

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File #575

2/15 Bill Miller advised Secy/State's list and Certificate of Compliance missing Jerry

Permanent Rule X

Temporary Rule

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 2/11/80 DUE DATE 3/2/80

Resubmitted and Received 3/4/80 ; Due: 3/14/80

a. Returned to Agency w/o Filing w/Secretary of State 2/28
b. Approved _____ Date Sent Back to Agency _____

- -

1. Rules as Adopted ✓
1A. Amendments to Rules as Proposed ✓
2. Rules as Proposed ✓

3. Certificate of Board's Authorizing Resolution, where applicable N/A

ok 4. Order for Hearing ✓

? 5. Notice of Hearing ✓
Sufficiency ✓

6. Secretary of State's List ok - [illegible] (one copy only)

ok 7. Certificate of Acquisition of Secretary of State's List ✓

ok 8. Secretary of State's Certification of Delivery of Secretary of State's List to Agency ✓

ok 9. Affidavit of Mailing ✓
At least 30 days prior to hearing ✓

ok 10. Publication in State Register ✓
At least 30 days prior to hearing ✓

11. Statement of Need and Evidence ✓

12. Hearing Examiner's Report ✓ (attached to No. 13)

13. Agency's Findings of Fact ✓

14. Certificate of Board's Resolution Adopting Rules, where applicable N/A

15. Order Adopting ✓

ok 16. Report of Chief Hearing Examiner ✓

17. Order Approving Incorporation by Reference, where applicable N/A

18. Certificate of Compliance with Rulemaking Procedures ✓

ok 19. Copy of Notice of Intent to Solicit Outside Opinion, where applicable ✓

20. Petition by Public, where applicable N/A

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

COMMISSIONER OF HEALTH

In the Matter of Proposed
Amendments to Rules Relating
to Clean Indoor Air

ORDER FOR RE-ADOPTION

The above-entitled rules were adopted by order of December 10, 1979. The rules as adopted contained errors in cross-references to other parts of the rules.

With the following corrections having been made - -

7 MCAR §1.443 C. 8. (p. 11):

> "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.C 3,4,5 and 6."

7 MCAR §1.444 B.1. (p. 12):

> "As an alternative to 7 MCAR §1.443 C. B. 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 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 7 MCAR §1.443 B. C., but the responsible person must conspicuously post at least one sigh on each floor which states, "Smoking is prohibited except in designated areas."

7 MCAR §1. 444 B.3. (p. 13):

> "Any "factory, warehouse or similar place of work," as defined in 7 MCAR §1.442 E. D., shall be regulated by Rules of the Department of Labor and Industry."

NOW, THEREFORE, IT IS ORDERED THAT the above-entitled rules, as herein corrected, are hereby re-adopted, this 29th day of February, 1980, pursuant to authority contained in Minnesota Statutes § 144.411 through §144.417 (1978).

STATE OF MINNESOTA

George R. Pettersen M.D.
Commissioner of Health

7MCAR§1.441 Authority, Scope and Purpose.

A. These rules are promulgated pursuant to authority granted to the Commissioner of Health in Minnesota Statutes §144.417, Subd. 1, relating to prohibition of smoking in public places and at public meetings.

B. These rules apply to "public places" and "public meetings," as defined in Minnesota Statute §144.413, Subdivision 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. 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. 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.

7MCAR§1.442. Definitions. All terms which are defined in Minnesota Statute §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. "Acceptable Smoke-free Area" means:

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. At least one of the following conditions exists:

a. 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. 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. 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 rules of the Department of Administration, Minnesota Building Code, Minn. Reg. SBC 6007 (c) (3).

B. "Act" means the Minnesota Clean Indoor Air Act of 1975, Minnesota Laws 1975, Chapter 211, Minnesota Statutes §144.411-§144.417.

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.

D. ~~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.

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

F. ~~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.

G. ~~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.

H. ~~I.~~ "One side of the room" shall mean a contiguous portion of the room, including any seating arrangements.

I. ~~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.

J. ~~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 employement 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.

K. ~~L.~~ "Private social function" shall mean any function for which all the following conditions are met:

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

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.

L. ~~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.

M. ~~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.

~~N.~~ O. "Responsible person" means the proprietor or other person in charge as herein defined.

~~O.~~ 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.

~~P.~~ 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 General Provisions.

A. ~~General Prohibition.~~

Smoking shall be prohibited in all sections of public places or public meetings except in areas designated as smoking-permitted areas. The responsible person shall make arrangements for an acceptable smoke-free area as defined in 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.

~~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.~~

B. ~~C.~~ Smoking Permitted Area

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. 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. 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.

~~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. 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. 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. 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. 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.~~

C. ~~B~~. Signs.

1. 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.

~~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. 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. All signs which are used to identify a smoking-permitted area shall use the words "smoking permitted" and/or use the international smoking symbol. Signs which are used to identify a no-smoking area shall use the words "no smoking" and/or the international no-smoking symbol.

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
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. 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. 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. 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.

8. 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.~~ C. 3, 4, 5 and 6.

~~F. (c) Acceptable Smoke-free Area~~

~~The responsible person shall make arrangements for an acceptable smoke-free area as defined in 7MCAR§1.442A. 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.~~

D. ~~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

7MCAR§1.444 Categories of Affected Places

A. Absent irreconcilable conflict, the responsible person shall be expected to comply with 7MCAR§1.443 and the specific provisions governing that public place in 7MCAR§1.444. If the provisions of the rules governing specific affected places conflict with or are inconsistent with a general provision of 7MCAR§1.443, the specific portion of 7MCAR§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. Places of Work

1. As an alternative to 7 MCAR § 1.443 B.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 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 7 MCAR § 1.443 B-C., but the responsible person must conspicuously post at least one sign on each floor which states, "Smoking is prohibited except in designated smoking areas."

*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.

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

3. Any "factory, warehouse or similar place of work," as defined in 7 MCAR § 1.442 E-D., shall be regulated by Rules of the Department of Labor and Industry.

C. Offices

1. 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.

2. 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. Restaurants.

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. 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.

3. A restaurant shall be deemed to be in compliance with these rules if 30% of the seats in the eating area are designated as "Smoking Prohibited".

E. Public Conveyances.

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. 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. Health Care Facilities

1. The requirement for posting of appropriate signs in 7MCAR§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. One of the following procedures shall be used in patient or resident rooms:

a. The responsible person shall ask all prospective patients or resident 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. If the responsible person does not assign patient or resident rooms according to the smoking preference of the patient or resident, smoking shall b- prohibited in all such rooms except rooms occupied exclusively by persons who smoke or persons who have expressed permission for smoking.

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. 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.

H. Common Areas.

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. These rules 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.

7MCAR§1.445 - Application for Waiver of the Law.

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 Commissioner of Health stating the grounds for the waiver. The 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. An applicant for waiver shall have the burden to provide clear and convincing evidence to demonstrate that 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.

C. In making determination of the eligibility of an applicant for a waiver, the Commissioner of Health shall:

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

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

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

D. After the Commissioner has reviewed the information required in 7MCAR§1.445C., the 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.

