

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 719 ● Submission withdrawn 9/17

resubmitted 11/16
Due 11/26

RULE REVIEW CHECKLIST

NEW DATE RULE RECEIVED 9/17 10 Submission withdrawn 9/22
" DATE FOR REVIEW 9/14 8/A 10/13
" DATE DUE 9/28 8/31 10/12

Adopted w/a hearing X
Adopted w/o a hearing
Temporary rule

Approved ~~9/17~~ Disapproved 10/9 Returned to Agency 10/12

Resubmitted ~~9/22~~ 11/16 Due 11/26
Approved 11-25 Disapproved Returned to Agency

Date filed w/Secretary of State 11-25 REVISOR — disapproved 9/8/81
~~approved 9/15/81~~
approved 11/18/81

- ✓ Rule as Adopted
- ✓ Rule as Proposed
- ✓ Order Adopting 9.1.81
- ✓ Notice of Intent to Solicit Outside Opinion 3.10.80
- ✓ Order for rulemaking
  6.12.81 Date of Hearing
- ✓ Certificate of Board's Authorizing Resolution
- ✓ Notice of rulemaking
  ✓ Sufficiency
- ✓ Affidavit of Mailing Notice or rulemaking
  ✓ 4.30.81 At least 30 days prior to hearing/~~adoption~~
- ✓ Mailing list Certificate
- ✓ Publication in State Register
  5.4.81 At least 30/20 days prior to hearing/adoption
- ✓ Hearing Examiner's Report
- ✓ Chief Hearing Examiner's Report(s)
  ✓ 7.20.81 Approving H.E.'s Report, disapproving in part
  ✓ 7.31.81 Approving agency action
  ✓ 11.10.81 " " " after chges made pursuant to Atty Gen. 10/9 memo
- ✓ Agency's Findings of Fact
- N/A LCRAR Report or agency Affidavit
- ✓ Certificate of Board's Resolution Adopting Rules
- N/A Order Approving Incorporation by Reference " " " " " " after chnges made pursuant to Atty Gen 10/9 memo
- ✓ Statement of Need and Reasonableness
  ✓ Amended Statement of N/R, dated 7.1.81
- N/A Petition for Adoption of a Rule
- ✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)
- ✓ Certificate of Compliance w/Rulemaking Procedures
- ✓ Affidavit of Mailing Notice of Submission to Attorney General
- ✓ Notice of Submission to the Attorney General

Minnesota
State
Arts Board

2500 Park Avenue
Minneapolis, MN 55404
(612) 341-7170
toll-free (800) 652-9747

September 22, 1981

MEMORANDUM

TO: JUDITH WEHRWEIN, Legal Assistant Attorney General

FROM: MARY SULERUD, State Arts Board

RE: SUBMISSION OF AGENCY RULES

Enclosed are the following documents:

1) New Order Adopting Rules

2) Findings of Fact and Conclusions

3) Affidavit of Mailing Notice of Submission to Attorney General

4) Notice of Submission to Attorney General

5) Rule Hearing Register.

These materials are part of file number 710, Minnesota State Arts Board Rules Governing Reviw of Requests for and Distribution of Grants, Loans and Other Forms of Assistance. These materials should provide your office with a complete submission related to our rules.

Thank you again for your assistance. Please call me if you have any questions.

RECEIVED
SEP 22 1981
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : MARY SULERUD
State Arts Board

DATE: September 17, 1981

FROM : Judith V. Wehrwein JVW
Legal Assistant
Attorney General

PHONE: 297-3471

SUBJECT: Minnesota State Arts Board Rules Governing Review of Requests For and Distribution of Grants, Loans and Other Forms of Assistance

This is to confirm withdrawal of submission of the above-referenced rules as we discussed today.

This office will, however, retain the documents and other material submitted by you on September 1, 1981, except for the hearing attendance sign-up sheet which is enclosed.

Review of the rules will proceed upon your submission of additional required documents i.e. new Order Adopting, Notice of Submission to Attorney General, and Affidavit of Mailing said Notice. Please reference our file No. 719 when you complete the submission.

Please feel free to contact me if you have any further questions on rule review procedure.

JVW/cae

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August 31, 1981

MEMORANDUM

TO: Judith V. Wehrwein, Attorney General's Office

FROM: Mary Sulerud, State Arts Board

RE: File No. 719, Agency Amended Rules

Enclosed for your review is the rules file for the Minnesota State Arts Board. This file now contains an Order Adopting Rules, Certificate of Board's Resolution Adopting Rules and a Statement of Compliance with Rulemaking Procedures. The board did not receive any requests to mail a notice of submission to the Attorney General.

The rules which the board adopted are attached to a copy of a letter to the hearing examiner George Beck. The board adopted the Report of the Hearing Examiner and Chief Hearing Examiner and agreed with all of the recommended changes in the rules which are contained in the Report of the Hearing Examiner. These changes are noted in the rules by use of a double-underline, which distinguishes new language proposed at the hearing from the modifications suggested by the hearing examiner. The changes are contained on pages 6, 10, 14, 29 and 30 of the draft of the rules.

Please contact me if you need other information or materials. Thank you for your assistance with the submission of these materials.

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : Mary Sulerud
State Arts Board

DATE: August 26, 1981

FROM : Judith V. Wehrwein JVW

PHONE: 297-3471

SUBJECT: Rules of Minnesota State Arts Board

Herewith is the complete file on the above-referenced matter as submitted to this office on August 10, 1981.

As we discussed, the file is incomplete and therefore the submission is being withdrawn.

When the renewed submission is made, please reference our file No. 719.

Please feel free to contact me if you have further questions.

cae:JVW

Minnesota
State
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Minneapolis, MN 55404
(612) 341-7170
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August 7, 1981

RECEIVED
AUG 10 1981
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

MEMORANDUM

TO: MR. TED MARTINEZ, ATTORNEY GENERAL'S OFFICE

FROM: MARY SULERUD, MINNESOTA STATE ARTS BOARD

RE: THE ENCLOSED RULES FILE

Enclosed for your review is the hearing file on the proposed and amended rules and regulations of the Minnesota State Arts Board. Please feel free to call me or our special assistant attorney, Mr. William P. Marshall, if you have any questions about this file.

cc: John M. Ondov
G. James Olsen

State Arts Board

Adopted Rules Governing Review of Requests for and Distribution of Grants, Loans and other Forms of Assistance

Rules as Adopted

Contents

Rule

5 MCAR S 5.005 Advisory committees.

5 MCAR S 5.006 Eligiblity requirements for individuals applying for grant assistance.

5 MCAR S 5.007 Eligibility requirements for organizations, governmental units and schools applying for grant assistance.

5 MCAR S 5.008 Process for obtaining grants in all categories except regional arts council grants.

5 MCAR S 5.009 Process for obtaining regional block grants; ~~block grant application~~ regional plan review; regional arts council review; re-granting~~,~~ and reporting requirements.

5 MCAR S 5.010 Standards for review of requests for grants.

5 MCAR S 5.011 Provisions affecting grantees.

5 MCAR S 5.012 Miscellaneous provisions.

5 MCAR S 5.013 Public participation in agency matters.

5 MCAR S 5.002 Purpose of the rules. The purpose of these rules is to set forth procedures and standards to be followed by the board in receiving, considering and reviewing requests for and distribution of grants. Any actions taken by the board, its staff and advisory committees related to the review and distribution of grants must be clearly based on the standards in rule form. Explanation of actions requested by applicants must be offered in the context of the standards in rule form.

5 MCAR S 5.003 Whom the rules govern. These rules govern the board; advisory committees; regional arts councils; and all

individuals, organizations, departments, and agencies of the state and political subdivisions who wish to receive grants or other forms of assistance from the board.

5 MCAR S 5.004 Definitions. For the purpose of these rules, the following terms shall have the meanings given to them:

A. "Advisory committee" means a group of citizens appointed by the board to review and make recommendations on grants assistance offered by the board or make recommendations on public arts policy matters.

B. "Block grant" means grants to regional arts councils for the purpose of providing services, re-grants, and direct programming for local/regional arts development.

C. [Unchanged.]

D. "Certified audit report" means a document prepared and signed by a Certified Public Accountant showing the total fiscal activity of the organization regarding a project or program.

E. "Direct programming" means the implementation of arts production or arts sponsorship activities by a regional arts council.

F. "General support" means a program that provides unrestricted operational grants assistance to eligible organizations which meet the standards contained in these rules.

G. "Local/regional arts development" means programs or projects which are for the development or enhancement of local or regional artists, art resources, or art audiences.

H. "Other forms of assistance" means publications, staff consultation or workshops with individuals or groups who have developed, or are interested in developing, projects or programs in the arts but need advice on matters such as, but not limited to, budgeting, administration, production and technology.

I. "Program information" means any document(s) issued describing programs and services of the board which includes instructions, deadlines, and other aids for the applicant seeking board grants assistance. Program information may clarify and explain standards contained in rule form, but such clarification shall not be considered standards or criteria

itself.

J. "Project" means an activity or series of closely related activities for which funds are requested from the MSAB or a regional arts council. The activity or series of activities must be completed within 24 months of the notification of the receipt of a grant in support of the activities.

K. "Regional" means program or service distribution and organizational impact within the geographic area served by a regional arts council. Formal combinations of two or more development regions under one regional arts council will be regarded as one region for this purpose.

L. "Regional arts council" means an organization or a group designated by the board to make final decisions on the utilization of block grant funds granted to them for local/regional arts development.

M. "Regional arts task force" means an advisory committee of the board which reviews applications for local arts development projects serving the region(s) the arts task force represents. A regional arts task force may also be an advisory committee to a regional development commission or the Metropolitan Council.

N. "Re-granting" means the process of allocating block grant funds for the purpose of funding arts projects or programs or services described in the applications to regional arts councils.

O. "Services" means non-grant activities including, but not limited to, information services, technical and consultative services, planning, reporting, evaluation, and other program development efforts that are provided by the Minnesota State Arts Board and/or regional arts councils.

P. "Sponsor assistance" means a program which provides grants assistance to eligible organizations, which meet the standards contained in these rules, that host arts events by contracting for the services of another organization or individual to provide arts programming to their community.

Q. "State-wide" means program or service distribution and organizational impact throughout most or all of the regions of the state.

5 MCAR S 5.005 [Repealed.]

5 MCAR S 5.005 Advisory committees.

A. The board may appoint advisory committees to review grant applications.

B. The board may discontinue any advisory committee, as it deems necessary.

C. Members of each advisory committee shall have expertise and/or experience in a particular area of the arts, arts support or administration. Committee members will be selected by the board from among practitioners, administrators, educators, volunteer directors of arts organizations, trustees of arts organizations and other participants in the arts.

D. Appointments to advisory committees shall be made by majority vote of the board. Members shall serve at the pleasure of the board for appointment-terms of no longer than three years. Appointments to advisory committees shall be made so that the appointment-terms of at least one-third of the membership of each committee shall expire in each year.

E. At least sixty days prior to expiration of the appointment-terms of any advisory committee member, the board will publish, distribute and post notice of such openings. Nominations will be actively solicited and accepted by the board. Nominations must be in writing and should include all pertinent information including nominees' qualifications and experience in the arts.

F. Advisory committees will, insofar as reasonably possible, be geographically balanced.

G. Members of the advisory committees and regional arts task force shall be compensated for expenses incurred to attend advisory committee meetings as provided in Minn. Stat. ~~ch.~~ S 15.059, subd. 3, except that they shall not be eligible for the per diem.

H. Any member of an advisory panel with a direct financial or employment interest relating to any grant application before the advisory panel, or with a professional, employment or

financial interest relating to any individual artist applicant, ~~which interest is reasonably likely to affect his/her impartiality or judgement in the review~~ will ~~be instructed to~~ inform the board of such an affiliation prior to the review of grant applications.

1. Affiliation of an advisory panel member with an applicant includes:

a. Receipt of direct financial benefit from the applicant organization or project being reviewed;

b. Serving as an employee or governing board member of an applicant organization being reviewed;

c. Serving with or without payment as a consultant to an applicant on the application being reviewed;

d. Familial relationship with an applicant or a staff or board member of an applicant organization;

e. Recent ~~recipient~~ receipt of free tickets or other benefits from an applicant being reviewed.

2. The MSAB will annually screen panel members for affiliations which may constitute conflict-of-interest.

5 MCAR S 5.006 Eligibility requirements for individuals applying for grant assistance.

A. Subject to 5 MCAR S 5.012 and the other provisions contained in these rules an individual artist is eligible for grants assistance only if that artist is:

1. A resident of Minnesota according to the voting requirements of the state;

2. Not involved in executing work initiated or completed by another individual or organization as their agent, or not solely involved in the organization or presentation of other artists' works.

B. An individual artist who has received a Minnesota State Arts Board individual artist grant may not apply for another individual artist grant until one fiscal year after the receipt of such grant.

