

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File #560

11/21 Bill Miller advised send 1 copy each of H E Rpt State Register
11/28 rec'd fr P. Bouchard.

Permanent Rule X

Temporary Rule _____

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 11-16-79 DUE DATE 12-6-79
Lee. 11/26/79

Resubmitted and Received ~~11/30~~ 12/4

a. Returned to Agency w/o Filing w/Secretary of State 11/30
b. Approved 12/4 Date Sent Back to Agency _____

- -

1. Rules as Adopted ✓
   a. Amendments to Rules as Proposed ✓
2. Rules as Proposed ✓
3. Certificate of Board's Authorizing Resolution, where applicable N/A
4. Order for Hearing ✓
5. Notice of Hearing ✓
   Sufficiency ✓
6. Secretary of State's List ✓ (one copy only)
7. Certificate of Acquisition of Secretary of State's List ✓
8. Secretary of State's Certification of Delivery of Secretary of State's List to Agency ✓
9. Affidavit of Mailing ✓
   At least 30 days prior to hearing ✓
10. Publication in State Register ✓
    At least 30 days prior to hearing ✓
11. Statement of Need and Evidence ✓
12. Hearing Examiner's Report ✓
13. Agency's Findings of Fact ✓
14. Certificate of Board's Resolution Adopting Rules, where applicable N/A
15. Order Adopting ✓
16. Report of Chief Hearing Examiner ✓
17. Order Approving Incorporation by Reference, where applicable N/A
18. Certificate of Compliance with Rulemaking Procedures ✓
19. Copy of Notice of Intent to Solicit Outside Opinion, where applicable ✓
20. Petition by Public, where applicable N/A
21. Approval of Commissioner of Finance ✓

Our File No: 560

DEPARTMENT: Attorney General

STATE OF MINNESOTA

Office Memorandum

TO : George R. Pettersen, MD
Commissioner of Health

DATE: December 5, 1979

FROM : Lee E. Sheehy
Special Assistant
Attorney General

PHONE: 296-1238

SUBJECT: Rules as Approved In the Matter of the Proposed Amendments to Rules Relating to Food, Beverage and Lodging Establishments, to License Fees and to Swimming Pools

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Note that they have NOT been filed with the State Register; this must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of the stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages of the rules in the approved set.

Directly following the approved rules is a complete set of required documents and transcript which must be retained with the rules by you or your agency.

If you have any questions in this regard, please contact me.

LES/dw
Enclosure
cc: Duane Harves
Marshall Whitlock
William Miller

7 MCAR §1.141 Public Swimming Pools

. . . . .

B. Definitions. The following definitions shall apply in the interpretation and enforcement of this rule. The word "shall as used herein indicated a mandatory requirement.

1. Swimming Pool. Any structure, basin, chamber, or tank containing an artificial body of water for swimming, diving, relaxation, or recreational bathing, including special purpose pools.

2. Public Swimming Pool. Any swimming pool, other than a private residential swimming pool, intended to be used collectively by numbers of persons for swimming or bathing, operated by any person as defined herein, whether he be owner, lessee, operator, licencee, or concessionaire, regardless of whether a fee is charged for such use.

3. Private Residential Swimming Pool. Any swimming pool, located on private property under the control of the homeowner, the use of which is limited to swimming or bathing by members of his family or their invited guests. (The design, construction, and operation of such pools are not subject to the provisions of this Regulation.)

4. Person. Any person, firm, partnership, association, corporation, company, governmental agency, club, or organization of any kind.

5. Commissioner means commissioner of health.

6. Wading Pool. Any pool used or designed to be used exclusively for wading or bathing and having a maximum depth of 24 inches.

7. Special Purpose Pool. Treatment pools, therapeutic pools, special pools for water therapy, whirlpools, spas, and cold plunges.

* * * * *

LODGING ESTABLISHMENTS

7MCAR§1.151

A. SCOPE. This rule shall be applicable to all lodging establishments, such as hotels, motels, lodging houses and resorts as defined in Minnesota Statutes, Chapter 157.

B. DEFINITIONS

1. COMMISSIONER. The term "Commissioner" shall mean the Minnesota Commissioner of Health and the Minnesota Department of Health, which terms shall be synonymous.

2. APPROVED. The term "approved" shall mean acceptable to the Commissioner following his determination as to conformity with established public health practices.

3. CLEAN. The term "clean" shall mean the absence of dirt, grease, rubbish, garbage and other offensive, unsightly or extraneous matter.

4. GOOD REPAIR. The term "good repair" shall mean free of corrosion, breaks, cracks, chips, pitting, excessive wear and tear, leaks, obstructions and similar defects so as to constitute a good and sound condition.

5. USABLE FLOOR SPACE. The term "usable floor space" means all floor space in a sleeping room not occupied by closets, toilet rooms, shower or bathrooms.

7MCAR§1.152 SANITATION REQUIREMENTS. The construction, operation, maintenance and equipment of lodging establishments shall be regulated as follows:

A. BUILDING. Every building, structure or enclosure used to provide lodging accommodations for the public shall be kept in good repair, and so maintained as to promote the health, comfort, safety and well being of persons accommodated.

B. FLOORS. The floors of all guest rooms, hallways, bathrooms, store rooms, and all other spaces used or traversed by guests shall be of such construction as to be easily cleaned, shall be smooth, and shall be kept clean and in good repair. Cleaning of floors shall be so done as to minimize the raising of dust and the exposure of guests thereto. The requirements of this section shall not prevent the use of rugs, carpets or natural stone which can be kept clean. Abrasive strips for safety purposes may be used wherever deemed necessary to prevent accidents.

C. WALLS AND CEILINGS. The walls and ceilings of all rooms, halls and stairways shall be kept clean and in good repair. Studs, joists or rafters shall not be left exposed except when suitably finished and kept clean.

D. SCREENING. When flies, mosquitoes, and other insects are prevalent, all outside doors, windows and other outer openings shall be screened: Provided that such screening shall not be required for rooms deemed by the Commissioner to be located high enough in the upper stories of the building as to be free of such insects, or in such areas where other effective means are provided to prevent their entrance.

E. LIGHTING AND VENTILATION. All rooms and areas used by patrons and guests and all other rooms or spaces in which lighting and ventilation, either natural or artificial, are essential to the efficiency of the business operation shall be well lighted and ventilated.

An area shall be considered well ventilated when excessive heat, odors, fumes, vapors, smoke or condensation is reduced to a negligible level and barely perceptible to the normal senses. During

seasons when weather conditions require tempering of make-up air, adequate equipment shall be provided to temper the make-up air. Every gas-fired or oil-fired room heater and water heater shall be vented to the outside air.

F. SPACE. Every room occupied for sleeping purposes by one person shall contain at least 70 sq. ft. of usable floor space, and every room occupied for sleeping purposes by more than one person shall contain not less than 60 sq. ft. of usable floor space for each occupant thereof. Under no circumstances shall there be provided less than 400 cu. ft. of air space per occupant. Beds shall be spaced at least 3 ft. apart when placed side by side. No sleeping quarters shall be provided in any basement having more than half its clear floor to ceiling height below the average grade of the adjoining ground. When strict compliance herewith is impracticable, the Commissioner may waive any of the provisions of this paragraph subject to such conditions as may be deemed desirable in the individual case.

G. BEDDING AND LINEN. All beds, bunks, cots, and other sleeping places provided for guests in hotels, motels, resorts and lodging houses shall be supplied with suitable pillow slips and under and top sheets. All bedding including mattresses,

quilts, blankets, pillows, sheets, spreads, and all bath linen shall be kept clean. No bedding including mattresses, quilts, blankets, pillows, bed and bath linen, shall be used which are worn out or unfit for further use. Pillow slips, sheets and bath linen after being used by one guest shall be washed before they are used by another guest, a clean set being furnished each succeeding guest. For any guest occupying a guest room for an extended period of time, a fresh set of sheets and pillow slips shall be furnished at least once each week, and at least two clean towels shall be furnished each day, except that the proprietor will not be responsible for the sheets, towels, pillow slips, and bath linen furnished by a guest.

H. ROOM FURNISHINGS. All equipment, fixtures, furniture and furnishings, including windows, draperies, curtains and carpets, shall be kept clean and free of dust, dirt, vermin and other contaminants, and shall be maintained in good order and repair.

I. TOILETS. Every hotel, motel and lodging house shall be equipped with adequate and conveniently located water closets for the accommodation of its employees and guests. Water closets, lavatories and bath tubs or showers, shall be available on each floor when not provided in each individual room. Toilet,

lavatory and bath facilities shall be provided in the ratio of one toilet and one lavatory for every ten occupants, or fraction thereof, and one bath tub or shower for every twenty occupants, or fraction thereof. ~~The hot water temperature shall not exceed 130° F (≈55° C).~~ Toilet rooms shall be well ventilated by natural or mechanical methods. The doors of all toilet rooms serving the public and employees shall be self-closing. Toilets and bathrooms shall be kept clean and in good repair and shall be well lighted and ventilated. Handwashing signs shall be posted in each toilet room used by employees. Every resort shall be equipped with adequate and convenient toilet facilities for its employees and guests. If privies are provided they shall be separate buildings and shall be constructed, equipped, and maintained in conformity with the standards of the Commissioner and shall be kept clean.

J. - WATER SUPPLY. A safe adequate supply of water shall be provided. The water supply system shall be located, constructed and operated in accordance with the rules of the commissioner. <u>After September 30, 1980, the temperature of hot water which is provided in any public area or guest room, including but not limited to lavatories, bath tubs or showers, shall not exceed 130° F. (approximately 55° C.).</u>

K. HANDWASHING. All lavatories for public use or furnished in guest rooms at hotels, motels, lodging houses and resorts shall be supplied with hot and cold running water and with soap. ~~The hot water temperature shall not exceed 130° F. (~55° C).~~ Scullery sinks should not be used as handwashing sinks.

In the case of separate housekeeping cabins at resorts not supplied with running hot water, equipment shall be provided for heating water in the cabin.

Individual or other approved sanitary towels or warm-air dryers shall be provided at all lavatories for use by employees or the public.

L. EATING UTENSILS AND DRINKING VESSELS PROVIDED IN GUEST ROOMS.

1. After each usage, all multi-use eating utensils and drinking vessels shall be thoroughly washed in hot water containing a suitable soap or synthetic detergent, rinsed in clean water, and effectively subjected to a bactericidal process approved by the commissioner. Approved facilities for manual dishwashing shall consist of a three compartment sink with stacking and drainboards at each end. All mechanical dishwashing machines shall conform to Standard Number 3 of the National Sanitation Foundation, dated April, 1965. All dishes, glasses, utensils and equipment after washing and bactericidal treatment shall be permitted to drain and air dry.

2. Single service utensils or vessels as defined in MHD 162(s) must be handled in a sanitary manner. Such utensils may not be re-used.

M. WASTE DISPOSAL. All liquid wastes shall be disposed of in an approved public sewerage system or in a sewerage system which is designed, constructed and operated in accordance with the rules of the Minnesota Pollution Control Agency (6 MCAR § 4.8040).

Prior to removal, all garbage and refuse in storage shall be kept in water-tight, non-absorbent receptacles which are covered with close-fitting, fly-tight lids. All garbage, trash and refuse shall be removed from the premises frequently to prevent nuisance and unsightly conditions, and shall be disposed of in a sanitary manner. All garbage receptacles shall be kept clean and in good repair.

N. INSECT AND RODENT CONTROL. Every hotel, motel, lodging house and resort shall be so constructed and equipped as to prevent the entrance, harborage or breeding of flies, roaches, bedbugs, rats, mice and all other insects and vermin, and specific means necessary, for the elimination of such pests such as cleaning, renovation or fumigation shall be used. The Commissioner may order the facility to hire an exterminator licensed by the state to exterminate pests when:

1. The infestation is so extensive that it is unlikely that a non-professional can eradicate the pests effectively, or
2. The extermination method of choice can only be carried out by a licensed exterminator, or
3. Upon reinspection, it is found that an establishment has not been brought into compliance with a prior order to rid the establishment of pests.

O. PERSONNEL HEALTH AND CLEANLINESS. No person shall resume work after visiting the toilet without first thoroughly washing his hands.

Personnel of hotels, motels, lodging houses and resorts may be required to undergo medical examination to determine whether or not they are cases or carriers of a communicable disease.

P. CLEANLINESS OF PREMISES. The premises of all hotels, motels, lodging houses and resorts shall be kept clean and free of litter or rubbish.

Q. FIRE PROTECTION. All lodging establishments shall provide suitable fire escapes which shall be kept in good repair and accessible at all times. Hallways shall be marked and exit lights provided; fire extinguishers shall be provided and shall be recharged annually and kept accessible for use. No sleeping quarters shall be maintained in rooms which do not have unobstructed egress to the outside or to a central hall leading to a fire escape. ALL FIRE PROTECTION MEASURES SHALL BE IN ACCORDANCE WITH REQUIREMENTS OF THE STATE FIRE MARSHAL.

R. PLUMBING AND SWIMMING POOLS. All new plumbing in hotels, motels, lodging houses and resorts, and all plumbing reconstructed or replaced after January 1, 1968 shall be designed, constructed and installed in conformity with the Minnesota Plumbing Code (7MCAR§1.120-1.134).

All swimming pools and other artificial recreational bathing facilities shall be located, constructed and operated in conformity with 7 MCAR §1.141.

S. SANITARY DISPENSING OF ICE. Any lodging establishment which makes ice available in public areas, including but not limited to lobbies, hallways, and outdoor areas shall restrict access to such ice in accordance with the following provisions:

1. After the effective date of this rule, any newly-constructed lodging establishment which installs ice-making equipment, and any existing lodging establishment which installs or replaces ~~its~~ ice-making equipment shall install only automatic dispensing, sanitary ice-making and storage equipment in areas to which the public has access. Any such establishment may install open-type ice bins only if the ice therefrom is dispensed in the manner provided in subpart S.2.

2. After December 31, ~~1982~~ 1984, any existing lodging establishment which has not converted to automatic dispensing ice-making and storage equipment shall no longer permit unrestricted public access to open-type ice bins, and shall dispense ice to guests only by having employees give out prefilled, individual sanitary containers of ice, or by making available prefilled, disposable, closed bags of ice.

7MCAR§1.155 - INITIAL AND RENEWAL LICENSE FEES: LICENSE EXPIRATION DATES.

A. FEE SCHEDULE. License applications for lodging establishments as defined in 7MCAR§1.151 shall be accompanied by the applicable fee as determined from the following fee schedule.

Fee Schedule

Number of Sleeping Rooms	Fee
1 - 18	$23.00
19 - 35	$45.00
36 - 100	$60.00
101 and over	$75.00

B. EXPIRATION DATE. Initial and renewal lodging establishment licenses shall be issued for the calendar year for which application is made and shall expire on December 31 of such year.

C. LICENSE RENEWALS. License renewals shall be obtained on an annual basis. License renewal applications shall be submitted to the Commissioner of Health on forms provided no later than December 31 of the year preceding the year for which application is made.

D. PENALTY FEE. A penalty fee of $10.00 shall be added to the amount of the license fee if the application has not reached the office of the Commissioner of Health before January 31, or in the case of a new business, 30 days after the opening of such business.

E. REDUCED LICENSE FEE. From and after October 1 of each year, the license fee for new establishments or new operators shall be one half of the appropriate annual license fee plus any penalty which may be required.

~~F. EFFECTIVE DATE. The fees prescribed in 7MCAR§1.155 shall apply to all licenses which become effective on or after~~ September 1, 1979.

Struck by Jo E. Stuly per agency memo dated 12-3-79 filed with the office of Atty Gen.

* * * * *

RESTAURANTS AND PLACES OF REFRESHMENT

7 MCAR §1.162

. . . . .

M. FOOD ESTABLISHMENT shall mean food and beverage service establishments as defined in Minnesota Statutes Chapter 157 and 144.72 and shall include drive-ins, bars, taverns, drive-in cafes, clubs, lodges, eating facilities at resorts and churches, temporary and limited food service establishments, except as exempted by Section 157.14.

...

W. LIMITED FOOD SERVICE ESTABLISHMENT shall mean an itinerant establishment, or one serving only prepackaged foods (eg., frozen pizza and sandwiches) which receive only heat treatment.

7 MCAR §1.163

. . . . .

S. TEMPORARY OR LIMITED FOOD SERVICE ESTABLISHMENTS: A temporary or limited food-service establishment shall comply with all provisions of 7 MCAR §1.161-1.165 which are applicable to its operation: Provided, that the Commissioner may augment such requirements when needed to assure the service of safe food, may prohibit the sale of certain potentially hazardous food, and may modify specific requirements for physical facilities when in his opinion no health hazard will result.

. . . . .

W. Emergency First Aid for Choking:

Any food service establishment which is not a temporary or limited food service establishment shall post a chart illustrating the use of an emergency first aid procedure which is approved by the commissioner for use to relieve a patron with a restricted airway. Such an illustration shall be posted in the food preparation area where all employees may easily see it.

7 MCAR 1.165 INITIAL AND RENEWAL LICENSE FEES: LICENSE EXPIRATION DATES

A. Fee Schedule. Initial and renewal license applications for food and beverage establishments as defined in 7 MCAR 1.162 shall be accompanied by the applicable fee as determined from the schedule below. The average number of employees shall be computed in accordance with Minnesota Statutes § 157.03.

Food or Beverage Establishment Fee Schedule

Number of Employees	Fee
1 - 4	$ 21.00
5 - 18	$ 36.00
19 - 28	$ 54.00
29 - 35	$ 75.00
36 and over	$ 90.00
limited or temporary food service	$ 15.00

B. ...

C. ...

D. ...

E. ...

~~F. Effective Date. The fees prescribed in 7 MCAR 1.165A shall apply to all licenses which become effective on or after September 1, 1979.~~

* * * * *

See p. 13

APPROVED AS TO FORM AND LEGALITY
DEC. 4 1979 19____
WARREN SPANNAUS, ATTORNEY GENERAL
BY _____
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
DEC – 5 1979
Joan Anderson Growe
Secretary of State

1:05 P.M.

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

COMMISSIONER OF HEALTH

In the Matter of Proposed Amendments to Rules Relating to Food, Beverage and Lodging Establishments, to License Fees and to Swimming Pools	* * * * * * *	ORDER ADOPTING AND AMENDING RULES

The above-entitled matter came on for hearing before the Commissioner of Health on the 22nd day of June, 1979 in Room 105 of the Minnesota Department of Health Building, after proper notice as required by Minn. Stat. § 15.0412 (1978) had been served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards and criteria, and having confirmed the need for the above-captioned rules,

NOW, THEREFORE, IT IS ORDERED THAT 7 MCAR § 1.151, § 1.152, § 1.155, § 1.162, § 1.163, § 1.165 and § 1.141 as amended, copies of which are attached to this order and made a part hereof, are adopted, this 20th day of September, 1979, pursuant to authority vested in me by Minn. Stat. § 144.05 (c) and § 144.12 Subd. 1 (1978).

STATE OF MINNESOTA

for Allen Fisher M.D.
George R. Pettersen, M.D.
Commissioner of Health

Our File No: 560

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : GEORGE R. PETTERSEN, MD
Commissioner of Health

DATE: November 30, 1979

FROM : LEE E. SHEEHY
Special Assistant
Attorney General

PHONE: 296-1288

SUBJECT: In the Matter of the Proposed Amendments to Rules Relating to Food, Beverage and Lodging Establishments, to License Fees and to Swimming Pools

The above-captioned rules have not been approved by this office for the below enumerated reason. After agency consideration of this reason and appropriate action, if any, the rules may be resubmitted. At that time, please insure that the original of the Order Adopting and Rules as Adopted accompanies the resubmitted materials as they are necessary for filing with the Secretary of State.

The rules have not been approved for the following reason:

7 MCAR §§ 1.155 and 1.565 appear to apply retroactively to license applications submitted on or after September 1, 1979. The Minnesota Supreme Court in Mason v. Farmers Insurance Companies, 281 N.W. 2d 344 (1979) held that retroactive rules, like the retroactive application of statutes, is improper "unless clearly and manifestly intended by the Legislature." 281 N.W. 2d at 348.

If you have any questions, do not hesitate to contact me.

LES/bw

cc: Duane Harves
Marshall Whitlock
William Miller

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL - Health

Office Memorandum

TO : Lee Sheehy
Special Assistant
Attorney General

DATE: December 3, 1979

FROM : William G. Miller
Special Assistant
Attorney General

PHONE: 341-7272

SUBJECT: Environmental Health Amendments Relating to Food, Beverage, and Lodging Establishments, to License Fees, and Swimming Pools

In our recent discussion you pointed out to me that proposed rules 7 MCAR §§ 1.155 and 1.165 have a stated effective date of September 1, 1979. As this date would obviously make the effect of the rules retroactive, which the Commissioner does not intend, the Commissioner has authorized the striking of the effective date language of these proposed rules. Without any language setting an effective date, of course, the rules would all become effective at the statutorily prescribed time.

Thank you for your cooperation and attention in this matter.

WGM:rlb

RULES AS PROPOSED

LODGING ESTABLISHMENTS

7MCAR§1.151 ~~MHD 151.~~

A. SCOPE ~~(a)~~ This rule ~~regulation~~ shall be applicable to all lodging establishments, such as hotels, motels, lodging houses and resorts as defined in Minnesota Statutes, Chapter 157.

B. DEFINITIONS

1. ~~(a)~~ ~~BOARD~~ COMMISSIONER. The term ~~"Board"~~ "Commissioner" shall mean the Minnesota ~~State Board~~ Commissioner of Health and the Minnesota Department of Health, which terms shall be synonymous.

2. APPROVED. The term "approved" shall mean acceptable to the ~~Board~~ Commissioner following ~~its~~ his determination as to conformity with ~~departmental standards and~~ established public health practices.

3. ~~(c)~~ CLEAN. The term "clean" shall mean the absence of dirt, grease, rubbish, garbage and other offensive, unsightly or extraneous matter.

4. ~~(d)~~ GOOD REPAIR. The term "good repair" shall mean free of corrosion, breaks, cracks, chips, pitting, excessive wear and tear, leaks, obstructions and similar defects so as to constitute a good and sound condition.

4/20/79

~~(e) STANDARDS. The term "standards" means the criteria of compliance of the Board and available on request.~~

5. ~~(f)~~ USABLE FLOOR SPACE. The term "usable floor space" means all floor space in a sleeping room not occupied by closets, toilet rooms, shower or bathrooms.

7MCAR§1.152 ~~MHD 152~~. SANITATION REQUIREMENTS. The construction, operation, maintenance and equipment of lodging establishments shall be regulated as follows:

A. ~~(a)~~ BUILDING. Every building, structure or enclosure used to provide lodging accommodations for the public shall be kept in good repair, and so maintained as to promote the health, comfort, safety and well being of persons accommodated.

B. ~~(b)~~ FLOORS. The floors of all guest rooms, hallways, bathrooms, store rooms, and all other spaces used or traversed by guests shall be of such construction as to be easily cleaned, shall be smooth, and shall be kept clean and in good repair. Cleaning of floors shall be so done as to minimize the raising of dust and the exposure of guests thereto. The requirements of this section shall not prevent the use of rugs, carpets or natural stone which can be kept clean. Abrasive strips for safety purposes may be used wherever deemed necessary to prevent accidents.

C. ~~(c)~~ WALLS AND CEILINGS. The walls and ceilings of all rooms, halls and stairways shall be kept clean and in good repair. Studs, joists or rafters shall not be left exposed except when suitably finished and kept clean.

D. ~~(d)~~ SCREENING. When flies, mosquitoes, and other insects are prevalent, all outside doors, windows and other outer openings shall be screened: Provided that such screening shall not be required for rooms deemed by the ~~Board~~ Commissioner to be located high enough in the upper stories of the building as to be free of such insects, or in such areas where other effective means are provided to prevent their entrance.

E. ~~(e)~~ LIGHTING AND VENTILATION. All rooms and areas used by patrons and guests and all other rooms or spaces in which lighting and ventilation, either natural or artificial, are essential to the efficiency of the business operation shall be well lighted and ventilated.

An area shall be considered well ventilated when excessive heat, odors, fumes, vapors, smoke or condensation is reduced to a negligible level and barely perceptible to the normal senses. ~~Air replacement vents shall be designed to permit the entrance of an equal volume of displaced air and to prevent the entrance of insects, dust or other contaminating materials.~~ During

seasons when weather conditions require tempering of make-up air, adequate equipment shall be provided to temper the make-up air. Every gas-fired or oil-fired room heater and water heater shall be vented to the outside air.