APPROVED AS TO FORM AND LEGALITY

MAR 1 3 1980 19____

WARREN SPANNAUS, ATTORNEY GENERAL

BY _____

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAR 1 4 1980
Joan Anderson Growe
Secretary of State
8:55 PM

Our File: #575

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

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : GEORGE R. PETTERSEN
Commissioner of Health

DATE: 2/28/80

Attn: WILLIAM G. MILLER

FROM : JERRY S. ANDERSON
Special Assistant
Attorney General

PHONE: 296-1288

SUBJECT: In the Matter of the Proposed Amendments to Rules Relating to Clean Indoor Air

The rules in the above-captioned matter have not been approved by this office for the following reasons:

1. Section 1.443 C. 8. contains a citation to § 1.443 E. 3, 4, 5 and 6, which should be § 1.443 C. 3, 4, 5 and 6.

2. Section 1.444 B. 1. contains two incorrect citations: § 1.443 C. 1. should be § 1.443 B. 1. and § 1.443 B. should be § 1.443 C.

3. Section 1.444 B. 3. cites to § 1.442 E., which should be § 1.443 C.

Following agency consideration of the reasons for disapproval and appropriate action, if any, the rules may be resubmitted. The Chief Hearing Examiner requests that any rules that are changed subsequent to his review be resubmitted to that office. Therefore, this office suggests that you contact the Chief Hearing Examiner regarding any changes made in the rules. At the time of resubmittal to this office, please ensure that the original and two copies of the Order Adopting and the Rules as Adopted accompany the resubmittal documents as they are necessary for filing with the Secretary of State.

JSA/bw
Encl.
cc: Duane Harves
Susan Robertson

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

STATE OF MINNESOTA

DEPARTMENT HEALTH

Office Memorandum

TO : Gerry Anderson
Special Assistant Attorney General
Department of Administration

DATE: March 3, 1980

FROM : Pauline M. Bouchard, J.D.
Assistant to the Director
Division of Environmental Health

PHONE: 296-5331

SUBJECT: Revision of Clean Indoor Air Rules

Pursuant to our conversation of February 27, I have made the following label changes in the Rules as Adopted:

7 MCAR 1.443C.8. (p. 11) change reference to 7 MCAR 1.443~~E~~.~~3~~ C4, 5 and 6.

7 MCAR 1.444B.1 (p. 12) change reference to 7 MCAR 1.443~~C~~.B.1.
(same page) change reference to 7 MCAR 1.443~~B~~C.

7 MCAR 1.444B.3 (p. 13) change reference to 7 MCAR 1.442~~E~~.D.

I have attached five copies of the Rules as Adopted (incorporating the above changes) which you should substitute for the copies submitted to you earlier, along with three copies of the ORDER FOR READOPTION.

Please notify me when the rules are filed with the Secretary of State.

PMB:mrs

Attachments

cc: Duane Harves
Chief Hearing Examiner
William Miller
Special Assistant Attorney General
Health Law Division

OFFICE OF HEARING EXAMINERS

WILLIAM G. MILLER
Special Assistant Attorney General

March 4, 1980

DUANE R. HARVES
Chief Hearing Examiner

6-8100

CLEAN INDOOR AIR RULES

I am in receipt of Jerry Anderson's February 28 memo to you relating to the above-referenced rules. As the changes required are form changes only, they need not be submitted for my review. Please note that I am copying Jerry on this memo.

DRH:sh
cc: Jerry Anderson

RECEIVED
MAR 6 1980
ADMINISTRATIVE AGENCIES

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

STATE OF MINNESOTA

DEPARTMENT HEALTH

Office Memorandum

TO : Gerry Anderson
Special Assistant Attorney General
Joan Hinderaker
Special Assistant Attorney General
Department of Administration

DATE: March 10, 1980

FROM : Pauline M. Bouchard, J.D.
Assistant to the Director
Division of Environmental Health

PHONE: 296-5331

SUBJECT: Revision of Clean Indoor Air Rules -- Correcting Memo of March 3, 1980

Pursuant to our conversation of March 7, I have made the following label changes in the Rules as Adopted:

7 MCAR 1.443C.8. (p. 11) change reference to 7 MCAR 1.443~~E~~ C.3, 4, 5 and 6.

I have attached five copies of p. 11 (corrected) of the Rules as Re-Adopted (incorporating the above change) which you should substitute for the copies submitted to you earlier.

I discussed this matter with Duane Harves on March 10, and he repeated the position he had taken previously, i.e., that he considered this to be merely a style change, and that, therefore, he does not need to review the record again.

Please notify me when the rules are filed with the Secretary of State.

PMB:mrs

Attachments

cc: Duane Harves
Chief Hearing Examiner
William Miller
Special Assistant Attorney General
Health Law Division

Our File: #575

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

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : FILE

DATE: March 7, 1980

FROM : JOANNE E. HINDERAKER JEH
Special Assistant
Attorney General

PHONE: 296-4692

SUBJECT: In the Matter of the Proposed Amendments to Rules Relating to Clean Indoor Air

I talked to Pauline Bouchard by telephone on 3/7/80. I informed her that the Order for Re-Adoption is inconsistent with the text of the Rules as Re-Adopted. In the latter the reference was changed to 7 MCAR 1.443E~~3~~ C 4, 5 and 6, while in the former the reference was changed to 7 MCAR § 1.443E C. 3, 4, 5 and 6.

I also advised her that this office needed some indication of Harves' position on these changes, i.e., whether he wants to review the file again, etc.

I told her that if she gets all of this material back into this office before 3/14/80, the rules could be filed on 3/14/80.

JEH/bw

RULES AS ADOPTED

7MCAR§1.441 Authority, Scope and Purpose.

A. These rules are promulgated pursuant to authority granted to the Commissioner of Health in Minnesota Statutes §144.417, Subd. 1, relating to prohibition of smoking in public places and at public meetings.

B. These rules apply to "public places" and "public meetings," as defined in Minnesota Statute §144.413, Subdivision 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. 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. 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.

7MCAR§1.442. Definitions. All terms which are defined in Minnesota Statute §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. "Acceptable Smoke-free Area" means:

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. At least one of the following conditions exists:

a. 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. 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. 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 rules of the Department of Administration, Minnesota Building Code, Minn. Reg. SBC 6007 (e) (3).

B. "Act" means the Minnesota Clean Indoor Air Act of 1975, Minnesota Laws 1975, Chapter 211, Minnesota Statutes §144.411-§144.417.

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.

D. ~~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.

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

F. ~~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.

G. ~~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.

H. ~~I.~~ "One side of the room" shall mean a contiguous portion of the room, including any seating arrangements.

I. ~~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.

J. ~~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 employement 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.

K. ~~L.~~ "Private social function" shall mean any function for which all the following conditions are met:

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

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.

L. ~~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.

M. ~~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.

~~N.~~ O. "Responsible person" means the proprietor or other person in charge as herein defined.

~~O.~~ 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.

~~P.~~ 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 General Provisions.