C. An individual artist may not submit more than one application each fiscal year.

5 MCAR S 5.007 Eligibility requirements for organizations, governmental units and schools applying for grant assistance.

A. Subject to 5 MCAR S 5.012 and the other provisions of these rules, non-profit, tax-exempt organizations, schools, governmental units and departments and agencies of the state are eligible to apply for:

1. Local/regional arts development assistance from regional arts councils if:

a. This assistance is for the creation and production of arts programs or projects which are for the development or enhancement of local or regional artists or arts organizations.

b. This assistance is for local arts sponsorship projects in which $3,000 or less is requested.

c. The project submitted is not limited in access to, or only serves, those attending schools, including the staff.

2. Sponsor assistance from the Minnesota State Arts Board if:

a. ~~Schools are seeking arts-in-education assistance for the support of artist residency projects of one week (5 school days) or longer~~ All applicants identified in A. submit projects which are within the definition of sponsor assistance in 5 MCAR S 5.004 P. of these rules.

b. The project submitted is not limited in access to, or only serves, those attending schools, including the staff.

c. This assistance is for projects in which more than $3,000 is requested.

d. In those cases in which a school is an applicant and is seeking arts-in-education assistance, the project to be supported must be an artist residency project of one week (5 school days) or longer.

3. General support from the Minnesota State Arts Board if:

a. The organization seeking support is an arts producing, or exhibiting organization. Public broadcasting stations, schools, universities ~~and other organizations which primarily present rather than create or produce arts programs,~~ colleges, libraries, govermental units, chambers of commerce and

other community service organizations are not eligible to apply for this type of assistance.

b. The organization has been in existence ~~in its current form~~ two full years prior to applying.

c. The organization has a certified audit of its accounts for two full years prior to applying.

d. The organization has ~~a commitment to~~ paid professional management~~--at least one full-time paid management (not clerical) position for 12 months per year~~.

e. ~~Have an annual budget of $100,000, less any other MSAB or regional arts council grants, for the fiscal year completed prior to applying for Group II, and~~ The organization has a cash revenue budget of at least $700,000 for its fiscal year completed prior to applying for Group I, and at least $100,000, but less than $700,000, for its fiscal year completed prior to applying for Group II. This budget shall be substantiated by certified audit.

B. Organizations may only request up to 10% of their annual budgets from the general support program.

C. Organizations which receive grants for general support are ineligible to apply for special project and sponsor assistance grants from the Minnesota State Arts Board and all grants from regional arts councils.

D. Applicants for grants assistance from the Minnesota State Arts Board and regional arts councils must be able to show evidence of match through cash, revenue or grants in order to be eligible for any type of grants assistance.

5 MCAR S 5.008 Process for obtaining grants in all categories except regional arts council block grants.

A. Definitions. For the purpose of this rule the following terms shall have the meanings given to them.

1. "Applicant" means

~~(a)~~ a. Any Minnesota resident who submits an application for a grant, or

~~(b)~~ b. Any organization, department or agency of the state or political subdivision on whose behalf an application

for a grant is submitted.

2. "Authorizing official" means

~~(a)~~ a. A person, empowered to enter into contracts for and who signs the grant application of an organization, political subdivision, or department or agency of the state, or

~~(b)~~ b. In the case of individual artist applications, an individual artist who signs the grant application.

3. "Co-sponsor" means a partnership of two or more organizations and/or governmental units to present arts activities within a community or school which submits one grant application.

4. "Fiscal agent" means any Minnesota non-profit, tax-exempt organization or governmental unit which applies to the board on behalf of an organization or group not meeting the non-profit, tax-exempt requirements. The fiscal agent must sign the application and, if a grant is received, sign the grant letter/contract. The fiscal agent is legally responsible for the completion of the project and for the proper management of the grant funds.

5. "Grant" means an allocation of funds to an applicant which is to be used for the purpose(s) described in the application ~~which~~. The funds are not repaid.

6. "Grant contract" means the legally binding document signed by an authorizing official of an organization or an individual artist who has received a grant obligating him/her to perform grant activities and to fulfill the requirements stipulated in the contract.

7. "Grantee" means an applicant whose application is approved for funding by the board.

8. "Matching funds" means share of the financial support for a project or program raised by applicant from sources other than MSAB. Match for a project or program cannot be made up solely of in-kind contributions. The sources for matching funds may be one or more of the following: cash, in-kind items, revenue or other grants.

a. "Cash" means cash as shown by availability of bank

statements, or other indication of cash on hand and budgeted for the project or program.

b. "In kind" means items such as materials, labor and space which can be given a dollar value. Applicant must be able to prove that in-kind match is committed to the project or program.

c. "Revenue" means anticipated or actual receipts from sale of tickets or products.

d. "Other grants" means grants received from other grant-making agencies, public or private.

9. [Unchanged.]

10. "Project director" means person designated by an organization, political subdivision or department or agency of the state as the individual responsible for overseeing the implementation of the project or program for which the application is made.

B. All applications for grants must be made ~~an~~ on official application forms for the appropriate program available at the offices of the board. Applicants must use grant application forms for the appropriate fiscal year. Requests for other forms of assistance may be made directly to the board at its offices.

C. A copy of these rules and appropriate program information will be provided upon request to all applicants and the public.

D. All applications must be postmarked by the deadlines set forth by the board in the current program information.

E. The application form will request the specific data needed to determine the eligibility of the individual or organization and to review the application according to the review standards.

F. All applications submitted by individual artists to the board for grants must include examples of works of art of the applicant submitting. The type of examples required and the maximum number of examples to be submitted will be specified in current program information of the board. No exceptions will be made to these requirements ~~may be made on application to the Board~~.

G. All applications of an organization, political subdivision or agency or department of the state must name a project director.

H. The staff will review all applications submitted by the deadline for completeness.

1. The applicant is responsible for the completeness of the application.

2. An incomplete application is not eligible for review by the advisory committee or the board.

I. A late application will not be considered for review by the advisory committee or the board.

~~1. The applicant is responsible for the completeness of the application.~~

~~2. An incomplete application is not eligible for review by the advisory committee or the board.~~

J. A complete application includes the following:

1. The appropriate application form with all spaces completed;

2. Authorizing signature(s) on the application form;

3. A complete data summary form;

4. All required resumes attached;

5. Applications from organizations have named a project director;

6. Applications from individual artists must have included required supporting materials;

7. Where applicable, a copy of the contract with the fiscal agent;

8. ~~Postmarked~~ Postmark or ~~delivered~~ delivery by the stated deadline(s) in program information.

K. The applicant is responsible for the quality and the nature of the responses in the application form and the supporting materials.

L. Advisory committees, when reviewing applications under the standards listed in 5 MCAR S 5.010, shall submit as recommendations:

1. Full funding~~.~~,

2. Partial funding, except for individual artist grants, which can only be for the full requested amount, or;

3. No funding.

M. The board shall give considerable weight to the recommendations of the advisory committees.

N. The board may request comments and recommendations from the staff on all aspects of applications.

O. The board may request a revised budget and/or project description before taking final action on grant applications.

P. The board shall make all final decisions as to approval or rejection of grant applications or requests for other forms of assistance.

Q. If the board awards a grant which is smaller than the amount requested, the applicant will be notified by mail, and will be required to submit a revised budget before a grant contract will be sent.

R. All applicants will receive a notification letter of acceptance or rejection within 45 days after final review of the application by the board, except when a revised budget is necessary. In that case, applicants will receive a grant contract and notification letter within 45 days after the receipt of the revised budget by the board.

S. In the event a grant is awarded to a fiscal agent, the fiscal agent must sign the grant letter. The fiscal agent must have a written contract with the group implementing the project/program which specifies the responsibilities of each. This contract must be submitted with the application form.

T. The board will not assume responsibility for any loss or damage to materials submitted with applications.

5 MCAR S 5.009 Process for obtaining regional block grants; regional plan review; regional arts council review; re-granting and reporting requirements.

A. To be eligible to receive a regional block grant an organization shall:

1. Develop a biennial plan to be submitted by an announced date, determined by the board.

2. The plan will include:

a. A mission statement of goals established by the organization. The mission statement shall describe the overall philosophy and aims of the organization concerning local/regional arts development.

b. A needs assessment which will be carried out in a manner which ensures input from the arts community and the arts-involved public. This needs assessment will be updated at intervals determined and announced by the board and the results included in the plan. The needs assessment will be conducted to determine the need to develop new or continued program activities, services and grants assistance offered by the regional arts council.

c. Description of the planning process including a list of the steps in the development of the plan and the participants in the planning process. Before the plan is submitted to the board for final approval at least one public meeting must be held for the purpose of soliciting public reaction to the plan.

d. Work plan including a description of services, programs and grants assistance available from the organization and the goals and objectives of these activities as related to the needs assessment.

e. Program information which describes grants and other forms of assistance available, the methods for such assistance, eligibility requirements, review standards, the review process, the terms of the grant contract with grant recipients, the time needed and process followed in paying ~~rent~~ grant recipients, and the responsibilities of the grantees.

f. The organizational structure which must include bylaws, an identification of the arts experience and background requirements for the members and job description of the staff of the~~,~~ organization, a description of the rotation system which will ensure replacement of members on a regular basis, and an outline of the open nominations process used to appoint the members.

g. Where applicable, a memorandum of agreement with the regional development commission(s) or the Metropolitan Council, a letter of agreement between the organization and a fiscal agent or the tax-exempt letter for non-profit organizations will be included. A memorandum of agreement shall include that application decisions on artistic merit, applicant ability, and need for project or program must be reserved for consideration only by citizen advisory committees appointed for their expertise and experience in the arts. The memorandum need only be submitted to the MSAB once, at the start of the operation of an organization as a regional arts council.

h. A budget which will be a total projected budget identifying all local, regional, state and federal sources of support, public and private.

i. A grant monitoring and evaluation process description and an evaluation process description of the council itself.

B. The review of a block grant application is as follows:

1. All regional plans/block grant applications shall be reviewed by a regional arts development advisory committee of the board.

2. The committee will review plans/block grant applications using the review standards of merit of the proposed activities, ability of the applicant and need for the proposed activities by the organization or audience it serves as contained in 5 MCAR S 5.010 A.

3. The regional advisory committee shall submit as recommendations to the board one of the following:

a. Full funding based on the Minnesota State Arts Board allocation formula;

b. Partial funding; or

c. No funding.

4. A representative of the applicant organization shall have the opportunity to present the plan and respond to questions raised by either the regional arts development advisory committee, the board staff, or the board.

5. The Regional Arts Development Advisory Committee shall submit its recommendations to the board for final review.

6. The board shall approve, defer or reject plans submitted by the regional block grant applicants.

C. After the board review, the applicant organization shall have at least 30 days to make any revisions in the plan required by the board.

D. The board will award only one regional block grant in each region during a fiscal year.

E. Each applicant organization receiving a regional block grant shall be designated a regional arts council.

F. Allocated funds for regions not served by a regional arts council will be administered by the MSAB with the advice of a regional arts task force.

G. Copies of the board approved regional arts council plan will be available for distribution to the public by the regional arts council.

H. Regional arts councils are eligible to apply only for block grants for the purposes of local/regional arts development.

I. Regional arts councils receiving block grants from the board are required to follow board rules pertaining to eligibility requirements and review standards in distributing local/regional arts development grants, process for obtaining grants, provisions affecting grantees and miscellaneous provisions. These rules are 5 MCAR SS 5.007, 5.008, 5.010, 5.011 and 5.012.

J. Regional arts councils must base decisions on local/regional arts development grant applications received through re-granting programs on the review standards listed in 5 MCAR S 5.010 A.~~1.~~ These decisions must be made by citizen committees appointed for their expertise and experience in the arts according to 5 MCAR S 5.005 C.

K. Organizations which receive a grant from a regional arts council are subject to the provisions of 5 MCAR S ~~5.001~~ 5.011, Provisions affecting grantees.

L. Each regional arts council shall submit an annual report

within 90 days~~,~~ after the end of the regional arts council's fiscal year which shall include:

1. Total fiscal statement, not an audit, for the years in which the plan was in effect.

2. Description of the relationship between the approved plan and the actual grants, and other forms of assistance provided during the year with Arts Board block grant funds.

3. Report of the grants awarded, services provided and programs disseminated.

5 MCAR S 5.009 Appeals process. [Repealed.]

5 MCAR S 5.010 Standards for review of requests for grants ~~and other forms of assistance~~.

A. Applications for special projects, sponsor assistance, local arts development and regional block grants will be reviewed ~~primarily~~ according to:

1. The merit and artistic quality of project or program. In the case of service programs and projects the merit and quality of the service being provided to the arts will be reviewed.

2. If the application is determined to be of sufficient merit and artistic quality as to indicate further review the following standards will be applied:

a. The ability of the organization to accomplish the project or program they describe or the organizational goals as presented. This is demonstrated by providing evidence of a planning process, qualifications of artistic and/or administrative personnel, publicity efforts and previous successful efforts.

b. Applicants must demonstrate demand or need for the project or program by the organization applying or the group it serves.

B. In the event that more applications are recommended for funding than funds are available, the advisory committee may rate the recommended applications individually to determine funding priorities. This procedure will be outlined by the MSAB

and the regional arts council for each fiscal year.