F. ~~(f)~~ SPACE. Every room occupied for sleeping purposes by one person shall contain at least 70 sq. ft. of usable floor space, and every room occupied for sleeping purposes by more than one person shall contain not less than 60 sq. ft. of usable floor space for each occupant thereof. Under no circumstances shall there be provided less than 400 cu. ft. of air space per occupant. Beds shall be spaced at least 3 ft. apart when placed side by side. No sleeping quarters shall be provided in any basement having more than half its clear floor to ceiling height below the average grade of the adjoining ground. When strict compliance herewith is impracticable, the ~~Board~~ Commissioner may waive any of the provisions of this paragraph subject to such conditions as may be deemed desirable in the individual case.

G. ~~(g)~~ BEDDING AND LINEN. All beds, bunks, cots, and other sleeping places provided for guests in hotels, motels, resorts and lodging houses shall be supplied with suitable pillow slips and under and top sheets. All bedding including mattresses,

quilts, blankets, pillows, sheets, spreads, and all bath linen shall be kept clean. No bedding including mattresses, quilts, blankets, pillows, bed and bath linen, shall be used which are worn out or unfit for further use. Pillow slips, sheets and bath linen after being used by one guest shall be washed before they are used by another guest, a clean set being furnished each succeeding guest. For any guest occupying a guest room for an extended period of time, a fresh set of sheets and pillow slips shall be furnished at least once each week, and at least two clean towels shall be furnished each day, except that the proprietor will not be responsible for the sheets, towels, pillow slips, and bath linen furnished by a guest.

H. ~~(h)~~ ROOM FURNISHINGS. All equipment, fixtures, furniture and furnishings, including windows, draperies, curtains and carpets, shall be kept clean and free of dust, dirt, vermin and other contaminants, and shall be maintained in good order and repair.

I. ~~(i)~~ TOILETS. Every hotel, motel and lodging house shall be equipped with adequate and conveniently located water closets for the accommodation of its employees and guests. Water closets, lavatories and bath tubs or showers, shall be available on each floor when not provided in each individual room. Toilet,

lavatory and bath facilities shall be provided in the ratio of one toilet and one lavatory for every ten occupants, or fraction thereof, and one bath tub or shower for every twenty occupants, or fraction thereof. The hot water temperature shall not exceed 130° F (∿55° C). Toilet rooms shall be well ventilated by natural or mechanical methods. The doors of all toilet rooms serving the public and employees shall be self-closing. Toilets and bathrooms shall be kept clean and in good repair and shall be well lighted and ventilated. Handwashing signs shall be posted in each toilet room used by employees. Every resort shall be equipped with adequate and convenient toilet facilities for its employees and guests. If privies are provided they shall be separate buildings and shall be constructed, equipped, and maintained in conformity with the standards of the ~~Board~~ Commissioner and shall be kept clean.

J. ~~(j)~~ WATER SUPPLY. A safe adequate supply of water shall be provided. The water supply system shall be located, constructed and operated in accordance with the rules ~~standards~~ of the ~~Board~~ Commissioner. ~~When strict compliance herewith is impracticable the Board may waive any of the provisions for location and construction specified in this item, subject to such conditions as may be deemed desirable in the individual case.~~

K. ~~(k)~~ HANDWASHING. All lavatories for public use or furnished in guest rooms at hotels, motels, lodging houses and resorts shall be supplied with hot and cold running water and with soap. The hot water temperature shall not exceed 130° F (~55° C). Scullery sinks should not be used as handwashing sinks.

In the case of separate housekeeping cabins at resorts not supplied with running hot water, equipment shall be provided for heating water in the cabin.

Individual or other approved sanitary towels or warm-air dryers shall be provided at all lavatories for use by employees or the public.

L. ~~(1) CLEANING AND BACTERICIDAL TREATMENT~~. EATING UTENSILS AND DRINKING VESSELS PROVIDED IN GUEST ROOMS.

/. After each usage, all multi-use eating utensils and drinking vessels shall be thoroughly washed in hot water containing a suitable soap or synthetic detergent, rinsed in clean water, and effectively subjected to a bacteri=cidal process approved by the ~~Board~~ Commissioner. Approved facilities for manual dishwashing shall consist of a three compartment sink with stacking and drainboards at each end. ~~Dishwashing machines shall be equipped with thermometers which will accurately indicate the temperature of the wash and rinse water.~~ All mechanical dishwashing machines ~~installations installed on or before January 1, 1968,~~ shall conform to Standard Number 3 of the National Sanitation Foundation, dated April, 1965.

~~Either of the following bactericidal processes for manual dishwashing is regarded as approved:~~

~~(1) Complete immersion in clean water a temperature of not lower than 170° Fahrenheit for at least two minutes. The bactericidal compartment must be properly equipped with a heating unit or other means to maintain the specified temperature while in use.~~

~~(2) Complete immersion in clean water containing not less than 50 parts per million of available cholorine if hypochlorites are used, or not less than 200 parts per million if chloramines are used, for not less than two minutes. Other compounds acceptable to the Board may be used in accordance with standards recommended at the time of acceptance.~~

~~Any other processes acceptable to the Board may be used for machine or manual dishwashing.~~

All dishes, glasses, utensils and equipment after washing and bactericidal treatment shall be permitted to drain and air dry.

2. Single service utensils or vessels as defined in MHD 162(s) must be handled in a sanitary manner. Such utensils may not be re-used.

M. ~~(m)~~ WASTE DISPOSAL. All liquid wastes shall be disposed of in an approved public sewerage system or in a sewerage system which is designed, constructed and operated in accordance with the ~~standards of the Board~~ rules of the Minnesota Pollution Control Agency (6 MCAR § 4.8040).

Prior to removal, all garbage and refuse in storage shall be kept in water-tight, non-absorbent receptacles which are covered with close-fitting, fly-tight lids. All garbage, trash and refuse shall be removed from the premises frequently to prevent nuisance and unsightly conditions, and shall be disposed of in a sanitary manner. All garbage receptacles shall be kept clean and in good repair.

N. ~~(n)~~ INSECT AND RODENT CONTROL. Every hotel, motel, lodging house and resort shall be so constructed and equipped as to prevent the entrance, harborage or breeding of flies, roaches, bedbugs, rats, mice and all other insects and vermin, and specific means necessary, for the elimination of such pests such as cleaning, renovation or fumigation shall be used. The Commissioner may order the facility to hire an exterminator licensed by the state to exterminate pests when:

1. The infestation is so extensive that it is unlikely that a non-professional can eradicate the pests effectively, or
2. The extermination method of choice can only be carried out by a licensed exterminator, or
3. Upon reinspection, it is found that an establishment has not been brought into compliance with a prior order to rid the establishment of pests.

O. ~~(o)~~ PERSONNEL HEALTH AND CLEANLINESS. No person shall resume work after visiting the toilet without first thoroughly washing his hands.

Personnel of hotels, motels, lodging houses and resorts may be required to undergo medical examination to determine whether or not they are cases or carriers of a communicable disease.

P. ~~(p)~~ CLEANLINESS OF PREMISES. The premises of all hotels, motels, lodging houses and resorts shall be kept clean and free of litter or rubbish.

Q. ~~(q)~~ FIRE PROTECTION. All lodging establishments shall provide suitable fire escapes which shall be kept in good repair and accessible at all times. Hallways shall be marked and exit lights provided; fire extinguishers shall be provided and shall be recharged annually and kept accessible for use. No sleeping quarters shall be maintained in rooms which do not have unobstructed egress to the outside or to a central hall leading to a fire escape. ALL FIRE PROTECTION MEASURES SHALL BE IN ACCORDANCE WITH REQUIREMENTS OF THE STATE FIRE MARSHAL.

R. ~~(r)~~ PLUMBING AND SWIMMING POOLS. All new plumbing in hotels, motels, lodging houses and resorts, and all plumbing reconstructed or replaced after January 1, 1968 ~~the effective date of this regulation~~ shall be designed, constructed and installed in conformity with the Minnesota Plumbing Code (7MCAR§1.120-1.134).

All swimming pools and other artificial recreational bathing facilities shall be located, constructed and operated in conformity with ~~the standards of the Board~~ 7 MCAR§1.141.

S. SANITARY DISPENSING OF ICE. Any lodging establishment which makes ice available in public areas, including but not limited to lobbies, hallways, and outdoor areas shall restrict access to such ice in accordance with the following provisions:

1. after the effective date of this rule, any newly-constructed lodging establishment which installs ice-making equipment, and any existing lodging establishment which replaces its ice-making equipment, shall install only automatic dispensing, sanitary ice-making and storage equipment;
2. after December 31, 1982, any existing lodging establishment which has not converted to automatic dispensing ice-making and storage equipment shall no longer permit unrestricted public access to open-type ice bins, and shall dispense ice to guests only by having employees give out prefilled, individual, sanitary containers of ice, or by making available prefilled, disposable, closed, bags of ice.

7MCAR§1.155 ~~MHD 155~~ INITIAL AND RENEWAL LICENSE FEES: LICENSE EXPIRATION DATES.

A. ~~(a)~~ FEE SCHEDULE. License applications for lodging establishments as defined in 7MCAR§1.151 ~~MHD 151~~ shall be accompanied by the applicable fee as determined from the following fee schedule.

Fee Schedule

Number of Sleeping Rooms	Fee	
1 - 18	~~$ 7.50~~	$23.00
19 - 35	~~$15.00~~	$45.00
36 - 100	~~$20.00~~	$60.00
101 and over	~~$25.00~~	$75.00

B. ~~(b)~~ EXPIRATION DATE. Initial and renewal lodging establishment licenses shall be issued for the calendar year for which application is made and shall expire on December 31 of such year.

C. ~~(c)~~ LICENSE RENEWALS. License renewals shall be obtained on an annual basis. License renewal applications shall be submitted to the Commissioner ~~State Board~~ of Health on forms provided ~~by it~~ no later than December 31 of the year preceding the year for which application is made.

D. ~~(d)~~ PENALTY FEE. A penalty fee of $10.00 shall be added to the amount of the license fee if the application has not reached the office of the Commissioner ~~State Board~~ of Health before January 31, or in the case of a new business, 30 days after the opening of such business.

E. ~~(e)~~ REDUCED LICENSE FEE. From and after October 1 of each year, the license fee for new establishments or new operators shall be one half of the appropriate annual license fee plus any penalty which may be required.

F. ~~(f)~~ EFFECTIVE DATE. The fees prescribed in 7MCAR§1.155 ~~regulation MHD 155~~ shall apply to all licenses which become effective on or after ~~January 1, 1975~~ September 1, 1979.

* * * * *

7 MCAR 1.165 ~~MHD-165~~ INITIAL AND RENEWAL LICENSE FEES: LICENSE EXPIRATION DATES

A. ~~(a)~~ Fee Schedule. Initial and renewal license applications for food and beverage establishments as defined in 7 MCAR 1.162 ~~MHD-162~~ shall be accompanied by the applicable fee as determined from the schedule below. The average number of employees shall be computed in accordance with Minnesota Statutes § 157.03.

Food or Beverage Establishment Fee Schedule

Number of Employees	Fee	Proposed Fee
1 - 4	~~$ 7.00~~	$ 21.00
5 - 18	~~$12.00~~	$ 36.00
19 - 28	~~$18.00~~	$ 54.00
29 - 35	~~$25.00~~	$ 75.00
36 and over	~~$30.00~~	$ 90.00
limited or temporary food service		$ 15.00

B. ~~(b)~~ ...

C. ~~(c)~~ ...

D. ~~(d)~~ ...

E. ~~(e)~~ ...

F. ~~(f)~~ Effective Date. The fees prescribed in ~~regulation MHD 165~~ 7 MCAR 1.165A shall apply to all licenses which become effective on or after ~~January~~ September 1, ~~1975~~ 1979.

4/30/79

7 MCAR § 1.162 ~~MHD 162~~. DEFINITIONS

...

M. ~~(m)~~ FOOD ESTABLISHMENT shall mean food and beverage service establishments as defined in Minnesota Statutes Chapter 157 and 144.72 and shall include drive-ins, bars, taverns, drive-in cafes, clubs, lodges, eating facilities at resorts and churches, temporary and limited food service establishments, except as exempted by Section 157.14.

...

W. LIMITED FOOD SERVICE ESTABLISHMENT shall mean an itinerant establishment, or one serving only prepackaged foods which receive no more than heat treatment.

7 MCAR §1.163 S ~~(MHB-163)~~

~~(s)~~ TEMPORARY OR LIMITED FOOD SERVICE ESTABLISHMENTS: A temporary or limited food-service establishment shall comply with all provisions of ~~this regulation~~ 7 MCAR §1.161-1.165 which are applicable to its operation: Provided, that the ~~Board~~ Commissioner may augment such requirements when needed to assure the service of safe food, may prohibit the sale of certain potentially hazardous food, and may modify specific requirements for physical facilities when in ~~its~~ his opinion no health hazard will result.

W. Emergency First Aid for Choking:

Any food service establishment which is not a temporary or limited food service establishment shall post a chart illustrating the use of an emergency first aid procedure which is approved by the commissioner for use to relieve a patron with a restricted airway. Such an illustration shall be posted in the food preparation area where all employees may easily see it.

4/30/79

MCAR: ~~MHD~~ 141. Public Swimming Pools

B. ~~(1)~~ Definitions. The following definitions shall apply in the interpretation and enforcement of this ~~Regulation~~ rule. The word "shall" as used herein indicates a mandatory requirement.

~~(1)~~. Swimming Pool. Any structure, basin, chamber, or tank containing an artificial body of water for swimming, diving, relaxation, or recreational bathing, including special purpose pools.

~~(2)~~. Public Swimming Pool. Any swimming pool, other than a private residential swimming pool, intended to be used collectively by numbers of persons for swimming or bathing, operated by any person as defined herein, whether he be owner, lessee, operator, licensee, or concessionaire, regardless of whether a fee is charged for such use.

~~(3)~~. Private Residential Swimming Pool. Any swimming pool, located on private property under the control of the homeowner, the use of which is limited to swimming or bathing by members of his family or their invited guests. (The design, construction, and operation of such pools are not subject to the provisions of this Regulation.)

~~(4)~~. Person. Any person, firm, partnership, association, corporation, company, governmental agency, club, or organization of any kind.

~~(5)~~. ~~State Board of Health. The State Board of Health of the State of Minnesota, hereinafter referred to as the Board.~~ Commissioner means commissioner of health.

~~(6)~~. Wading Pool. Any pool used or designed to be used exclusively for wading or bathing and having a maximum depth of 24 inches.

~~(7)~~. Special Purpose Pool. Treatment pools, therapeutic pools, ~~and~~ special pools for water therapy, whirlpools, spas, and cold plunges.

. . .

3/2/79

. . . .

B. ~~(b)~~ Definitions. The following definitions shall apply in the interpretation and enforcement of this ~~Regulation~~ rule. The word "shall" as used herein indicates a mandatory requirement.

~~(1)~~ Swimming Pool. Any structure, basin, chamber, or tank containing an artificial body of water for swimming, diving, relaxation, or recreational bathing, including special purpose pools.

~~(2)~~ Public Swimming Pool. Any swimming pool, other than a private residential swimming pool, intended to be used collectively by numbers of persons for swimming or bathing, operated by any person as defined herein, whether he be owner, lessee, operator, licensee, or concessionaire, regardless of whether a fee is charged for such use.

~~(3)~~ Private Residential Swimming Pool. Any swimming pool, located on private property under the control of the homeowner, the use of which is limited to swimming or bathing by members of his family or their invited guests. (The design, construction, and operation of such pools are not subject to the provisions of this Regulation.)

~~(4)~~ Person. Any person, firm, partnership, association, corporation, company, governmental agency, club, or organization of any kind.

~~(5)~~ ~~State Board of Health. The State Board of Health of the State of Minnesota, hereinafter referred to as the Board~~. Commissioner means commissioner of health.

~~(6)~~ Wading Pool. Any pool used or designed to be used exclusively for wading or bathing and having a maximum depth of 24 inches.

~~(7)~~ Special Purpose Pool. Treatment pools, therapeutic pools, ~~and~~ special pools for water therapy, whirlpools, spas, and cold plunges.

. . .

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

COMMISSIONER OF HEALTH

In the Matter of Proposed Amendments to Rules Relating to Food, Beverage and Lodging Establishments, to License Fees and to Swimming Pools	* * * * * * *	FINDINGS AND CONCLUSIONS

The above-entitled matter came on for hearing before the Commissioner of Health on the 22nd day of June, 1979 in Room 105 of the Minnesota Department of Health Building, presided over by Natalie Gaull of the Minnesota Office of Hearing Examiners, after proper notice as required by Minn. Stat. § 15.0412 (1978) had been served upon all persons, associations, and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, I hereby adopt the relevant Findings and Conclusions which were contained in the report submitted by the Hearing Examiner on August 13, 1979, a copy of which is attached hereto and made a part hereof, with the following changes:

7 MCAR § 1.152 S.1. shall be adopted as follows:

"after the effective date of this rule any newly constructed lodging establishment which installs ~~or replaces~~ ice-making equipment, and any existing lodging establishment which installs or replaces ice-making equipment, shall install only automatic dispensing, sanitary ice-making and storage equipment in areas to which the public has access. Any such establishment may install open-type ice bins only if the ice therefrom is dispensed in the manner provided in subpart S.2."

The words "or replaces" are being deleted because they are inappropriate in that sentence. The words were not contained in the version which was printed as proposed in the State Register (3 S.R. 2059). The words were inadvertently added to the post-hearing revision which was submitted to the Hearing Examiner by the agency.

7 MCAR § 1.162 W. shall be adopted as follows:

"Limited Food Service Establishment shall mean an itinerant establishment, or one serving only prepackaged foods, (eg., frozen pizza and sandwiches) which receive no more than heat treatment.

The phrase in parenthesis is being included for the purpose of giving the reader an example of the types of foods which are deemed to come under this provision.

STATE OF MINNESOTA

DATED: Sept. 20, 1979

for Ellen Z. Fiterman M.D.
George R. Pettersen, M.D.
Commissioner of Health

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE MINNESOTA DEPARTMENT OF HEALTH

In the Matter of Proposed Amendments to Rules Relating to Food, Beverage and Lodging Establishments, to License Fees, to Clean Indoor Air and to Swimming Pools.

REPORT OF HEARING EXAMINER

The above-entitled matter came on for hearing before Natalie L. Gaull, duly appointed Hearing Examiner, on June 22, 1979, in Room 105, Minnesota Department of Health Building, 717 Delware Street Southeast, Minneapolis, Minnesota, at 9:30 a.m.

This proceeding is a rules hearing held pursuant to Minn. Stat. Ch. 15, to determine whether the proposed amendments should be adopted. Copies of this Report are available for review from the Minnesota Department of Health (hereinafter "the Department") and from the Office of Hearing Examiners.

Members of the Agency Panel included: William G. Miller, Special Assistant Attorney General; Pauline Bouchard, Assistant to the Director, Division of Environmental Health; and Charles B. Schneider, Chief, Section of Environmental Field Services, Division of Environmental Health.

Approximately 15 persons were present at the hearing and signed the hearing register. Approximately six persons spoke at the hearing. Approximately 243 written comments were received by the Examiner subsequent to the issuance of the Order for Hearing and prior to the close of the record on July 12, 1979. Any comments received after the close of the record are forwarded to the Commissioner, but were not considered by the Examiner.

Pursuant to Minn. Stat. Sec. 15.0412, subd. 4, this Report shall be available for review to all affected individuals upon request for at least five days. The Board shall, if it proposes to adopt the rules as originally proposed or amended, submit the complete hearing record, including its Findings and Order, to the Chief Hearing Examiner no earlier than five days subsequent to the receipt of this Report. This submission shall clearly indicate any changes made to the rules as originally proposed, preferably in the format that will be submitted to the State Register for publication. The Chief Hearing Examiner shall complete his review and submit his report to the Commissioner on the issues of substantial changes in the rule and compliance with Minn. Stat. Sec. 15.0412 within ten calendar days. Thereafter, the Commissioner shall be responsible for filing the rules with the Attorney General and for notifying persons who have indicated that they wish to be notified of such filing.

Based upon the testimony, exhibits and written comments, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. On May 1, 1979, the Department filed the following documents with the Chief Hearing Examiner:

(a) The proposed Order for Hearing.
(b) The proposed Notice of Hearing.
(c) The Statement of the number of persons expected to attend and the length of hearing.

2. On May 24, 1979, the Department filed the following documents with the Hearing Examiner:

(a) The Notice of Hearing.
(b) The Order for Hearing.
(c) The Statement of Agency Testimony.
(d) The Affidavit of Receipt of the Secretary of State's list.
(e) The Secretary of State's Certificate.
(f) The Affidavit of Mailing.
(g) The Statement of Need and Reasonableness.

3. All of the above documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of the hearing.

4. On May 21, 1979, a Notice of Hearing and a copy of the proposed amendments were published at 3 State Register 2055.

5. On May 22, 1979, a copy of the Notice of Hearing was mailed to all persons and associations who had registered their names with the Secretary of State, to other interested persons and associations listed on Attachment B to Agency Exhibit No. 6, and to members of the Minnesota Legislature as of the date of mailing.

6. The record remained open through July 12, 1979, for the receipt of written comments and statements.

Swimming Pools - 7 MCAR Sec. 1.141 B.

7. The proposed amendments to the rules regarding public swimming pools include the change from "regulation" to "rule", the change of "Board" to "Commissioner", and the addition of whirlpools, spas and cold plunges to the definition of a special purpose pool. The statutory authority for the proposed amendment is Minn. Stat. Sec. 144.05 (c) which requires the Commissioner to establish and enforce health standards for the protection and promotion of the public's health. There was no comment either at the public hearing or in writing with regard to the proposed amendments. The Statement of Need and Reasonableness with regard to the proposed amendments is incorporated by reference herein and appended as Exhibit A hereto. The Examiner finds that the Department has demonstrated that it has statutory authority to adopt the proposed amendments and that the amendments as proposed are necessary and reasonable.

Fees - 7 MCAR Sec. 1.155 and Sec. 1.165 A.

8. The proposed amendments increase by a factor of three the license fees for lodging establishments and for food and beverage establishments.

The Commissioner's authority to prescribe license fees for food, beverage and lodging establishments is provided in Minn. Stat. Sec. 157.03 and Minn. Stat. Sec. 144.122. Minn. Stat. Sec. 144.122 requires that all fees: (1) must be reasonable, (2) must first be approved by the Department of Finance, and (3) must be in an amount such that the total fees selected by the Commissioner will, where practical, approximate the cost to the Commissioner in administering the program. The Department has submitted approval by the Commissioner of Finance necessary to comply with the preceding statute (Agency Exhibit No. 10). The Statement of Need and Reasonableness with regard to the proposed change contains data indicating the revenue to be realized during fiscal years 1979-1981 as a result of the change. The Statement of Need and Reasonableness is incorporated by reference herein and appended hereto as Exhibit B. At the hearing, Thomas W. Newcome, Attorney at Law, representing the Minnesota Restaurant and Food Service Association, Minnesota Hotel and Motor Hotel Association and Minnesota Resort Association, indicated that the proposed increases may impose a hardship on some small operators. The Examiner received written comment from Brian Smith, Community Health Services Coordinator, Le Sueur Waseca Board of Health, suggesting that the proposed fees be increased two-fold from the current level. Thomas L. Heenan, Supervising Sanitarian for the Health Department, City of Crystal, submitted written comments that the proposed license fees seemed too low to permit recovery of costs. It should be noted that the Commissioner proposes a new license category for "limited food service". (See, Finding at Paragraph 9.) The Examiner finds that there is statutory authority to adopt the proposed amendments and that the amendments, as proposed, are necessary and reasonable.

Restaurants and Places of Refreshment - 7 MCAR Sec. 1.162 - 7 MCAR Sec. 1.163

9. The statutory authority for these amendments is contained in Minn. Stat. Sec. 144.05 (c) and Minn. Stat. Ch. 157. The Department indicates that the authority to adopt rules contained in the preceding statutes necessarily carries with it the authority to revise or amend those rules when conditions change. The amendments to 7 MCAR Sec. 1.162 would add "temporary" and "limited" food service establishments to the definition of food establishment contained in 7 MCAR Sec. 1.162 M. "Limited food service establishment" is defined in 7 MCAR Sec. 1.162 W. The term "limited food service establishment" is added to 7 MCAR Sec. 1.163 S. The proposed amendments also add a new section, 7 MCAR Sec. 1.163 W. requiring any food service establishment other than a temporary or limited food service establishment to post a chart illustrating the use of an emergency first aid procedure approved by the Commissioner to relieve a patron with a restricted airway. There were comments in the record endorsing the Heimlich method of first aid for choking victims, instead of the method illustrated on the chart attached to the proposed rules. There seems to be a valid difference of opinion as to the relative desirability of using the Heimlich method as

opposed to the one selected by the Health Department. The Statement of Need and Reasonableness with regard to these amendments submitted by the Department of Health is incorporated by reference herein and attached as Exhibit C. hereto. The Examiner finds that there is statutory authority to adopt the proposed amendments and that the amendments, as proposed, are necessary and reasonable.