A. ~~General Prohibition.~~

Smoking shall be prohibited in all sections of public places or public meetings except in areas designated as smoking-permitted areas. The responsible person shall make arrangements for an acceptable smoke-free area as defined in 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.

~~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.~~

B. ~~C.~~ Smoking Permitted Area

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. 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. 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.

~~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. 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. 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. 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. 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.~~

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. 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.

8. 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.

~~F. (e) Acceptable Smoke-free Area~~

~~The responsible person shall make arrangements for an acceptable smoke-free area as defined in 7MCAR§1.442A. 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.~~

D. ~~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

7MCAR§1.444 Categories of Affected Places

A. Absent irreconcilable conflict, the responsible person shall be expected to comply with 7MCAR§1.443 and the specific provisions governing that public place in 7MCAR§1.444. If the provisions of the rules governing specific affected places conflict with or are inconsistent with a general provision of 7MCAR§1.443, the specific portion of 7MCAR§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. Places of Work

1. As an alternative to 7MCAR§1.443C.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 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 7MCAR§1.443B., but the responsible person must conspicuously post at least one sign on each floor which states, "Smoking is prohibited except in designated smoking areas."

*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.

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

3. Any "factory, warehouse or similar place of work," as defined in 7MCAR§1.442E., shall be regulated by Rules of the Department of Labor and Industry.

C. Offices

1. 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.

2. 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. Restaurants.

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. 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.

3. A restaurant shall be deemed to be in compliance with these rules if 30% of the seats in the eating area are designated as "Smoking Prohibited".

E. Public Conveyances.

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. 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. Health Care Facilities

1. The requirement for posting of appropriate signs in 7MCAR§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. One of the following procedures shall be used in patient or resident rooms:

a. The responsible person shall ask all prospective patients or resident 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. 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. 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. 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.

H. Common Areas.

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. These rules 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.

7MCAR§1.445 Application for Waiver of the Law.

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 Commissioner of Health stating the grounds for the waiver. The 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. An applicant for waiver shall have the burden to provide clear and convincing evidence to demonstrate that 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.

C. In making determination of the eligibility of an applicant for a waiver, the Commissioner of Health shall:

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

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

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

D. After the Commissioner has reviewed the information required in 7MCAR§1.445C., the 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.

C. ~~E.~~ Signs.

1. 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.

~~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. 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. All signs which are used to identify a smoking-permitted area shall use the words "smoking permitted" and/or use the international smoking symbol. Signs which are used to identify a no-smoking area shall use the words "no smoking" and/or the international no-smoking symbol.

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
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. 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.

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 Clean Indoor Air 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: February 26, 1980.

WILLIAM G. MILLER
Special Assistant
Attorney General

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

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

STATE OF MINNESOTA

DEPARTMENT HEALTH

Office Memorandum

TO : Joanne Hinderaker
Special Assistant Attorney General

DATE: February 14, 1980

FROM : Pauline M. Bouchard, J.D.
Assistant to the Director
Division of Environmental Health

PHONE: 296-5331

SUBJECT: In the Matter of Proposed Amendments to Rules Relating to Clean Indoor Air

I have enclosed for your review an affidavit of mailing to persons who asked to be notified when the rules were filed with your office, along with a copy of the notice and a list of the persons to whom such notice was sent.

PMB:mrs

Enclosures

cc: William Miller
Special Assistant Attorney General
Health Law Division

FEB 2[illegible] 1980

[illegible] AGENCIES

minnesota department of health
717 s.e. delaware st. minneapolis 55440
(612) 296-5221

DATE: February 12, 1980

TO: Persons attending hearing on revision of Clean Indoor Air rules - June 22, 1979:

As you requested at the hearing, you are hereby notified that the revisions to Clean Indoor Air rules were submitted to the Attorney General's Office for final review on Monday, February 11, 1980.

A copy of the rules as finally adopted is attached. The majority of the changes (shown by underlining and strikeouts) are merely reorganizations of the draft which was presented at the hearing.

You may call me at 296-5331 if you have further questions.

Yours very truly,

Pauline M. Bouchard, J.D.
Assistant to the Director
Division of Environmental Health

PMB:mrs

• Attachment

STATE OF MINNESOTA)
)ss.
COUNTY OF HENNEPIN)

In the Matter of Proposed Amendments
to Rules Relating to Clean Indoor Air

AFFIDAVIT
OF MAILING

NANCY GREENE, being first duly sworn, deposes and says:

That on the 12th day of February, 1980, at the City of Minneapolis, County of Hennepin, State of Minnesota, she served the attached Notice of submission of the record to the Attorney General 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 named on the list attached and made a part hereof as Exhibit A.

Nancy Greene

Subscribed and sworn to before
me this 12 day of February, 1980

Louise K Kaniuk

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

RULE HEARING REGISTER

PLEASE PRINT CLEARLY

ou wish to be notified when the
ing Examiner's Report is avail-
, please put your name and address
ne of the envelopes supplied.

	REPRESENTING	COMPLETE ADDRESS	TELEPHONE	CHECK HERE IF YOU WISH TO MAKE A STATEMENT AT THE HEARING	CHECK HERE IF YOU WISH TO BE NOTIFIED BY THE AGENCY WHEN THE HEARING RECORD HAS BEEN SUBMITTED TO THE ATTORNEY GENERAL
Brodie	Mo. Motel Assoc.	7300 France Ave So. Mpls 55435	830-2925	✓	✓
[illegible]	MN Hospitality Assoc.	2001 Univ, St Paul. 55101	227-9281		✓
Hewes	"	"	647-0107		✓
Hemon	NSP	414 Nicollet Mall 55401 Mpls	330-6883		✓
[illegible]	Minnegasco	9525 Wayzata Blvd - 55426	540-6063		✓
[illegible]	[illegible]	410 Church St Mpls 55455	373-4012		✓
Smith	LeSueur - Waseca of Health Board	88 S. Park Ave. Le Center, Mn 56057	612-357-2251		✓
[illegible]	[illegible]	410 Church St SE Mpls 55455	373-3167		✓
Evanoff	Ramsey Cnty Lung Assn	614 Portland St. Paul MN 55102	224-4801	✓	✓
[illegible]	MN Dept of Health	717 Delaware St.	296-5341	?	
Palm	Palm Brothers	2727 Nicollet Ave Mpls 55423	871-2727		✓
[illegible] Weigum	ANSR	1647 Laurel St. Paul 55104	645-4370	✓	✓
Gilbertson	Ch of M Hospitals	Box 1000 Mayo Mpls MN 55455	376-1177	✓	✓

Send xerox letter to each person w/ ✓ next to name

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

COMMISSIONER OF HEALTH

In the Matter of Proposed Amendments to Rules Relating to Clean Indoor Air

Findings and Conclusions

The above-entitled matter came on for hearing before the Commissioner of Health on the 22nd day of June, 1979, at 9:30 a.m. in Room 105, Minnesota Department of Health Building, after proper notice as required by Minn. Stats. § 15.0412S.4 (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 standards and criteria, and having confirmed the need for the above-captioned amendments, the Commissioner hereby adopts as his own the relevant Findings and Conclusions 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.