C. Applications for general support will be reviewed ~~primarily~~ according to:

1. Artistic excellence and leadership.

a. Service to the organization's principal art form(s), i.e., preservation of artistic heritage(s), presentation of new works, new artists.

b. Serving as an example of excellence for others-setting standards. Recognition and impact in community, region, state and nation.

c. Uniqueness of service, in nature or method.

d. Sharing of expertise.

e. Variety of program offering.

f. Qualifications and achievements of artistic leadership.

g. Qualifications, achievements and methods of selection of other principal artistic personnel and administrative personnel.

2. The application is then reviewed according to the following standards.

5 MCAR S 5.010 C.2.-5. [Renumber as 5 MCAR S 5.010 C.3.-6.]

7. Size and distribution of audience/public.

a. Numbers served, by program type, if possible.

b. Numbers of subscribers and/or regular members; enumeration of individuals served.

c. Numbers of persons served in headquarters facilities and those served away from home facility.

d. Indications of audience/public demographics, if available.

e. Special efforts to serve special constituencies.

D. Individual artists' applications will be reviewed ~~primarily~~ for the quality of the artistic activity as demonstrated in the examples of the work submitted. If the artistic activity is determined to be of sufficient quality as to indicate further review the following standards will be applied:

1. The merit of the proposed activity as this relates to the artist's ability to execute the proposed activity and an examination of the artist's proposal, submitted work and career brief.

2. Explanation of the amount requested.

E. Because it is anticipated that there will be more qualified applicants than funds available, funding decisions may be made by the board on the basis of the board's and advisory ~~committees determination~~ committees' determinations of the artistic quality as evidenced in the work submitted relative to the artistic work submitted in other applications.

5 MCAR S 5.011 Provisions affecting grantees.

A. The grantee or authorizing official must sign and return to the board, within 45 days from date of mailing, one copy of the grant contract and necessary attachments if notification is of grant approval. No action is required on notification of applications not recommended for funding.

B. The grantee must acknowledge assistance by the board on all written materials relating to the project or program such as programs, news releases and posters. Grantee must use the acknowledgement statement as found in the grant contract. Grantees of regional arts councils must also use the board acknowledgement statement on all materials relating to the project or program.

C. The grantee must notify the board in writing at any point if the program or project is changed from the way in which it was described in the grant application. This notification letter will be reviewed by the staff to ensure that the change does not make a project or program ineligible for support as eligibility is specified in these rules. Grantee will be notified in writing of the approval or non-approval of the program or project change(s).

D. [Unchanged.]

E. The grantee may be required to submit a certified audit report of the organization or a project funded by the board.

F. For purposes of evaluation, grantees must permit the

board reasonable access to all activities supported by Arts Board funds.

5 MCAR S 5.011 F.-H. [Reletter as 5 MCAR S ~~5.001~~ 5.011 G.-I.]

J. A grant commitment to a grantee may be rescinded by the board if one of the following conditions exists:

1. The grantee does not return the signed grant contract and/or attachments ~~with~~ within 45 days of the date specified by the board letter or in program information.

2. The grantee does not return a revised budget and/or project description within 30 days of the date of the notification of board action by letter.

3. The grantee does not request the grant amount within 45 days of the date of the grant contract.

K. Grantee must submit a final report, within 60 days of the date stated in the application as the end of the project or program. This report is to be completed by grantee in the requested format provided by the board. Failure to submit any final reports will adversely affect the grantee's receipt of Minnesota State Arts Board grant funds.

L. Grantee must start grant activities in the same fiscal year in which the grant is received.

M. The board will annually review the regional block grant allocation formula.

N. The board may recall uncommitted regional block grant funds at the end of ~~their~~ the board's fiscal year. A written request must be made by the regional arts council and submitted to the MSAB for approval to carry-forward unexpended funds from one fiscal year of the board to the next. This request from a regional arts council must be made by May 1 of the same fiscal year of the board and must outline the proposed allocation for any unexpended funds in narrative form and contain a budget for such use.

O. The board may institute systems of grant payments in which such payments are contingent upon the receipt of final reports and/or board evaluation of the grantee.

5 MCAR S 5.012 Miscellaneous provisions.

A. The board may initiate new assistance categories or pilots in which applicants for assistance may be selected specifically for the way in which the board can learn from their experience.

1. No pilot assistance category will continue for longer than 2 years without the category being established on a permanent basis, or discontinued.

2. All pilot assistance categories will be specifically described as such in MSAB program information.

B. Applications for organizational and individual grants assistance will not be accepted for review when one of the following conditions exists:

1. Artists are required to pay entry or exhibition fees in order to exhibit and/or perform in the project or program for which funding is sought.

2. Funds are requested for capital improvement or construction, purchase of real property or endowment funds.

3. Funds are requested to account for fund deficiencies in projects begun prior to the project start date specified by the Minnesota State Arts Board and regional arts councils in program information.

4. Funds are requested to pay fees for touring costs, performances or exhibitions carried out exclusively by student organizations or schools.

5. Funds are requested to support activities which are essentially for the religious socialization of the participants.

C. Applications for individual artist grants assistance will not be accepted for review when one of the following conditions exists:

1. Funds are requested by individuals for tuition or other fees related to the pursuit of an academic degree.

2. Funds are requested by individuals to develop curriculum plans, teaching materials or to teach classes.

3. Funds are requested by individual artists to engage in activities such as establishing an arts organization or a

commercial venture.

D. Organizations which receive grants for general support may apply for grants in pilot programs offered by the State Arts Board if the organizations meet the stated eligibility requirements of such pilot programs.

E. The board~~, in addition to the criteria set forth above,~~ may award all or most of the available grant funds at the first deadline of each fiscal year.

F. The board may give priority to one form of assistance over others during a fiscal year.

5 MCAR S 5.013 Public participation in agency matters.

A. Any applicant who disputes the decision of the board regarding his or her grant application on any issue other than artistic quality or merit may appeal the decision of the board. This appeal to the board will be conducted in the following way:

1. The applicant will submit a written request for consideration of his or her appeal within 45 days of notification of the board's decision on the application.

2. This request must state the reason(s) for the appeal.

3. The board will review the written request appealing its decision at its first meeting following the receipt of the request.

4. The board may take one of the following actions in response to the request for an appeal:

a. Determine that the applicant does not show sufficient cause for an appeal.

b. Direct the staff to investigate the applicant's appeal and bring a resolution of the claim to a subsequent meeting of the board.

c. Request that the applicant appear before the board at a subsequent meeting and address his or her appeal at that time.

d. Determine that the applicant does show sufficient cause for appeal and offer ~~resolution~~ settlement to the applicant at the meeting.

e. Refer the appeal to a hearing examiner as a

contested case.

5. ~~If the applicant for a grant does not receive satisfactory resolution of~~ Following the appeal to the board if the applicant continues to dispute the decision of the board regarding his or her appeal from the board, or if the board refers the appeal to a hearing examiner, this appeal will be conducted as a contested case pursuant to the Administrative Procedures Act, Minn. Stat. SS 15.0418-15.0422 and 15.052.

B. There is no right of appeal for disputes of decisions of the board and/or its advisory committees with respect to artistic quality or merit, artistic excellence and leadership, and the quality of the artistic activity of the work of an individual artist.

AR0077
11-17-81

OFFICE OF THE REVISOR OF STATUTES

Certificate of Approval of Adopted Rules

Agency: Minnesota State Arts Board

Rule Numbers: 5 MCAR SS 5.002, 5.003, 5.004, 5.005, 5.006, 5.007, 5.008, 5.009, 5.010, 5.011, 5.012, 5.013

Rule Title: Adopted Rules Governing Review of Requests for and Distribution of Grants, Loans and Other Forms of Assistance

Type of Rules: Permanent X

Temporary _____

Documents Incorporated by Reference:

The attached Rules are approved as to form.

Steven C. Cross
Revisor of Statutes

APPROVED AS TO LEGALITY
Nov. 25 19 81
WARREN SPANNAUS, ATTORNEY GENERAL
BY [signature]
SPECIAL ASSISTANT ATTORNEY GENERAL

Name: Lorna Breiter
Lorna Breiter

Title: Assistant Revisor

Phone: 296-2778

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
NOV 25 1981
[signature]
Secretary of State

2:15 p.m.

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : JOHN ONDOV
Executive Director
Minnesota State Arts Board

DATE: 11/25/81

ATTN : Brad Engdahl
Special Assistant Attorney General

FROM : H. Theodore Grindal
Special Assistant
Attorney General

PHONE: 296-1288

SUBJECT: In the Matter of Rules Governing Review of Requests for and Distribution of Grants, Loans and Other Forms of Assistance.

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

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

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

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

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

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

HTG/cae

Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

STATE OF MINNESOTA

BOARD OF THE ARTS

In the Matter of the Proposed Adoption
of Rules of the State Arts Board Governing
Review of and Requests for and Distribution
of Grants, Loans and Other Forms of Assistance

ORDER ADOPTING
RULES

The above-entitled matter came on for hearing before Hearing Examiner George Beck on the 12th day of June, 1981, at 9:00 A.M., in the Office of Administrative Hearings, St. Paul, Minnesota, after proper notice required by Minnesota Statutes section 15.0412 was served upon all persons, associations, and other interested groups registered with the State Arts Board for that purpose.

After affording interested persons an opportunity to present written and oral data, statements, and arguments, hearing all the testimony, sonsidering all the evidence adduced and upon the records, files, and proceedings herein and applicable statutory standards or criteria, and confirming the need for and reasonableness of the above-captioned rules, and based on the recommendations of the Office of the Attorney General regarding the rules,

NOW THEREFORE, IT IS ORDERED that these rules identified as Rules Governing Review of Requests for and Distribution of Grants, Loans and Other Forms of Assistance are adopted this 6th day of November, 1981, pursuant to authority vested in me by Minnesota Statutes section 139.10.

STATE OF MINNESOTA

ACTING DIRECTOR OF THE ARTS BOARD

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : JOHN ONDOV
Executive Director
Minnesota State Arts Board

DATE: October 9, 1981

ATTN : Brad Engdahl
Special Assistant Attorney General

FROM : H. Theodore Grindal
Special Assistant
Attorney General

PHONE: 296-1288

SUBJECT: Adopted Rules Governing Review of Requests for and Distribution of Grants, Loans and other Forms of Assistance.

The above-captioned rules have been rejected for the following reasons:

1. In 5 MCAR § 5.007 A.3.e. (on page 7) the rule does not describe in sufficient detail whether the organizations' budget must be exactly $100,000 or $700,000. It would appear as if the language should read "between $100,000 and no less than $700,000."

Also in this section particularly, the term "fiscal year" is seemingly ambiguous. Does this term refer to the State of Minnesota's fiscal year or the organization's fiscal year?

2. In 5 MCAR § 5.011 N. there is another ambiguity. It refers to the boards' ability to recall "uncommitted regional block grant funds at the end of their fiscal year." (Emphasis added). Which fiscal year is being referenced? Is it the board's or the regional arts council?

After consideration of the above comments and agency action, if any, these rules may be resubmitted for review. Upon resubmission, please include two copies of a new or supplemental Order Adopting, and the original and two copies of the new Rule as Adopted. Also, please include a memorandum specifying that the rules are being resubmitted so that we may obtain our initial file in this matter.

Please be advised that pursuant to Minn. Stat. § 15.0412 subd. 4g effective July 1, 1981, "(n)o rule shall be filed with the secretary of state or published in the state register unless the revisor of statutes has endorsed on the rule that it is approved as to form." Therefore, at the time when you resubmit the new rule to this office, you must submit two copies of the same to the revisor of statutes.

If you have any questions concerning the issues raised in this memorandum. Please do not hesitate to call me.

HTG/cae

Enc.

cc: Duane Harves
Kathy Burek

AG copy

this version disapproved by Atty. Gen. 10/9/81

State Arts Board

Adopted Rules Governing Review of Requests for and Distribution of Grants, Loans and other Forms of Assistance

Rules as Adopted

Contents

Rule

5 MCAR S 5.005 Advisory committees.

5 MCAR S 5.006 Eligiblity requirements for individuals applying for grant assistance. (REVISOR)

5 MCAR S 5.007 Eligibility requirements for organizations, governmental units and schools applying for grant assistance. (REVISOR)

5 MCAR S 5.008 Process for obtaining grants in all categories except regional arts council grants.

5 MCAR S 5.009 Process for obtaining regional block grants; ~~block grant application~~ (REVISOR) regional plan review; regional arts council review; re-granting~~,~~ and reporting requirements.

5 MCAR S 5.010 Standards for review of requests for grants.

5 MCAR S 5.011 Provisions affecting grantees.

5 MCAR S 5.012 Miscellaneous provisions.

APR
REVISOR OF STATUTES
OFFICE BY:
AB

5 MCAR S 5.013 Public participation in agency matters.

5 MCAR S 5.002 Purpose of the rules. The purpose of these rules is to set forth procedures and standards to be followed by the board in receiving, considering and reviewing requests for and distribution of grants. Any actions taken by the board, its staff and advisory committees related to the review and distribution of grants must be clearly based on the standards in rule form. Explanation of actions requested by applicants must be offered in the context of the standards in rule form.