Lodging Establishments - 7 MCAR Sec. 1.151 and Sec. 1.152

10. The amendments to the rules governing lodging establishments are in part technical amendments changing the word "regulation" to "rule" and "Board" to "Commissioner". The statutory authority for amendment of these rules is cited as Minn. Stat. Sec. 144.12, subd. 1(6). The Department states that the authority to adopt rules contained in that statute necessarily carries with it the responsibility to revise or amend such rules when changed conditions affect their applicability or scope. The amendments to the rules delete 7 MCAR Sec. 1.151 (e) which defines departmental standards. The reason for the deletion is because such standards do not exist apart from the rules. 7 MCAR Sec. 1.152 E. is being amended to delete the design requirement for air vents because the standards of the Minnesota Energy Agency which have been incorporated into the State Building Code have superseded that rule.

11. 7 MCAR Sec. 1.152 I. and K. are being amended to add new provisions specifying an upper limit for the temperature of hot water supplied in public areas of lodging establishments. The Department has submitted data supporting the proposal that 130 degrees Fahrenheit is the highest temperature which ought to be permitted in order to avoid serious burns. At the hearing and in written comment, the Minnesota Motel Association requested a one year delay in the implementation of this section to permit time to inform members of the change in the rules as well as time to make necessary changes. The Minnesota Restaurant and Food Service Association, Minnesota Hotel and Motor Hotel Association and Minnesota Resort Association suggested that the date for compliance with this amendment be two to three years after the effective date of the rule. The representative of those Associations noted that in many cases the present equipment is controlled by a single control, and that it is not possible to make the water in the rooms a lower temperature while maintaining the necessary temperature for dishwashing. The minimum cost of a conversion to a dual control system would be approximately $1,000. Therefore, a two to three year delay would be necessary to implement the change.

Following the public hearing, the Department proposed to amend the proposed addition to 7 MCAR Sec. 1.152 J. as follows:

> After September 30, 1980, the temperature of hot water which is provided in any public area or guest room, including but not limited to lavatories, bathtubs or showers shall not exceed 130 degrees F. (approximately 55 degrees C.).

The Department also proposes to delete the amendments proposed to 7 MCAR Sec. 1.152 I. and 7 MCAR Sec. 1.152 K.

The Department proposes to strike the waiver provision contained in 7 MCAR Sec. 1.152 J. in order to ensure consistency by requiring waivers to be made under the Minnesota Plumbing Code.

12. There are several proposed amendments to 7 MCAR Sec. 1.152 L. First, the heading is being changed from "Cleaning and Bactericidal Treatment" to "Eating Utensils and Drinking Vessels Provided in Guest Rooms". 7 MCAR Sec. 1.152 L.1. is being amended to delete the requirement that dishwashers shall be equipped with thermometers. The reasoning behind this change is that the National Sanitation Foundation Standard No. 3 cited in that portion of the rule includes the thermometer requirement. In addition, the two specific bactericidal processes are being deleted from the section because there are now dozens of commercially available effective bactericidal processes from which to choose. A new section, 7 MCAR Sec. 1.152 L.2. has been added dealing with single serviced utensils or vessels which have only come into use since the promulgation of the original rules. 7 MCAR Sec. 1.152 M. is being revised by substituting rules of the Minnesota Pollution Control Agency for standards of the Board. This reflects the failure of the Board to promulgate such standards and the adoption of WPC-40 by the PCA which governs the design, construction and installation of individual sewage disposal systems. 7 MCAR Sec. 1.152 N. has been amended to provide a means by which serious pest infestations can be controlled.

13. 7 MCAR Sec. 1.152 S. is a new section being added to control the availability of ice cubes to lodging establishment guests. At the hearing, there was some confusion expressed as to the actual requirements of the proposed rule. The Minnesota Motel Association suggested that 7 MCAR Sec. 1.152 S.1. should be clarified as to the placement of machines that are not accessible to the public. It was also suggested that the December 31, 1982 date for compliance was unrealistic and that an additional three years should be permitted for compliance. The representative of the Minnesota Restaurant and Food Service Association, Minnesota Hotel and Motor Hotel Association and Minnesota Resort Association indicated that the amendment, if adopted, should not become effective until 1985, to allow properties which have recently purchased open-type ice bins a reasonable time to amortize their investment. It was also noted that continued of open-type ice bins by having ice dispensed by employees in sanitary containers is not a workable solution for many properties.

In response to those comments, the Department proposed to amend the proposed amendment to read as follows:

> After the effective date of this rule any newly constructed lodging establishment which installs or replaces ice-making equipment, and any existing lodging establishment which installs or replaces ice-making equipment shall install only automatic dispensing, sanitary ice-making and storage equipment in areas to which the public has access. Any such establishment may install open-type ice bins only if the ice therefrom is dispensed in the manner provided in subpart S.2.

2. After December 31, ~~1982~~ 1984, any existing lodging establishment . . . .

The changes are primarily to clarify the intent of the change and to accommodate the request made at the hearing for an extension of time to implement the proposed rules.

The Examiner finds that the Commissioner has statutory authority to adopt the proposed amendments, as modified, and that the proposed amendments as modified are necessary and reasonable.

Clean Indoor Air Act - 7 MCAR Sec. 1.441-1.444

14. The statutory authority for amendment of these rules is cited as Minn. Stat. Sec. 144.417, which gives the Commissioner authority to adopt rules and regulations necessary and reasonable to implement the provisions of the Clean Indoor Air Act. The Commissioner argues that the authority to adopt rules necessarily implies a responsibility to amend the rules if their administration becomes ineffective or when it becomes clear that new language would improve the manner in which the legislative intent is carried out.

15. It should be noted that the Hearing Examiner has received more than 200 written comments on this portion of the proposed amendments. It is a fair summary of those comments to indicate that they all favored the amendments to the proposed rules regarding the Clean Indoor Air Act, and that most would favor even stricter controls.

16. 7 MCAR Sec. 1.442 A. is amended to define an acceptable smoke-free area as one which measures a minimum of 200 square feet. This size was chosen as a result of observations made by health inspectors in a variety of public places.

7 MCAR Sec. 1.442 A.2.(dd.) is being deleted because it was determined that it was nearly impossible to make reliable measurements of carbon monoxide concentrations within the time available for carrying out an inspection.

7 MCAR Sec. 1.442 N., the definition of public conveyance, has been amended to specifically include commuter vans or buses whether or not operated for compensation. The amendment also specifies that it does not include privately owned vehicles used for private purposes.

7 MCAR Sec. 1.443 B. requires posting of a notice advising persons of the existence of no smoking and smoking permitted areas. It also requires the posting of a statement that "smoking is prohibited except in designated areas" at all major entrances to any public place. The Department submitted post-hearing comment amending that section as follows:

> Notice to be posted. To advise persons of the existence of "No Smoking" and "Smoking Permitted" areas. "No Smoking" and "Smoking Permitted" signs shall be posted in the appropriate areas. In addition, the statement "Smoking is prohibited except in designated areas" shall be conspicuously posted at all major entrances to any public place.

The purpose of the amendment is to direct the public's attention to the primary purpose of the law.

7 MCAR Sec. 1.443 C.4.(c.) was proposed to be amended to provide a minimum smoke-free area of 200 square feet or 30% of the total public area, whichever is greater, excluding hallways, foyers or similar waiting areas. At the hearing, there was testimony indicating that a minimum of 200 square feet was too restrictive for small restaurants and might force them to be designated "no smoking" in their entirety. As a result of those comments, the Department proposes to add the following sentence:

> A restaurant need not comply with the minimum square footage requirement and shall be deemed in compliance if 30% of the seats in the eating area are designated as "no smoking".

7 MCAR Sec. 1.443 C.5. permits smoking in a private office. It also defines private office. The Department submitted post-hearing comment indicating its intent to modify the amendments by deleting 7 MCAR Sec. 1.441 D. because it is no longer used in the rules.

7 MCAR Sec. 1.443 E.3. governs the content of signs and permits the use of international symbols in addition to or in place of the written message. The amendment to 7 MCAR Sec. 1.443 E.4. and 5. specifies a minimum symbol size when international symbols are used in different settings.

7 MCAR Sec. 1.443 E.7. is amended to require a restaurant or other public place which has controlled seating to ask each person whether he or she prefers smoking or no smoking before directing them to a seat. It also requires a restaurant or public place which takes advance reservations shall ask the person's preference at the time the reservation is made. Such restaurants using controlled seating are exempt from the sign requirements of 7 MCAR Sec. 1.443 E.3., 4., 5. and 6. There was testimony at the hearing from representatives of various restaurants and restaurant associations objecting to the requirement that table reservations taken by telephone must indicate smoking permitted or no smoking area. There was testimony that this would result in confusion and that many people would change their minds upon arrival. Following the hearing, the Department proposed to amend 7 MCAR Sec. 1.443 E.7. as follows:

> . . . before directing that person to a seat in the appropriate area. <u>At least one sign advising the public of this mechanism shall be conspicuously posted at all entrances normally used by the public.</u> Similarly a restaurant or other public place . . . .

7 MCAR Sec. 1.443 G. defines permissible ash trays in no smoking areas and requires permanent ash trays at the entrances to no smoking areas.

Former Minn. Rule MHD 444(e)(2)(f) is being stricken as it addresses smoking by minors in educational facilities, an activity already prohibited by state law, Minn. Stat. Sec. 609.685.

7 MCAR Sec. 1.444 F.4. adds a prohibition against smoking in corridors, emergency rooms, treatment rooms, admitting areas and intensive care units of hospitals.

The Examiner finds that the Commissioner has statutory authority to adopt the preceding amendments, as modified, and that they are necessary and reasonable as proposed.

Based upon the foregoing Findings of Fact, the Examiner makes the following:

CONCLUSIONS

1. That the Department gave proper notice of the promulgation of the proposed rules.

2. That the Commissioner has statutory authority to take the action proposed, to wit, the promulgation of the proposed rules.

3. That the Department has fulfilled all relevant, substantive and procedural requirements of law or rule.

4. That the Department has demonstrated the need for and reasonableness of the proposed amendments by an affirmative presentation of facts in the record.

Based upon the foregoing Conclusions, the Hearing Examiner makes the following:

RECOMMENDATION

It is recommended that the Commissioner of Health adopt the proposed rules with consideration given to the Findings of Fact herein.

Dated: August 13, 1979.

NATALIE L. GAULL
Hearing Examiner

ADMIN. 1000A (REV. 8/76)

STATE OF MINNESOTA

DEPARTMENT Health

Office Memorandum

TO : Judith Wehrwein
AG's Office - Admin.

DATE: 11/21/79

RECEIVED
NOV 28 1979
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

FROM : Pauline Bouchard
Div. of Env. Health

PHONE: 5331

SUBJECT: Attached Documents for Hearing of 6/22/79
"In the Matter of Proposed Amendments to Rules Relating to Food, Beverage & Lodging Establishments, to License Fees and to Swimming Pools"

Bill Miller (SAAG, Health) informed me that you were now requesting that additional documents and/or copies be submitted as part of the package

for review. I have attached the following:

(1) Sec. of State's mailing list (3 parts)
(1) Copy of Hearing Examiner's Report
(1) Notice of Hearing as published.

B

xc - Bill Miller

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL - Health

Office Memorandum

TO : Lee Sheehy
Special Assistant
Attorney General

DATE: November 14, 1979

FROM : William G. Miller
Special Assistant
Attorney General

PHONE: 341-7272

SUBJECT: In the Matter of Proposed Amendments to Rules Relating to Food, Beverage & Lodging Establishments, to License Fees, and to Swimming Pools

I have enclosed for your review the required documents related to the above-referenced rules. Those persons requesting notification of this submission have been so notified. You will note that while the hearing on the rules related to the Clean Indoor Air Act (CIAA) was held concurrently with the hearing for the above rules, the CIAA rules will be submitted for separate review at a later date.

WGM:rlb

Enclosure

PRINTED ON RECYCLED PAPER

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE COMMISSIONER OF HEALTH

IN THE MATTER OF PROPOSED AMENDMENTS TO RULES RELATING TO FOOD, BEVERAGE AND LODGING ESTABLISHMENTS, TO LICENSE FEES AND TO SWIMMING POOLS.

REPORT OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on June 22, 1979, before Natalie L. Gaull, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 15.052, subd. 3, was issued to the Commissioner on August 13, 1979; and

WHEREAS, the Commissioner has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Commissioner has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, subd. 4, and 9 MCAR § 2.110; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the Commissioner has met all requirements of Minn. Stat. § 15.0412, subd. 4.

NOW, THEREFORE, upon receipt of this Report, the Commissioner has the responsibility of submitting the complete hearing record and the rules as adopted by the Commissioner to the Attorney General, notifying all persons who requested to be informed that the hearing record has been submitted to the Attorney General, and publishing in the State Register, all pursuant to Minn. Stat. § 15.0412, subd. 4.

Dated this 11th day of October, 1979.

DUANE R. HARVES
Chief Hearing Examiner

COST OF THIS COPY PAID BY MINNESOTA TAXPAYERS

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

COMMISSIONER OF HEALTH

In the Matter of Proposed Amendments to Rules Relating to Food, Beverage & Lodging Establishments, to License Fees, to Clean Indoor Air and to Swimming Pools	* * * *	Amendments To Rules As Proposed And Justification For Such Amendments

A hearing was held on the above-captioned rules on June 22, 1979. At the hearing, several members of the public who would be directly affected thereby suggested that certain changes be made to the revisions which the agency had proposed. In response to some of the suggestions which were made, we propose to make the following changes:

1) 7 MCAR § 1.152 J. shall read as follows:*

"Water supply. A safe adequate supply of H_2O shall be provided. The water supply system shall be located, constructed and operated in accordance with the rules of the commissioner. After September 30, 1980, the temperature of hot water which is provided in any public area or guest room, including but not limited to lavatories, bath tubs or showers, shall not exceed 130° F. (approximately 55° C.).

7 MCAR § 1.152 I. ...~~The hot water temperature shall not exceed 130° F. (approximately 55° C.).~~ ...

7 MCAR § 1.152 K. ...~~The hot water temperature shall not exceed 130° F. (approximately 55° C.).~~ ...

The requirement for setting a maximum temperature for hot water in those areas serving the public is being amended to take effect after the tourist season has peaked in 1980. In effect, hotel, motel and resort owners will have had approximately one year after the revision is adopted (approximately October, 1979) in which to make any plumbing changes which may be necessitated by the new temperature maximum. This compliance date is being postponed to accomodate the requests made at the public hearing. It is not likely that any serious consequences will result if the effective date is postponed for a year. For these reasons, the revision noted above is being proposed for adoption.

* New language is underlined. Language to be stricken has a line drawn through it.

2) 7 MCAR § 1.152 S.1. shall read as follows:

"after the effective date of this rule any newly constructed lodging establishment which installs ~~or replaces~~ ice-making equipment, and any existing lodging establishment which installs or replaces ice-making equipment, shall install only automatic dispensing, sanitary ice-making and storage equipment in areas to which the public has access. Any such establishment may install open-type ice bins only if the ice therefrom is dispensed in the manner provided in subpart S.2.

2. after December 31, ~~1982~~ 1984, any existing lodging establishment ..."

The changes above are proposed in response to suggestions made at the hearing. The first change, the addition of the words "installs or" is being made to correct an inadvertent omission in the draft which was printed in the State Register. The second addition reflects the need to explain more clearly the intent of the change. The agency does not intend to prohibit use of open-bin ice machines, but merely to restrict the public's access to them. The new language states this intent with regard to installations made after the effective date of the rule. The third change would postpone by two years the date by which establishments must restrict the manner in which ice is dispensed to guests. This postponement is made to accomodate the request made at the hearing by the representative of the motel association.

3) 7 MCAR § 1.441 D. shall be stricken in its entirety. There is no need to define the term since it is no longer used in the revision which was proposed. The remaining definitions in the rule will be relabelled to reflect this delition.

4) 7 MCAR § 1.443 B. shall read as follows:

"Notice to be posted. To advise persons of the existence of "No Smoking" and "Smoking Permitted" areas, "No Smoking" and "Smoking Permitted" signs shall be posted in the appropriate areas. In addition, the statement "Smoking is prohibited except in designated areas" shall be conspicuously posted at all major entrances to any public place."

This addition will serve to give another reminder to smokers in those areas where smoking is prohibited. The requirement directs the attention of the public to the primary purpose of the law.

5) 7 MCAR § 1.443 C.4.c. shall have the following sentence added:

"A restaurant need not comply with the minimum square footage requirement and shall be deemed in compliance if 30% of the seats in the eating area are designated as "No Smoking."

This added language relaxes the requirement which was shown to be a very restrictive one for small restaurants. The purpose for imposing a fixed minimum is still being met, i.e., a certain proportion of non-smokers will be able to be seated. On the other hand, a person in charge of a 20 feet by 10 feet eating area will not be forced to designate such a small restaurant as a "No Smoking" restaurant in its entirety.

6) 7 MCAR § 1.443 E.7. shall read as follows:

"A restaurant or other public place which has controlled seating (an employee directs patrons to seating or waiting areas) must ask each person whether he prefers a Smoking Permitted or a No Smoking area before directing that person to a seat in the appropriate area. At least one sign advising the public of this mechanism shall be conspicuously posted at all entrances normally used by the public. Similarly a restaurant or other public place which takes advance reservations shall ask the person's preference for a Smoking Permitted or No Smoking area at the time the reservation is made. A restaurant or other public place which uses controlled seating as defined above shall be exempt from the sign requirements contained in 7 MCAR § 1.443 E.3., 4., 5. and 6."

The result of this change is to leave in the rule a requirement which was originally contained in it. The message contained in this sentence is necessary to inform the public of the procedure by which they may be seated in either a No Smoking or Smoking Permitted area.

The foregoing changes are being proposed in response to suggestions made by the public at the hearing. The changes also reflect the need for further clarification which was evidenced by some of the questions posed at the hearing. Since the changes proposed above will result in no significant new burdens to the regulated groups, they are reasonable. To the extent that the proposed changes clarify and further the purposes of the enabling laws they are necessary.

Minnesota Department of Health

Date: July 9, 1979

Roger L. McFoos, Ph.D., Director
Division of Environmental Health

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE MINNESOTA DEPARTMENT OF HEALTH

In the Matter of Proposed Amendments to Rules Relating to Food, Beverage and Lodging Establishments, to License Fees, to Clean Indoor Air and to Swimming Pools.

REPORT OF HEARING EXAMINER

The above-entitled matter came on for hearing before Natalie L. Gaull, duly appointed Hearing Examiner, on June 22, 1979, in Room 105, Minnesota Department of Health Building, 717 Delware Street Southeast, Minneapolis, Minnesota, at 9:30 a.m.

This proceeding is a rules hearing held pursuant to Minn. Stat. Ch. 15, to determine whether the proposed amendments should be adopted. Copies of this Report are available for review from the Minnesota Department of Health (hereinafter "the Department") and from the Office of Hearing Examiners.

Members of the Agency Panel included: William G. Miller, Special Assistant Attorney General; Pauline Bouchard, Assistant to the Director, Division of Environmental Health; and Charles B. Schneider, Chief, Section of Enviromental Field Services, Division of Environmental Health.

Approximately 15 persons were present at the hearing and signed the hearing register. Approximately six persons spoke at the hearing. Approximately 243 written comments were received by the Examiner subsequent to the issuance of the Order for Hearing and prior to the close of the record on July 12, 1979. Any comments received after the close of the record are forwarded to the Commissioner, but were not considered by the Examiner.

Pursuant to Minn. Stat. Sec. 15.0412, subd. 4, this Report shall be available for review to all affected individuals upon request for at least five days. The Board shall, if it proposes to adopt the rules as originally proposed or amended, submit the complete hearing record, including its Findings and Order, to the Chief Hearing Examiner no earlier than five days subsequent to the receipt of this Report. This submission shall clearly indicate any changes made to the rules as originally proposed, preferably in the format that will be submitted to the State Register for publication. The Chief Hearing Examiner shall complete his review and submit his report to the Commissioner on the issues of substantial changes in the rule and compliance with Minn. Stat. Sec. 15.0412 within ten calendar days. Thereafter, the Commissioner shall be responsible for filing the rules with the Attorney General and for notifying persons who have indicated that they wish to be notified of such filing.

Based upon the testimony, exhibits and written comments, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. On May 1, 1979, the Department filed the following documents with the Chief Hearing Examiner:

(a) The proposed Order for Hearing.
(b) The proposed Notice of Hearing.
(c) The Statement of the number of persons expected to attend and the length of hearing.

2. On May 24, 1979, the Department filed the following documents with the Hearing Examiner:

(a) The Notice of Hearing.
(b) The Order for Hearing.
(c) The Statement of Agency Testimony.
(d) The Affidavit of Receipt of the Secretary of State's list.
(e) The Secretary of State's Certificate.
(f) The Affidavit of Mailing.
(g) The Statement of Need and Reasonableness.

3. All of the above documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of the hearing.

4. On May 21, 1979, a Notice of Hearing and a copy of the proposed amendments were published at 3 State Register 2055.

5. On May 22, 1979, a copy of the Notice of Hearing was mailed to all persons and associations who had registered their names with the Secretary of State, to other interested persons and associations listed on Attachment B to Agency Exhibit No. 6, and to members of the Minnesota Legislature as of the date of mailing.

6. The record remained open through July 12, 1979, for the receipt of written comments and statements.

Swimming Pools - 7 MCAR Sec. 1.141 B.

7. The proposed amendments to the rules regarding public swimming pools include the change from "regulation" to "rule", the change of "Board" to "Commissioner", and the addition of whirlpools, spas and cold plunges to the definition of a special purpose pool. The statutory authority for the proposed amendment is Minn. Stat. Sec. 144.05 (c) which requires the Commissioner to establish and enforce health standards for the protection and promotion of the public's health. There was no comment either at the public hearing or in writing with regard to the proposed amendments. The Statement of Need and Reasonableness with regard to the proposed amendments is incorporated by reference herein and appended as Exhibit A hereto. The Examiner finds that the Department has demonstrated that it has statutory authority to adopt the proposed amendments and that the amendments as proposed are necessary and reasonable.

Fees - 7 MCAR Sec. 1.155 and Sec. 1.165 A.

8. The proposed amendments increase by a factor of three the license fees for lodging establishments and for food and beverage establishments.

The Commissioner's authority to prescribe license fees for food, beverage and lodging establishments is provided in Minn. Stat. Sec. 157.03 and Minn. Stat. Sec. 144.122. Minn. Stat. Sec. 144.122 requires that all fees: (1) must be reasonable, (2) must first be approved by the Department of Finance, and (3) must be in an amount such that the total fees selected by the Commissioner will, where practical, approximate the cost to the Commissioner in administering the program. The Department has submitted approval by the Commissioner of Finance necessary to comply with the preceding statute (Agency Exhibit No. 10). The Statement of Need and Reasonableness with regard to the proposed change contains data indicating the revenue to be realized during fiscal years 1979-1981 as a result of the change. The Statement of Need and Reasonableness is incorporated by reference herein and appended hereto as Exhibit B. At the hearing, Thomas W. Newcome, Attorney at Law, representing the Minnesota Restaurant and Food Service Association, Minnesota Hotel and Motor Hotel Association and Minnesota Resort Association, indicated that the proposed increases may impose a hardship on some small operators. The Examiner received written comment from Brian Smith, Community Health Services Coordinator, Le Sueur Waseca Board of Health, suggesting that the proposed fees be increased two-fold from the current level. Thomas L. Heenan, Supervising Sanitarian for the Health Department, City of Crystal, submitted written comments that the proposed license fees seemed too low to permit recovery of costs. It should be noted that the Commissioner proposes a new license category for "limited food service". (See, Finding at Paragraph 9.) The Examiner finds that there is statutory authority to adopt the proposed amendments and that the amendments, as proposed, are necessary and reasonable.