The Commissioner further finds that the proposed amendments can be read with greater ease and understanding if the text of some of the rules is reorganized in the following manner:

Subject matter	Label as proposed 7 MCAR § 1. . . .	Label as reorganized 7 MCAR § 1. . . .
Definitions	442 E. through Q.	442 D. through P.
Acceptable smoke-free area (duty of responsible person)	443 F.	443 A.
Notice to be posted	443 B.	443 C.1.
Smoking-permitted area	443 C.	443 B.
Single room	443 D.	443 B.3.
Entry and exit areas	443 C.3.	444 H.
Minimum area	443 B.4.c. (part of)	442 A., 444 D.3.
Private office	443 C.5.	444 C.1.
Signs	443 E. 443 B.	443 C. 443 C.1.
Bar: signs	443 E.1.	443 C.7.

A copy of the rules as reorganized is attached hereto and made a part hereof.

A deletion is being made from 7 MCAR § 1.443 B.4.c. The following sentence

> "In no case shall the smoke-free area measure less than 200 square feet, or 30% of the total public area, whichever is greater."

is being stricken because it largely repeats language which is contained elsewhere. The 200-square-foot minimum is already included in the definition of what constitutes an "acceptable smoke-free area" in 7 MCAR § 1.442 A. The alternative minimum "or 30% of the total public area, whichever is greater," was intended to apply only to restaurant eating areas and is contained in 7 MCAR § 1.444 D.3. Since there is a minimum area requirement applicable to all public places, the Commissioner finds that there is no need for the rules to contain an alternative minimum. The second sentence only served to explain part of the first sentence. Since this sentence would have no meaning standing alone, it also is being deleted.

STATE OF MINNESOTA

DATED: Dec 10, 1979

George R. Pettersen MD

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

7MCAR§1.441 Authority, Scope and Purpose.

A. These rules are promulgated pursuant to authority granted to the Commissioner of Health in Minnesota Statutes §144.417, Subd. 1, relating to prohibition of smoking in public places and at public meetings.

B. These rules apply to "public places" and "public meetings," as defined in Minnesota Statute §144.413, Subdivision 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. 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. 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.

7MCAR§1.442. Definitions. All terms which are defined in Minnesota Statute §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. "Acceptable Smoke-free Area" means:

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. At least one of the following conditions exists:

a. 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. 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. 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 rules of the Department of Administration, Minnesota Building Code, Minn. Reg. SBC 6007 (e) (3).

B. "Act" means the Minnesota Clean Indoor Air Act of 1975, Minnesota Laws 1975, Chapter 211, Minnesota Statutes §144.411-§144.417.

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.

D.

~~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.

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

F ~~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.

G ~~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.

H ~~I.~~ "One side of the room" shall mean a contiguous portion of the room, including any seating arrangements.

I ~~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.

J. ~~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 employement 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.

K. ~~L~~. "Private social function" shall mean any function for which all the following conditions are met:

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

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.

L. ~~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.

M. ~~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.

~~N.~~ O. "Responsible person" means the proprietor or other person in charge as herein defined.

~~O.~~ 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.

~~P.~~ 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 General Provisions.

A. ~~General Prohibition.~~

Smoking shall be prohibited in all sections of public places or public meetings except in areas designated as smoking-permitted areas. The responsible person shall make arrangements for an acceptable smoke-free area as defined in 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.

~~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.~~

~~B.~~ ~~C.~~ Smoking Permitted Area

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. 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. 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.

~~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. 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. . 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. . 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. . 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.~~

C. E. Signs.

1. 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.

~~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. 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. All signs which are used to identify a smoking-permitted area shall use the words "smoking permitted" and/or use the international smoking symbol. Signs which are used to identify a no-smoking area shall use the words "no smoking" and/or the international no-smoking symbol.

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
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. 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. 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. 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.

8. 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.

~~F. (c) Acceptable Smoke-free Area~~

~~The responsible person shall make arrangements for an acceptable smoke-free area as defined in 7MCAR§1.442A. 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.~~

D. ~~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

7MCAR§1.444 Categories of Affected Places

A. Absent irreconcilable conflict, the responsible person shall be expected to comply with 7MCAR§1.443 and the specific provisions governing that public place in 7MCAR§1.444. If the provisions of the rules governing specific affected places conflict with or are inconsistent with a general provision of 7MCAR§1.443, the specific portion of 7MCAR§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. Places of Work

1. As an alternative to 7MCAR§1.443C.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 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 7MCAR§1.443B., but the responsible person must conspicuously post at least one sign on each floor which states, "Smoking is prohibited except in designated smoking areas."

*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.

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

3. Any "factory, warehouse or similar place of work," as defined in 7MCAR§1.442E., shall be regulated by Rules of the Department of Labor and Industry.

C. Offices

1. 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.

2. 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. Restaurants.

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. 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.

3. A restaurant shall be deemed to be in compliance with these rules if 30% of the seats in the eating area are designated as "Smoking Prohibited".

E. Public Conveyances.

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. 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. Health Care Facilities

1. The requirement for posting of appropriate signs in 7MCAR§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. One of the following procedures shall be used in patient or resident rooms:

a. The responsible person shall ask all prospective patients or resident 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. 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. 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. 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.

H. Common Areas.

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. These rules 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.

7MCAR§1.445 - Application for Waiver of the Law.

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 Commissioner of Health stating the grounds for the waiver. The 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. An applicant for waiver shall have the burden to provide clear and convincing evidence to demonstrate that 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.

C. In making determination of the eligibility of an applicant for a waiver the Commissioner of Health shall:

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

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

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

D. After the Commissioner has reviewed the information required in 7MCAR§1.445C., the 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.

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 feea 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 <u>installs</u> 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 <u>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.</u>

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

EXHIBIT A

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

EXHIBIT B

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

5/2/79

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.

EXHIBIT C.

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

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.

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.