5 MCAR S 5.003 Whom the rules govern. These rules govern the board; advisory committees; regional arts councils; and all individuals, organizations, departments, and agencies of the state and political subdivisions who wish to receive grants or other forms of assistance from the board.

5 MCAR S 5.004 Definitions. For the purpose of these rules, the following terms shall have the meanings given to them:

A. "Advisory committee" means a group of citizens appointed by the board to review and make recommendations on grants assistance offered by the board or make recommendations on public arts policy matters.

B. "Block grant" means grants to regional arts councils for the purpose of providing services, re-grants, and direct programming for local/regional arts development.

C. [Unchanged.]

D. "Certified audit report" means a document prepared and signed by a Certified Public Accountant showing the total fiscal activity of the organization regarding a project or program.

E. "Direct programming" means the implementation of arts production or arts sponsorship activities by a regional arts council.

F. "General support" means a program that provides unrestricted operational grants assistance to eligible organizations which meet the standards contained in these rules.

G. "Local/regional arts development" means programs or

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projects which are for the development or enhancement of local or regional artists, art resources, or art audiences.

H. "Other forms of assistance" means publications, staff consultation or workshops with individuals or groups who have developed, or are interested in developing, projects or programs in the arts but need advice on matters such as, but not limited to, budgeting, administration, production and technology.

I. "Program information" means any document(s) issued describing programs and services of the board which includes instructions, deadlines, and other aids for the applicant seeking board grants assistance. Program information may clarify and explain standards contained in rule form, but such clarification shall not be considered standards or criteria itself.

J. "Project" means an activity or series of closely related activities for which funds are requested from the MSAB or a regional arts council. The activity or series of activities must be completed within 24 months of the notification of the receipt of a grant in support of the activities.

K. "Regional" means program or service distribution and organizational impact within the geographic area served by a regional arts council. Formal combinations of two or more development regions under one regional arts council will be regarded as one region for this purpose.

L. "Regional arts council" means an organization or a group designated by the board to make final decisions on the utilization of block grant funds granted to them for local/regional arts development.

M. "Regional arts task force" means an advisory committee of the board which reviews applications for local arts development projects serving the region(s) the arts task force represents. A regional arts task force may also be an advisory committee to a regional development commission or the Metropolitan Council.

N. "Re-granting" means the process of allocating block grant funds for the purpose of funding arts projects or programs or services described in the applications to regional arts councils.

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O. "Services" means non-grant activities including, but not limited to, information services, technical and consultative services, planning, reporting, evaluation, and other program development efforts that are provided by the Minnesota State Arts Board and/or regional arts councils.

P. "Sponsor assistance" means a program which provides grants assistance to eligible organizations, which meet the standards contained in these rules, that host arts events by contracting for the services of another organization or individual to provide arts programming to their community.

Q. "State-wide" means program or service distribution and organizational impact throughout most or all of the regions of the state.

5 MCAR S 5.005 [Repealed.]

5 MCAR S 5.005 Advisory committees.

A. The board may appoint advisory committees to review grant applications.

B. The board may discontinue any advisory committee, as it deems necessary.

C. Members of each advisory committee shall have expertise and/or experience in a particular area of the arts, arts support or administration. Committee members will be selected by the board from among practitioners, administrators, educators, volunteer directors of arts organizations, trustees of arts organizations and other participants in the arts.

D. Appointments to advisory committees shall be made by majority vote of the board. Members shall serve at the pleasure of the board for appointment-terms of no longer than three years. Appointments to advisory committees shall be made so that the appointment-terms of at least one-third of the membership of each committee shall expire in each year.

E. At least sixty days prior to expiration of the appointment-terms of any advisory committee member, the board will publish, distribute and post notice of such openings. Nominations will be actively solicited and accepted by the

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board. Nominations must be in writing and should include all pertinent information including nominees' qualifications and experience in the arts.

F. Advisory committees will, insofar as reasonably possible, be geographically balanced.

G. Members of the advisory committees and regional arts task force shall be compensated for expenses incurred to attend advisory committee meetings as provided in Minn. Stat. ~~ch.~~ S 15.059, subd. 3, except that they shall not be eligible for the per diem.

H. Any member of an advisory panel with a direct financial or employment interest relating to any grant application before the advisory panel, or with a professional, employment or financial interest relating to any individual artist applicant, ~~which interest is reasonably likely to affect his/her impartiality or judgement in the review~~ will ~~be instructed to~~ inform the board of such an affiliation prior to the review of grant applications. HE 9

1. Affiliation of an advisory panel member with an applicant includes:

a. Receipt of direct financial benefit from the applicant organization or project being reviewed;

b. Serving as an employee or governing board member of an applicant organization being reviewed;

c. Serving with or without payment as a consultant to an applicant on the application being reviewed;

d. Familial relationship with an applicant or a staff or board member of an applicant organization;

e. Recent ~~recipient~~ receipt of free tickets or other benefits from an applicant being reviewed.

2. The MSAB will annually screen panel members for affiliations which may constitute conflict-of-interest.

5 MCAR S 5.006 Eligibility requirements for individuals applying for grant assistance.

A. Subject to 5 MCAR S 5.012 and the other provisions

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contained in these rules an individual artist is eligible for grants assistance only if that artist is:

1. A resident of Minnesota according to the voting requirements of the state;

2. Not involved in executing work initiated or completed by another individual or organization as their agent, or not solely involved in the organization or presentation of other artists' works.

B. An individual artist who has received a Minnesota State Arts Board individual artist grant may not apply for another individual artist grant until one fiscal year after the receipt of such grant.

C. An individual artist may not submit more than one application each fiscal year.

5 MCAR S 5.007 Eligibility requirements for organizations, governmental units and schools applying for grant assistance.

A. Subject to 5 MCAR S 5.012 and the other provisions of these rules, non-profit, tax-exempt organizations, schools, governmental units and departments and agencies of the state are eligible to apply for:

1. Local/regional arts development assistance from regional arts councils if:

a. This assistance is for the creation and production of arts programs or projects which are for the development or enhancement of local or regional artists or arts organizations.

b. This assistance is for local arts sponsorship projects in which $3,000 or less is requested.

c. The project submitted is not limited in access to, or only serves, those attending schools, including the staff.

2. Sponsor assistance from the Minnesota State Arts Board if:

a. ~~Schools are seeking arts-in-education assistance for the support of artist residency projects of one week (5 school days) or longer~~ All applicants identified in A. submit projects which are within the definition of sponsor assistance

HE13

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in 5 MCAR S 5.004 P. of these rules.

b. The project submitted is not limited in access to, or only serves, those attending schools, including the staff.

c. This assistance is for projects in which more than $3,000 is requested.

d. In those cases in which a school is an applicant and is seeking arts-in-education assistance, the project to be supported must be an artist residency project of one week (5 school days) or longer.

3. General support from the Minnesota State Arts Board if:

a. The organization seeking support is an arts producing~~,~~ or exhibiting organization. Public broadcasting stations, schools, universities ~~and other organizations which primarily present rather than create or produce arts programs~~, colleges, libraries, govermental units, chambers of commerce and other community service organizations are not eligible to apply for this type of assistance.

b. The organization has been in existence ~~in its current form~~ two full years prior to applying.

c. The organization has a certified audit of its accounts for two full years prior to applying.

d. The organization has ~~a commitment to~~ paid professional management~~--at least one full-time paid management (not clerical) position for 12 months per year~~.

e. ~~Have an annual budget of $100,000, less any other MSAB or regional arts council grants,~~ The organization has a cash revenue budget of $100,000 for the fiscal year completed prior to applying for Group II, and $700,000 for Group I. This budget shall be substantiated by certified audit.

B. Organizations may only request up to 10% of their annual budgets from the general support program.

C. Organizations which receive grants for general support are ineligible to apply for special project and sponsor assistance grants from the Minnesota State Arts Board and all grants from regional arts councils.

D. Applicants for grants assistance from the Minnesota State

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Arts Board and regional arts councils must be able to show evidence of match through cash, revenue or grants in order to be eligible for any type of grants assistance.

5 MCAR S 5.008 Process for obtaining grants in all categories except regional arts council block grants.

A. Definitions. For the purpose of this rule the following terms shall have the meanings given to them.

1. "Applicant" means

~~(a)~~ a. Any Minnesota resident who submits an application for a grant, or

~~(b)~~ b. Any organization, department or agency of the state or political subdivision on whose behalf an application for a grant is submitted.

2. "Authorizing official" means

~~(a)~~ a. A person~~,~~ empowered to enter into contracts for and who signs the grant application of an organization, political subdivision, or department or agency of the state, or

~~(b)~~ b. In the case of individual artist applications, an individual artist who signs the grant application.

3. "Co-sponsor" means a partnership of two or more organizations and/or governmental units to present arts activities within a community or school which submits one grant application.

4. "Fiscal agent" means any Minnesota non-profit, tax-exempt organization or governmental unit which applies to the board on behalf of an organization or group not meeting the non-profit, tax-exempt requirements. The fiscal agent must sign the application and, if a grant is received, sign the grant letter/contract. The fiscal agent is legally responsible for the completion of the project and for the proper management of the grant funds.

5. "Grant" means an allocation of funds to an applicant which is to be used for the purpose(s) described in the application ~~which~~. The funds are not repaid.

6. "Grant contract" means the legally binding document

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signed by an authorizing official of an organization or an individual artist who has received a grant obligating him/her to perform grant activities and to fulfill the requirements stipulated in the contract.

7. "Grantee" means an applicant whose application is approved for funding by the board.

8. "Matching funds" means share of the financial support for a project or program raised by applicant from sources other than MSAB. Match for a project or program cannot be made up solely of in-kind contributions. The sources for matching funds may be one or more of the following: cash, in-kind items, revenue or other grants.

a. "Cash" means cash as shown by availability of bank statements, or other indication of cash on hand and budgeted for the project or program.

b. "In kind" means items such as materials, labor and space which can be given a dollar value. Applicant must be able to prove that in-kind match is committed to the project or program.

c. "Revenue" means anticipated or actual receipts from sale of tickets or products.

d. "Other grants" means grants received from other grant-making agencies, public or private.

9. [Unchanged.]

10. "Project director" means person designated by an organization, political subdivision or department or agency of the state as the individual responsible for overseeing the implementation of the project or program for which the application is made.

B. All applications for grants must be made ~~an~~ on official application forms for the appropriate program available at the offices of the board. Applicants must use grant application forms for the appropriate fiscal year. Requests for other forms of assistance may be made directly to the board at its offices.

C. A copy of these rules and appropriate program information will be provided upon request to all applicants and the public.

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D. All applications must be postmarked by the deadlines set forth by the board in the current program information.

E. The application form will request the specific data needed to determine the eligibility of the individual or organization and to review the application according to the review standards.

F. All applications submitted by individual artists to the board for grants must include examples of works of art of the applicant submitting. The type of examples required and the maximum number of examples to be submitted will be specified in current program information of the board. No exceptions will be made to these requirements ~~may be made on application to the Board~~.

HE 24

G. All applications of an organization, political subdivision or agency or department of the state must name a project director.

H. The staff will review all applications submitted by the deadline for completeness.

1. The applicant is responsible for the completeness of the application.

2. An incomplete application is not eligible for review by the advisory committee or the board.

replacement of deletions below. HE 24

I. A late application will not be considered for review by the advisory committee or the board.

~~1. The applicant is responsible for the completeness of the application.~~

~~2. An incomplete application is not eligible for review by the advisory committee or the board.~~

moved to above HE 24

J. A complete application includes the following:

1. The appropriate application form with all spaces completed;

2. Authorizing signature(s) on the application form;

3. A complete data summary form;

4. All required resumes attached;

5. Applications from organizations have named a project director;

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6. Applications from individual artists must have included required supporting materials;

7. Where applicable, a copy of the contract with the fiscal agent;

8. ~~Postmarked~~ Postmark or ~~delivered~~ delivery by the stated deadline(s) in program information.

K. The applicant is responsible for the quality and the nature of the responses in the application form and the supporting materials.

L. Advisory committees, when reviewing applications under the standards listed in 5 MCAR S 5.010, shall submit as recommendations:

1. Full funding;

2. Partial funding, except for individual artist grants, which can only be for the full requested amount, or;

3. No funding.

M. The board shall give considerable weight to the recommendations of the advisory committees.

N. The board may request comments and recommendations from the staff on all aspects of applications.

O. The board may request a revised budget and/or project description before taking final action on grant applications.

P. The board shall make all final decisions as to approval or rejection of grant applications or requests for other forms of assistance.

Q. If the board awards a grant which is smaller than the amount requested, the applicant will be notified by mail, and will be required to submit a revised budget before a grant contract will be sent.

R. All applicants will receive a notification letter of acceptance or rejection within 45 days after final review of the application by the board, except when a revised budget is necessary. In that case, applicants will receive a grant contract and notification letter within 45 days after the receipt of the revised budget by the board.