Restaurants and Places of Refreshment - 7 MCAR Sec. 1.162 - 7 MCAR Sec. 1.163

9. The statutory authority for these amendments is contained in Minn. Stat. Sec. 144.05 (c) and Minn. Stat. Ch. 157. The Department indicates that the authority to adopt rules contained in the preceding statutes necessarily carries with it the authority to revise or amend those rules when conditions change. The amendments to 7 MCAR Sec. 1.162 would add "temporary" and "limited" food service establishments to the definition of food establishment contained in 7 MCAR Sec. 1.162 M. "Limited food service establishment" is defined in 7 MCAR Sec. 1.162 W. The term "limited food service establishment" is added to 7 MCAR Sec. 1.163 S. The proposed amendments also add a new section, 7 MCAR Sec. 1.163 W. requiring any food service establishment other than a temporary or limited food service establishment to post a chart illustrating the use of an emergency first aid procedure approved by the Commissioner to relieve a patron with a restricted airway. There were comments in the record endorsing the Heimlich method of first aid for choking victims, instead of the method illustrated on the chart attached to the proposed rules. There seems to be a valid difference of opinion as to the relative desirability of using the Heimlich method as

opposed to the one selected by the Health Department. The Statement of Need and Reasonableness with regard to these amendments submitted by the Department of Health is incorporated by reference herein and attached as Exhibit C. hereto. The Examiner finds that there is statutory authority to adopt the proposed amendments and that the amendments, as proposed, are necessary and reasonable.

Lodging Establishments - 7 MCAR Sec. 1.151 and Sec. 1.152

10. The amendments to the rules governing lodging establishments are in part technical amendments changing the word "regulation" to "rule" and "Board" to "Commissioner". The statutory authority for amendment of these rules is cited as Minn. Stat. Sec. 144.12, subd. 1(6). The Department states that the authority to adopt rules contained in that statute necessarily carries with it the responsibility to revise or amend such rules when changed conditions affect their applicability or scope. The amendments to the rules delete 7 MCAR Sec. 1.151 (e) which defines departmental standards. The reason for the deletion is because such standards do not exist apart from the rules. 7 MCAR Sec. 1.152 E. is being amended to delete the design requirement for air vents because the standards of the Minnesota Energy Agency which have been incorporated into the State Building Code have superseded that rule.

11. 7 MCAR Sec. 1.152 I. and K. are being amended to add new provisions specifying an upper limit for the temperature of hot water supplied in public areas of lodging establishments. The Department has submitted data supporting the proposal that 130 degrees Fahrenheit is the highest temperature which ought to be permitted in order to avoid serious burns. At the hearing and in written comment, the Minnesota Motel Association requested a one year delay in the implementation of this section to permit time to inform members of the change in the rules as well as time to make necessary changes. The Minnesota Restaurant and Food Service Association, Minnesota Hotel and Motor Hotel Association and Minnesota Resort Association suggested that the date for compliance with this amendment be two to three years after the effective date of the rule. The representative of those Associations noted that in many cases the present equipment is controlled by a single control, and that it is not possible to make the water in the rooms a lower temperature while maintaining the necessary temperature for dishwashing. The minimum cost of a conversion to a dual control system would be approximately $1,000. Therefore, a two to three year delay would be necessary to implement the change.

Following the public hearing, the Department proposed to amend the proposed addition to 7 MCAR Sec. 1.152 J. as follows:

> After September 30, 1980, the temperature of hot water which is provided in any public area or guest room, including but not limited to lavatories, bathtubs or showers shall not exceed 130 degrees F. (approximately 55 degrees C.).

The Department also proposes to delete the amendments proposed to 7 MCAR Sec. 1.152 I. and 7 MCAR Sec. 1.152 K.

The Department proposes to strike the waiver provision contained in 7 MCAR Sec. 1.152 J. in order to ensure consistency by requiring waivers to be made under the Minnesota Plumbing Code.

12. There are several proposed amendments to 7 MCAR Sec. 1.152 L. First, the heading is being changed from "Cleaning and Bactericidal Treatment" to "Eating Utensils and Drinking Vessels Provided in Guest Rooms". 7 MCAR Sec. 1.152 L.1. is being amended to delete the requirement that dishwashers shall be equipped with thermometers. The reasoning behind this change is that the National Sanitation Foundation Standard No. 3 cited in that portion of the rule includes the thermometer requirement. In addition, the two specific bactericidal processes are being deleted from the section because there are now dozens of commercially available effective bactericidal processes from which to choose. A new section, 7 MCAR Sec. 1.152 L.2. has been added dealing with single serviced utensils or vessels which have only come into use since the promulgation of the original rules. 7 MCAR Sec. 1.152 M. is being revised by substituting rules of the Minnesota Pollution Control Agency for standards of the Board. This reflects the failure of the Board to promulgate such standards and the adoption of WPC-40 by the PCA which governs the design, construction and installation of individual sewage disposal systems. 7 MCAR Sec. 1.152 N. has been amended to provide a means by which serious pest infestations can be controlled.

13. 7 MCAR Sec. 1.152 S. is a new section being added to control the availability of ice cubes to lodging establishment guests. At the hearing, there was some confusion expressed as to the actual requirements of the proposed rule. The Minnesota Motel Association suggested that 7 MCAR Sec. 1.152 S.1. should be clarified as to the placement of machines that are not accessible to the public. It was also suggested that the December 31, 1982 date for compliance was unrealistic and that an additional three years should be permitted for compliance. The representative of the Minnesota Restaurant and Food Service Association, Minnesota Hotel and Motor Hotel Association and Minnesota Resort Association indicated that the amendment, if adopted, should not become effective until 1985, to allow properties which have recently purchased open-type ice bins a reasonable time to amortize their investment. It was also noted that continued of open-type ice bins by having ice dispensed by employees in sanitary containers is not a workable solution for many properties.

In response to those comments, the Department proposed to amend the proposed amendment to read as follows:

> After the effective date of this rule any newly constructed lodging establishment which installs or replaces ice-making equipment, and any existing lodging establishment which installs or replaces ice-making equipment shall install only automatic dispensing, sanitary ice-making and storage equipment in areas to which the public has access. Any such establishment may install open-type ice bins only if the ice therefrom is dispensed in the manner provided in subpart S.2.

2. After December 31, ~~1982~~ 1984, any existing lodging establishment . . . .

The changes are primarily to clarify the intent of the change and to accommodate the request made at the hearing for an extension of time to implement the proposed rules.

The Examiner finds that the Commissioner has statutory authority to adopt the proposed amendments, as modified, and that the proposed amendments as modified are necessary and reasonable.

Clean Indoor Air Act - 7 MCAR Sec. 1.441-1.444

14. The statutory authority for amendment of these rules is cited as Minn. Stat. Sec. 144.417, which gives the Commissioner authority to adopt rules and regulations necessary and reasonable to implement the provisions of the Clean Indoor Air Act. The Commissioner argues that the authority to adopt rules necessarily implies a responsibility to amend the rules if their administration becomes ineffective or when it becomes clear that new language would improve the manner in which the legislative intent is carried out.

15. It should be noted that the Hearing Examiner has received more than 200 written comments on this portion of the proposed amendments. It is a fair summary of those comments to indicate that they all favored the amendments to the proposed rules regarding the Clean Indoor Air Act, and that most would favor even stricter controls.

16. 7 MCAR Sec. 1.442 A. is amended to define an acceptable smoke-free area as one which measures a minimum of 200 square feet. This size was chosen as a result of observations made by health inspectors in a variety of public places.

7 MCAR Sec. 1.442 A.2.(dd.) is being deleted because it was determined that it was nearly impossible to make reliable measurements of carbon monoxide concentrations within the time available for carrying out an inspection.

7 MCAR Sec. 1.442 N., the definition of public conveyance, has been amended to specifically include commuter vans or buses whether or not operated for compensation. The amendment also specifies that it does not include privately owned vehicles used for private purposes.

7 MCAR Sec. 1.443 B. requires posting of a notice advising persons of the existence of no smoking and smoking permitted areas. It also requires the posting of a statement that "smoking is prohibited except in designated areas" at all major entrances to any public place. The Department submitted post-hearing comment amending that section as follows:

> Notice to be posted. To advise persons of the existence of "No Smoking" and "Smoking Permitted" areas. "No Smoking" and "Smoking Permitted" signs shall be posted in the appropriate areas. In addition, the statement "Smoking is prohibited except in designated areas" shall be conspicuously posted at all major entrances to any public place.

The purpose of the amendment is to direct the public's attention to the primary purpose of the law.

7 MCAR Sec. 1.443 C.4.(c.) was proposed to be amended to provide a minimum smoke-free area of 200 square feet or 30% of the total public area, whichever is greater, excluding hallways, foyers or similar waiting areas. At the hearing, there was testimony indicating that a minimum of 200 square feet was too restrictive for small restaurants and might force them to be designated "no smoking" in their entirety. As a result of those comments, the Department proposes to add the following sentence:

> A restaurant need not comply with the minimum square footage requirement and shall be deemed in compliance if 30% of the seats in the eating area are designated as "no smoking".

7 MCAR Sec. 1.443 C.5. permits smoking in a private office. It also defines private office. The Department submitted post-hearing comment indicating its intent to modify the amendments by deleting 7 MCAR Sec. 1.441 D. because it is no longer used in the rules.

7 MCAR Sec. 1.443 E.3. governs the content of signs and permits the use of international symbols in addition to or in place of the written message. The amendment to 7 MCAR Sec. 1.443 E.4. and 5. specifies a minimum symbol size when international symbols are used in different settings.

7 MCAR Sec. 1.443 E.7. is amended to require a restaurant or other public place which has controlled seating to ask each person whether he or she prefers smoking or no smoking before directing them to a seat. It also requires a restaurant or public place which takes advance reservations shall ask the person's preference at the time the reservation is made. Such restaurants using controlled seating are exempt from the sign requirements of 7 MCAR Sec. 1.443 E.3., 4., 5. and 6. There was testimony at the hearing from representatives of various restaurants and restaurant associations objecting to the requirement that table reservations taken by telephone must indicate smoking permitted or no smoking area. There was testimony that this would result in confusion and that many people would change their minds upon arrival. Following the hearing, the Department proposed to amend 7 MCAR Sec. 1.443 E.7. as follows:

> . . . before directing that person to a seat in the appropriate area. <u>At least one sign advising the public of this mechanism shall be conspicuously posted at all entrances normally used by the public.</u> Similarly a restaurant or other public place . . . .

7 MCAR Sec. 1.443 G. defines permissible ash trays in no smoking areas and requires permanent ash trays at the entrances to no smoking areas.

Former Minn. Rule MHD 444(e)(2)(f) is being stricken as it addresses smoking by minors in educational facilities, an activity already prohibited by state law, Minn. Stat. Sec. 609.685.

7 MCAR Sec. 1.444 F.4. adds a prohibition against smoking in corridors, emergency rooms, treatment rooms, admitting areas and intensive care units of hospitals.

The Examiner finds that the Commissioner has statutory authority to adopt the preceding amendments, as modified, and that they are necessary and reasonable as proposed.

Based upon the foregoing Findings of Fact, the Examiner makes the following:

CONCLUSIONS

1. That the Department gave proper notice of the promulgation of the proposed rules.

2. That the Commissioner has statutory authority to take the action proposed, to wit, the promulgation of the proposed rules.

3. That the Department has fulfilled all relevant, substantive and procedural requirements of law or rule.

4. That the Department has demonstrated the need for and reasonableness of the proposed amendments by an affirmative presentation of facts in the record.

Based upon the foregoing Conclusions, the Hearing Examiner makes the following:

RECOMMENDATION

It is recommended that the Commissioner of Health adopt the proposed rules with consideration given to the Findings of Fact herein.

Dated: August 13, 1979.

NATALIE L. GAULL
Hearing Examiner

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

COMMISSIONER OF HEALTH

In the Matter of Proposed Amendments
to Rules Relating to Food, Beverage &
Lodging Establishments, to License Fees,
to Clean Indoor Air and to Swimming Pools

STATEMENT OF NEED
AND REASONABLENESS

The justification for the proposed changes to the aforementioned rules are attached in the following order:

LODGING ESTABLISHMENTS	7MCAR §1.151-1.155
FOOD & BEVERAGE ESTABLISHMENTS	7MCAR §1.161-1.165
FEES	7MCAR §1.155 A and 1.165 A
~~CLEAN INDOOR AIR~~	~~7MCAR §1.441-1.444~~
SWIMMING POOLS	MHD 141 (b)

Dated: May 23, 1979

George R. Pettersen M.D.

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

STATEMENT OF NEED AND REASONABLENESS

FOOD AND BEVERAGE ESTABLISHMENTS

The changes proposed by the Commissioner for rules governing food and beverage establishments are made pursuant to authority to regulate such establishments contained in Minnesota Statutes §144.05 (c) and Chapter 157 (1978). The authority to adopt regulations necessarily carries with it the authority to revise or amend those regulations whenever conditions change.

7 MCAR §1.165. The fee increases proposed here are justified in the attached document. A new license category for "limited food service" is being created. Heretofore such a facility was charged the same license fee as that for the smallest type of regular establishment. The need for creating a new license category is based on the fact that this type of facility is usually small and has less equipment than that contained in a regular food or beverage establishment. For these reasons, the inspection of a limited or temporary establishment is less complicated and requires less time. Therefore, it is appropriate that a reduced license fee be charged for this type of establishment.

7 MCAR §1.165 F. The date on which the fee increase is to take effect is set for September 1, 1979, so that notices which go to licensees for 1980 renewals will be based on the increased license fee.

7 MCAR §1.162 M. Two types of facilities are to be included within the definition of food establishment. The term "temporary food establishment" is already defined in the existing rule. The term was inadvertently omitted from the definition of "food establishment" when the rule was originally adopted. The second type of facility which is being included within this definition is a "limited food service" establishment. This is a new type of facility which is being defined in 7 MCAR §1.162 W. In the past, although these two types of facilities were inspected and licensed by the Minnesota Department of Health, the fact that they were

not included within this definition gave rise to considerable confusion and misunderstanding among food establishment operators. Since these two types of facilities serve food, it is necessary that they be clearly governed by sanitary requirements applicable to all food establishments. In order that all who are concerned with these types of facilities will know that the rules governing food establishments do apply to these limited and temporary facilities, these are being specifically included in the definition of "food establishment."

7 MCAR §1.162 W. Defines a new phrase "limited food service establishment" so that readers are made aware of the meaning which is intended when the phrase is used elsewhere in these rules. The phrase includes two types of facilities: itinerant establishments, such as mobile units or trailer type facilities which go from one site to another and limited establishments, such as bars which sell pre-wrapped sandwiches warmed in a microwave oven. Definitional problems occasionally arose as to which rules or fees really ought to apply to these facilities. This definition and inclusion of the term in the definition 7 MCAR §1.162 M clearly brings itinerant and limited facilities within the scope of these rules and eliminates any confusion which may have existed. Since both of the foregoing types of facilities engage in the serving of food to the public and since the serving of food without taking certain precautions can endanger the health of the public, it is appropriate that these two types of facilities should be brought within the scope of these rules.

7 MCAR §1.163 S. The newly defined category of "limited" establishment is being added to this section for the purpose of specifying that "limited" establishments need only comply with those portions of the rules which are appropriate to an establishment which may not carry out all the steps usually associated with the preparing and serving of food.

7 MCAR §1.163 W. A new section being added to this rule requires that certain food establishments post a chart which illustrates a procedure for relieving a person with a restricted airway. The need for posting such illustrations has been emphasized by the Minnesota Medical Association and is strongly supported by medical auxiliary groups, the American Red Cross and the American Heart Association. In 1977 the Illinois legislature enacted the "Choke-Saving Methods Act" which imposes a requirement similar to that proposed here. Ill. Pub. Act 80-44 L. Temporary or limited food service establishments are exempted because in most cases, their patrons do not consume the food on the premises and the need to use the emergency technique in one of these establishments is much smaller than it is in an establishment where patrons eat on the premises. After having weighed a variety of methods by which use of this technique in a restaurant could be facilitated, we decided that requiring the display of a poster would be the least burdensome and yet would make the necessary information readily available when an emergency did arise. The requirement that the illustration be posted in the food preparation area is imposed to assure that all kitchen and serving personnel are familiar with the location of the poster. Authority to adopt this section is derived generally from Minnesota Statutes Chapter 157 (1978), and from Minnesota Statutes §144.05 (c)(1978) which authorizes the commissioner of health to establish and enforce health standards for the protection of the public's health. The requirements that a poster be displayed illustrating the use of an emergency technique to relieve choking will assist in protecting the public health and is therefore reasonable. See attachments A and B.

The amendments to 7 MCAR §1.162 and 1.163 discussed above are necessary since they are proposed for the purpose of protecting the health of persons who consume food provided by certain types of food service establishments. To the extent that the amendments impose the minimum requirements which are necessary to assure that the health of the public will be protected, the amendments are reasonable.

Attachment A

EMERGENCY CARE FOR CHOKING



UNIVERSAL CHOKING SIGN

EMERGENCY PHONE NUMBER

IF VICTIM CAN BREATHE, COUGH, SPEAK. DO NOT INTERFERE
IF VICTIM CANNOT BREATHE, COUGH OR SPEAK

CONSCIOUS VICTIM | GIVE



4 QUICK BACK BLOWS



4 QUICK UPWARD THRUSTS
(Grip above waist.)

REPEAT STEPS UNTIL EFFECTIVE OR UNTIL VICTIM BECOMES UNCONSCIOUS



TRY TO VENTILATE
TILT HEAD - BEGIN MOUTH TO MOUTH BREATHING



4 QUICK BACK BLOWS



TURN HEAD TO SIDE
4 QUICK UPWARD THRUSTS



CLEAR AIRWAY WITH FINGER

CONTINUE VENTILATION. IF PULSELESS PERFORM CPR

- DO NOT PRACTICE ON PEOPLE - ABDOMINAL THRUST MAY CAUSE INJURY
- EVERYONE SHOULD LEARN TO PERFORM EMERGENCY CARE FOR CHOKING AND CARDIOPULMONARY RESUSCITATION (CPR)
- FOR INFORMATION CALL THE LOCAL HEART ASSOCIATION, AMERICAN NATIONAL RED CROSS CHAPTER, LOCAL HEALTH DEPARTMENT OR EMS COORDINATOR

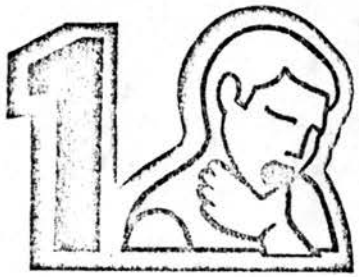
The National Research Council/ National Academy of Sciences Publication — Emergency Airway Management 1976 is the reference for this poster.

Illinois Dept. of Public Health
Division of Emergency Medical Services and Highway Safety
525 West Jefferson
Springfield, Illinois 62761
(217) 785-2080

FIRST AID FOR CHOKING

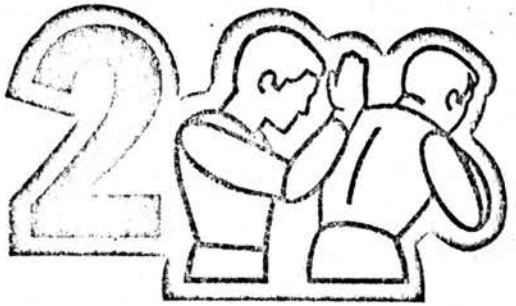
CONSCIOUS VICTIM

1



If the victim <u>can</u> speak, cough or breathe, do not interfere.

2



If the victim <u>cannot</u> speak, cough or breathe, give 4 quick back blows.

3



If unsuccessful, give 4 upward abdominal thrusts,

<u>or</u> 4 backward chest thrusts.

Repeat above sequence.
Be persistent.
Continue uninterrupted until advanced life support is available.

IF VICTIM BECOMES UNCONSCIOUS

1

Open airway and try to ventilate.

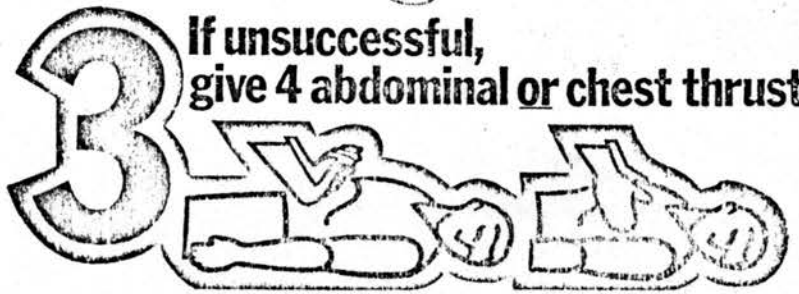


2



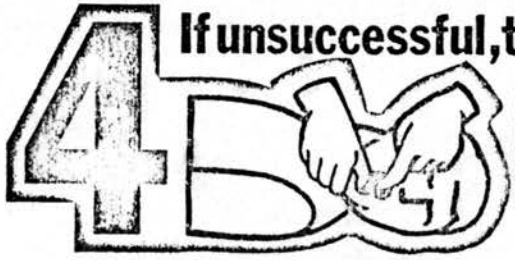
If unsuccessful, give 4 quick back blows.

3



If unsuccessful, give 4 abdominal <u>or</u> chest thrusts.

4



If unsuccessful, try finger probe.

Repeat above sequence.
Be persistent.
Continue uninterrupted until advanced life support is available.

Call for help #_____

AMERICAN HEART ASSOCIATION
MINNESOTA AFFILIATE, INC.
4701 West 77th Street
Edina, Minnesota 55435
or phone (612) 835-3300

Attachment B

STATEMENT OF NEED AND REASONABLENESS

AMENDMENTS TO RULES GOVERNING LODGING ESTABLISHMENTS

The following revisions and amendments to Rules 7MCAR§1.151, 1.152 and 1.155 are proposed by the Commissioner of Health pursuant to authority to control lodging establishments by adoption of regulations (Minnesota Statutes §144.12 Subdivision 1 (6) (1978)). The authority to adopt rules necessarily carries along with it the responsibility to revise or amend such rules when changed conditions affect the applicability, appropriateness or scope of existing rules. Several of the changes being proposed are merely technical.

7MCAR§1.151A. The word "regulation" is being replaced with the word "rule" since the latter is the term which is defined in and used throughout the Administrative Procedures Act (APA) (Minnesota Statutes Chapter 15 (1978)).

7MCAR§1.151B.1. Here and in other parts of 7MCAR§1.151, 1.152 and 1.155 the term "Board" is being replaced by "Commissioner" to reflect the transfer of rule-making and enforcement power from the State Board of Health to the Commissioner of Health (Laws 1977, Chapter 305§39).

7MCAR§1.151B.2. The phrase "departmental standards" and its definition in "e" are being stricken from the rule because such standards do not exist apart from the rules themselves. The term was incorporated when the rule was originally adopted in anticipation that formal standards would be promulgated. However, since no such "standards" have been promulgated and since criteria by which to judge sanitary conditions are contained elsewhere in these rules it seems appropriate to eliminate any reference to the term "standards" at this time.

7MCAR§1.152E. The design requirement for air vents is being stricken because the requirements for design of such components has been completely superseded by standards of the Minnesota Department of Energy which have been incorporated into the State Building Code. (2MCAR§1.0111, Uniform Building Code §§1305, 1405 and S.B.C.§7702).

7MCAR§1.152 I. and K. A new provision is being added to both of these sections. The new provision specifies an upper limit for the temperature of hot water which is supplied in public areas of lodging establishments. The amendments are being proposed because of the fact that Department of Health sanitarians have frequently observed hot water temperatures in guest rooms which far exceeded 140°F. It is commonly known that excessively hot water can cause severe burns. Support for this position has come from several writers who report on the frequency and types of burn injuries being treated in hospital emergency rooms. (See Appendix A, p. 1) Additional support for the amendments comes from the fact that a guest of a Minnesota lodging establishment has sued the facility for bodily injuries allegedly caused by excessively hot water. (See Appendix A, p. 6)

The maximum temperature of 130°F. being proposed here is generally considered to be the highest temperature which ought to be permitted in order to avoid serious burns. Medical World News, 5/16/78, p. 20 and 10/17/77, p. 75. (See Appendix A, p. 4) Imposition of this maximum temperature should not pose any significant problems for lodging establishments. It should not require installation of new equipment since most hot water heaters have thermostats which can be set down to 130°F. Setting this limit should indirectly benefit the establishment by reducing its total fuel cost and energy demand, and by reducing the number of possible injuries to guests.

7MCAR§1.152J. The waiver provision relating to compliance with water supply rules is being stricken. The water supply rules of the Commissioner, ie. Minnesota Plumbing Code, the rules relating to public water supplies and the water well construction code contain their own waiver or variance provisions. For the sake of consistency, any request for waiver from compliance with any such set of rules should be made and granted pursuant to those rules and not in the general context of a rule relating to lodging establishments. No significant consequences will result for either the Commissioner or a license applicant from the striking of this sentence from the rule.