Attachment A

EMERGENCY CARE FOR CHOKING

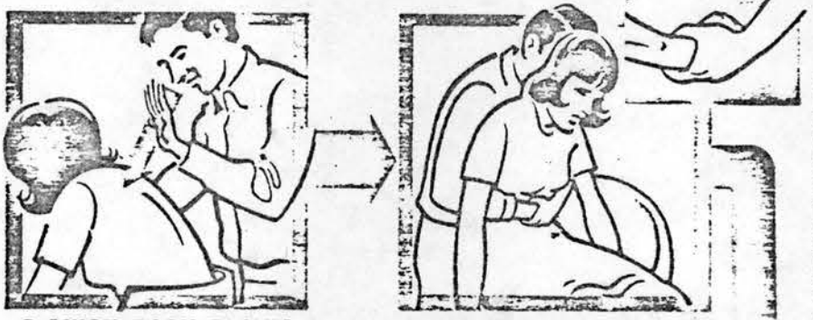


UNIVERSAL CHOKING SIGN

EMERGENCY PHONE NUMBER

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

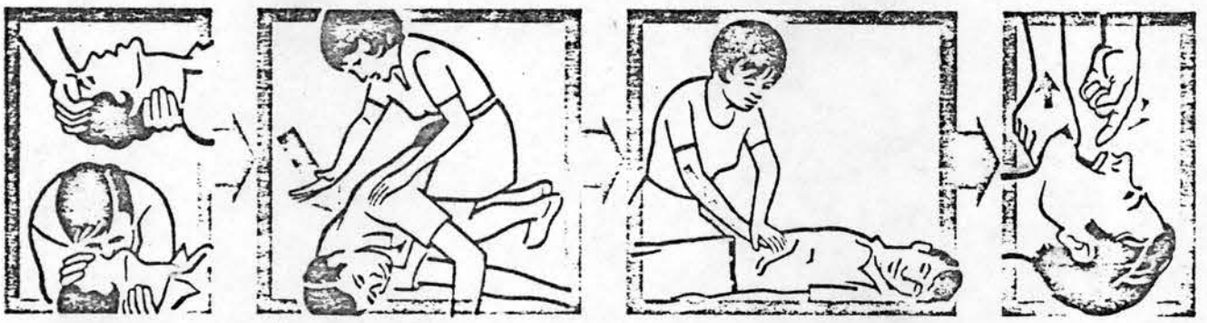
CONSCIOUS VICTIM I GIVE



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

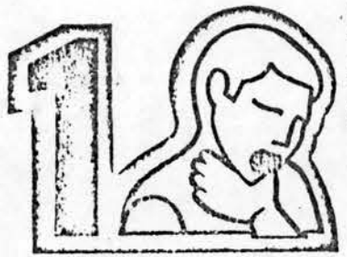
- DO NOT PRACTICE ON PEOPLE - ABDOMINAL THRUST MAY CAUSE INJURY
- EVERYONE SHOULD LEARN TO PERFORM EMERGENCY CARE FOR CHOKING AND CARDIOPULMONARY RESUSCITATION (CPR)
- FOR INFORMATION CALL THE LOCAL HEART ASSOCIATION, AMERICAN NATIONAL RED CROSS CHAPTER, LOCAL HEALTH DEPARTMENT OR EMS COORDINATOR

The National Research Council/ National Academy of Sciences Publication — Emergency Airway Management 1975 is the reference for this poster.

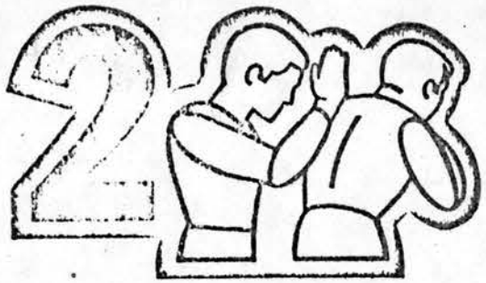
Illinois Dept. of Public Health
Division of Emergency Medical Services and Highway Safety
525 West Jefferson
Springfield, Illinois 62761
(217) 785-2080

FIRST AID FOR CHOKING:

CONSCIOUS VICTIM

1 

If the victim can speak, cough or breathe, do not interfere.

2 

If the victim cannot speak, cough or breathe, give 4 quick back blows.

3 

If unsuccessful, give 4 upward abdominal thrusts,

or 4 backward chest thrusts.

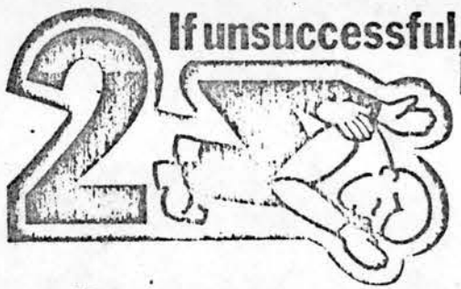
Repeat above sequence.
Be persistent.
Continue uninterrupted until advanced life support is available.

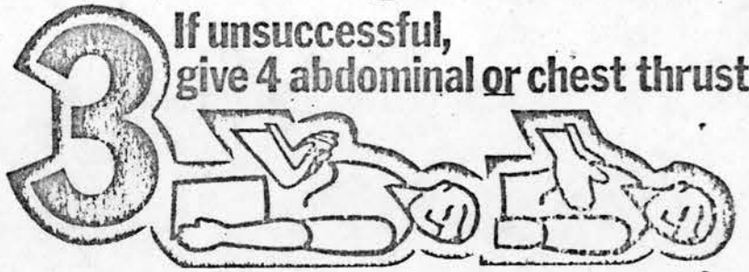
Call for help #_____

IF VICTIM BECOMES UNCONSCIOUS

Open airway and try to ventilate.

1 

2 If unsuccessful, give 4 quick back blows. 

3 If unsuccessful, give 4 abdominal or chest thrusts. 

4 If unsuccessful, try finger probe. 

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

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

Attachment B

CLEAN INDOOR AIR RULES

STATEMENT OF NEED AND REASONABLENESS

The commissioner of health proposes to amend 7MCAR §1.441-1.444 (MHD 441-444). These rules were adopted pursuant to Minnesota Statutes §144.417 (1978) which provides that "The State Commissioner of Health shall adopt rules and regulations necessary and reasonable to implement the provisions of [The Clean Indoor Air Act]..." The authority to adopt rules necessarily imposes a responsibility upon the Commissioner to amend those rules when their adminstration is becoming ineffective or when it becomes clear that new language would improve the manner in which the legislative intent is carried out. The changes proposed below are intended to achieve both of these purposes.

7MCAR §1.441 A. The term "Commissioner" is being substituted for "State Board" or "Board" throughout these rules, pursuant to legislation which abolished the State Board of Health and transfered its authority to the Commissioner. Laws 1977, Chapter 305, §39.

7MCAR §1.442 A. The definition of what constitutes an "acceptable smoke-free area" is being amended. A requirement is being added that an area may be no less than 200 square feet in order to qualify. The 200 square foot size was chosen as a result of observations made by health inspectors in a variety of public places. Under the existing rule, the responsible person could designate an unreasonably small area as being smoke-free and still be in compliance. Non-smokers had little recourse in such instances. The minimum area being prescribed will assure that up to 20 non-smokers could be accommodated within the area, depending upon the seating arrangement. The provision dealing with

carbon monoxide concentration is being deleted. Health inspectors found that it was nearly impossible to make reliable measurements of carbon monoxide concentrations in the air within the time available for carring out an inspection. This criterion was also found to be unsatisfactory since it allowed for acceptable levels of carbon monoxide to vary in relation to changing levels in outside air. These levels are clearly affected by auto emissions and by a facility's proximity to roads, etc. In view of the fact that only one or two facilities ever relied on carbon monoxide concentrations as criterion for compliance, and because of the serious measurement difficulties, we feel that it is reasonable to repeal this subsection.