S. In the event a grant is awarded to a fiscal agent, the

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fiscal agent must sign the grant letter. The fiscal agent must have a written contract with the group implementing the project/program which specifies the responsibilities of each. This contract must be submitted with the application form.

T. The board will not assume responsibility for any loss or damage to materials submitted with applications.

5 MCAR S 5.009 Process for obtaining regional block grants; regional plan review; regional arts council review; re-granting and reporting requirements.

A. To be eligible to receive a regional block grant an organization shall:

1. Develop a biennial plan to be submitted by an announced date, determined by the board.

2. The plan will include:

a. A mission statement of goals established by the organization. The mission statement shall describe the overall philosophy and aims of the organization concerning local/regional arts development.

b. A needs assessment which will be carried out in a manner which ensures input from the arts community and the arts-involved public. This needs assessment will be updated at intervals determined and announced by the board and the results included in the plan. The needs assessment will be conducted to determine the need to develop new or continued program activities, services and grants assistance offered by the regional arts council.

c. Description of the planning process including a list of the steps in the development of the plan and the participants in the planning process. Before the plan is submitted to the board for final approval at least one public meeting must be held for the purpose of soliciting public reaction to the plan.

d. Work plan including a description of services, programs and grants assistance available from the organization and the goals and objectives of these activities as related to

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the needs assessment.

e. Program information which describes grants and other forms of assistance available, the methods for such assistance, eligibility requirements, review standards, the review process, the terms of the grant contract with grant recipients, the time needed and process followed in paying ~~rent~~ grant recipients, and the responsibilities of the grantees.

f. The organizational structure which must include bylaws, an identification of the arts experience and background requirements for the members and job description of the staff of the~~,~~ organization, a description of the rotation system which will ensure replacement of members on a regular basis, and an outline of the open nominations process used to appoint the members.

g. Where applicable, a memorandum of agreement with the regional development commission(s) or the Metropolitan Council, a letter of agreement between the organization and a fiscal agent or the tax-exempt letter for non-profit organizations will be included. A memorandum of agreement shall include that application decisions on artistic merit, applicant ability, and need for project or program must be reserved for consideration only by citizen advisory committees appointed for their expertise and experience in the arts. The memorandum need only be submitted to the MSAB once, at the start of the operation of an organization as a regional arts council.

h. A budget which will be a total projected budget identifying all local, regional, state and federal sources of support, public and private.

i. A grant monitoring and evaluation process description and an evaluation process description of the council itself.

B. The review of a block grant application is as follows:

1. All regional plans/block grant applications shall be reviewed by a regional arts development advisory committee of the board.

2. The committee will review plans/block grant

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applications using the review standards of merit of the proposed activities, ability of the applicant and need for the proposed activities by the organization or audience it serves as contained in 5 MCAR S 5.010 A.

3. The regional advisory committee shall submit as recommendations to the board one of the following:

a. Full funding based on the Minnesota State Arts Board allocation formula;

b. Partial funding; or

c. No funding.

4. A representative of the applicant organization shall have the opportunity to present the plan and respond to questions raised by either the regional arts development advisory committee, the board staff, or the board.

5. The Regional Arts Development Advisory Committee shall submit its recommendations to the board for final review.

6. The board shall approve, defer or reject plans submitted by the regional block grant applicants.

C. After the board review, the applicant organization shall have at least 30 days to make any revisions in the plan required by the board.

D. The board will award only one regional block grant in each region during a fiscal year.

E. Each applicant organization receiving a regional block grant shall be designated a regional arts council.

F. Allocated funds for regions not served by a regional arts council will be administered by the MSAB with the advice of a regional arts task force.

G. Copies of the board approved regional arts council plan will be available for distribution to the public by the regional arts council.

H. Regional arts councils are eligible to apply only for block grants for the purposes of local/regional arts development.

I. Regional arts councils receiving block grants from the board are required to follow board rules pertaining to eligibility requirements and review standards in distributing

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local/regional arts development grants, process for obtaining grants, provisions affecting grantees and miscellaneous provisions. These rules are 5 MCAR SS 5.007, 5.008, 5.010, 5.011 and 5.012.

J. Regional arts councils must base decisions on local/regional arts development grant applications received through re-granting programs on the review standards listed in 5 MCAR S 5.010 A.~~1.~~ These decisions must be made by citizen committees appointed for their expertise and experience in the arts according to 5 MCAR S 5.005 C.

K. Organizations which receive a grant from a regional arts council are subject to the provisions of 5 MCAR S ~~5.001~~ 5.011, Provisions affecting grantees.

L. Each regional arts council shall submit an annual report within 90 days~~,~~ after the end of the regional arts council's fiscal year which shall include:

1. Total fiscal statement, not an audit, for the years in which the plan was in effect.

2. Description of the relationship between the approved plan and the actual grants, and other forms of assistance provided during the year with Arts Board block grant funds.

3. Report of the grants awarded, services provided and programs disseminated.

5 MCAR S 5.009 Appeals process. [Repealed.]

5 MCAR S 5.010 Standards for review of requests for grants ~~and other forms of assistance~~.

A. Applications for special projects, sponsor assistance, local arts development and regional block grants will be reviewed ~~primarily~~ according to:

1. The merit and artistic quality of project or program. In the case of service programs and projects the merit and quality of the service being provided to the arts will be reviewed.

2. If the application is determined to be of sufficient merit and artistic quality as to indicate further review the

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following standards will be applied:

a. The ability of the organization to accomplish the project or program they describe or the organizational goals as presented. This is demonstrated by providing evidence of a planning process, qualifications of artistic and/or administrative personnel, publicity efforts and previous successful efforts.

b. Applicants must demonstrate demand or need for the project or program by the organization applying or the group it serves.

B. In the event that more applications are recommended for funding than funds are available, the advisory committee may rate the recommended applications individually to determine funding priorities. This procedure will be outlined by the MSAB and the regional arts council for each fiscal year.

C. Applications for general support will be reviewed ~~primarily~~ according to: HE27

1. Artistic excellence and leadership.

a. Service to the organization's principal art form(s), i.e., preservation of artistic heritage(s), presentation of new works, new artists.

b. Serving as an example of excellence for others-setting standards. Recognition and impact in community, region, state and nation.

c. Uniqueness of service, in nature or method.

d. Sharing of expertise.

e. Variety of program offering.

f. Qualifications and achievements of artistic leadership.

g. Qualifications, achievements and methods of selection of other principal artistic personnel and administrative personnel.

2. The application is then reviewed according to the following standards.

5 MCAR S 5.010 C.2.-5. [Renumber as 5 MCAR S 5.010 C.3.-6.]

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REVISOR OF STATUTES
OFFICE BY:

7. Size and distribution of audience/public.

a. Numbers served, by program type, if possible.

b. Numbers of subscribers and/or regular members; enumeration of individuals served.

c. Numbers of persons served in headquarters facilities and those served away from home facility.

d. Indications of audience/public demographics, if available.

e. Special efforts to serve special constituencies.

D. Individual artists' applications will be reviewed ~~primarily~~ for the quality of the artistic activity as demonstrated in the examples of the work submitted. If the artistic activity is determined to be of sufficient quality as to indicate further review the following standards will be applied:

1. The merit of the proposed activity as this relates to the artist's ability to execute the proposed activity and an examination of the artist's proposal, submitted work and career brief.

2. Explanation of the amount requested.

E. Because it is anticipated that there will be more qualified applicants than funds available, funding decisions may be made by the board on the basis of the board's and advisory ~~committees determination~~ committees' determinations of the artistic quality as evidenced in the work submitted relative to the artistic work submitted in other applications.

5 MCAR S 5.011 Provisions affecting grantees.

A. The grantee or authorizing official must sign and return to the board, within 45 days from date of mailing, one copy of the grant contract and necessary attachments if notification is of grant approval. No action is required on notification of applications not recommended for funding.

B. The grantee must acknowledge assistance by the board on all written materials relating to the project or program such as programs, news releases and posters. Grantee must use the

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acknowledgement statement as found in the grant contract. Grantees of regional arts councils must also use the board acknowledgement statement on all materials relating to the project or program.

C. The grantee must notify the board in writing at any point if the program or project is changed from the way in which it was described in the grant application. This notification letter will be reviewed by the staff to ensure that the change does not make a project or program ineligible for support as eligibility is specified in these rules. Grantee will be notified in writing of the approval or non-approval of the program or project change(s).

D. [Unchanged.]

E. The grantee may be required to submit a certified audit report of the organization or a project funded by the board.

F. For purposes of evaluation, grantees must permit the board reasonable access to all activities supported by Arts Board funds.

5 MCAR S 5.011 F.-H. [Reletter as 5 MCAR S ~~5.001~~ 5.011 G.-I.]

J. A grant commitment to a grantee may be rescinded by the board if one of the following conditions exists:

1. The grantee does not return the signed grant contract and/or attachments ~~with~~ within 45 days of the date specified by the board letter or in program information.

2. The grantee does not return a revised budget and/or project description within 30 days of the date of the notification of board action by letter.

3. The grantee does not request the grant amount within 45 days of the date of the grant contract.

K. Grantee must submit a final report, within 60 days of the date stated in the application as the end of the project or program. This report is to be completed by grantee in the requested format provided by the board. Failure to submit any final reports will adversely affect the grantee's receipt of Minnesota State Arts Board grant funds.

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L. Grantee must start grant activities in the same fiscal year in which the grant is received.

M. The board will annually review the regional block grant allocation formula.

N. The board may recall uncommitted regional block grant funds at the end of their fiscal year. A written request must be made by the regional arts council and submitted to the MSAB for approval to carry-forward unexpended funds from one fiscal year to the next. This request from a regional arts council must be made by May 1 of the same fiscal year and must outline the proposed allocation for any unexpended funds in narrative form and contain a budget for such use.

O. The board may institute systems of grant payments in which such payments are contingent upon the receipt of final reports and/or board evaluation of the grantee.

5 MCAR S 5.012 Miscellaneous provisions.

A. The board may initiate new assistance categories or pilots in which applicants for assistance may be selected specifically for the way in which the board can learn from their experience.

1. No pilot assistance category will continue for longer than 2 years without the category being established on a permanent basis, or discontinued.

2. All pilot assistance categories will be specifically described as such in MSAB program information.

B. Applications for organizational and individual grants assistance will not be accepted for review when one of the following conditions exists:

1. Artists are required to pay entry or exhibition fees in order to exhibit and/or perform in the project or program for which funding is sought.

2. Funds are requested for capital improvement or construction, purchase of real property or endowment funds.

3. Funds are requested to account for fund deficiencies in projects begun prior to the project start date specified by

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

the Minnesota State Arts Board and regional arts councils in program information.

4. Funds are requested to pay fees for touring costs, performances or exhibitions carried out exclusively by student organizations or schools.

5. Funds are requested to support activities which are essentially for the religious socialization of the participants.

C. Applications for individual artist grants assistance will not be accepted for review when one of the following conditions exists:

1. Funds are requested by individuals for tuition or other fees related to the pursuit of an academic degree.

2. Funds are requested by individuals to develop curriculum plans, teaching materials or to teach classes.

3. Funds are requested by individual artists to engage in activities such as establishing an arts organization or a commercial venture.

D. Organizations which receive grants for general support may apply for grants in pilot programs offered by the State Arts Board if the organizations meet the stated eligibility requirements of such pilot programs.

E. The board~~, in addition to the criteria set forth above,~~ may award all or most of the available grant funds at the first deadline of each fiscal year. HE 30

F. The board may give priority to one form of assistance over others during a fiscal year.

5 MCAR S 5.013 Public participation in agency matters.

A. Any applicant who disputes the decision of the board regarding his or her grant application on any issue other than artistic quality or merit may appeal the decision of the board. This appeal to the board will be conducted in the following way:

1. The applicant will submit a written request for consideration of his or her appeal within 45 days of notification of the board's decision on the application.

2. This request must state the reason(s) for the appeal.

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3. The board will review the written request appealing its decision at its first meeting following the receipt of the request.

4. The board may take one of the following actions in response to the request for an appeal:

a. Determine that the applicant does not show sufficient cause for an appeal.

b. Direct the staff to investigate the applicant's appeal and bring a resolution of the claim to a subsequent meeting of the board.

c. Request that the applicant appear before the board at a subsequent meeting and address his or her appeal at that time.

d. Determine that the applicant does show sufficient cause for appeal and offer ~~resolution~~ settlement HE 31 to the applicant at the meeting.

e. Refer the appeal to a hearing examiner as a contested case.

5. ~~If the applicant for a grant does not receive satisfactory resolution of~~ Following the appeal to the board if the applicant continues to dispute the decision of the board regarding his or her appeal from the board, or if the board refers the appeal to a hearing examiner, this appeal will be conducted as a contested case pursuant to the Administrative Procedures Act, Minn. Stat. SS 15.0418-15.0422 and 15.052.