7MCAR§1.152L. A few changes are proposed in this section. The heading is being changed to reflect the fact that the section addresses all eating utensils and drinking vessels which are provided in rooms for guest use. In the existing version, only treatment of multi-use items is discussed. The sentence concerning thermometers in dishwashers is being deleted because this requirement is contained in the National Sanitation Foundation (NSF) Standard #3, cited in the next sentence. The term "mechanical" is added to specify those types of dishwashers which must comply with the NSF Standard. Two specific bactericidal processes are being deleted from this section. It no longer seems reasonable to list these separately when there are now literally dozens of commercially available, effective, bactericidal processes from which to choose. These involve various combinations of chemical treatment at a certain water temperature for a certain time. Because there are so many of these treatments available for which approval may be given on an individual basis, it no longer seems reasonable to single out two of them in the rule. A new subsection is being added which addresses specifically the matter of single-service items. These have only come into use since the existing rule was promulgated. Since the use of these items is so widespread, there is a need to restrict their use and to control the means by which they are handled to assure that the public health is not endangered when they are used by guests.

7MCAR§1.152M. This section is being revised by substituting "standards of the Board" with rules of the MPCA. The reasons for this change are that, 1) no standards of the Board were ever formally promulgated; and 2) the MPCA has adopted WPC-40 which governs the design, construction and installation of individual sewage disposal systems. The Commissioner is required to notify a license applicant of the standards with which a lodging establishment is to comply and the revision serves this purpose.

7MCAR§1.152N. This section, which governs procedures for pest control, is being expanded to provide a means by which serious pest infestations can be controlled. Heretofore, it was procedurally complicated to order a licensee to hire a licensed exterminator. The proposed

language specifies three conditions under which the Commissioner will issue such an order. These conditions grew out of the experience gained over the years by department sanitarians who have had to reinspect lodging establishments which were seriously infested. This new language provides a remedial alternative which is less punitive than would be the initiation of a license revocation. The requirement for a licensed exterminator is imposed to assure that any work which the Commissioner orders to be done shall be done by one who has demonstrated technical competence to the satisfaction of those who oversee and control the use of potentially harmful pesticides.

7MCAR§1.152R. The actual date on which the original rule went into effect was contained in MHD 154 (a). Since that rule is being repealed, the original effective date is being inserted here. Proper citation form is being used to designate the Minnesota Plumbing Code (7MCAR§1.120 - 1.134) and the rule governing construction of swimming pools (7MCAR§1.141).

7MCAR§1.152S. is a new section being added to control the availability of ice cubes to lodging establishment guests. Since ice is considered a food, the same standards of cleanliness should apply to containers which hold ice as to those which hold food. Departmental sanitarians have frequently observed and noted on their reports, that these loose-cube, open, ice bins to which the public has access, are often unsanitary and could serve as breeding grounds for disease-causing organisms. Heretofore, open ice bins for use by guests have inadvertently become repositories for used drinking cups, pop cans, freshly caught fish and sand and other debris introduced on the outside of containers used for dipping into these bins. The proposed amendment requires the operator of a new establishment to install only automatic dispensing equipment. This requirement is imposed based on the fact that most newly constructed facilities are already voluntarily complying with this requirement. In discussions held with departmental staff, association representatives have not opposed the changes being proposed here. Certain motel chains already prohibit the use of open-type, loose-cube, ice bins in public areas of their facilities. Several other states are considering

adopting similar restrictions. (Cf Appendix A, p. 9)

The proposed amendment, part S.2, will require existing facilities which do not replace their open bin, loose-cube equipment before 1983, to bar public access to such bins. The amendment requires that such facilities may thereafter, make ice available only in containers or bags to which the public has not had access, for the same reasons as were given above regarding the need for automatic equipment. Giving existing establishments 3^+ years in which to comply will allow operators sufficient time in which to plan and arrange for relocation of such equipment into non-public areas and to arrange for the dispensing of ice either by having an employee hand over a container or bag of ice to the guest upon request, or by installing storage freezers from which guests can help themselves to pre-bagged ice.

Typically, ice making equipment is amortized in five years. The imposition of the three year compliance deadline is reasonable because those who had been using accelerated depreciation would be approaching the date on which the equipment would be completely written off. If they had intended to replace their equipment, the time would be appropriate for them to purchase the type of automatic dispensing equipment being prescribed here.

The cost of automatic dispensing equipment is nearly twice that of the open bin type which is sought to be prohibited here. While it may seem to impose a burden on a lodging establishment operator to require the purchase of expensive ice making equipment, the fact that automatic dispensing machines meter the quantities delivered means there is less waste from contamination and from melting because the entire supply isn't open and available to the public. There is less use because these machines only deliver a small quantity of cubes at a time. Lodging establishment association spokesmen feel that these are advantages which help reduce the impact of the higher cost of such equipment.

MHD 153 and 154 are being repealed in their entirety since they do not contain any substantive provisions and since neither comes under the existing APA definition of a rule. The effective date of the proposed amendments is prescribed by the terms of the APA and there is no purpose to be served by specifying a different effective date at this time. The

justification for increasing the fees contained in 7MCAR§1.155 is attached.

All of the amendments discussed above are proposed for the purpose of assuring that the health of persons who are guests at lodging establishments will be protected and that such persons will not be exposed to any unreasonable risks to health. For this reason they are necessary. The proposed amendments are reasonable in that they impose minimum burdens on the regulated industry while still serving the intended purpose of protecting the public health.

from Pediatric News, June 4, 1978.

Lowering Tap Water Temperature to 120-125° F Prevents Severe Scalds to Children



Dr. Feldman

International Medical News Service

NEW YORK — Voluntary reduction of household tap water temperature settings can prevent many of the thousands of often serious tap water scalds seen each year in emergency rooms, Dr. Kenneth W. Feldman said at the annual meeting of the Ambulatory Pediatric Association.

Public education by itself probably won't prevent the carelessness and abusiveness responsible for these burns, but more concrete measures, such as lowering the temperature setting on water heaters to 120-125° F, can be effective, said Dr. Feldman, of the Odessa Brown Children's Clinic, Children's Orthopedic Hospital and Medical Center, Seattle.

Of the 369 scald burns seen in children admitted to two Seattle hospitals over a 15-year period, 15% were caused by hot tap water, and 95% of these occurred in children under 5 years of age.

Tap water scalds involved twice the body area and required twice the length of hospitalization of other scalds. The amount of body surface area involved was over 40% in 12.5% of the patients; mortality for these scalds was 12.5%, he said.

Thirty-one middle-class and 26 poorer homes were visited to check tap water temperatures. The mean bathtub water temperature was 142° F, ranging from 90° to 168° F; 80% of the homes had water temperatures over 130° F, Dr. Feldman said.

A full-thickness scald can occur in adults in 10 minutes in water at 120° F, 2 minutes at 125° F, 1 minute at 127° F, 30 seconds at 130° F, and 1 second at 158° F. These temperatures could be expected to burn young children even faster, Dr. Feldman said.

Most families did not know tap water could be dangerous. There were no differences in household water temperatures or other relevant factors between the two socioeconomic groups.

Further, 32 participants in pediatric grand rounds at the Medical Center responded when asked what a safe water temperature would be: 12 rec-

(Continued on page 39)

(Continued from page 1)

ommended home water temperature above 130° F.

The Consumer Product Safety Commission and the plumbing industry have proposed a voluntary standard requiring valves that limit water temperature to 120° F in new bathtubs and showers. This could prevent almost three-fourths of bathtub and shower scalds, he said.

Local power companies contacted have expressed interest in recommending lower temperatures on water heaters; every 10° F reduction from 150° F yields a 4% energy saving, said.

Pediatricians could include tap water counseling in child safety discussions during routine well-child checkups. Physicians doing this should recommend a water temperature of 120-125° F, Dr. Feldman said.

His associates in this study were Dr. Robert T. Schaller, Jane A. Feldman, and Mollie McMillon.

Lodging Establishm.

Appendix H

THE HOT WATER STORY

Hotel and home hazards, hospital waste

Our little girl got a bad burn in the bathtub a few weeks ago. She was playing with the faucets and turned on the hot water—it was scalding.
—Letter to Dr. Neil Solomon, *New York Post*

The other day I had a strange experience—I was taking a shower in a hotel when all of a sudden the water became very hot and as I tried to reach to adjust it I slipped, and it took me quite a while to get it adjusted properly. I later experienced what I thought was similar to a sunburn and wondered if that could have been caused by the hot water.
—Letter to Dr. G. Timothy Johnson, *Washington Post*

NEW YORK CITY—Hot tapwater is nothing new, but recognition of its danger by doctors and burn experts is growing to new levels of concern:

- Dr. Jarold Z. Kaplan sounded the alarm at this year's meeting of the American Burn Association after scalding himself while scrubbing up for surgery at the Brooke Army Medical Center's burn unit in San Antonio (MWN, May 16, p. 20). He pointed out that water at 135° F (57° C) can cause a severe burn after only 15 seconds' exposure and that with each rise of 1.8° F (1° C) above that, the time needed to cause a serious burn is cut in half. He suggests that 130° F is the upper end of safe. Dr. Kaplan found that 50 scald patients had been admitted to Brooke since 1971; one third died.
- In animal tests, Harvard's Dr. Alan R. Moritz found five seconds' exposure to water at 140° F could cause burns producing epidermal necrosis.
- Dr. James Lloyd, director of the burn unit at Children's Hospital of Michigan in Detroit, said nine of 51 children admitted since the beginning of 1977 had been scalded by hot water. "In general, hot water scalds account for about 20% of the burns we see," Dr. Lloyd said.
- Dr. Donald D. Trunkey, head of the San Francisco General Hospital's burn center, told MWN recently a third of all pediatric burn cases he sees are results of abuse by parents who hold a child under a stream of hot water as punishment. Some of these maltreated children die of second- and third-degree burns covering more than half their bodies, he said.
- And this year, for the first time, the sponsors of national Fire Prevention Week (October 9-15) decided hot water poses such an important hazard that it should be highlighted in their publicity efforts, including radio and TV campaigns in several states.

In addition to causing second- and third-degree burns, excessively hot water wastes energy. Large hotels, hospitals, and apartment buildings may be spending thousands of dollars each year to heat water so hot that most has to be mixed with cold tap water before use anyway.

One major problem is deciding how hot is "hot." In New York, city and state codes stipulate that all buildings and facilities must provide hot running water for tenants and employees but give no minimum or maximum temperature. The same is true in Atlanta. County health authorities in Los Angeles have no upper limit but say hot water provided for public use may not be below 120° F. Chicago's plumbing code specifies that buldings serviced by the city water system may not go above 140° for lavatory sinks, tubs, and showers.

The Joint Commission on Accreditation of Hospitals feels 110° F is hot enough for its member institutions. **Walter Shakespeare,** JCAH's associate

continued



This youngster's hot-water burns came not from an accident but from parental punishment for slow toilet training. Such child abuse by scalding appears to be common—and is often fatal.

program director, explains that the 110° regulation was chosen because it's warm enough to be comfortable but not hot enough to burn a patient even after several minutes. A normal, healthy person can stand water at 120°, he said, but an elderly person or young child can't.

But Shakespeare pointed out that the 110° maximum is only a suggestion. The commission rarely checks a hospital's hot water, and would not withhold accreditation merely because it found water above that setting. HEW and some state health departments have also adopted the 110° maximum for hospitals.

Dr. Kaplan, now director of the burn center at Alta Bates Hospital in Berkeley, does not object to hospitals keeping their water at 110°, especially since such large facilities have heat boosters on almost all laundry and dishwashing machines to push the water up to 160° and 180°, respectively. Boosters eliminate the need to heat the general water supply above a safe level.

Dr. Kaplan said that if 110° were a convenient temperature for use in private homes, "it would be OK too." But he believes 130° is a "safe compromise for homeowners," especially for washing dishes and laundry.

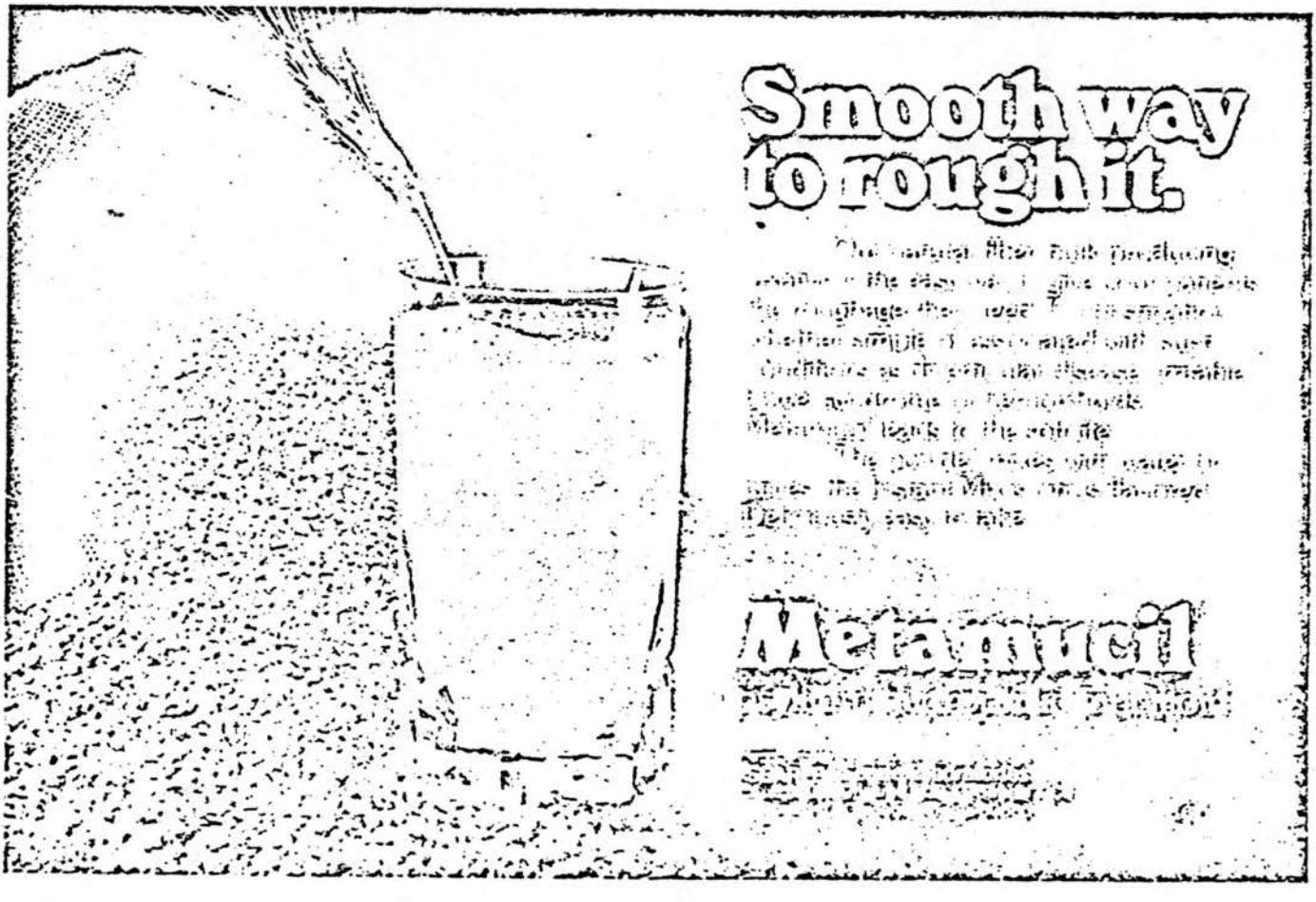
Hot-water burns send about 1,000 patients each year to emergency rooms

Dr. Trunkey admits he has advised some homeowners to keep their hot water set between 140° and 160° if they find cooler water a nuisance. "Ideally it should be 130° F or less, but some find this inconvenient. The higher temperature is quite dangerous, especially to a child unable to control the mixing of hot and cold. For example, at 156° F it only takes one second to get a full-thickness (third-degree) burn," Dr. Trunkey said.

When MWN reporters checked temperatures in major hotels across the nation, some were found to be overheating their water. Hotel managers and engineers say they like to keep their water about 130° to 140° to satisfy customers. Those temperatures can vary widely—especially while guests are taking their morning showers.

Engineer **Lee Cameron** at the New York Hilton said, "We find 140° a desirable temperature. If it were any hotter it would scald someone, and people complain if it's any cooler." When a New York Sheraton engineer was asked why the water was 150°, he said that figure was not possible since readings are taken every day so the water never gets hotter than 140°. But he promised to check.

Donald I. Blum, public relations representative for the St. Francis Hotel in San Francisco, says as far as he



knows the hotel staff has never checked the water temperatures. "I guess we're going to have to take a look at it now that you've raised the question," he told MWN.

Many new or remodeled hotels claim to have various mixing devices in the showers that increase hot water gradually and are sensitive to water pressure, leaving little chance of blasting anyone with very hot water.

In hospitals, high water temperatures sometimes seem to stem from intra-institutional misunderstandings. **Dick Ellis**, an engineer at Mount Sinai in New York City, said he was aware the hospital's water was 130° and in violation of the JCAH code, but he felt that some of the labs and scrub-up facilities needed hotter water. The surgery supervisor did not agree—he said 110° was hot enough. At Memorial Hospital in New York, the safety director said its 130° water temperature was set in accordance with New York City building codes—though numerous city and state agencies say they know of no such regulation.

The hospitals' most common complaint is that it's hard to keep one temperature throughout an entire medical complex. Water heated to 115° at the boiler, for example, may be only 95° by the time it reaches the building's outer wing. Some officials say hospitals just can't afford new controls on their water heating systems. On the other hand **Lawrence B. Dillehay**, executive director of Henrotin Hospital in Chicago, says he is extremely conscious of JCAH's 110° maximum, but occasionally temperatures may go higher because of "personnel communication" gaps.

Apparently most hospitals stay below Dr. Kaplan's 130° F, so they may not be scalding their patients, but they are wasting energy.

Hospital and hotel officials interviewed claim that they have never been sued for hot water burns. But scald victims continue to arrive at hospitals' burn units, suggesting that most severe hot water burns happen in the home. The National Electronic Injury Surveillance System estimates that in 1976 about 1,032 people—most of them younger than 15—were treated for hot-water burns in hospital emergency rooms throughout the country.

Private homeowners can control their own water temperatures. Apartment dwellers may find this difficult, though they can try putting some pressure on management. MWN reporters found their own household taps to be pumping out water and steam at 145° in New Jersey, 170° in Washington, and 180° in Atlanta!

Whether it scalds anyone or not, excessively hot water wastes the extra oil, gas, or electricity used to heat it. For example, one New York City hotel alone uses 20,000 gallons of hot water a day at about 150°. If it were to lower that temperature to 130°, it could reduce oil consumption by 243 barrels a year (equivalent to 1,460 cubic feet of natural gas), thus saving about $5,000 in fuel costs.

First-aid treatment for tapwater scalds remains unchanged. Drs. Kaplan and Trunkey both emphasize running cool tap water over a burn, applying a dry dressing, and immediately visiting a doctor if the burn appears serious. Skin absorbs heat's kinetic energy, so it can take up to 45 minutes for a quick burn to complete its skin damage. "That's why it is so important to cool it off as soon as possible," Dr. Trunkey explained. "The old remedy of putting oil or fat on the burn just locks in the heat." But don't use ice, he warns. Burned skin experiences "shock" from decreased blood flow, and contact with ice will aggravate this condition. ■

HOT-WATER HOTELS

*MWN reporters found 13 with hot-water temperatures of 135° F or more in rooms or public areas**

San Francisco	St. Francis	138° F
Los Angeles	Hyatt Regency	150, 130
	Century Plaza	152, 122
	Ambassador	139
Dallas	Baker	135
	Holiday Inn Downtown	139
Houston	Hyatt Regency	135
	Sheraton	138
Chicago	Sovereign	141
Washington	Hay Adams	135
New York City	Americana	140
	Hilton	140
	Sheraton	145

**Readings were taken on two days after water had flowed long enough to reach a steady temperature. Here the two readings are averaged, except for two Los Angeles hotels where a sharp drop in temperature followed management's awareness of reportorial interest.*

SOME HOSPITALS WITH WATER OVER 110° F

Atlanta	Atlanta Hospital	125° F
Chicago	Prentice Women's Hospital	121
	Henrotin Hospital	121
	Illinois College of Podiatric Medicine	132
	Augustana Hospital	140
New York City	Memorial Hospital	133
	Mount Sinai Hospital	130
	New York Hospital	130



Hot tap water can cause fatal burns

Burn expert finds hot water in many homes can scald in seconds

A great many—perhaps half—the homes and hotels of America heat their hot water to temperatures that are downright dangerous, as well as unnecessary and energy-wasting, says a U.S. Army burn specialist.

A temperature of 135° F (57° C) can produce full-thickness burns after only ten or 15 seconds' exposure and should be considered hazardous, Dr. Jerold Z. Kaplan told the American Burn Association in Anaheim, Calif. With each rise of 1° C above that, he said, the exposure time needed to cause a severe burn is cut in half.

Yet in a survey of 18 homes the Brooke Army Medical Center surgeon made in his own neighborhood in San Antonio, he found 35% of the homes heating their water to 138° F (59° C), which can produce a full-thickness burn with only three or four seconds' exposure. Making the rounds of ten Las Vegas hotels while attending a meeting, Dr. Kaplan found half of them delivering tap water at 132° F (55.2° C), a fifth of them at 138° F (59° C) and one at 168° F (75.5° C). He uses an ordinary kitchen meat thermometer for his measurements.

Major Kaplan found 50 cases of hot-tap-water scalding in the Brooke burn unit records since 1971. Thirty-seven were children under three years of age, most of them burned by the inadvertent turning-on of hot water taps while being bathed. Of the 13 older victims, most were scalded in showers.

Sixteen of these 50 patients died of their burns or of complications during treatment, Dr. Kaplan reported. Most deaths occurred after extensive (greater than 40% of body surface) and deep burns, though one elderly patient succumbed with only 24% over-all and 4% third-degree burns.

Dr. James R. Lloyd agreed with Dr. Kaplan's assessment of danger. In the discussion period at the burn meeting, the director of the burn unit at Children's Hospital of Michigan said nine of 51 children admitted since the beginning of the year had been scalded by hot water. "In general, hot water scalds account for about 20% of the burns we see," Dr. Lloyd said.

Dr. Kaplan lacked temperature and time-of-exposure data for the 50 patients, but he cited research done by Dr. Alan R. Moritz for the Army in World War II on both pigs and people that produced the critical relationships needed.

Using a device that circulated hot water against the skin through a one-inch port, Dr. Moritz and colleagues at Harvard found that severe burns occurred within a second of exposure to water hotter than 70° C (158° F). In effect, 70° C burned pigs as badly as did boiling water (100° C).

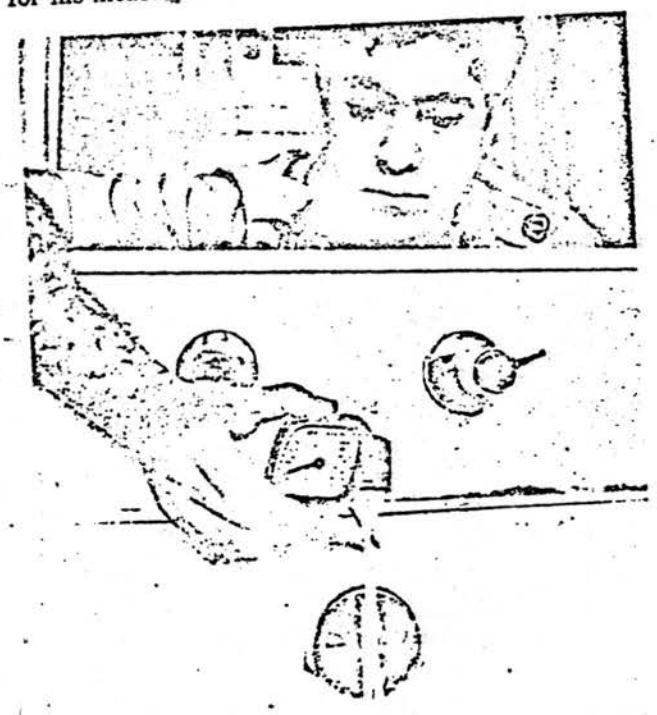
At lower temperatures, full-thickness burns producing epidermal necrosis were still caused in two seconds at 65° C (149° F); in five seconds at 60° C (140° F); in 15 seconds at 56° C (133° F); in 60 seconds at 53° C (127° F); and in three minutes at 51° C (124° F).

