friday, November 2, 1979. Final proposals must be received by the Department of Labor and Industry by 4:30 p.m. Wednesday, November 14, 1979.

General information may be obtained by telephone from Mr. Adel at (612) 296-6490.

Please take notice that Harry D. Peterson, Commissioner, Minnesota Department of Labor and Industry, pursuant to authority contained in Minn. Stat § 16.098 does this date authorize publication of Notice of Request for Proposals for Court Reporter Services during the fiscal year of July 1, 1979 through June 30, 1980.

This notice shall be published in the *State Register*.

Harry D. Peterson
Commissioner of Labor and Industry

**Department of
Transportation
Bridges and Structures**

**Notice of Availability of Contract
for Minnesota Consulting
Engineers**

The Mn/DOT requires the services of a qualified consultant to design and prepare construction plans for the bridge project described below.

Bridge No. 60019 — on T.H. 220 approximately 975 feet long, carrying four (4) traffic lanes and two sidewalks across the Red Lake River in East Grand Forks.

Estimated fee range: About \$75,000.00.

The work will start in the next few months with approximately six months anticipated for completion.

Firms desiring consideration should express their interest to Mn/DOT before 4:30 p.m., November 19, 1979. Identify personnel to conduct the project and include resume of their training and work experience. Minnesota firms will be given first consideration.

The Bridge Contractor Selection Committee will solicit a proposal from the list of responders after screening and interviews.

Send response to:

K. V. Benthin
Bridge Engineer
Room 610D
Transportation Bldg.
St. Paul, Minnesota 55155

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on

the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Department of Agriculture Agronomy Services Division

Notice of Special Local Need Registration for Top-Side Dipel

Pursuant to Minn. Stat. § 18.A.23 and 3 MCAR § 1.0338 B., the Minnesota Department of Agriculture on October 17, 1979 issued a Special Local Need Registration for Top-Side Dipel manufactured for Loveland Industries, Loveland, Colorado 80537.

The Commissioner of Agriculture, based upon information in the application, has deemed it in the public interest to issue such a registration, and has deemed that the information in the application indicates that the pesticide does not have the potential for unreasonable adverse environmental effects.

This Special Local Need Registration permits the use of this pesticide on stored Sunflower Seed to control and prevention of Indian Meal Moth.

The application and other data required under Minn. Stat. §§ 18A.22, subd. 2 (a-d); 18A.23; and 40 CFR 162.150-162.158, subpart B relative to this registration (identified as SLN # MN 79-0018) is on file for inspection at:

Minnesota Department of Agriculture
Agronomy Services Division
90 W. Plato Boulevard, Room 119
St. Paul, Minnesota 55107

A federal or state agency, a local unit of government, or any person or group of persons filing with the Commissioner a petition that contains the signatures and addresses of 500 or more individuals of legal voting age has 30 days to file written objections with the Commissioner of Agriculture regarding the issuance of This Special Local Need Registration. Upon receipt of such objections and when it is deemed in the best interest of the environment or the health, welfare, and safety of the public, the Commissioner of Agriculture shall order a hearing pursuant to Minn. Stat. ch. 15 for the purpose of revoking, amending, or upholding this registration.

October 17, 1979

Mark W. Seetin, Commissioner
Commissioner of Agriculture

Department of Commerce Banking Division

Bulletin No. 2136: Maximum Lawful Rate of Interest for Mortgages for the Month of November 1979

Notice is hereby given that the Banking Division, Department of Commerce, State of Minnesota, pursuant to House File No. 564, Chapter 279, 1979 Session Laws, as it amended Section 47.20, Subd. 4, Minnesota Statutes, effective May 31, 1979, hereby determines that the maximum lawful rate of interest for home mortgages for the month of November, 1979, is twelve and three-quarters (12.75) percent.

October 16, 1979

Michael J. Pint
Commissioner of Banks

Department of Commerce Board of Barber Examiners

Notice and Order For Hearing Regarding the Application of Joseph Francis to Expand the Minneapolis Barber School

Adam J. Mikrot, Executive Secretary of the Minnesota Board of Barber Examiners, issues this Order pursuant to the authority vested in the Board of Barber Examiners by Minn. Stat. § 154.07 (1978) and 4 MCAR §§ 8.056-8.066.

It is hereby ordered that Joseph Francis ("Applicant") shall appear at a hearing to be held at 9:00 a.m. on the 26th day of November, 1979, at 500 Metro Square Building (large hearing room) before Hearing Examiner George Beck, 1745 University Avenue, Saint Paul, Minnesota, telephone (612) 296-8108, duly appointed as Hearing Examiner in this matter by the Chief Hearing Examiner of the State Office of Hearing Examiners.