B. There is no right of appeal for disputes of decisions of the board and/or its advisory committees with respect to artistic quality or merit, artistic excellence and leadership, and the quality of the artistic activity of the work of an individual artist.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

OFFICE OF THE REVISOR OF STATUTES

Certificate of Approval of Adopted Rules

Agency: Minnesota State Arts Board

Rule Numbers: 5 MCAR SS 5.002, 5.003, 5.004, 5.005, 5.006, 5.007, 5.008, 5.009, 5.010, 5.011, 5.012, and 5.013

Rule Title: Adopted Rules Governing Review of Requests for and Distribution of Grants, Loans and Other Forms of Assistance

Type of Rules: Permanent X

Temporary ____

Documents Incorporated by Reference:

The attached Rules are approved as to form.

Steven C. Cross
Revisor of Statutes

Name: Ann L. Bateson
Ann L. Bateson

Title: Deputy Revisor

Phone: 296-1536

CERTIFICATE OF BOARD'S

RESOLUTION ADOPTING RULES

I, Stephen Keating, do hereby certify that I am a member and the chairman of the Board of the Arts, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Board of the Arts, duly and properly called and held on the sixth day of November, 1981, that a quorum was present at said meeting, that a majority of those present voted for the resolution, and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

"RESOLVED, that the rules relating to the Review of and Requests for and Distribution of Grants, Loans and Other Forms of Assistance be and they are approved and adopted, pursuant to authority vested in us by Minnesota statutes 139.10 and that G. James Olsen, the acting executive director of the Board of the Arts, be and hereby is authorized to sign an order adopting these rules and further is authorized to perform the necessary acts to provide that these rules shall have the force and effect of law."

IN WITNESS WHEREOF, I have hereunto subscribed my name this sixth day of November, 1981.

Stephen Keating
Chairman

Katherine Munpley
Board Member

STATE OF MINNESOTA

BOARD OF THE ARTS

In the Matter of the Proposed Adoption
of Rules of the State Arts Board Governing
Review of and Requests for and Distribution of
Grants, Loans and Other Forms of Assistance

ORDER ADOPTING
RULES

The above-entitled matter came on for hearing before Hearing Examiner George Beck on the 12th day of June, 1981, at 9:00 A.M., in the Office of Administrative Hearings, St. Paul, Minnesota, after proper notice required by Minnesota Statutes section 15.0412 was served upon all persons, associations, and other interested groups registered with the State Arts Board for that purpose.

After affording interested persons an opportunity to present written and oral data, statements, and arguments, hearing all the testimony, considering all of the evidence adduced and upon the records, files, and proceedings herein and applicable statutory standards or criteria, and confirming the need for and reasonableness of the above- captioned rules, and based on the recommendations of the Office of the Attorney General regarding the rules,

NOW THEREFORE, IT IS ORDERED that these rules identified as Rules Governing Review of Requests for and Distribution of Grants, Loans and Other Forms of Assistance are adopted this sixth day of November , 1981, pursuant to authority vested in me by Minnesota Statutes section 139.10.

STATE OF MINNESOTA

Stephen Keating

CHAIRMAN OF THE ARTS BOARD

Minnesota
State
Arts Board

2500 Park Avenue
Minneapolis, MN 55404
(612) 341-7170
toll-free (800) 652-9747

November 16, 1981

MEMORANDUM

TO: JUDITH WEHRWEIN, ATTORNEY GENERAL'S OFFICE

FROM: MARY SULERUD, MINNESOTA STATE ARTS BOARD MMS

RE: MSAB RULES RESUBMISSION, FILE NO. 719

Attached to this memorandum is a copy of the Report of the Chief Hearing Examiner regarding the changes made by the MSAB at their November 6, 1981 meeting in their rules. These changes were made in response to the memorandum of October 9, 1981 from H. Theodore Grindal regarding the rejection of the rules. We sincerely hope that the changes made and approved by the board and the Chief Hearing Examiner will now meet with your approval. We hope to hear from you at your earliest convenience.

These rules have also been filed with the Revisor's Office.

RECEIVED
NOV 16, 81
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

Minnesota
State
Arts Board

2500 Park Avenue
Minneapolis, MN 55404
(612) 341-7170
toll-free (800) 652-9747

November 16, 1981

MEMORANDUM

TO: ANN BATESON, REVISOR'S OFFICE

FROM: MARY SULERUD, MINNESOTA STATE ARTS BOARD MMS

RE: ATTACHED REVISION OF THE RULES

In response to a rejection of our rules by the Attorney General in October, the Minnesota State Arts Board approved rule changes at their November 6, 1981 meeting. These changes are written out on the rules and on a memorandum to the Chief Hearing Examiner which is attached. Because these rules as amended have been approved by the Chief Hearing Examiner they are again being resubmitted to the Attorney General.

Please call if you have any questions.

An Equal Opportunity Employer

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
ROOM 300 – 1745 UNIVERSITY AVENUE
ST. PAUL, MINNESOTA 55104
(612) 296-6910

November 10, 1981

Mr. G. James Olsen
Acting Executive Director
Minnesota State Arts Board
2500 Park Avenue
Minneapolis, Minnesota 55404

Re: In the Matter of the Proposed Adoption of Rules of the State Arts Board Governing Review of and Requests for and Distribution of Grants, Loans and Other Forms of Assistance. Docket No. SAB-81-002-GB.

Dear Mr. Olsen:

Enclosed and served upon you by mail please find the Order of the Chief Hearing Examiner in connection with the above-captioned matter.

Yours very truly,

Duane R. Harves by

DUANE R. HARVES
Chief Hearing Examiner

Telephone: 612/296-8100

DRH:sw

AN EQUAL OPPORTUNITY EMPLOYER

SAB-81-002-GB

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA STATE ARTS BOARD

In the Matter of the Proposed Adoption of Rules of the State Arts Board Governing Review of Requests for and Distribution of Grants, Loans and Other Forms of Assistance.

ORDER OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on June 12, 1981 before George A. Beck, a Hearing Examiner of the State Office of Administrative Hearings, 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 and the Report of the Chief Hearing Examiner was issued to the Minnesota State Arts Board and;

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

WHEREAS, the Board has resubmitted said rules to the Chief Hearing Examiner on November 9, 1981, for review pursuant to Minn. Stat. §§ 15.0412, subd. 4e and 15.052, subd. 4, and 9 MCAR § 2.111; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing.

NOW, THEREFORE, upon receipt of this Order, the Board has the responsibility of resubmitting the complete hearing record and the rules as adopted by the Board to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. § 15.0412, subd. 4e and 4f.

Dated: November 10, 1981.

DUANE R. HARVES
Chief Hearing Examiner

By MYRON S. GREENBERG
Hearing Examiner

STATE OF MINNESOTA)
(ss.
COUNTY OF RAMSEY)

SAB-81-002-GB

AFFIDAVIT OF SERVICE

SUSAN WOJCIK, being first duly sworn, deposes and says that on the 10th day of November, 1981, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Order of the Chief Hearing Examiner

unstamped, by placing in the designated tray to be collected by messenger for delivery to the central mailing station as required by Minn. Stat. § 16.54 (1974), a true and correct copy thereof on all persons at the addresses shown on the attached mailing list.

Susan Wojcik

Subscribed and sworn to before me this 10th day of November, 1981.

Sandra A. Haven

SANDRA A. HAVEN
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires July 29, 1983

Mr. G. James Olsen
Acting Executive Director
Minnesota State Arts Board
2500 Park Avenue
Minneapolis, Minnesota 55404

OFFICE OF THE REVISOR OF STATUTES

Certificate of Approval of Adopted Rules

Agency: Minnesota State Arts Board

Rule Numbers: 5 MCAR SS 5.002, 5.003, 5.004, 5.005, 5.006, 5.007, 5.008, 5.009, 5.010, 5.011, 5.012, and 5.013

Rule Title: Adopted Rules Governing Review of Requests for and Distribution of Grants, Loans and Other Forms of Assistance

Type of Rules: Permanent X

Temporary _____

Documents Incorporated by Reference:

The attached Rules are approved as to form.

Steven C. Cross
Revisor of Statutes

Name: Ann L Bateson
Ann L. Bateson

Title: Deputy Revisor

Phone: 296-1536

STATE OF MINNESOTA

BOARD OF THE ARTS

In the Matter of the Proposed Adoption
of Rules of the State Arts Board
Governing Review of Requests for and
Distribution of Grants, Loans and Other
Forms of Assistance

ORDER ADOPTING
RULES

The above-entitled matter came on for hearing before Hearing Examiner George Beck on the 12th day of June, 1981, at 9:00 A.M., in the hearing room of the Office of Administrative Hearings, 1745 University Avenue, St. Paul, Minnesota, after proper notice required by Minnesota Statutes section 15.0412 was served upon all persons, associations, and other interested groups registered with the State Arts Board for that purpose.

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

NOW THEREFORE, IT IS ORDERED that these rules identified as rules governing review of requests for and distribution of grants, loans and other forms of assistance, 5MCAR §§ 5.001- 5.013 are adopted this 1st day of September, 1981, pursuant to authority vested in me by Minnesota Statutes section 139.09.

STATE OF MINNESOTA

EXECUTIVE DIRECTOR

STATE OF MINNESOTA

BOARD OF THE ARTS

In the Matter of the Proposed Adoption
of Rules of the State Arts Board
Governing Procedures and Standards for
the Review of Grant Applications

ORDER ADOPTING
RULES

The above-entitled matter came on for hearing before Hearing Examiner George Beck on the twelfth day of June 1981, at 9:00 A.M., in the Hearing Room of the Office of Administrative Hearings, St. Paul, Minnesota after proper notice required by Minnesota Statutes section 15.0412 was served upon all persons, associations, and other interested groups registered with the State Arts Board for that purpose.

After affording interested persons and opportunity to present written and oral data, statements, and arguments, hearing all of the testimony, considering all of the evidence adduced and upon the records, files,and proceedings herein and applicable statutory standards or criteria, and confirming the need for and reasonableness of the above captioned rules,

NOW, THEREFORE, IT IS ORDERED that these rules identified as 5 MCAR §§ 5.001- 5.013, Review of Requests for and Distribution of Grants, Loans and Other Forms of Assistance are adopted this thirtieth day of July 1981, pursuant to authority vested in me be Minnesota Statutes section 139.09.

STATE OF MINNESOTA



EXECUTIVE DIRECTOR OF THE MINNESOTA
STATE ARTS BOARD

CERTIFICATE OF BOARD'S

RESOLUTION ADOPTING RULES

I, Stephen Keating, do hereby certify that I am a member and the chairman of the Board of the Arts, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Board of the Arts, duly and properly called and held on the 26th day of August, 1981, that a quorum was present at said meeting, that a majority of those present voted for the resolution, and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

"RESOLVED, that the rules relating to review of requests for and distribution of grants, loans and other forms of assistance be and they hereby are approved and adopted, pursuant to authority vested in us by Minnesota Statutes § 139.10 (e) and (f) and that John M. Ondov the executive director of the Board of the Arts, be and hereby is authorized to perform the necessary acts to provide that these rules shall have the force and effect of law."

IN WITNESS WHEREOF, I have hereunto subscribed my name this August day of 31st, 1981.

Stephen Keating
Chairman of the Board

Leonard J. Nadasdy
Board Member

Board of the Arts

Board Exh. No. 6
File No. 8AB-81-002-C D
Date 6/12/81

RECEIVED
APR 7
ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Adoption of Rules
Governing Review of Requests for and Distribution of Grants,
Loans and Other Forms of Assistance
5 MCAR §§ 5.002-5.013
Notice of Hearing

A public hearing concerning the proposed rules will be held at the Office of Administrative Hearings, Room 300, 1745 University Avenue, St. Paul, Minnesota, 55104 on June 12, 1981, commencing at 9:00 a.m. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing all interested or affected persons will have an opportunity to ask questions and make comments. 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 to George Beck, Hearing Examiner, Room 300, 1745 University Avenue, St. Paul, Minnesota, 55104, telephone (612) 296-8108 either before the hearing or within five working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052, and by 9 MCAR §§ 2.101-2.113 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

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 Administrative Hearings. This Statement of Need and Reasonableness

will include the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rule or rules. The agency intends to present only a short summary of the Statement of Need and Reasonableness at the hearing but will answer questions raised by interested persons. You are therefore urged to review the Statement of Need and Reasonableness before the hearing. Additional copies will be available at the hearing. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

The Board's statutory authority to promulgate the proposed rules is provided by Minn. Stat. § 139.10, subd. (e) and (f). 4

A copy of the proposed rules is attached hereto. One free copy may be obtained by writing to the Minnesota State Arts Board, 2500 Park Avenue, Minneapolis, Minnesota, 55404. Additional copies will be available at the door on the date of the hearing. If you have any questions on the content of the proposed rules, contact Mary Sulerud, 341-7179. 3a. 3b

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the Board 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 Board. 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 Board, in the case of the Board's submission or resubmission to the Attorney General. 8

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1979 Supp.) as any 6

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 one month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

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

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

State of Minnesota

Board of the Arts

John M. Ondov, Executive Director

Date April 7, 1981

Board Exh. No. 7
File No. 8MA-8/-002-G
KD Date 6/12/81

STATE OF MINNESOTA

MINNESOTA STATE ARTS BOARD

RECEIVED
MAY 15 1981
ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Adoption of Rules of the State Arts Board Governing Review of Requests for and Distribution of Grants, Loans and Other Forms of Assistance

ORDER OF HEARING

IT IS ORDERED this third day of April, 1981 that a public hearing on the proposed rules captioned above be held at the Office of Hearing Examiners, 1745 University Avenue, St. Paul, Minnesota on Friday, June 12, 1981, commencing at 9:00 A.M., and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard.