7MCAR §1.442 N. The definition of "public conveyance" is being amended to clarify the scope of the term. Numerous complaints have been received from persons who ride in commuter vans or buses, who were told that the rules did not apply to such vehicles unless they were driven for compensation. The enabling legislation is clear in that it addresses all public places, without regard as to whether or not users of the public place are paying for such use. Since the purpose of these rules is to assure the existence of clean air in public places, it is reasonable that the assurance provided by these rules should extend to all types of public places, whether or not the public pays for the use of such places. The last sentence is being added to alleviate the concerns of people who carpool, or those who occasionally offer rides to others, etc. It is unlikely that the legislature intended that the rules should apply to private vehicles used to transport one's acquaintances.

7MCAR §1.443 B. is a revision of language presently contained in 443 B.7. The changes being made are the following: the phrase

"In accordance with the Minnesota Clean Indoor Air Act" is being deleted from the requirement for language which must be contained in a posted notice, because the phrase contributes very little to the primary message the sign is intended to convey. The existing provision made the posting of notices permissive. The revision being proposed would require the posting of a notice at major entrances of public places to insure that there is at least one warning being given to a patron as he enters a public place.

7MCAR §1.443 C.4 The amendment being proposed in this section will help assure that every public place designates a no-smoking area. Under the existing rule a responsible person could argue that none of his patrons asked for a no-smoking area. Non-smokers were then forced to occupy smokey areas in such facilities. Since the determination made by the responsible person in this case is exclusively within that person's control, it was difficult for health inspectors to evaluate whether or not the facility was in compliance. Under the proposed revision, the responsible person may not designate a no-smoking area which comprises less than 30% of the total area, regardless of whether or not a smaller proportion of his patrons have requested a no-smoking area. The requirement that the no-smoking area be the greater of 30% or 200 square feet is imposed to guarantee, at a minimum, that up to 20 non-smokers can be accomodated in every public place.

7MCAR §1.443 C.5 This is a new provision which is being added in response to numerous questions which have been addressed to departmental health inspectors. This provision merely paraphrases the exception contained in the law, which reads as follows: "'Public place' means any enclosed, indoor area ...serving as a place of work, ...but excluding private, enclosed offices

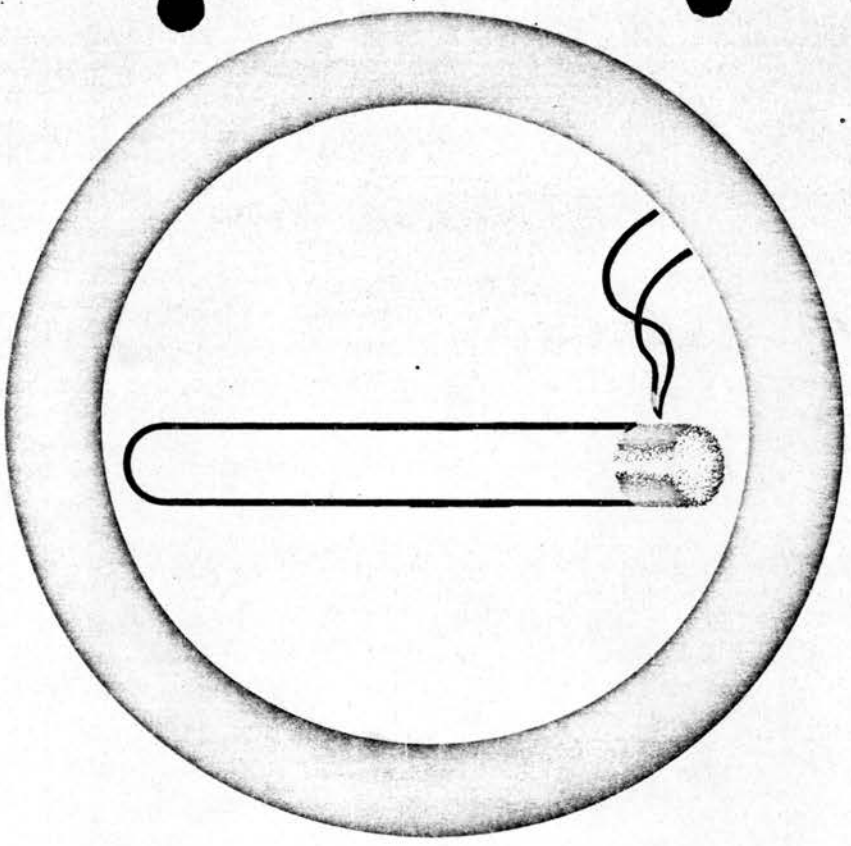
occupied exclusively by smokers even though such offices may be visited by non-smokers." (Minnesota Statutes §144.413 S.2 (1978)).

7MCAR §1.443 E.3 The provision regarding the contents of appropriate signs is being amended to allow the use of the international symbols in addition to, or in place of the written message. It was felt by health inspectors, after having consulted with volunteer organizations who are concerned with clean air, that these symbols had acquired a sufficient degree of recognition among the population at large to allow for the use of the symbols as a substitute for the written message. Striking the last sentence in the provision is necessary to allow for use of the international symbols without additional words. Copies of the symbols are attached.

7MCAR §1.443 E.4 and 5 are being amended to specify a minimum symbol size when the international symbols are used in different settings. The sizes of symbols which are prescribed in the table are based on highway sign sizes and on the sizes recommended by professional sign makers.

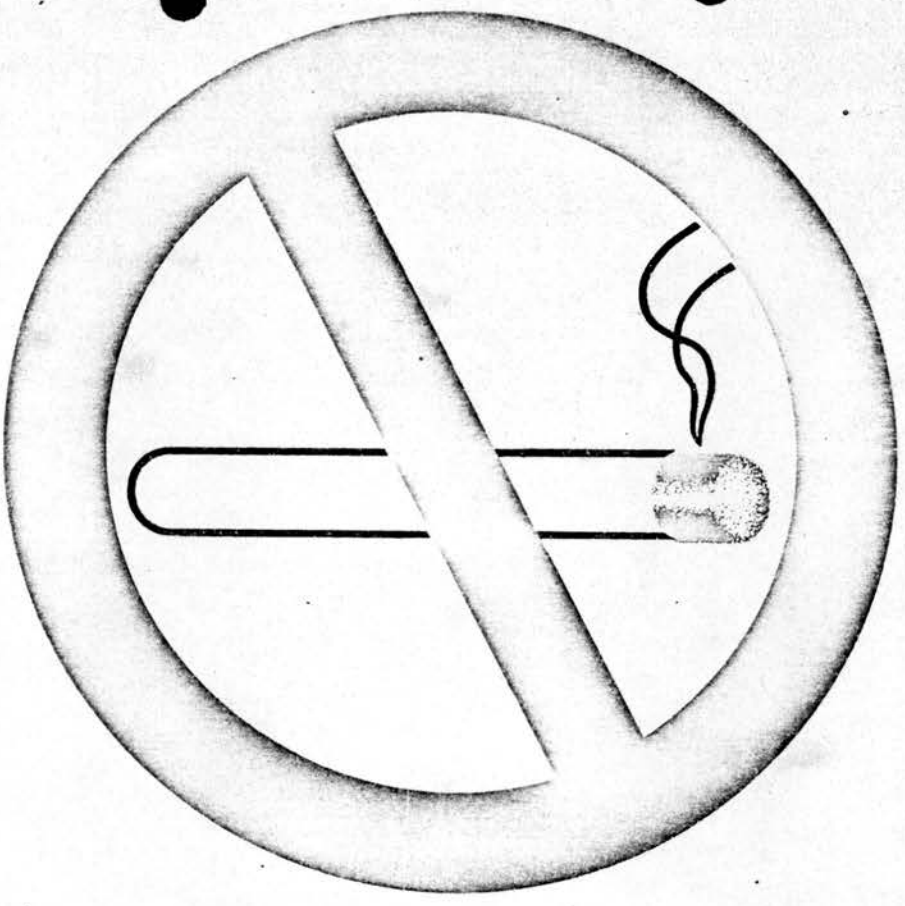
The portion of subdivision E which was numbered (7) is being stricken from this subdivision since it is being relocated in a more appropriate section in 7MCAR §1.443 B.