The hearing in this matter will be held for the purpose of determining whether the Board of Barber Examiners should

OFFICIAL NOTICES

approve the expansion of the Minneapolis Barber School, 819 Hennepin Avenue, Minneapolis, Minnesota, from fifteen (15) to thirty (30) students, based on the criteria set forth in Minn. Stat. § 154.07 (1978) and 4 MCAR §§ 8.056-8066 and based on the application for a Certificate of Approval submitted to the Board of Barber Examiners by the Applicant.

The hearing will be conducted pursuant to the contested case procedures set forth in Minn. Stat. §§ 15.0411 through 15.0422 (1978) as amended, and pursuant to the rules of contested case procedures adopted by the State Office of Hearing Examiners, 9 MCAR §§ 2.201-2.222.

Applicant may be represented by legal counsel, by a person of his choice, or by himself if not otherwise prohibited as the unauthorized practice of law, throughout the proceedings in this matter. Questions concerning issues, concerning informal disposition of these proceedings, or discovery should be directed to Special Assistant Attorney General Robert J. Clayton, 500 Metro Square Building, St. Paul, Minnesota 55101, telephone (612) 296-9412, or Adam J. Mikrot, Executive Secretary of the Board of Barber Examiners, 500 Metro Square Building, St. Paul, Minnesota 55101, telephone (612) 296-2364.

October 22, 1979.

Adam J. Mikrot, Executive Secretary
Board of Barber Examiners

Department of Commerce Insurance Division

Notice of Meeting

Notice of Meeting
Actuarial Committee
Minnesota Comprehensive Health Association
Monday, November 12, 1979, 1:30 p.m.

Northwestern National Life Insurance Company
20 Washington Avenue South
Minneapolis, Minnesota

Changes in any scheduled meetings and notice of any additional meetings will be posted or otherwise available upon inquiry at the offices of the Insurance Division, and may also be obtained by telephone from the Life and Health Section, telephone 296-2202.

Notice of Meeting

Notice of Meeting
Board of Directors
Minnesota Comprehensive Health Association
Wednesday, November 14, 1979, 11:00 a.m.

Blue Cross and Blue Shield of Minnesota
3535 Blue Cross Road
St. Paul, Minnesota

Changes in any scheduled meetings and notice of any additional meetings will be posted or otherwise available upon inquiry at the offices of the Insurance Division, and may also be obtained by telephone from the Life and Health Section, telephone 296-2202.

Department of Health Emergency Medical Services Section

Notice of Filing of Application for Emergency Ambulance Service License, and Notice of Hearing

Notice is hereby given that on July 19, 1979, Medibus-Helpmobile Inc., filed application with George R. Pettersen, M.D., Commissioner of Health, for a license to operate a (an) land emergency ambulance service with a base of operation in Minneapolis, Minnesota. This notice is made pursuant to Minn. Stat. § 144.802 (Supp. 1977). Please be advised that subd. 2 of that statute states, in part: The Commissioner may grant or deny the license 30 days after notice of the filing has been fully published. If the Commissioner receives a written objection to the application from any person within 20 days of the notice having been fully published, the license shall be granted or denied only after a contested case hearing has been conducted on the application. The Commissioner may elect to hold a contested case hearing if no objections to the application are received. If a timely objection is not received, the Commissioner may grant or deny the requested license based upon the information contained in the license application. If licensure is denied without hearing, the applicant, within 30 days after receiving notice of denial, may request and shall be granted a contested case hearing upon the application, at which hearing all issues will be heard de novo. Any objections to this service pursuant to Minn. Stat. § 144.802 (Supp. 1977) may be made in writing to George R. Pettersen, M.D. within the time period outlined by statute.

Notice is hereby further given that a hearing will be held to determine whether the public convenience and necessity require the above-referenced proposed life support transportation service ("emergency ambulance").

This proceeding has been initiated pursuant to and in satisfaction of the requirements of Minn. Stat. § 144.802, subd. 3 (Supp. 1978) and pursuant to the Administrative Procedure Act and the Rules for Contested Cases of the Office of Hearing Examiners, 9 MCAR §§ 2.201-2.222.

1. It is ordered and notice is hereby given that a hearing will be held on this matter at the State Office Building, 435 Park Street, St. Paul, Minnesota, in the Auditorium (Room 83) on the 26th day of November, 1979, commencing at 9:30 a.m. All interested persons are hereby urged to attend. Failure to do so may affect your right in this matter. The issues to be deter-

OFFICIAL NOTICES

mined are whether the public convenience and necessity require the above-referenced proposed life support transportation service ("emergency ambulance") and whether or not an Ambulance Service license should be granted to this service.