IT IS FURTHER ORDERED, that notice of said hearing be given to all persons who have registered their names with the State Arts Board for that purpose and be published in the State Register.

STATE OF MINNESOTA

EXECUTIVE DIRECTOR

ATTACHMENT TO ORDER FOR HEARING

The Minnesota State Arts Board estimates that approximately 20 people will be in attendance at the rules hearing to be held on June 12, 1981. The length of time needed for this hearing should be about three hours.

RECEIVED
MAY 15 1981
ADMINISTRATIVE HEARINGS

CERTIFICATE OF BOARD'S

AUTHORIZING RESOLUTION

I, Stephen Keating, do hereby certify that I am a member and the chairman of the Board of the Arts, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Board of the Arts duly and properly called and held on the first day of April, 1981, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "RESOLVED, that John Ondov, Executive Director of the Board of Arts, be and he hereby is granted the authority and directed to call a hearing for the purpose of promulgating rules of the Board governing review of requests for and distribution of grants, loans and other forms of assistance as well as perform any and all acts incidental thereto, including but without being limited to signing an Order for Hearing and Notice of Hearing as well as acting as the Board's representative at all hearings."

IN WITNESS WHEREOF, I have hereunto subscribed my name this third day of April, 1981.

Stephen Keating
CHAIRMAN OF THE BOARD OF THE ARTS

[illegible]
ATTESTED TO AS A MEMBER OF THE
BOARD OF THE ARTS

2) comparative unit costs of program components; and average costs of clients served.

The estimated amount of the contract(s) for **each** part will be $75,000. The total contract will not exceed $150,000. Responses must be received by 4:30 p.m., March 31, 1980.

The formal RFP may be requested and inquiries should be directed to:

Ms. Terri Seppala, Supervisor
Planning, Research and Evaluation Section
Welfare-Chemical Dependency Programs Division
658 Cedar, 4th Fl., Centennial Office Building
St. Paul, MN 55155
(612) 296-4605

RECEIVED
MAY 15 1981
ADMINISTRATIVE HEARINGS

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

State Arts Board

Notice of Intent to Solicit Outside Opinions or Information Relating to Amendments to Rules on Standards and Procedures for Obtaining Grants and Other Forms of Assistance

Notice is hereby given that the Minnesota State Arts Board is soliciting information and opinions from sources outside of the agency for the purpose of preparing amendments to the existing rules related to standards and procedures for obtaining grants and other forms of assistance. The Minnesota State Arts Board is interested in clarifying existing rules related to eligibility and review standards and the right of appeal for grant applicants.

Any persons desiring to submit data or views on the subjects may do so either orally or in writing. All written submissions will become part of the record in any subsequent hearing.

All written or oral information and comment should be addressed to:

Ms. Mary Sulerud
Information Officer, Minnesota State Arts Board
2500 Park Avenue
Minneapolis, Minnesota 55404

All statements of information and comment must be received by April 15, 1980.

February 28, 1980

Department of Education Special Services Division Office of Public Libraries and Interlibrary Cooperation

Notice of Intent to Solicit Outside Opinion Concerning Proposed Rules Governing Multi-county Multi-type Library Cooperation Development and Operating Grants Programs

Notice is hereby given that the Department of Education, Special Services Division, Office of Public Libraries and Interlibrary Cooperation, is drafting rules to implement Laws of 1979, ch. 334, art. IX, §§ 9-10, which provides development and operating grants for multi-county multi-type library systems. Proposed rules would specify application and review procedures, computation formulas for operating grants, eligibility criteria for grants, and audit requirements.

All interested or affected persons or groups may submit information on this subject. Written or oral information and comment should be addressed to:

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

Board Exh. No. 10
File No. SAB-81-902-025
10 Date 6/12/81

RECEIVED
MAY 15 1981
ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA

MINNESOTA STATE ARTS BOARD (MSAB)

IN THE MATTER OF THE AMENDMENT OF RULES OF THE MINNESOTA STATE ARTS BOARD CONCERNING REQUESTS FOR AND DISTRIBUTION OF GRANTS, LOANS AND OTHER FORMS OF ASSISTANCE.

AFFIDAVIT OF MAILING

JENNIFER R. HADTRATH, being first duly sworn, deposes and says:

That on the 30 day of APRIL, 1981, 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 attached certificate.

Jennifer R Hadtrath

Subscribed and sworn to before me this 11 day of May, 1981

NOTARY PUBLIC—MINNESOTA
WASHINGTON COUNTY
My Comm. Expires Jan. 22, 1988

RECEIVED
MAY 15 1981
ADMINISTRATIVE
HEARINGS

STATE OF MINNESOTA

IN THE MATTER OF THE PROPOSED AMENDMENT)
OF RULES OF THE MINNESOTA STATE ARTS BOARD)
CONCERNING REQUESTS FOR AND DISTRIBUTION OF)
GRANTS, LOANS AND OTHER FORMS OF ASSISTANCE.)

CERTIFICATE OF
MINNESOTA STATE ARTS
BOARD RULES MAILING LIST

I hereby certify that the attached 30, 2 sheets

constitute the complete list of persons, associations, and other interested groups who as of 4:30 o'clock p.m., this 29th day of April 1981, have requested pursuant to M.S. 1980, 15.0421, that their names be placed on file with this agency for the purpose of receiving notice of public hearing on proposed rules on the subject matter captioned above.

EXECUTIVE DIRECTOR

BY Mary Sulerud

Susan P. Robertson
Executive Director
Room 430, State Office Bldg.
St. Paul, MN 55155

Peter S. Popovich
814 Minnesota Building
Saint Paul, MN 55101

Phillips Legislative Service, Inc
459 Rice Street
St. Paul, MN 55103

Conrad M. Fredin
Attorney at Law
811 First National Bank Building
Duluth, MN 55802

Mike Steele
Minneapolis Tribune
425 Portland Avenue
Minneapolis, MN 55415

Cheryl Dickson
Minnesota Humanities Commission
LL 85 Metro Square Building
St. Paul, MN 55101

Dale Huffington
Chimera Theatre
30 E 10th St
St. Paul, MN 55101

Mr. John A. Knapp
Hessian, McKasy & Soderberg
1500 Midwest Plaza Bldg.
Minneapolis, MN 55402

Thomas M. Polt
Attorney at Law
McCarthy Bldg.
Eyota, MN 55934

Jim Dusso
COMPAS
Landmark Center
75 W. 5th Street
St. Paul, MN 55102

David Markle
1822 1/2 S. 7th Street
Minneapolis, MN 55454

Bonnie Bannanno
Room 300
1745 University Avenue
St. Paul, MN 55104

Bob Franklin, City Editor
Minneapolis Tribune
425 Portland Avenue
Minneapolis, MN 55488

Eric W. Ingvaldson
1036 Midland Bank Building
Minneapolis, MN 55401

Megan Jones
Minnesota Citizens for the Arts
709 Pioneer Building
St. Paul, MN 55101

Terence Lapin
1432-Fifth Street NE
Minneapolis, MN 55413

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& ARTS TASK FORCES
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Crookston, MN 56716

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Region V RDC
611 Iowa Avenue
Staples, MN 56479

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Region IX Development Comm.
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Mankato, MN 56001

Cheryl Younger, RTAHC

426 Bemidji Avenue
Bemidji, MN 56601

Curt Lambrecht
P.O. Box 583
Marshall, MN 56258

Pat Beaver
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2200 2nd Street S.W.
Rochester, MN 55901

Becky Engel-Abrahamson
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Marshall, MN 56258

Linda Hennessey
Metropolitan Arts Council
300 Metro Square Building
St. Paul, MN 55101

Gloria Brush, Executive Dir.
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Phil Schroeder
East Central RDC
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Roger Israel
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300 Metro Square Building
St. Paul, MN 55101

Marion Angelica
Metropolitan Council
300 Metro Square Building
St. Paul, MN 55101

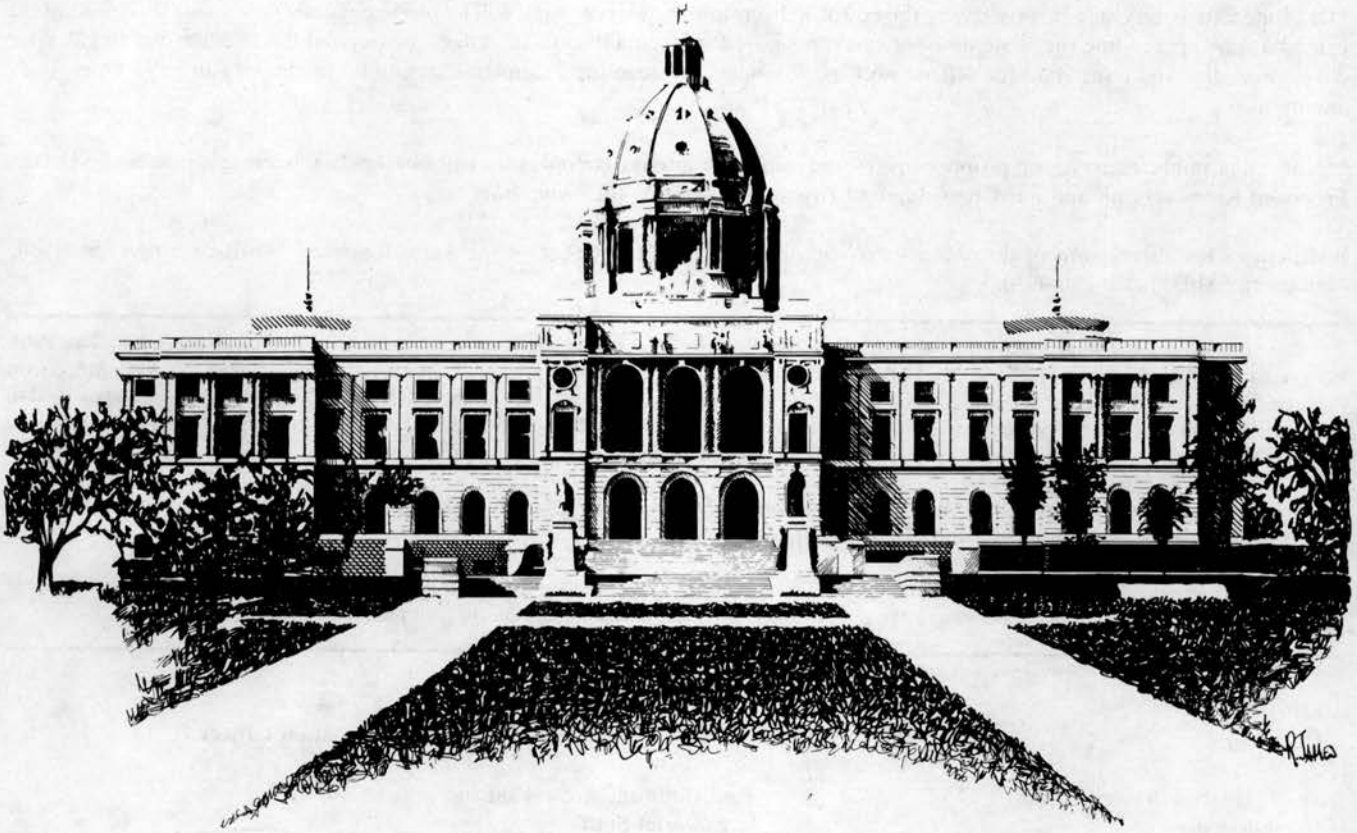
Solveig Glasoe
West Central RDC
Administration Building
Fergus Falls Community College
Fergus Falls, MN 56537

Steve Meyer
Central Minnesota Arts Council
P.O. Box 1442
St. Cloud, MN 56301

Board Exh. No. 18
File No. 8400-81-001-GM
AR Date 6/12/81

STATE REGISTER

STATE OF MINNESOTA



VOLUME 5, NUMBER 44

May 4, 1981

Pages 1703-1798

STATE REGISTER

Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
	SCHEDULE FOR VOLUME 5		
45	Monday Apr 27	Monday May 4	Monday May 11
46	Monday May 4	Monday May 11	Monday May 18
47	Monday May 11	Monday May 18	Monday May 25
48	Monday May 18	Friday May 22	Monday June 1

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

**Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the Office of the State Register, 506 Rice Street, St. Paul, Minnesota 55103, (612) 296-0930.