After getting results of 179 experiments on pigs, pathologist Moritz and his colleagues exposed their own chests or forearms to the same tests, going as high as 60° C. The results, published in the September 1947 *American Journal of Pathology*, were similar to the animal results.

Dr. Kaplan's interest in tap water stems from a day when, at a scrub sink, his foot slipped off the "cold" pedal and he had to yank his hands out of the stream to avoid a burn. He estimates most people take a half-second or less to react to too-hot water—probably fast enough to avoid a severe burn.

The patients in the Brooke series were not able to get out of the hot water fast enough, Dr. Kaplan notes, because they were infants or because they slipped in the shower or were neurologically handicapped. "A person who slips in the shower will grab for any support that's handy. Unfortunately that is often the hot-water tap and the person may make matters worse by turning the water on hotter," he warns.

Dr. Kaplan thinks tap temperatures should be kept below 130° F (55° C) and tells his neighbors that 135° F is dangerous. "We keep ours at 124°." What's needed, he thinks, is voluntary action reinforced by the economy of energy-saving and the added economy—for hotels—of not being sued. ■



Dr. Kaplan tests tap water in a bathtub and finds it hovers around 140° F, a temperature that can cause a full-thickness burn with only three or four seconds' exposure.

2 inspections

MINNESOTA DEPARTMENT OF HEALTH
Section of Hotels, Resorts and Restaurants
717 Delaware S.E., Minneapolis, Minn. 55440

PUBLIC HEALTH AND SAFETY INSPECTION RECORD

DATE 3/29/77

P.O. Redwood Falls CO. Redwood OWNER

LICENSEE Minno Inn Keepers Inco ADDRESS

ADDRESS Highway #71 & 19 East P.O.

BUSINESS NAME Donaldson's NO. OF EMPLOYEES

LIC. NO. 1977 0059816 POSTED ✓ NO. OF: BEDS ___, SLEEPING ROOMS ___, UNITS 60, CABINS ___

TYPE OF BUSINESS Motel & Swimming Pool Mobile Home Park and/or Recreational Camping Area Sites ___

ORDERS WRITTEN BELOW MUST BE COMPLIED WITH BY DATE INDICATED

the room inspected (107) when checked had a hot water temperature of 160°.

A pool inspection was also made and a complete report will be sent later.

city — city

WELL SEWER DIAGRAM

COMPLIANCE PREVIOUS ORDERS YES NO

(Manager) Elaine J. Nesburg
Received by

Robert S. Schmidt
Public Health Sanitarian

DISTRICT OFFICES - 1. Bemidji (755-3820) 2. Mankato (389-6025) 3. Rochester (285-0178) 4. Duluth (723-4642) 5. Marshall (537-7151) 6. Mpls. (296-5335) 7. Fergus Falls (736-6922) 8. St. Cloud (255-4216)

COPIES - Central Office, Licensee, District Office

Redwood

LAW OFFICES
MOLTER, RUNCHEY, LOUWAGIE & WELLMAN
WESTERN STATE BANK BUILDING
EAST COLLEGE DRIVE
MARSHALL, MINNESOTA 56258

DON S. MOLTER
ROBERT C. RUNCHEY
JOSEPH H. LOUWAGIE
STEVEN C. WELLMAN

PHONE
532-3251

November 3, 1976

Mr. C. B. Schneider
Section Chief
Environmental Field Services
Minnesota Department of Health
717 S. E. Delaware Street
Minneapolis, Minnesota 55440

file
Redwood Falls

Re: Knutson vs Minnesota Innkeepers, et al

Dear Mr. Schneider:

In December of 1975, Robert C. Runchey of this firm contacted you relative to temperature controls at motels, etc.

At that time, I believe you indicated to Mr. Runchey that you would not be willing to testify as an expert on our behalf, but that if you were subpoenaed, you would be willing to appear and testify as to the correct regulations and standards.

This letter is merely to advise you that we have now been informed by the Clerk of District Court of Federal District Court that Judge Miles Lord intends to begin trying cases on November 15, 1976. Therefore, we wish to place you on notice that you may possibly be called as a witness for the Plaintiff in the trial of the above entitled matter.

Yours very truly,

MOLTER, RUNCHEY,
LOUWAGIE & WELLMAN

Joseph H. Louwagie

Joseph H. Louwagie

JHL:jd

Inspection

MINNESOTA DEPARTMENT OF HEALTH

Section of Hotels, Resorts and Restaurants
717 Delaware S.E., Minneapolis, Minn. 55440

PUBLIC HEALTH AND SAFETY INSPECTION RECORD

DATE 9/10/73

P.O. Redwood Falls CO. Redwood OWNER _____

LICENSEE Minn. Innkeepers Inc ADDRESS _____

ADDRESS Highway #71 & 19 East P.O. _____

BUSINESS NAME Donahue's Conference Center NO. OF EMPLOYEES _____

LIC. NO. 1973 18129 POSTED + NO. OF: BEDS ___, SLEEPING ROOMS ___, UNITS ___, CABINS ___

TYPE OF BUSINESS motel, rest. + Place of Cabin Home Park and/or Recreational Camping Area Sites _____

ORDERS WRITTEN BELOW MUST BE COMPLIED WITH BY DATE INDICATED

Inspection made in units #105 + 107 to determine if a potential hazard exists in regards to showers + steam operations in the units.

Thermasol steam unit. 5 minutes operation with the doors closed the temperature was (unit 105 130°F.) (unit 107 144°F.)

Temperature of water at sink + shower tap was 165°F after running 25 seconds. 160°F after 10 seconds.

A heating element is located above the ceiling for each two units.

A very small amount of water is released by the steam system before steam starts comming out in the shower stall.

(About 3:00 P.M Sunday!

Mrs. Knutson started the steam unit a few minutes and got into the cabinet and had taken a steam bath and leaned forward and turned water regulator on, checked the water temperature. It felt okay and pulled the shower lever and received ~~second~~ 1st & 2nd degree burns from the shower head. Mrs. Knutson fell when the hot water hit him and couldn't get out of the shower + steam stall by himself.

Mrs. Knutson is confined to the Hospital/City.

WELL - SEWER DIAGRAM

COMPLIANCE PREVIOUS ORDERS YES NO

DISTRICT OFFICES - 1. Bemidji (755-2983) 2. Mankato (389-6025) 3. Rochester (282-3861) 4. Duluth (727-7204) 5. Marshall (537-6110) 6. Mpls. (296-5335) 7. Fergus Falls (736-6922) 8. Little Falls (632-9297)

COPIES - Central Office, Licensee, District Office

Received by Robert D. Schmidt
District Sanitation Inspector

INSIDE EQUIPMENT:
ICE MACHINES

Sanitation freezes out old-style ice bins

On a sultry summer afternoon, the tinkle of ice cubes in a tall frosty glass can induce sales as well as any other advertisement.

Ice is more than effective window dressing, however. It's part of the beverage it chills and calls for the same standards of cleanliness as any other ingredient.

The various regulatory agencies that make sanitation rules have given growing scrutiny to ice in recent years. The result, inevitably, has been a lengthening list of sanitation guidelines for ice dispensers.

The days of open ice bins for the unrestricted use of hotel and motel guests are probably numbered, agree equipment manufacturers and health officials. In some cases, the bins become repositories for paper cups, cigarette butts, cans of beer, even freshly caught fish. Such instances may be infrequent, but they have been enough to provoke regulation.

The fault is not that of the ice dispensing equipment itself, but how equipment is used. "If it's a bin in back of a bar, accessible only to the bartender, there's generally no problem," says James L. Brown, program director at the National Sanitation Foundation. "But it's a different story when you put the same type bin in the driveway of a gas station or in a motel lobby."

Some local jurisdictions have regulations against open ice bins in lodging places. Several states have considerd either restricting open bin use or banning the open bins in favor of automatic dispensing systems with enclosed ice storage.

The expense of automatic dispensing systems, generally twice that of open bins of similar capacity, is one drawback to banning the bins. Manufacturers point out that automatic dispensers can serve more people because the ice they dispense is metered. Still, the initial investment is one operators hesitate to make.

An alternative is placing bins under closer employee supervision, or bagging ice for guests.

While open bin restrictions are still in talking stages, other ice equipment regulations are closer to maturity.

Promising to be part of this year's harvest are proposals now in the bailiwick of the National Sanitation Foundation.

Current concerns, according to Robert Collins, NSF director of standards development, include overhead protection of ice bins and installation of carbonators and drop-in cold plates in ice bins.

Michigan has had restrictions in these areas since 1974. The overhead covering requirement was designed to protect ice from dripping beverage faucets and dispensing heads, as well as drippings from a bartender's well-intentioned swipes of his countertop. [illegible]ns in Michigan are often protected by plexiglass shields.

Cold plates are heavy aluminum plates through which beverage syrup and carbonated water circulate to chill. Drop-in cold plates are not permanently fixed to the ice bin; theoretically, they can be moved for routine cleaning of the bin interior.

But the plates can weigh 100 lb. or more, making their removal a cleaning step often skipped. And without routine cleaning, mold and slime can flourish.

A further caution against cold plates is the possibility of leakage from the lines carrying syrup and carbonated water to dispensing heads outside the bin. The same caution is cited against drop-in carbonators, the 4-in. by 8- to 10-in. models hung on ice bin interiors.

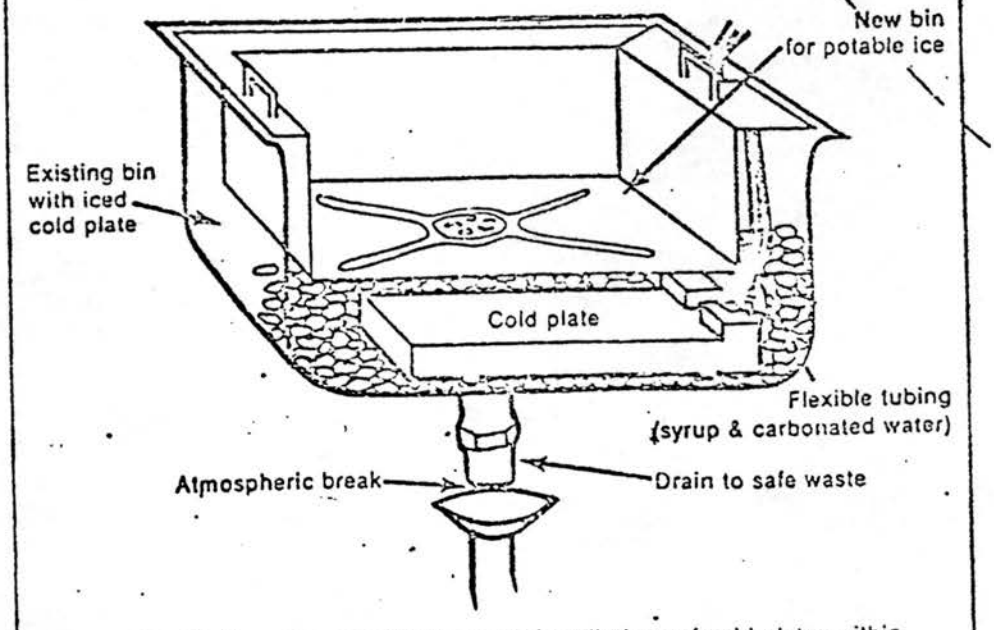
The NSF stresses that restrictions against drop-in cold plates and carbonators, and a requirement for overhead ice bin protection, are still under preliminary consideration. If they are ultimately endorsed by NSF directors, they stand a solid chance of being adopted by many state and local health authorities. □

For information, see Action Express.



Will health officials banish self-serve ice bins from hotel corridors? Some Marriott inns already have been forced to substitute automatic dispensers.

COLD PLATE INSTALLATION,
ADAPTED TO SANITATION REQUIREMENT



Since 1974, Michigan has permitted no new installations of cold plates within bins storing potable ice. Existing installations are acceptable if a slightly smaller ice bin is inserted within the existing bin to separate potable ice from the plate.

STATEMENT OF NEED AND REASONABLENESS

FEES

The Commissioner proposes to increase license fees for lodging establishments, 7MCAR§1.155A(MHD 155 (a)), and for food and beverage establishments, 7MCAR§1.165A(MHD 165 (a)) by three times. The present fee schedule was imposed by statute (Laws 1963, Chapter 154, Minnesota Statutes §157.03), and was incorporated into rule effective January 1, 1975. The revenue generated by the existing fee schedule is considerably less than the current operating expenses of the Section of Hotels, Resorts and Restaurants (HR&R) and of that portion of the Section of Environmental Field Services (EFS) which provides sanitarian services to the Section of HR&R. The proposed increase which is intended to be in effect for most of FY 1980, would generate income nearly sufficient to meet the two units' expenses projected for FY 1980 and FY 1981 as shown in the table below.

	ACTUAL	PROJECTED		
INCOME	FY'78	FY'79	FY'80	FY'81
License fees and late renewal penalties at existing rate	$167,816	$141,904*	$129,133**	$117,511***
at proposed higher rate			(387,399)	(352,533)
EXPENSES				
34% of EFS budget	$256,758	$290,326	$288,252	$288,252
87% of HR&R budget	$ 98,484	$107,880	$ 84,390	$ 84,390
	+	+	+	+
TOTAL EXPENSES	$355,252	$398,206	$372,642	$372,642
NET using income based on existing rate	-$187,436	-$256,302	-$243,509	-$255,131
using income based on proposed higher rate			(+$ 14,757)	(-$ 20,109)

*Takes into account loss of $12,700 to City of Minneapolis and $13,212 to other Community Health Service agencies.

**Assume a reduction of 9% from FY 1979 income, for fees going to new Community Health Service agencies.

***Assume a reduction of 9% from FY 1980 income, for fees going to new Community Health Service agencies.

The figures above show that there is clearly a need to increase existing license fees. Based on recent experience it is reasonable to assume that there will be no significant increase in the existing number of licensed facilities, and therefore, no increase in income. It is possible that the income which is anticipated to be lost to

3/2/79

Community Health Service agencies in FY 1980 and FY 1981, will be less than 9% for each year. While these two assumptions indicate that the projected income may not decrease by as much as is anticipated, the projected income will most certainly not increase above the amounts stated, nor will it equal projected costs.

The Commissioner proposes a new license category for a "limited food service" with a fee below that charged for the smallest category of establishment. A "limited food service" establishment is an itinerant establishment, or one serving only prepackaged foods which receive no more than heat treatment. This new category of license is being created because it does not seem fair to charge the existing minimum fee (that which is imposed on establishments with 1-4 employees) for a facility which, by definition, does not handle or prepare food in the traditional manner. License fees are set to reflect the average amount of time spent to inspect and maintain records on each category of establishment. Because of its small size and the restrictions on the type of equipment to be used and the service available, the inspection of such a facility takes far less time than that which is spent inspecting a more traditional facility. For this reason it seems reasonable to charge a reduced fee for such a facility.

Most licenses are issued on a calendar year basis. The effective date of September 1, 1979, is proposed because it will make the new fees applicable to all licenses issued for 1980.

The Commissioner's authority to prescribe license fees for food, beverage and lodging establishments is provided in Minnesota Statute §157.03 (1978). The fees to be prescribed shall first be approved by the Department of Finance. The fees shall be reasonable and shall be in an amount to approximate the agency's costs for administering the program, Minnesota Statute §144.122 (1978). As was shown earlier, the amount of revenue being generated under the existing fee schedule is clearly not sufficient to meet current operating expenses. The proposed fee schedule would generate income which would more closely reflect current and projected expenses. Because the law requires that fees reflect expenses and because the proposed increased fees achieve this purpose, they are necessary.

STATEMENT OF NEED AND REASONABLENESS

SWIMMING POOLS

The commissioner proposes to amend MHD 141(b) by expanding the definition of a swimming pool to include special purpose pools, and the definition of special purpose pools to include whirlpools, spas and cold plunges. The swimming pool code imposes restrictions on pool design and operation to maximize the general safety of swimmers and to minimize the risks to the public health. The swimming pool code is designed to impose restrictions on self contained swimming or bathing facilities which pose particular risks to the public health because they are not exposed to naturally-caused self-purifying and cleansing processes, and because the water temperature is frequently elevated to a temperature which promotes the growth of pathogenic bacteria.

Since the swimming pool code was adopted in 1971, there have been numerous occasions when the applicability of the code to certain types of pools was questioned by pool designers and contractors. Because the definitional sections were unclear, the agency felt that its authority for requiring that the code apply to whirlpools, spas and cold plunges was not as definite as would be desired, and certainly not as clear as the hazards created by these special pools would require. In order to eliminate these ambiguities and definitional uncertainties, the changes noted earlier are being proposed.

The authority of the commissioner to propose these changes derives from the duties imposed and authority granted in Minnesota Statues §§ 144.05(C)(1978) to establish and enforce health standards for the protection and promotion of the public's health, such as regulation of environmental health hazards. To allow certain types of pools, which create particular environmental hazards, to operate without complying with the pool code would create situations where the swimmers' and bathers' health might be endangered. Because the proposed amendments would serve to protect the public health, the proposed amendments are necessary. Because the proposed amendment would not create any burdens upon

builders and owners of special purpose pools, which are different from those being imposed upon builders and owners of regular pools, for the purpose of protecting the public health, the proposed amendments are reasonable.

STATEMENT OF COMPLIANCE WITH

MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General William G. Miller, do hereby declare that I have examined the proposed amendments to rules relating to Food, Beverage & Lodging Establishments, to License Fees, and to Swimming Pools and all related documents and that, based on such examinations and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed.

Dated: November 15, 1979

WILLIAM G. MILLER
Special Assistant
Attorney General

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.

Calendar

Public Hearings on Proposed Agency Rules

May 28-June 1, 1979

Date	Agency and Rule Matter	Time and Place
May 31	Livestock Sanitary Board Control of Pseudorabies; Aleutian Disease-Free Herds of Mink; Control of Glanders-Farcy; Control of Hog Cholera; Horse Mange or Scabies; Cleaning and Disinfection of Railroad Cars; Condemnation & Slaughter of Animals with Tuberculosis, Para-tuberculosis, & Bang's Disease Hearing Examiner: Harry Seymour Crump	9:30 a.m., Conference Rm. D, Veterans Service Bldg., 20 W. 12th St. and Columbus Ave., St. Paul, MN
June 1	Dept. of Administration, Building Code Division Training & Certification of Evaluators for Energy Disclosure Program Hearing Examiner: Natalie Gaull	9:30 a.m., Conference Rm., 408 Metro Square Bldg., 7th & Robert St., St. Paul, MN

Department of Health Environmental Health Division

Proposed Amendments to Rules Relating to Food, Beverage and Lodging Establishments, License Fees, Clean Indoor Air and Swimming Pools

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, June 22, 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 existing rules 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 Natalie Gaull, Hearing Examiner, at Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104, telephone (612) 296-8114, 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. 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 be-

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."

half of such interests. The conduct of the hearing shall be governed by the rules of the Office of Hearing Examiners, 9 MCAR §§ 2.101-2.199.

If adopted, the proposed amendments would result in the following changes:

1. Increase 1980 license fees for food, beverage and lodging establishments by three times;

2. Define a new license category for limited food service establishments;

3. Set a maximum of 130°F. for hot water in guest areas of lodging establishments;

4. Provide for hiring a licensed exterminator to rid a lodging establishment of pests;

5. Prohibit public access to open ice bins in lodging establishments after 1982;

6. Bring spa pools and whirlpools within the scope of construction standards of the swimming pool code;

7. Revise certain definitions and requirements of the Clean Indoor Air rules; and

8. Make various minor technical amendments to the above-captioned rules.

Statutory authority of the Commissioner of Health to promulgate the above revisions is contained in Minn. Stat. §§ 144.12, 144.122, 144.05, 144.417, and ch. 157 (1978).

Copies of the proposed amendments are now available and at least one free copy may be obtained by writing to the Minnesota Department of Health, Division of Environmental Health, 717 Delaware Street Southeast, Minneapolis, Minnesota 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 Agency therefore strongly urges those who are potentially affected in any manner by the substance of the proposed amendments rule 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.

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. Laws 1978, ch. 463, § 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 communicaint 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 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 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).

May 7, 1979

s / Ellen Z. Fifer, M.D.
For George R. Pettersen, M.D.
Commissioner

Rules as Proposed

Lodging establishments.

7 MCAR § 1.151 ~~MHD 151.~~ Scope and definitions.

A. Scope. ~~(a)~~ This rule ~~regulation~~ shall be applicable to all lodging establishments, such as hotels, motels, lodging houses and resorts as defined in Minn. Stat. ch. 157.

B. Definitions.

1. (a) ~~Board~~ Commissioner. The term ~~"Board"~~ "Commissioner" shall mean the Minnesota ~~State Board~~ Commissioner of Health and the Minnesota Department of Health, which terms shall be synonymous.

2. Approved. The term "approved" shall mean acceptable to the ~~Board~~ Commissioner following ~~its~~ his determination as to conformity with ~~departmental standards and~~ established public health practices.

3. (c) Clean. The term "clean" shall mean the absence of dirt, grease, rubbish, garbage and other offensive, unsightly or extraneous matter.

4. (d) Good repair. The term "good repair" shall mean free of corrosion, breaks, cracks, chips, pitting, excessive wear and tear, leaks, obstructions and similar defects so as to constitute a good and sound condition.

~~(e) Standards. The term "standards" means the criteria of compliance of the Board and available on request.~~

5. (f) Usable floor space. The term "usable floor space" means all floor space in a sleeping room not occupied by closets, toilet rooms, shower or bathrooms.

7 MCAR § 1.152 ~~MHD 152.~~ Sanitation requirements. The construction, operation, maintenance and equipment of lodging establishments shall be regulated as follows:

A. (a) Building. Every building, structure or enclosure used to provide lodging accommodations for the public shall be kept in good repair, and so maintained as to promote the health, comfort, safety and well being of persons accommodated.

B. (b) Floors. The floors of all guest rooms, hallways, bathrooms, store rooms, and all other spaces used or traversed by guests shall be of such construction as to be easily cleaned, shall be smooth, and shall be kept clean and in good repair. Cleaning of floors shall be done as to minimize the raising of dust and the exposure of guests thereto. The requirements of this section shall not prevent the use of rugs, carpets or natural stone which can be kept clean. Abrasive strips for safety purposes may be used wherever deemed necessary to prevent accidents.

C. (c) Walls and ceilings. The walls and ceilings of all rooms, halls and stairways shall be kept clean and in good repair. Studs, joists or rafters shall not be left exposed except when suitably finished and kept clean.

D. (d) Screening. When flies, mosquitoes, and other insects are prevalent, all outside doors, windows and other outer openings shall be screened: Provided that such screening shall not be required for rooms deemed by the ~~Board~~ Commissioner to be located high enough in the upper stories of the building as to be free of such insects, or in such areas where other effective means are provided to prevent their entrance.

E. (e) Lighting and ventilation. All rooms and areas used by patrons and guests and all other rooms or spaces in which lighting and ventilation, either natural or artificial, are essential to the efficiency of the business operation shall be well lighted and ventilated.

An area shall be considered well ventilated when excessive heat, odors, fumes, vapors, smoke or condensation is reduced to a negligible level and barely perceptible to the normal senses. ~~Air replacement vents shall be designed to permit the entrance of an equal volume of displaced air and to prevent the entrance of insects, dust or other contaminating materials.~~ During seasons when weather conditions require tempering of make-up air, adequate equipment shall be provided to temper the make-up air. Every gas-fired or oil-fired room heater and water heater shall be vented to the outside air.

F. (f) Space. Every room occupied for sleeping purposes by one person shall contain at least 70 sq. ft. of usable floor space, and every room occupied for sleeping purposes by more than one person shall contain not less than 60 sq. ft. of usable floor space for each occupant thereof. Under no circumstances shall there be provided less than 400 cu. ft. of air space per occupant. Beds shall be spaced at least 3 ft. apart when placed side by side. No sleeping quarters shall be provided in any basement having more than half its clear floor to ceiling height below the average grade of the adjoining ground. When strict compliance herewith is impracticable, the ~~Board~~ Commissioner may waive any of the provisions of this paragraph subject to such conditions as may be deemed desirable in the individual case.