2. Mr. Peter Erickson, Minnesota Office of Hearing Examiners, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104 (telephone: [612] 296-8118) will preside at this hearing.

3. Any party will be given opportunity to be heard orally, to present witnesses and to submit evidence, written data, statements or arguments in these proceedings. The hearing and the decision will be controlled by the Administrative Procedure Act and the Rules of the Minnesota Office of Hearing Examiners, 9 MCAR §§ 2.201-2.222. The Commissioner of Health will request the Chief Hearing Examiner to have a court reporter to record the testimony taken at the hearing.

4. The Hearing Examiner may hear testimony and receive exhibits from any person at the hearing, or allow a person to note his appearance, but no person shall become, or be deemed to have become, a party by reason of such participation.

5. All parties are hereby informed of their right to be represented by counsel in these proceedings.

6. William G. Miller, Special Assistant Attorney General, 2829 University Avenue S.E., Park Plaza Building, Minneapolis, Minnesota 55414 (telephone: [612] 341-7272), or Diane Newberg, Section of Emergency Medical Services, Minnesota Department of Health, 717 Delaware Street S.E., Minneapolis, Minnesota 55440 (telephone: [612] 296-5281), may be contacted for further information on this matter, for discovery pursuant to 9 MCAR § 2.214, for an explanation of the process by which one can intervene as a party in this matter.

The petition recites among other matters that: "The subject track is no longer needed for rail transportation services, and constitutes a continuing and burdensome maintenance expense. The trackage is not used at the present time and there is no present prospect that the subject trackage will be needed in the future. There are no shippers, patrons or members of the public with any interest in the retention of the tracks or facilities, or who have used the same to any substantial degree within the past several years."

Any person may file a written objection to the proposed action by means of a letter addressed to the Commissioner of Transportation, Transportation Building, Saint Paul, Minnesota 55155, not later than the date specified below. An objection must be received on or before November 19, 1979. The objection should state specifically how the objector's interest will be adversely affected by the proposed action.

Upon receipt of a written objection, the Commissioner will, with respect to the named petitioner, set the matter down for hearing. If no objections are received, the Commissioner may grant the relief sought by the petitioner.

If this matter is set for hearing, any person who desires to become a Party to this matter must submit a timely Petition to Intervene to the Hearing Examiner pursuant to 9 MCAR § 2.210, showing how the person's legal rights, duties and privileges may be determined or affected by the decision in this case. The petition must also set forth the grounds and purposes for which intervention is sought. All parties have the right to be represented by legal counsel or any other representative of their choice. In the event the objecting party does not do so, or otherwise does not participate in the hearing, the statements contained in the application filed may be taken as true.

October 19, 1979

Richard P. Braun
Commissioner

Department of Transportation

Notice of Application and Opportunity for Hearing Regarding Authority to Retire and Remove ICC Track No. 41 Located at Chaska, Minnesota

Notice is hereby given that Chicago and North Western Transportation Company with attorneys at 4200 IDS Center, 80 South 8th Street, Minneapolis, Minnesota 55402 has filed a petition with the Commissioner of Transportation pursuant to Minn. Stat. §§ 219.741, and 218.041, subd. 3 (10) to retire and remove ICC track No. 41 located at Chaska, Minnesota.

STATE OF MINNESOTA
OFFICE OF THE STATE REGISTER

Suite 415, Hamm Building
408 St. Peter Street
St. Paul, Minnesota 55102
(612) 296-8239

ORDER FORM

State Register. Minnesota's official weekly publication for agency rules, notices and executive orders.

_____ Annual subscription \$110.00
_____ Additional Subscription \$85.00
_____ Single Copy \$2.25 each

State Register Binder. Durable 3½ inch, forest green binders imprinted with the *State Register* logo.

_____ *State Register* Binder \$5.00 + \$.20 (sales tax) = \$5.20* each

Minnesota Code of Agency Rules (MCAR). The permanent, 15 volume set of state agency rules. An indispensable reference work for the practice of administrative law.

_____ 15 volume set \$325.00, includes the annual update service subscription for the year of order (a \$105.00 value) and a set of MCAR binders.

MCAR Binders. A set of 15 sturdy, three inch, three-ring binders in attractive forest green, imprinted with the MCAR logo.

_____ 15 volume set \$35.00 + \$1.40 (sales tax) = \$36.40*

*To avoid Minnesota sales tax, please include your Certificate of Exempt Status issued by the Minnesota Department of Revenue.

Please enclose full amount for items ordered. Make check or money order payable to, "Minnesota State Register."

Name _____

Attention of: _____

Street _____

City _____ State _____ Zip _____

Telephone _____

Legislative Reference Library
Room 111 Capitol

Interoffice