7MCAR §1.443 E.7 This section is being completely rewritten to help assure that a non-smoker will be directed to the appropriate area, if the facility controls seating of patrons. Under the existing rule, facilities with controlled seating occasionally did not ask the patron's preference and if there were no signs posted designating a no-smoking area, a non-smoker could be made to sit in a smoking-permitted area. The proposed revision



SMOKING PERMITTED

MINNESOTA CLEAN INDOOR AIR ACT, 1975



NO SMOKING

MINNESOTA CLEAN INDOOR AIR ACT, 1975

also helps assure that a non-smoker who makes advance reservations will be seated in a no-smoking area upon his arrival and will not be made to wait until a seat in the no-smoking area becomes available.

7MCAR §1.443 G. This is a new provision being proposed for the purpose of discouraging the carrying of lighted smoking materials into an area where smoking is prohibited. The provision does not require that ash receptacles be made available. Rather it requires only that if ash receptacles are used, only those which are relatively non-portable will be used. The posting of a sign adjacent to the ashstand is required so that smokers will be reminded of the prohibition which is in effect in the area, and will hopefully extinquish the smoking material in the receptacles provided.

7MCAR §1.444 B. This section is being amended only with respect to the labels of sections which are cross-referenced. In the existing rule, reference is made to §443 (D). The mandatory language of §443 (D)(7) has been relabelled as 443 B. The remaining portions of 443 (D) which relate to different types of signs have not been specifically enumerated in the proposed revision. Nevertheless they continue to apply whether or not they are specifically cross-referenced here. In the existing rule, cross-reference is made to 443 (b)(1). This section has been relabelled 443 C.1.

7MCAR §1.444 E. The provision labeled as "(f)" in the existing rule, relating to educational facilities is being stricken because it addresses an activity (smoking by persons who may be under 18 years of age) which is already prohibited by state law (Minnesota Statutes §609.685 (1978)). The category "educational facility" encompasses a broad range of facilities which serve many different age groups. Health inspectors charged

with enforcement of these rules have come to realize that decisions regarding the designation of smoking permitted areas in schools are best left to school administrators.

7MCAR §1.444 F.4 This new section is being proposed for adoption, in response to a number of complaints from non-smokers who have been confined in a variety of hospital settings. We agree with the complainants that smoking in a hospital is inappropriate and it is most inappropriate in those areas of a hospital which are specified in the proposed language. The prohibition prevents a responsible person from designating a smoking permitted area in one of the enumerated portions of the hospital.

7MCAR §1.445 B.2 is being stricken for the same reason as that stated earlier in relation to 7MCAR §1.442 A.2.

All of the foregoing changes are being made for the purpose of achieving greater compliance with the Clean Indoor Air Act. The existing rules were drafted largely on the basis of what appeared to be a reasonably implementable program in 1976. Since that time, we have gained experience in implementing the existing rules, and the proposed changes are intended to correct, and/or ameliorate the program as it has developed to date. All of the changes are designed to impose minimum additional burdens on the public and on persons in responsible charge. In those instances where compliance with a new or revised criterion would pose great difficulty, the responsible person can seek a waiver under 7MCAR §1.445. Because these revisions are being proposed to assure greater compliance with the Act, the revisions are necessary. Since these revisions are designed to impose minimum additional burdens on those who are required to comply with the Act, the revisions are reasonable.

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

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL - Health

Office Memorandum

TO : Joanne Hinderaker
Special Assistant
Attorney General
G-25 Administration Building

DATE: February 8, 1980

FROM : William G. Miller
Special Assistant
Attorney General

PHONE: 341-7272

SUBJECT: In the Matter of Proposed Amendments to Rules Relating to Clean Indoor Air

I have enclosed for your review the following documents relating to the above referenced rules amendments:

5	Rules as Adopted
3	Rules as Proposed
3	Order for Hearing
3	Notice of Hearing (as mailed)
3	Certificate of Secretary of State
3	Affidavit of Receipt of List
3	Affidavit of Mailing
3	Statement of Need and Reasonableness
3	Notice of Intent to Obtain Information
3	Post-Hearing Revisions
3	Order Adopting Rules
3	Findings and Conclusions
1	Transcript
3	Report of Chief Hearing Examiner

An affidavit of the mailing of Notice of this submission will be forthcoming. You will note that these prepared amendments were heard at the same hearing and under the same Order for Hearing as the amendments to rules relating to food, beverage and lodging establishments, and to swimming pools, which rules have already been approved and been finally promulgated.

Please contact me with any questions or comments.

WGM:sd

Enclosures
cc: Pauline Bouchard

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. McRoos, Ph.D., Director
Division of Environmental Health

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE COMMISSIONER OF HEALTH

IN THE MATTER OF PROPOSED)
AMENDMENTS TO RULES RE-)
LATING TO CLEAN INDOOR)
AIR.)

ORDER 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 of Health on August 13, 1979; and

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

WHEREAS, the Commissioner of Health 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 of Health has met all requirements of Minn. Stat. § 15.0412, subd. 4.

NOW, THEREFORE, upon receipt of this Order, the Commissioner of Health 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 30th day
of January, 1980.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

COMMISSIONER OF HEALTH

In the Matter of Proposed
Amendments to Rules Relating
to Clean Indoor Air

ORDER FOR ADOPTION

The above-entitled matter came on for hearing before the Commissioner of Health on the 22nd day of June, 1979, at 9:30 a.m. in Room 105, Minnesota Department of Health Building, after proper notice as required by Minn. Stats. § 15.0412S.4 (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 standards and criteria, and having confirmed the need for the above-captioned amendments,

NOW, THEREFORE, IT IS ORDERED THAT amendments to rules 7 MCAR § 1.441 through § 1.445 be adopted, this 10 day of December, 1979, pursuant to authority contained in Minn. Stats. § 144.411 through § 144.417 (1978).

STATE OF MINNESOTA

George R. Pettersen M.D.

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

will fail to comply with relevant policies, rules and regulations of other state agencies, federal agencies, and local governments which have been considered during the hearing process.