G. (g) Bedding and linen. All beds, bunks, cots, and other sleeping places provided for guests in hotels, motels, resorts and lodging houses shall be supplied with suitable pillow slips and under and top sheets. All bedding including mattresses, quilts, blankets, pillows, sheets, spreads, and all bath linen shall be kept clean. No bedding including mattresses, quilts, blankets, pillows, bed and bath linen,

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."

shall be used which are worn out or unfit for further use. Pillow slips, sheets and bath linen after being used by one guest shall be washed before they are used by another guest, a clean set being furnished each succeeding guest. For any guest occupying a guest room for an extended period of time, a fresh set of sheets and pillow slips shall be furnished at least once each week, and at least two clean towels shall be furnished each day, except that the proprietor will not be responsible for the sheets, towels, pillow slips, and bath linen furnished by a guest.

H. ~~(h)~~ Room furnishings. All equipment, fixtures, furniture and furnishings, including windows, draperies, curtains and carpets, shall be kept clean and free of dust, dirt, vermin and other contaminants, and shall be maintained in good order and repair.

I. ~~(i)~~ Toilets. Every hotel, motel and lodging house shall be equipped with adequate and conveniently located water closets for the accommodation of its employees and guests. Water closets, lavatories and bath tubs or showers, shall be available on each floor when not provided in each individual room. Toilet, lavatory and bath facilities shall be provided in the ratio of one toilet and one lavatory for every ten occupants, or fraction thereof, and one bath tub or shower for every twenty occupants, or fraction thereof. The hot water temperature shall not exceed 130°F (~55° C). Toilet rooms shall be well ventilated by natural or mechanical methods. The doors of all toilet rooms serving the public and employees shall be self-closing. Toilets and bathrooms shall be kept clean and in good repair and shall be well lighted and ventilated. Handwashing signs shall be posted in each toilet room used by employees. Every resort shall be equipped with adequate and convenient toilet facilities for its employees and guests. If privies are provided they shall be separate buildings and shall be constructed, equipped, and maintained in conformity with the standards of the ~~Board~~ Commissioner and shall be kept clean.

J. ~~(j)~~ Water supply. A safe adequate supply of water shall be provided. The water supply system shall be located, constructed and operated in accordance with the rules ~~standards~~ of the ~~Board~~ Commissioner. ~~When strict compliance herewith is impracticable the Board may waive any of the provisions for location and construction specified in this item, subject to such conditions as may be deemed desirable in the individual case.~~

K. ~~(k)~~ Handwashing. All lavatories for public use or furnished in guest rooms at hotels, motels, lodging houses and resorts shall be supplied with hot and cold running water and with soap. The hot water temperature shall not exceed 130° F (~55° C). Scullery sinks should not be used as handwashing sinks.

In the case of separate housekeeping cabins at resorts not supplied with running hot water, equipment shall be provided for heating water in the cabin.

Individual or other approved sanitary towels or warm-air dryers shall be provided at all lavatories for use by employees or the public.

L. ~~(l) Cleaning and bactericidal treatment.~~ Eating utensils and drinking vessels provided in guest rooms.

1. After each usage, all multi-use eating utensils and drinking vessels shall be thoroughly washed in hot water containing a suitable soap or synthetic detergent, rinsed in clean water, and effectively subjected to a bactericidal process approved by the ~~Board~~ Commissioner. Approved facilities for manual dishwashing shall consist of a three compartment sink with stacking and drainboards at each end. ~~Dishwashing machines shall be equipped with thermometers which will accurately indicate the temperature of the wash and rinse water.~~ All mechanical dishwashing machines ~~installations installed on or before January 1, 1968,~~ shall conform to Standard Number 3 of the National Sanitation Foundation, dated April, 1965.

~~Either of the following bactericidal processes for manual dishwashing is regarded as approved:~~

~~(1) Complete immersion in clean water at a temperature of not lower than 170° Fahrenheit for at least two minutes. The bactericidal compartment must be properly equipped with a heating unit or other means to maintain the specified temperature while in use.~~

~~(2) Complete immersion in clean water containing not less than 50 parts per million of available chlorine if hypochlorites are used, or not less than 200 parts per million if chloramines are used, for not less than two minutes. Other compounds acceptable to the Board may be used in accordance with standards recommended at the time of acceptance.~~

~~Any other processes acceptable to the Board may be used for machine or manual dishwashing.~~

All dishes, glasses, utensils and equipment after washing and bactericidal treatment shall be permitted to drain and air dry.

2. Single service utensils or vessels as defined in MHD 162(s) must be handled in a sanitary manner. Such utensils may not be re-used.

M. ~~(m)~~ Waste disposal. All liquid wastes shall be disposed of in an approved public sewerage system or in a sewerage system which is designed, constructed and operated in accordance with the ~~standards of the Board~~ rules of the Minnesota Pollution Control Agency (6 MCAR § 4.8040).

Prior to removal, all garbage and refuse in storage shall be kept in water-tight, non-absorbent receptacles which are covered with close-fitting, fly-tight lids. All garbage, trash and refuse shall be removed from the premises frequently to prevent nuisance and unsightly conditions, and shall be disposed of in a sanitary manner. All garbage receptacles shall be kept clean and in good repair.

N. ~~(n)~~ Insect and rodent control. Every hotel, motel, lodging house and resort shall be so constructed and equipped as to prevent the entrance, harborage or breeding of flies, roaches, bedbugs, rats, mice and all other insects and vermin, and specific means necessary for the elimination of such pests such as cleaning, renovation or fumigation shall be used. The Commissioner may order the facility to hire an exterminator licensed by the state to exterminate pests when:

1. The infestation is so extensive that it is unlikely that a non-professional can eradicate the pests effectively, or

2. The extermination method of choice can only be carried out by a licensed exterminator, or

3. Upon reinspection, it is found that an establishment has not been brought into compliance with a prior order to rid the establishment of pests.

O. ~~(o)~~ Personnel health and cleanliness. No person shall resume work after visiting the toilet without first thoroughly washing his hands.

Personnel of hotels, motels, lodging houses and resorts may be required to undergo medical examination to determine whether or not they are cases or carriers of a communicable disease.

P. ~~(p)~~ Cleanliness of premises. The premises of all hotels, motels, lodging houses and resorts shall be kept clean and free of litter or rubbish.

Q. ~~(q)~~ Fire protection. All lodging establishments shall provide suitable fire escapes which shall be kept in good repair and accessible at all times. Hallways shall be marked and exit lights provided; fire extinguishers shall be provided and shall be recharged annually and kept accessible for use. No sleeping quarters shall be maintained in rooms which do not have unobstructed egress to the outside or to a central hall leading to a fire escape. **All fire protection measures shall be in accordance with requirements of the State Fire Marshal.**

R. ~~(r)~~ Plumbing and swimming pools. All new plumbing in hotels, motels, lodging houses and resorts, and all plumbing reconstructed or replaced after January 1, 1968 ~~the effective date of this regulation~~ shall be designed, constructed and installed in conformity with the Minnesota Plumbing Code (7 MCAR §§ 1.120-1.134).

All swimming pools and other artificial recreational bathing facilities shall be located, constructed and operated in conformity with ~~the standards of the Board~~ 7 MCAR § 1.141.

S. Sanitary dispensing of ice. Any lodging establishment which makes ice available in public areas, including but not limited to lobbies, hallways, and outdoor areas shall restrict access to such ice in accordance with the following provisions:

1. after the effective date of this rule, any newly-constructed lodging establishment which installs ice-making equipment, and any existing lodging establishment which replaces its ice-making equipment, shall install only automatic dispensing, sanitary ice-making and storage equipment;

2. after December 31, 1982, any existing lodging establishment which has not converted to automatic dispensing ice-making and storage equipment shall no longer permit unrestricted public access to open-type ice bins, and shall dispense ice to guests only by having employees give out prefilled, individual, sanitary containers of ice, or by making available prefilled, disposable, closed, bags of ice.

7 MCAR § 1.155 ~~MHD 155~~ Initial and renewal license fees: License Expiration dates.

A. ~~(a)~~ Fee schedule. License applications for lodging establishments as defined in 7 MCAR § 1.151 ~~MHD 151~~ shall be accompanied by the applicable fee as determined from the following fee schedule.

Fee Schedule

Number of Sleeping Rooms	Fee	
1 — 18	~~$ 7.50~~	$23.00
19 — 35	~~$15.00~~	$45.00
36 — 100	~~$20.00~~	$60.00
101 and over	~~$25.00~~	$75.00

B. ~~(b)~~ Expiration date. Initial and renewal lodging establishment licenses shall be issued for the calendar year for

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which application is made and shall expire on December 31 of such year.

C. (c) License renewals. License renewals shall be obtained on an annual basis. License renewal applications shall be submitted to the Commissioner ~~State Board~~ of Health on forms provided ~~by it~~ no later than December 31 of the year preceding the year for which application is made.

D. (d) Penalty fee. A penalty fee of $10.00 shall be added to the amount of the license fee if the application has not reached the office of the Commissioner ~~State Board~~ of Health before January 31, or in the case of a new business, 30 days after the opening of such business.

E. (e) Reduced license fee. From and after October 1 of each year, the license fee for new establishments or new operators shall be one half of the appropriate annual license fee plus any penalty which may be required.

F. (f) Effective date. The fees prescribed in 7 MCAR § 1.155 ~~regulation MHD 155~~ shall apply to all licenses which become effective on or after ~~January 1, 1975~~ September 1, 1979.

Restaurants and Places of Refreshment

7 MCAR § 1.165 ~~MHD 165~~ Initial and renewal license fees: License expiration dates.

A. (a) Fee schedule. Initial and renewal license applications for food and beverage establishments as defined in 7 MCAR § 1.162 ~~MHD 162~~ shall be accompanied by the applicable fee as determined from the schedule below. The average number of employees shall be computed in accordance with Minn. Stat. § 157.03.

Food or Beverage Establishment Fee Schedule

Number of Employees	Fee	Proposed Fee
1–4	~~$ 7.00~~	$21.00
5–18	~~$12.00~~	$36.00
19–28	~~$18.00~~	$54.00
29–35	~~$25.00~~	$75.00
36 and over	~~$30.00~~	$90.00
limited or temporary food service		$15.00

B. (b) . . .

C. (c) . . .

D. (d) . . .

E. (e) . . .

F. (f) Effective date. The fees prescribed in ~~regulation MHD 165~~ 7 MCAR § 1.165A shall apply to all licenses which become effective on or after ~~January~~ September 1, ~~1975~~ 1979.

7 MCAR § 1.162 ~~MHD 162:~~ Definitions.

M. (m) Food Establishment shall mean food and beverage service establishments as defined in Minn. Stat. chs. 157 and 144.72 and shall include drive-ins, bars, taverns, drive-in cafes, clubs, lodges, eating facilities at resorts and churches, temporary and limited food service establishments, except as exempted by § 157.14.

W. Limited Food Service Establishment shall mean an itinerant establishment, or one serving only prepackaged foods which receive no more than heat treatment.

7 MCAR § 1.163 S. ~~(MHD 162) (s)~~ Temporary or limited food service establishments.

A temporary or limited food-service establishment shall comply with all provisions of ~~this regulation~~ 7 MCAR §§ 1.161–1.165 which are applicable to its operation: provided, that the ~~Board~~ Commissioner may augment such requirements when needed to assure the service of safe food, may prohibit the sale of certain potentially hazardous food, and may modify specific requirements for physical facilities when in ~~its~~ his opinion no health hazard will result.

W. Emergency first aid for choking: Any food service establishment which is not a temporary or limited food service establishment shall post a chart illustrating the use of an emergency first aid procedure which is approved by the commissioner for use to relieve a patron with a restricted airway. Such an illustration shall be posted in the food preparation area where all employees may easily see it.

7 MCAR § 1.141 ~~MHD 141~~ Public swimming pools.

B. (b) Definitions. The following definitions shall apply in the interpretation and enforcement of this ~~Regulation~~ rule. The word "shall" as used herein indicates a mandatory requriement.

1. (1) Swimming pool. Any structure, basin, chamber, or tank containing an artificial body of water for swimming, diving, relaxation, or recreational bathing, including special purpose pools.

2. (2) Public swimming pool. Any swimming pool, other than a private residential swimming pool, intended to be used collectively by numbers of persons for swimming or bathing, operated by any person as defined herein, whether he be owner, lessee, operator, licensee, or concessionaire, regardless of whether a fee is charged for such use.

3. (3) Private residential swimming pool. Any swimming

pool, located on private property under the control of the homeowner, the use of which is limited to swimming or bathing by members of his family or their invited guests. (The design, construction, and operation of such pools are not subject to the provisions of this Regulation.)

4. (4) Person. Any person, firm, partnership, association, corporation, company, governmental agency, club, or organization of any kind.

5. (5) ~~State Board of Health. The State Board of Health of the State of Minnesota, hereinafter referred to as the Board.~~ Commissioner means Commissioner of Health.

6. (6) Wading pool. Any pool used or designed to be used exclusively for wading or bathing and having a maximum depth of 24 inches.

7. (7) Special purpose pool. Treatment pools, therapeutic pools, ~~and~~ special pools for water therapy, whirlpools, spas, and cold plunges.

Clean Indoor Air Rules

7 MCAR § 1.441 ~~MHD 441.~~ Authority, scope and purpose.

A. (a) These rules are promulgated pursuant to authority granted to the ~~State Board~~ Commissioner of Health in Minn. Stat. § 144.417, subd. 1, relating to prohibition of smoking in public places and at public meetings.

B. (b) These rules apply to "public places" and "public meetings," as defined in Minn. Stat. § 144.413, subds. 2 and 3. "Public place" includes all enclosed, indoor areas used by the general public or serving as a place of work, regardless of type of ownership of the area. Restrictions and prohibitions on smoking in "factories, warehouses and similar places of work" shall be regulated under rules of the Department of Labor and Industry.

C. (c) Nothing in these rules shall be construed to in any way affect smoking prohibitions imposed by the fire marshal or other laws, ordinances or regulations.

D. (d) It is the purpose of these rules to provide clarification of certain provisions of the Minnesota Clean Indoor Air Act and to maintain the same public policy position as the Act.

7 MCAR § 1.442. ~~MHD 442;~~ Definitions. All terms which are defined in Minn. Stat. §§ 144.411–144.417 shall have the meanings attributed to them therein. For the purpose of these rules the terms defined herein shall have the meanings given to them.

A. (a) "Acceptable Smoke-free Area" means:

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

2. (2). At least one of the following conditions exists:

a. (aa). There is a continuous, physical barrier such as a wall, partition or furnishing, of at least 56 inches (1.42 meters) in height to separate the smoking-permitted and no-smoking areas. The barrier may contain doors or portals for exit and entry.

b. (bb). There is a space of at least four feet (1.22 meters) in width to separate the smoking-permitted and no-smoking areas. This space may be either an unoccupied area or a section of seating area acting as a buffer zone in which smoking is not permitted, but which itself is not part of the "acceptable smoke-free area."

c. (cc) The ventilation system in the room containing both a smoking-permitted and no-smoking area has total air circulation (recirculated plus outside air) of not less than six air changes per hour including supply of tempered outside air determined according to ~~Regulation~~ rules of the Department of Administration, Minnesota Building Code, Minn. Reg. SBC 6007 (e) (3).

~~(dd) The concentration of carbon monoxide in the no smoking area shall at no time exceed concentration of carbon monoxide in outside air within 12 feet (3.7 meters) of the building by more than 10 milligrams per cubic meter (9 parts per million).~~

B. (b) "Act" means the Minnesota Clean Indoor Air Act of 1975, Minnesota Laws 1975, Chapter 211, Minn. Stat. §§ 144.411–144.417.

C. (c) "Bar" shall mean any establishment or portion of an establishment where one can purchase and consume alcoholic beverages, but excluding any such establishment or portion of the establishment having table and seating facilities for serving of meals to more than fifty people at one time, and where, in consideration of payment, meals are served at tables to the public.

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D. (d) "Educational facilities" means any location used for instruction of enrolled students, including but not limited to, day care centers, nursery schools, elementary schools, middle schools, junior and senior high schools, vocational schools, colleges and universities. This classification shall include all areas supportive of instruction which are under the responsibility of the school administration, including but not limited to classrooms, lounges, study area and libraries.

E. (e) "Factory, warehouse or similar place of work" means the indoor area of any facility of an enterprise used principally to manufacture or assemble goods, products or merchandise not for the purpose of direct retail sale, and shall include those areas incidental but related to the primary operation.

F. (f) "Health care facilities" means any institution, place, building or agency which is required to be licensed under Minn. Stat. §§ 144.50 to 144.58, including but not limited to, hospitals, nursing homes, boarding care homes, supervised living facilities and surgical centers.

G. (g) "Meals" shall mean any foods made available to be consumed on the premises except foods which are prepackaged when served to the patron and foods which are served as snacks or appetizers.

H. (h) "Office" means any building, structure or area which is used by the general public or serves as a place of work at which the principal activities consist of professional, clerical or administrative services. This classification shall include professional offices, financial institutions, business offices and government offices.

I. (i) "One side of the room" shall mean a contiguous portion of the room, including any seating arrangements.

J. (j) "Other person in charge" shall mean the agent of the proprietor authorized to perform administrative direction to and general supervision of the activities within the public place at any given time.

K. (k) "Place of work" shall mean any location at which two or more individuals perform any type of a service for consideration of payment under any type of employment relationship, including but not limited to such employment relationship with or for a private corporation, partnership, individual, or government agency. This term shall also include any locations wherein two or more individuals gratuitously perform services for which individuals are ordinarily paid.

L. (l) "Private social function" shall mean any function for which all the following conditions are met:

1. (1) The function is a specific social or recreational event for which an entire room or hall has been reserved for the purpose of entertainment or pleasure and not for the principal purpose of education, sales or business.

2. (2) The function is limited in attendance to people who have been specifically designated and their guests.

3. (3) Seating arrangements for the function, if any, are under control of the sponsor of the function and not of the person otherwise responsible for the public place.

M. (m) "Proprietor" means the party, regardless of whether he is owner or lessee of the public place, who ultimately controls, governs or directs the activities within the public place. The term does not mean the owner of the property unless he ultimately controls, governs or directs the activities within the public place. The term proprietor may apply to a corporation as well as an individual.

N. (n) "Public Conveyance" means any air, land or water vehicle used for the transportation of persons whether or not for compensation, including but not limited to airplanes, trains, buses, boats, and taxis. The term includes vans and trucks which may be used to transport persons to, from and during work or jury duty. The term does not include privately owned vehicles when used for private purposes.

O. (o) "Responsible person" means the proprietor or other person in charge as herein defined.

P. (p) "Restaurant" means any building, structure, or area used as, maintained as, or advertised as, or held out to the public to be an enclosure where meals, for consideration of payment, are made available to be consumed on the premises. For the purpose of these rules, the term "restaurant" shall not depend upon licensure as such under Minnesota Statutes, Chapter 157.

Q. (q) "Room" means any indoor area which is bordered on all sides by a wall or partition of at least 56 inches (1.42 meters). Such sides shall be continuous and solid except for door portals for entry and exit.

7 MCAR § 1.443 ~~MHD 443~~. General provisions.

A. (a) General prohibition. Smoking shall be prohibited in all sections of public places or public meetings except in areas designated as Smoking Permitted areas.

B. Notice to be posted. To advise persons of the existence of "No Smoking" and "Smoking Permitted" areas, the statement "Smoking is prohibited except in designated areas" shall be conspicuously posted at all major entrances to any public place.

C. (b) Smoking Permited area.

1. (1) If smoking is to be permitted in an area of a public place or public meeting, the responsible person shall designate such area as "smoking-permitted." One and only one Smoking Permitted area shall be designated per room. However, rooms containing at least 20,000 square feet (1,858 square meters) in total floor space may designate more than one Smoking Permitted area and shall otherwise comply with these rules.

2. (2) In a public place which contains two or more rooms which are used for the same activity, the responsible person may designate one entire room as smoking permitted as long as at least a portion of one other comparable room has been designated as a No Smoking area.

3. (3) Entry or exit areas, ticket areas, registration areas, common traffic areas or similar sections of public places shall not be designated in their entirety as a Smoking Permitted area if non-smokers would be required to use the area to participate in activities for which the public place is intended. This rule shall not be construed to prevent designation of a Smoking Permitted area in a portion of the establishment which non-smokers must briefly cross to reach the intended activity.

4. (4) The size of the designated Smoking Permitted area shall not be more than proportionate to the preference of users of that location for a Smoking Permitted area, as can be demonstrated by a responsible person. The proportional preference of users of a Smoking Permitted area in that location may be demonstrated by the responsible person by evidence of any of the following:

a. (aa) the percentage of users of the location who express a preference for a smoking-permitted area when the responsible person asks all users for their preference, or

b. (bb) the percentage of users of the location who request or select a Smoking Permitted area when the responsible person does not ask all users for their preference, or

c. (cc) the percentage of users who are determined by the proprietor to prefer a Smoking Permitted area by an alternate method which reasonably indicates the user's preference. In no case shall the smoke-free area measure less than 200 square feet, or 30 percent of the total public area, whichever is greater. For the purpose of these calculations, total public area does not include hallways, foyers or similar waiting areas.

5. Smoking is permitted in a private office. "Private office" means an enclosed room in an office which is occupied exclusively by smokers, even though such room may occasionally be visited by non-smokers.

D. (c) Single room. In the case of a public place consisting of a single room in which a Smoking Permitted area is designated, the responsible person shall be responsible for reserving and clearly designating a No Smoking area on one side of the room.

E. (d) Signs.

1. (1) All signs which are used to identify a bar that has been designated as a smoking area in its entirety shall use the statement, "This establishment is a Smoking Area in its entirety," or a similar statement. The sign shall be conspicuously posted either on all outside entrances or in a position clearly visible on entry into the establishment.

2. (2) All signs which are used to identify a location where the responsible person prohibits smoking in an entire public place or public meeting shall use the statement, "No smoking is permitted in this entire establishment," or a similar statement. The sign shall be conspicuously posted either on all outside entrances or in a position within the establishment.

3. (3) All signs which are used to identify a Smoking Permitted area shall use the words "Smoking Permitted" and/or use the international smoking symbol. ~~and all~~ Signs which are used to identify a No Smoking area shall use the words "No Smoking" and/or the international No Smoking symbol. ~~Additional words and symbols, including the international smoking symbol, may be used, but the additional printing shall not obscure the basic words "smoking permitted" or "no smoking."~~

4. (4) All signs which are used to identify Smoking Permitted and No Smoking areas shall be placed at a height and location easily seen by a person in the establishment and not obscured in any way. "Smoking Permitted" and "No Smoking" signs, except signs on tables or seats, shall be in printed letters of not less than 1.5 inches (3.8 centimeters) in height. Whenever either of the international symbols is used, the diameter of the outer circle shall not be less than 4 inches. In large areas where signs may have to be read from a distance, the following are minimum sizes which must be used:

Furthest distance from which sign is to be read:	Height of lettering	Diameter of outer circle on symbol
150 feet	4 inches	6 inches
200 feet	6 inches	10 inches

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350 feet	8 inches	15 inches
500 feet	12 inches	18 inches

The boundary between a No Smoking area and Smoking Permitted area shall be clearly designated so that persons may differentiate between the two areas.

5. (5) All signs which are used on tables or seats to designate No Smoking and Smoking Permitted areas shall use printed letters of not less than 0.5 inches (1.3 centimeters) in height. Whenever either of the international symbols is used, the diameter of the outer circle shall not be less than 3 inches. When such signs are used, the responsible person shall conspicuously post at least one "No Smoking" sign and one "Smoking Permitted" sign either at the boundary between the two areas or on the walls adjacent to the No Smoking and Smoking Permitted areas.

6. (6) The size of lettering on signs reading "Smoking Permitted" shall not exceed the size of lettering on signs reading "No Smoking" in the same public place.

(7) To advise patrons of existence of "no smoking" and "smoking permitted" areas, the statement: "In accordance with the Minnesota Clean Indoor Air Act, smoking is prohibited except in designated smoking areas," may be conspicuously posted at the entry to the establishment.

7. (8) In lieu of sign provisions specified in MHD 443(d)(3) and (4), a responsible person shall be in compliance with the law if all persons are asked their preference for a smoking-permitted or a no-smoking area and all persons are then directed to the appropriate area. Furthermore, at least one sign advising the public of this mechanism shall be conspicuously posted at all entrances normally used by the public. A restaurant or other public place which has controlled seating (an employee directs patrons to seating or waiting areas) must ask each person whether he prefers a Smoking Permitted or a No Smoking area before directing that person to a seat in the appropriate area. Similarly a restaurant or other public place which takes advance reservations shall ask the person's preference for a Smoking Permitted or No Smoking area at the time the reservation is made. A restaurant or other public place which uses controlled seating as defined above shall be exempt from the sign requirements contained in 7 MCAR § 1.443 E.3., 4., 5. and 6.

F. (e) Acceptable smoke-free area. The responsible person shall make arrangements for an acceptable smoke-free area as defined in MHD 442(a) 7 MCAR § 1.442 A. The size and location of any Smoking Permitted area shall be determined such that toxic effects of smoking are minimized in the adjacent No Smoking area.

G. Permissible ash trays. Portable ash trays are banned in all no-smoking areas. Only ash stands and permanent ash trays may be used at or near the entrance to a No Smoking area. Such ash stands and permanent ash trays shall be conspicuously labelled with the following message placed on or near the ash stand:

SMOKING IS PROHIBITED
PLEASE EXTINGUISH ALL SMOKING
MATERIALS IMMEDIATELY

7 MCAR § 1.444 ~~MHD 444.~~ Categories of affected places.

A. (a) Absent irreconcilable conflict, the responsible person shall be expected to comply with ~~Minn. Reg. MHD 443~~ 7 MCAR § 1.443 and the specific provisions governing that public place in ~~Minn. Reg. MHD 444~~ 7 MCAR § 1.444. If the provisions of the rules governing specific affected places conflict with or are inconsistent with a general provision of ~~Minn. Reg. MHD 443~~ 7 MCAR § 1.443, the specific portion of ~~Minn. Reg. MHD 444~~ 7 MCAR § 1.444 shall prevail over the general. The public places specified in this rule shall be expected to comply with applicable provisions according to functional activities taking place in a public area and not according to the nature of a controlling establishment.*

B. (b) Places of work.

1. (1) As an alternative to ~~Minn. Reg. MHD 443(b)(1)~~ 7 MCAR § 1.443 C.1. requiring one and only one Smoking Permitted area per room, a place of work which is not customarily frequented by the general public may contain several, separate No Smoking and Smoking Permitted areas within the same room provided each No Smoking area is at least 200 square feet (18.2 square meters) in area. Such No Smoking areas must comply with the requirements for an acceptable smoke-free area as defined in ~~Minn. Reg. MHD 442(a)~~ 7 MCAR § 1.442 A.2. Under this alternative for places of work which are not customarily frequented by the general public, the responsible person shall not be required to comply with sign provisions of ~~Minn. Reg. MHD 443(d)~~ 7 MCAR § 1.443 B., but the responsible person must conspicuously post at least one sign on each floor which states, "Smoking is prohibited except in designated smoking areas."

2. (2) These rules shall not apply to a private residence when the residence is not customarily used as a "place of work."

3. (3) Any "factory, warehouse or similar place of work," as defined in ~~MHD 442(e)~~ 7 MCAR § 1.442 E., shall be regulated by rules of the Department of Labor and Industry.

*For example, different rules may apply to component areas of a medical center according to the actual functional activities of each area, such as a restaurant, office or health care facility.

C. (c) Offices. When a public place which is a factory, warehouse or similar place of work contains an office which is incidental but related to the primary operation, such office shall for the purposes of this Act, be regulated under rules of the Department of Labor and Industry.

D. (d) Restaurant.

1. (1) During hours of operation when a facility which may otherwise be considered a restaurant does not serve food but does serve alcoholic beverages, the facility shall be considered a "bar."

2. (2) When a public place which is a factory, warehouse or similar place of work contains a restaurant which is intended as an employee eating area and which is incidental to the primary operation, such restaurant shall, for the purposes of this Act, be regulated under rules of the Department of Labor and Industry.

E. (e) Public conveyance.

1. (1) No person is permitted to smoke in a public conveyance except in designated smoking areas. Smoking Permitted sections may be designated in any public conveyance with a capacity of ten or more persons including the driver.

2. (2) A public conveyance with a capacity of less than ten persons may be considered to be a smoking area in its entirety if the driver and all passengers expressly consent.

~~(f) Educational Facility~~

~~Smoking permitted areas in educational facilities shall not be located in areas normally used by persons under 18 years of age.~~

F. (g) Health care facilities.

1. (1) The requirement for posting of appropriate signs in ~~Minn. Reg. MHD 443~~ 7 MCAR § 1.443 shall be satisfied in patient or resident rooms if there is at least one sign at the entrance to each floor and wing which states: "Smoking is prohibited except in designated smoking areas."

2. (2) One of the following procedures shall be used in patient or resident rooms:

a. (aa) The responsible person shall ask all prospective patients or residents or a person authorized to represent the patient or resident whether a Smoking Permitted or No Smoking area is preferred. The responsible person then shall assign rooms according to this preference when space is available. When space is not available in a No Smoking room and a person is admitted to a room originally designated for smoking, smoking shall be prohibited in that room unless expressly permitted by the non-smoker.

b. (bb) If the responsible person does not assign patient or resident rooms according to the smoking preference of the patient or resident, smoking shall be prohibited in all such rooms except rooms occupied exclusively by persons who smoke or persons who have expressed permission for smoking.

3. (3) Visitors and staff shall be prohibited from smoking in patient or resident rooms unless the occupants expressly permit.

4. In hospitals, smoking shall be prohibited in corridors, emergency rooms, treatment rooms, admitting areas and intensive care units.

G. (h) Hotels, motels and resorts. No person may smoke in hotels, motels and resorts except in designated smoking areas. This prohibition does not apply to sleeping rooms which are rented to a guest.

7 MCAR § 1.445 ~~MHD 445.~~ Application for waiver of the law.

A. (a) To apply for a waiver of the Act, the responsible person for a public place or public meeting shall submit a written application to the ~~State Board~~ Commissioner of Health stating the grounds for the waiver. The ~~Board~~ Commissioner has the right to request any other information reasonably necessary to determine the merits of the waiver application. Failure to submit such requested information may result in denial of the waiver application.

B. (b) An applicant for waiver shall have the burden to provide clear and convincing evidence to demonstrate that ~~both:~~ (1) compelling reasons exist to necessitate a waiver. Such compelling reasons may consist of evidence that implementation of the Act and these Rules would endanger the ability of the public place to produce sufficient income to meet its operating expenses. Acceptable evidence of such compelling reasons shall consist of financial records and/or projections, based upon demonstrable proof, reasonably showing changes of income and/or expenses which are directly attributable to the Act or these rules.

~~(2) Even with waiver of the Act and these Rules~~

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."

~~the concentration of carbon monoxide in all sections of the public place shall at no time exceed the concentration of carbon monoxide in outside air within 12 feet (3.7 meters) of the building by more than 10 milligrams per cubic meter (9 parts per million).~~

C. ~~(c)~~ In making determination of the eligibility of an applicant for a waiver, the ~~State Board~~ Commissioner of Health shall:

1. ~~(1)~~ Consider information supplied by the responsible person in the application for waiver.

2. ~~(2)~~ Consider prevailing smoking restrictions and other practices relating to similar public places in the community.

3. ~~(3)~~ Consider other relevant information consistent with the public policy expressed in the Act.

D. ~~(d)~~ After the ~~Board~~ Commissioner has reviewed the information required in ~~Minn. Reg. MHD 445(e)~~ 7 MCAR § 1.445C., The ~~Board~~ Commissioner shall make the final decision on the waiver application and shall respond in writing to the applicant indicating that the waiver request has been denied or approved and reasons therefor.

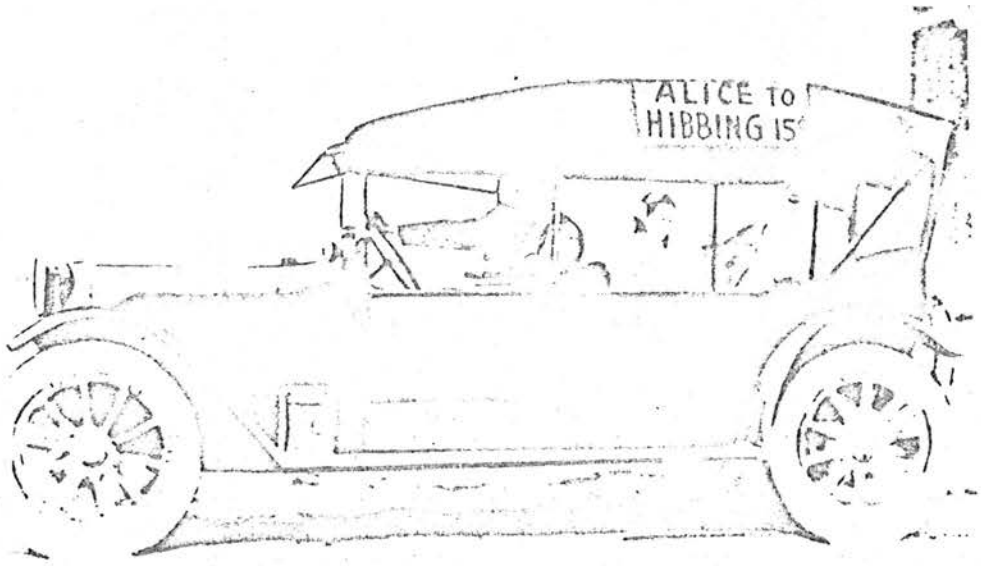
Energy Agency Conservation Division

Notice of Rescheduling of Hearing Regarding Proposed Rules Relating to Establishing Materials, Installation and Labeling Standards for Thermal Insulation Products

Notice is hereby given that the public hearing in the above-entitled matter originally scheduled for 9:00 a.m. on May 14, 1979, in Room D of the Veterans Service Building, 20 West 12th Street and Columbus Avenue, St. Paul, Minnesota, as published in Volume 3, Number 40 of the *State Register*, on April 9, 1979, on page 1855, has been rescheduled on June 21, 1979, in Room A of the Capitol Square Building, 550 Cedar Street between 10th Street and 11th Street, St. Paul, Minnesota, beginning at 9:00 a.m. and continuing until all persons have had an opportunity to be heard. Notice of postponement of the hearing in the above-entitled matter was published in Volume 3, Number 44 of the *State Register*, of May 7, 1979.

May 7, 1979

Algernon H. Johnson
Director



This 1914 Hupmobile, believed to be the first bus built in the U.S., carried passengers from the old Hibbing site to a new one when mining operations necessitated moving the town. Operated by Carl Wickman and Andrew Anderson, the pioneer bus line was called the Mesaba Transportation Company. Later it became the Northland Transportation Company, and eventually it gained national fame as the Greyhound Corporation.

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

COMMISSIONER OF HEALTH

In the Matter of Proposed *
Amendment of a Rule *
Relating to License Fees *
for Food, Beverage and *
Lodging Establishments, *
*

COMMISSIONER OF FINANCE
APPROVAL

Minn. Stat. §157.03(1978) authorizes the commissioner of health to set fees for establishments licensed by the Minnesota Department of Health in accordance with Minn. Stat. §144.122(1978) so that the total amount collected will approximate the costs of administering the program. Minn. Stat. §16A.128(1978) provides that fees shall be neither increased nor decreased except with the approval of the commissioner of finance.

The above-captioned amendment to 7MCAR§1.165(MHD 165) relating to license fees for food and beverage establishments would make the following changes:

7MCAR§1.165 A. ~~"MHD 165(a)~~

Fee Schedule

Number of employees	Fee	Proposed Fee
1-4	$7.00	$21.00
5-18	$12.00	$36.00
19-28	$18.00	$54.00
29-35	$25.00	$75.00
36 and over	$30.00	$90.00
Limited Food Service		$15.00

The above-captioned amendment to 7MCAR§1.155(MHD 155) relating to license fees for lodging establishments would make the following changes:

7MCAR§1.155A. ~~"MHD 155(a)~~

Fee Schedule

Number of rooms, units, cabins	Fee	Proposed Fee
1-18	$7.50	$23.00
19-35	$15.00	$45.00
36-100	$20.00	$60.00
101 and over	$25.00	$75.00

Upon review of the attached supporting information justifying the need, reasonableness and amounts of the new license fees, and pursuant to the authority vested in the Minnesota Department of Finance by Minn. Stat. §16A.128(1978), the fees set forth in the proposed amendments to rules of the commissioner of health are hereby approved.

W. Burggraaff
Commissioner

Date: June 14, 1979

BY Allen A. Yozamp
Allen A. Yozamp
Budget, Planning and Control

STATE OF MINNESOTA)
COUNTY OF HENNEPIN)

BEFORE THE MINNESOTA
COMMISSIONER OF HEALTH

In the Matter of Proposed Amendments to Rules Relating to Food, Beverage & Lodging Establishments, to License Fees, to Clean Indoor Air and to Swimming Pools

AFFIDAVIT OF RECEIPT OF THE SECRETARY OF STATE'S LIST

William L. Dickey, being first duly sworn upon oath, deposes and says:

1. The he is an employee of the Minnesota Commissioner of Health.

2. That on the 18th day of May, 1979, he called the Minnesota Secretary of State's office and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules or amendments thereto pursuant to Minn. Stat. § 15.0412, subd. 4 (1978).

3. That on the 18th day of May, 1979, in response to the above request, the Secretary of State provided him with such a list, a photocopy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

William L. Dickey

Subscribed and sworn to before me
this 18 day of May, 1979.

Louise K. Kanuk

LOUISE K. KANUK
NOTARY PUBLIC-MINNESOTA
HENNEPIN COUNTY
My Comm. Expires Feb. 22, 1984

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the Matter of Proposed Amendments
to Rules Relating to Food, Beverage &
Lodging Establishments, to License Fees,
to Clean Indoor Air and to Swimming Pools

CERTIFICATE

I hereby certify that the 585 general labels and 8 page list for the Minnesota Commissioner of Health, all of which are attached and made a part hereof, constitute the complete lists of persons, associations, and other interested groups who as of 10:40 o'clock ~~A~~.m., this 18th day of May, 1979, have requested, pursuant to Minn. Stat. § 15.0412, subd. 4 (1978), that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules and amendments thereto on the subject captioned above.

SECRETARY OF STATE

JOAN ANDERSON GROWE

Joan Anderson Growe

By Joanne Rest

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

In the Matter of Proposed Amendments to Rules Relating to Food, Beverage & Lodging Establishments, to License Fees, to Clean Indoor Air and to Swimming Pools

AFFIDAVIT OF MAILING

Patricia A. Chase, being first duly sworn, deposes and says:

That on the 22nd day of May, 1979, at the City of Minneapolis, County of Hennepin, State of Minnesota, she served the attached Notice of Hearing by depositing in the United States mail at said City of Minneapolis, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the Certificate of the Secretary of State attached and made a part hereof as Exhibit A, to all persons and associations at the addresses listed on Exhibit B, attached and made a part hereof, as well as to all members of the Minnesota Legislature as of the date of mailing.

Patricia A Chase

Subscribed and sworn to before
me this 22 day of May, 1979.

Louise K. Kaniuk

LOUISE K. KANIUK
NOTARY PUBLIC-MINNESOTA
HENNEPIN COUNTY
My Comm. Expires Feb. 23, 1984

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

COMMISSIONER OF HEALTH

In the Matter of Proposed Amendments to Rules Relating to Food, Beverage & Lodging Establishments, to License Fees, to Clean Indoor Air and to Swimming Pools

ORDER FOR HEARING

To effectively implement Minn. Stat. §§ 144.05(c), 144.12, 144.122, 144.417 and ch. 157 (1978), the Minnesota Commissioner of Health deems it necessary to consider adoption of the proposed amendments captioned above pursuant to the authority vested in him by the above-referenced statutes.

NOW, THEREFORE, IT IS ORDERED this 7 day of May, 1979, that a public hearing on the proposed amendments captioned above be held in Room 105, Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota, on Friday, June 22, 1979, commencing at 9:30 a.m. and continuing until all persons or representatives of associations or other interested groups have had an opportunity to be heard.

IT IS FURTHER ORDERED that notice of said hearing be published in the State Register and be given to all persons or representatives of associations or other interested groups who have registered their names with the Secretary of State for that purpose and to all persons who are presently members of the Minnesota Legislature.

STATE OF MINNESOTA

COMMISSIONER OF HEALTH

for Allen T. Fiber M.D. Deputy Comm.

GEORGE R. PETTERSEN, M.D.
Commissioner of Health

NOTICE AS MAILED

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

COMMISSIONER OF HEALTH

In the Matter of Proposed Amendments to Rules Relating to Food, Beverage & Lodging Establishments, to License Fees, to Clean Indoor Air and to Swimming Pools

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, June 22, 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 existing rules 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 Natalie Gaull, Hearing Examiner, at Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104, telephone (612) 296-8114, 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. 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 §§ 2.101-2.199.

If adopted, the proposed amendments would result in the following changes:

1. Increase 1980 license fees for food, beverage and lodging establishments by three times;

2. Define a new license category for limited food service establishments and require restaurants to post a chart showing an emergency treatment for choking;

3. Set a maximum of 130° F. for hot water in guest areas of lodging establishments;

4. Provide for hiring a licensed exterminator to rid a lodging establishment of pests;

5. Prohibit public access to open ice bins in lodging establishments after 1982;

6. Bring spa pools and whirlpools within the scope of construction standards of the swimming pool code;

7. Revise certain definitions and requirements of the Clean Indoor Air rules; and

8. Make various minor technical amendments to the above-captioned rules.

Statutory authority of the commissioner of health to promulgate the above revisions is contained in Minn. Stat. §§ 144.12, 144.122, 144.05, 144.417, and ch. 157 (1978).

Copies of the proposed amendments are now available and at least one free copy may be obtained by writing to the Minnesota Department of Health, Division of Environmental Health, 717 Delaware Street Southeast, Minneapolis, Minnesota 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 Agency therefore strongly urges those who are potentially affected in any manner by the substance of the proposed amendments rule 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.

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. Laws 1978, ch. 463, § 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, 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 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 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).

Dated: May 7, 1979

STATE OF MINNESOTA

COMMISSIONER OF HEALTH

s / Ellen Z. Fifer, M.D. Deputy Comm'r.

For GEORGE R. PETTERSEN, M.D.
Commissioner

. . . (f) Services for a constituent by a member of the legislature or a constitutional officer in the executive branch, performed from the beginning of the term of office to adjournment sine die of the legislature in the election year for the office held; . . .''

QUESTIONS

In light of the above, could the Board respond to the following questions:

1. What criteria, if any, are used to determine whether an expense is made for the purpose of influencing an election (i.e., a campaign expenditure) or for any other purpose (i.e., a non-campaign disbursement)? Is the determination based upon the item's content (e.g., is it informative or political to whom it is sent, i.e., to a constituent or the media); its time of release or use (e.g., before or after adjournment); or who pays for it (e.g., the candidate or his campaign committee)?

2. Are news releases, press statements, speeches, radio beepers, photographs, editorial columns and letters to the editor which do not mention the member's voting record, legislative programs, ''campaign pledges,'' etc., which are sent by a legislator to the media after adjournment considered to be a campaign expenditure and subject to the reporting requirements? What, if any, of these items are sent to constituents?

3. Are other informative materials (i.e., materials which do not mention the member's voting record, etc.) such as a bill, map, legislative manual, news clipping, data from a state department or agency, state department or agency rules and regulations, a film (e.g., ''Legislatures Today'') or a pamphlet (e.g., ''How a Bill Becomes a Law'') which are sent by a legislator to a constituent after adjournment considered a campaign expenditure and subject to the reporting requirements?

4. Are informative letters (i.e., ones which make no reference to the member's voting record, etc.) which are sent to a constituent after adjournment considered a campaign expenditure? What if they are sent in response to a constituent's letter or request? What if that constituent's letter or request is received after adjournment?

5. If any of the items mentioned in questions 2, 3 and 4 are considered a campaign expenditure, must the legislator include the cost of stationery and/or stamps provided as part of his allotment by the legislature? Must he also include the cost of having such material typed by a secretary who is employed by the legislature?

6. Under any of the above circumstances, does it matter if the legislator is not seeking reelection? What if he is seeking election to another office?

7. What if any of the items mentioned above are sent to residents of a district other than the legislator's?

May we have your opinion on the above questions at your earliest convenience?

Sincerely,

Raymond J. Albrecht
State Representative

Department of Health Environmental Health Division

Notice of Intent to Solicit Outside Opinion Regarding Proposed Revision of Rules and Adoption of New Rules Relating to Various Subjects

Notice is hereby given, pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6 (1976) that the Commissioner of Health will propose the amendment and revision of existing rules and the adoption of new rules.

All interested parties desiring to submit data or views relating to the proposed adoption, amendment or revision of the rules noted below should address their comments (either written or oral) to Ms. Pauline Bouchard, Minnesota Department of Health, Division of Environmental Health, 717 Delaware S.E., Minneapolis, Minnesota 55440 or by calling 612/296-5525. Evidence submitted for consideration should be pertinent to the matter at hand. Any material received by the Department of Health will become part of the hearing record.

Amendments and revisions to rules relating to the following subjects are proposed:

1. licensing of plumbers;
2. public water supplies;
3. construction and abandonment of water wells;
4. license fees for hotels, restaurants and resorts;
5. children's camps; and
6. swimming pools.

New rules are proposed relating to the following subjects:

1. a sanitation code for food service facilities; and

2. installation of water conditioning equipment and licensing of water conditioning contractors and installers.

Any materials submitted shall be reviewed and considered by the Department of Health during the preparation of the proposed rules. Notice of the public hearing on the proposed rules shall be published in the *State Register* and given to all interested parties who have registered with the Secretary of State's Office in accordance with the provisions of the Administrative Procedures Act.

Pollution Control Agency Air Quality Division

Order for Hearing and Notice of Hearing on Application of Ford Motor Company for a Variance from Minn. Reg. APC 9 for the Operation of Certain Painting Facilities at Its Twin Cities Assembly Plant

It is hereby ordered and notice is hereby given that a hearing concerning the above-entitled matter will be held on May 31, 1978, at Highland Branch Library, 1974 Ford Parkway, St. Paul, Minnesota 55116, beginning at 9:30 a.m. and continuing until all persons can be heard.

The hearing will be held before William Seltzer, 1745 University Avenue, St. Paul, Minnesota 55104, (612) 296-8105, a Hearing Examiner appointed by the Chief Hearing Examiner of the State of Minnesota. All parties have the right to be represented by legal counsel or any other representative of their choice throughout the proceeding. The hearing will be conducted pursuant to the contested case procedures set out in Minn. Stat. § 15.0411 through Minn. Stat. § 15.052 and Minn. Reg. HE 201 through HE 222. Questions concerning discovery or other matters concerning this proceeding may be directed to Special Assistant Attorney General Jocelyn Furtwangler Olson, (296-7343), or Thomas Townsend, Division of Air Quality (296-7271), Minnesota Pollution Control Agency, 1935 W. County Road B2, Roseville, Minnesota 55113.

The purpose of this hearing will be to consider testimony and evidence bearing upon the application of Ford Motor Company for a variance of Minn. Reg. APC 9, "Control of Odors in the Ambient Air," for the operation of the following painting facilities located at its Twin Cities Assembly Plant, 966 South Mississippi River Boulevard, St. Paul, Minnesota:

(1) Hood and fender prime oven

(2) Hood and fender enamel oven

(3) Body prime oven

(4) Body enamel spray booth

(5) Body enamel oven

(6) Body tutone enamel oven

(7) Oil house building

Ford Motor Company seeks a variance from the requirements of Minn. Reg. APC 9 until November 1, 1979.

The Minnesota Pollution Control Agency is authorized to hold such hearing and grant such a variance by Minn. Stat. § 116.07 subd. 5 (1976) and pursuant to its regulation, Minn. Reg. MPCA 6.

Any person who desires to become a party to this case must submit a timely petition to intervene to the Hearing Examiner, pursuant to Minn. Reg. HE 210, showing how that person's legal rights, duties, and privileges may be affected by the decision in this case. The petition must also set forth the grounds and purpose for which intervention is sought. A party to a case has the right to present evidence and argument with respect to the issues and to cross-examine witnesses. Interested persons may present oral or written statements at the hearing without becoming parties.

Any person desiring to intervene as a party must submit to the Hearing Examiner and serve upon all existing parties a Petition to Intervene by May 25, 1978. At the present time the representatives of parties to this proceeding who should be served with such Petition to Intervene are:

Mr. George Kircos
Ms. Marcia J. Swinehart
Attorneys for Ford Motor Company
Office of General Counsel
Ford Motor Company
The American Road
Dearborn, Michigan 48121
(313) 322-2958
(313) 323-3794

Ms. Jocelyn F. Olson
Attorney for MPCA Staff
Minnesota Pollution Control Agency
1935 W. County Road B2
Roseville, Minnesota 55113
(612) 296-7343

A Notice of Appearance form, enclosed with this order, is to