Any person wishing to become a party to the proceeding must file a Notice of Intervention or a Petition to Intervene with the Hearing Examiner pursuant to Minn. Rule EA 506 and 9 MCAR § 2.210 A. The Notice or Petition must be received by the Hearing Examiner on or before May 14, 1979, and a copy must be served on the Energy Agency (at 980 American Center Building, 160 East Kellogg Boulevard, Saint Paul, Minnesota 55101), on the applicant (at 403 Northwestern Bank Building, 161 North Concord Street, South St. Paul, Minnesota 55075, c/o David L. Grannis III), and on known parties at time of intervention. Early intervention is strongly encouraged. Parties must file a Notice of Appearance at least ten (10) days prior to the hearing. (The Notice of Appearance is not a substitute for a Petition to Intervene.)

A prehearing conference will be held pursuant to rule 9 MCAR § 2.213 A. at 1:00 p.m. on May 15, 1979, at the Office of Hearing Examiners, Room 300, 1745 University Avenue, Saint Paul, Minnesota. The applicant shall have its prefiled testimony available for distribution at the prehearing conference. Intervenors must attend the prehearing conference and be prepared to present a complete list of witnesses with prepared testimony or a summary of testimony to be presented. All parties must also present at the prehearing conference the exhibits to be sponsored and relied upon by their witnesses, clearly indicating the witness who will sponsor each exhibit.

Any person who wishes to give testimony, present other evidence or exhibits, or note his appearance at the hearing may do so, pursuant to 9 MCAR § 2.210 E., without having attained party status by intervention. Registration forms for such appearances will be available at the hearing. The time specified for receipt of testimony from persons not parties to the proceeding, as noted in the first paragraph above, is Monday, June 4, 1979, 7-9 p.m.

All persons are advised that no factual information or evidence which is not part of the hearing record shall be considered by the Hearing Examiner or by the Director in the determination of the above-entitled matter. Persons attending the hearing should bring all evidence bearing on the case including any records or other documents.

The procedural rules cited above are available for review at the Office of Hearing Examiners (9 MCAR §§ 2.201-.22) and at the offices of the Energy Agency (Minn. Rules EA 500-520). The applicant's application for a certificate of need and the substantive rules applicable to this matter, 6 MCAR §§ 2.1001-.1091, are also available for review at the offices of the Energy Agency and at libraries designated as Minnesota Environmental Quality Board distribution points. The latter are: the Minnesota Valley Regional Library, Mankato; the Rochester Public Library; the Legislative Reference Library, State Capitol, Saint Paul; and the Environmental Conservation Library, Minneapolis. All rules may be purchased from the Documents Section, Department of Administration, 140 Centennial Building, Saint Paul, Minnesota, 55155, telephone (612) 296-2874. The cited procedural rules provide generally for the procedural rights and obligations of the parties including the right to advance notice of witnesses and evidence, the right to present evidence and cross-examine witnesses, the right to purchase a record or transcript, the right to object to petitions for intervention, the obligation to meet certain time limits, the obligation to file proposed findings and conclusions, and the right to file comments on and exceptions to the findings and recommendation of the Hearing Examiner.

Parties are entitled to issuance of subpoenas to compel witnesses to attend and produce documents and other evidence. Requests for subpoenas must be made of the Hearing Examiner in writing, pursuant to rule 9 MCAR § 2.216.

If persons have good reason for requesting a delay in the hearing, the request must be made in writing to the Hearing Examiner at least 5 days prior to the hearing. A copy of the request must be served on the Agency and any other parties.

April 20, 1979

Algernon H. Johnson
Director

Department of Health Environmental Health Division

Notice of Intent to Solicit Outside Opinion Regarding Proposed Revision of Rules Relating to Clean Indoor Air

Notice is hereby given pursuant to the provisions of Minn. Stat. § 15.0412 subd. 6 (1978) that the Commissioner of Health will propose to revise MHD 441-445 (7 MCAR §§ 1.441-1.445). The proposed revision would clarify certain definitions, require that smoking be permitted in no more than 70% of a public place, permit use of the international smoking and no-smoking symbols, prescribe minimum sign sizes, prohibit the use of portable ashtrays in no-smoking areas, and make several other minor changes and clarifications.

All interested parties desiring to submit data or views relating to the proposed revision of MHD 441-445 should address their comments (either written or oral) to Ms. Pauline M. Bouchard, Minnesota Department of Health, Division of Environmental Health, 717 S.E. Delaware Street, Minneapolis, Minnesota 55440, or call (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.

Any materials submitted shall be reviewed and considered by the Department of Health during the preparation of proposed revision. Notice of the public hearing on the proposed revision 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.

Minnesota State Retirement System

Regular Meeting, Board of Directors

Regular quarterly meeting of the Board of Directors, Minnesota State Retirement System, will be held on Friday, May 18, 1979, at 9:00 a.m. in the office of the System, 529 Jackson Street, St. Paul, Minnesota.

Special Meeting, Board of Directors

Notice is given that the Chairman of the Board of Directors, Minnesota State Retirement System, has called a special meeting of the Board to be held at 9:00 a.m., on May 11, 1979, in the office of the System, 529 Jackson Street, St. Paul, Minnesota.

The purpose of the meeting is to receive and take appropriate action regarding the report of the consulting firm of Towers, Perrin, Forster & Crosby regarding the Data Base — Participant Account System and any other matter which may properly come before the Board.

Pollution Control Agency

Behind-Schedule and Substandard Project List

Minn. Stat. § 115.83 (1978) requires the Minnesota Pollution Control Agency ("Agency") to issue an order incorporating a list of principal consulting engineers, contracting engineers, and principal contractors who are responsible for behind-schedule or substandard municipal wastewater treatment projects. The statute also requires the List to be published in the *State Register*. A behind-schedule project is one which, due to failures of design or workmanship or other factors within the reasonable control of the contractor or engineer, the Agency determines is more than 90 days behind schedule. A substandard project is one which, due to failures of design or workmanship, or other factors within the reasonable control of the contractor or engineer, the Agency determines does not accomplish the purpose for which it was designed or constructed.

In accordance with the statute, the Agency has issued an order incorporating the following list.

Terry Hoffman
Executive Director

BEHIND SCHEDULE AND SUBSTANDARD PROJECT LIST

Behind Schedule Projects

Firm	Municipality or Sanitary District	Nature of Deficiency (Number of Days Behind Schedule)	Project Description
Bolton & Menk (Principal Consulting Engineer)	Waterville, MN 56096	274 Days (As of Dec. 31, 1978)	Facilities Plan (Step 1)
Koehnlein, Lightowler, Johnson, Inc. (Principal Consulting Engineer)	Canby, MN 56220	306 Days (As of Dec. 31, 1978)	Facilities Plan (Step 1)
	Morris, MN 56267	214 Days (As of Dec. 31, 1978)	Plans and Specifications (Step 2)

Substandard Projects

Firm	Municipality or Sanitary District	Nature of Deficiency	Project Description	Nature of Correction

Entries withheld pending outcome of hearings

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. 22, 1984

STATE OF MINNESOTA)
) ss.
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.

/s/ William L. Dickey

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

Louise K. Kaniuk

LOUISE K. KANIUK
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 Rodt

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