The *State Register* is published by the State of Minnesota, State Register and Public Documents Division, 117 University Avenue, St. Paul, Minnesota 55155, pursuant to Minn. Stat. § 15.0411. Publication is weekly, on Mondays, with an index issue in August. In accordance with expressed legislative intent that the *State Register* be self-supporting, the subscription rate has been established at $120.00 per year, postpaid to points in the United States. Second class postage paid at St. Paul, Minnesota. Publication Number 326630. (ISSN 0146-7751) No refunds will be made in the event of subscription cancellation. Single issues may be obtained at $2.25 per copy.

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

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

Albert H. Quie
Governor

James J. Hiniker, Jr.
Commissioner
Department of Administration

Stephen A. Ordahl
Director
State Register and
Public Documents Division

Carol Anderson Porter
Editor

Paul Hoffman, Robin PanLener
Editorial Staff

Roy Schmidtke
Circulation Manager

Cindy Peterson
Secretary

David Zunker
Information Officer

Cover graphic: *Minnesota State Capitol*, ink drawing by Ric James.

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How to Follow State Agency Rulemaking Action in the *State Register*

State agencies must publish notice of their rulemaking action in the *State Register*. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a **NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION.** Such notices are published in the **OFFICIAL NOTICES** section. Proposed rules and adopted rules are published in separate sections of the magazine.

The PROPOSED RULES section contains:

- Calendar of Public Hearings on Proposed Rules.
- Proposed new rules (including Notice of Hearing and/or Notice of Intent to Adopt Rules without A Hearing).
- Proposed amendments to rules already in existence in the Minnesota Code of Agency Rules (MCAR).
- Proposed temporary rules.

The ADOPTED RULES section contains:

- Notice of adoption of new rules and rule amendments (those which were adopted without change from the proposed version previously published).
- Adopted amendments to new rules or rule amendments (changes made since the proposed version was published).
- Notice of adoption of temporary rules.
- Adopted amendments to temporary rules (changes made since the proposed version was published).

All ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the *State Register* will be published in the Minnesota Code of Agency Rules (MCAR). Proposed and adopted TEMPORARY RULES appear in the *State Register* but are not published in the MCAR due to the short-term nature of their legal effectiveness.

The *State Register* publishes partial and cumulative lisitngs of rule action in the MCAR AMENDMENTS AND ADDITIONS list on the following schedule:

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PROPOSED RULES

Pursuant to Minn. Laws of 1980, § 15.0412, subd. 4h, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules;

and

4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of § 15.0412, subds. 4 through 4g, which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 30 days thereafter, interested persons may submit data and views in writing to the proposing agency.

State Arts Board

Proposed Rules Governing Review of Requests for and Distribution of Grants, Loans and Other Forms of Assistance (5 MCAR §§ 5.002-5.013)

Notice of Hearing

A public hearing concerning the proposed rules will be held at the Office of Administrative Hearings, Room 300, 1745 University Avenue, St. Paul, Minnesota, 55104 on June 12, 1981, commencing at 9:00 a.m. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing all interested or affected persons will have an opportunity to ask questions and make comments. 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 to George Beck, Hearing Examiner, Room 300, 1745 University Avenue, St. Paul, Minnesota, 55104, telephone (612) 296-8108 either before the hearing or within five working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052, and by 9 MCAR §§ 2.101-2.113 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

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 Administrative Hearings. This Statement of Need and Reasonableness will include the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rule or rules. The agency intends to present only a short summary of the Statement of Need and Reasonableness at the hearing but will answer questions raised by interested persons. You are therefore urged to review the Statement of Need and Reasonableness before the hearing. Additional copies will be available at the hearing. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

The board's statutory authority to promulgate the proposed rules is provided by Minn. Stat. § 139.10, subd. (e) and (f).

A copy of the proposed rules is attached hereto. One free copy may be obtained by writing to the Minnesota State Arts Board, 2500 Park Avenue, Minneapolis, Minnesota, 55404. Additional copies will be available at the door on the date of the hearing. If you have any questions on the content of the proposed rules, contact Mary Sulerud, 341-7179.

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the board may not take any final action on the rules for a period of five working days. Any person may request

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

notification of the date on which the hearing record has been submitted or resubmitted to the Attorney General by the board. 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 board, in the case of the board's submission or resubmission to the Attorney General.

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1979 Supp.) 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 one month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

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

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

April 7, 1981

John M. Ondov, Executive Director
State Arts Board

Rules as Proposed

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5 MCAR § 5.005 Advisory committees.

5 MCAR § 5.006 Eligibility requirements for individuals ~~and organizations~~.

~~5 MCAR § 5.007 Procedures for obtaining grants, loans and other forms of assistance.~~

5 MCAR § 5.007 Eligibility requirements for organizations.

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5 MCAR § 5.002 Purpose of the rules. The purpose of these rules is to set forth procedures and standards to be followed by the board in receiving, considering and reviewing requests for and distribution of grants~~, loans, and other forms of assistance~~. Any actions taken by the board, its staff and advisory committees related to the review and distribution of grants must be clearly based on the standards in rule form. Explanation of actions requested by applicants must be offered in the context of the standards in rule form.

5 MCAR § 5.003 Whom the rules govern. ~~A.~~ These rules govern the board; advisory committees; regional arts councils; and all individuals, organizations, departments, and agencies of the state and political subdivisions who wish to receive grants~~, loans,~~ or other forms of assistance from the board ~~and/or from regional arts councils~~.

~~B. Regional arts councils receiving block grants from the board are required to follow board rules pertaining to eligibility~~

~~requirements and general standards in distributing local/regional arts development grants, loans and other forms of assistance which utilize board funds.~~

5 MCAR § 5.004 Definitions. For the purpose of these rules, the following terms shall have the meanings given to them:

A. "Advisory committee" means a group of citizens ~~selected and convened~~ appointed by the board to review and make recommendations on ~~policy and distribution of forms of~~ grants assistance offered by the board or make recommendations on public arts policy matters.

B. "Block grant" means grants to regional arts councils for the purpose of providing ~~program~~ services, re-grants, and direct programming for local/regional arts development.

D. "Certified audit report" means a document prepared and signed by a Certified Public Accountant showing the total fiscal activity of the organization regarding a project or program.

E. "Direct programming" means the implementation ~~by a regional arts council~~ of arts production or arts sponsorship activities by a regional arts council.

~~F. "Local" means program or service distribution and organizational impact within a specific municipality or county.~~

F. "General support" means a program that provides unrestricted operational grants assistance to eligible organizations which meet the standards contained in these rules.

G. "Local/regional arts development" means programs or projects which are for the development or enhancement of local or regional artists, ~~or~~ art resources, or art audiences.

~~H. "Multi regional" means program or service distribution and organizational impact over more than one of the state's official development regions.~~

H.~~I.~~ "Other forms of assistance" means publications, ~~or~~ staff consultation or workshops with individuals or groups who have developed, or are interested in developing, projects or programs in the arts but need advice on matters such as, but not limited to, budgeting, administration, production and technology.

I.~~J.~~ "Program information" means any document(s) issued ~~annually~~ describing programs and services of the board which includes instructions, deadlines, and other aids for the applicant seeking board grants assistance. Program information may clarify and explain standards contained in rule form, but such clarification shall not be considered standards or criteria itself.

J. "Project" means an activity or series of closely related activities for which funds are requested from the MSAB or a regional arts council. The activity or series of activities must be completed within 24 months of the notification of the receipt of a grant in support of the activities.

K.~~L.~~ "Regional" means program or service distribution and organizational impact within the geographic area served by a ~~regional arts task force or~~ regional arts council. Formal combinations of two or more development regions under one regional arts council will be regarded as one region for this purpose.

L.~~M.~~ "Regional arts council" means an organization or a group designated by the board to make final decisions on the utilization of block grant funds granted to them for local/regional arts development.

M.~~N.~~ "Regional arts task force" means an advisory committee of the board which reviews applications for local arts development projects serving the region(s) the arts task force represents. A regional arts task force may also be an advisory committee to a regional development commission or the Metropolitan Council.

N.~~O.~~ "Re-granting" means the process of allocating block grant funds ~~to arts funding applicants to a regional arts council~~ for the purpose~~(s)~~ of funding arts projects or programs or services described in the applications to regional arts councils.

O.~~K.~~ "~~Program~~ sServices" means non-grant activities including, but not limited to, information services, technical and consultative services, planning, reporting, evaluation, and other program development efforts that are provided by the Minnesota State Arts Board and/or regional arts councils.

P. "Sponsor assistance" means a program which provides grants assistance to eligible organizations, which meet the

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standards contained in these rules, that host arts events by contracting for the services of another organization or individual to provide arts programming to their community.

Q.~~P.~~ "State-wide" means program or service distribution and organizational impact throughout most or all of the ~~development~~ regions of the state.

5 MCAR § 5.005 [Proposed for repeal.]

5 MCAR § 5.005 Advisory committees. [The following language was previously numbered 5 MCAR § 5.012 A.-G.]

A. The board may appoint advisory committees to review grant applications.

B. The board may discontinue any advisory committee, as it deems necessary.

C. Members of each advisory committee shall have expertise and/or experience in a particular area of the arts, arts support or administration. Committee members will be selected by the board from among practitioners, administrators, educators, volunteer directors of arts organizations, trustees of arts organizations and other participants in the arts.

D. Appointments to advisory committees shall be made by majority vote of the board. Members shall serve at the pleasure of the board for appointment-terms of no longer than three years. Appointments to advisory committees shall be made so that the appointment-terms of at least one-third of the membership of each committee shall expire in each year.

E. At least sixty days prior to expiration of the appointment-terms of any advisory committee member, the board will publish, distribute and post notice of such openings. Nominations will be actively solicited and accepted by the board. Nominations must be in writing and should include all pertinent information including nominees' qualifications and experience in the arts.

F. Advisory committees will, insofar as reasonably possible, be geographically balanced.

G. Members of the advisory committees and regional arts task force shall be compensated for expenses incurred to attend advisory committee meetings as provided in Minn. Stat. ch. 15.059, subd. 3, except that they shall not be eligible for the per diem.

H. Any member of an advisory panel with a direct financial or employment interest relating to any grant application before the advisory panel, or with a professional, employment or financial interest relating to any individual artist applicant, which interest is reasonably likely to affect his/her impartiality or judgement in the review will be instructed to inform the board of such an affiliation.

1. Affiliation of an advisory panel member with an applicant includes:

a. receipt of direct financial benefit from the applicant organization or project being reviewed;

b. serving as an employee or governing board member of an applicant organization being reviewed;

c. serving with or without payment as a consultant to an applicant on the application being reviewed;

d. familial relationship with an applicant or a staff or board member of an applicant organization;

e. recent recipient of free tickets or other benefits from an applicant being reviewed.

2. The MSAB will annually screen panel members for affiliations which may constitute conflict-of-interest.

5 MCAR § 5.006 Eligibility requirements for individuals~~, organizations, governmental units and schools~~ applying for grant assistance.

~~A. Arts Board assistance is available to individuals, non-profit, tax-exempt organizations, schools and governmental units and departments and agencies of the state.~~

~~B. Local/regional arts development assistance is available to non-profit, tax-exempt organizations or units of government, including schools. This assistance is for the creation and production of arts programs or projects which are for the development or enhancement of local or regional artists or arts resources.~~

~~C. Arts Board grants assistance is available to the following individual applicants:~~

~~1. Artists who directly produce new works of art such as, but not limited to, playwrights, composers, librettists, creative prose writers, independent filmmakers, video artists, visual artists, craftspeople, choreographers, poets, fiction writers, conceptual artists and artists working in multi-media fields.~~

~~2. Arts teachers, only if the teacher is pursuing professional development as an artist, not as a teacher.~~

~~3. Individual artists, who have received a MSAB Fellowship grant, cannot apply for another Fellowship grant until two fiscal year. after the receipt of the Fellowship grant.~~

~~4. Students, those who are pursuing either full-time or part-time a performance or academic degree in their creative field, may not apply for Fellowships, but may apply for Project or Works in Progress grants.~~

A. Subject to 5 MCAR § 5.012 and the other provisions contained in these rules an individual artist is eligible for grants assistance only if that artist is:

1. A resident of Minnesota according to the voting requirements of the state;

2. Not involved in executing work initiated or completed by another individual or organization as their agent, or not solely involved in the organization or presentation of other artists' works.

B.~~C. 5.~~ An individual artist who has ~~have~~ received a ~~Project or Works in Progress~~ Minnesota State Arts Board individual artist grant ~~cannot~~ may not apply for another ~~Project or Works in Progress~~ individual artist grant until one fiscal year after the receipt of such ~~the Project or Works in Progress~~ grant.

C. An individual artist may not submit more than one application each fiscal year.

~~D. Production grants assistance and Sponsor grants assistance are not available to schools if the project submitted is limited in access to, or only serves those attending school, including the staff.~~

~~E. Grants assistance for general operations (Subsidy) is only available to to arts producing, exhibiting or educational (non-academic i.e., do not offer curricular programs) organizations.~~

~~1. Organizations may apply for general operations (Subsidy) grants only if:~~

~~a. State-wide or multi-region impact is demonstrated by program dissemination, public participation or artistic leadership.~~

~~b. The organization has been in existence in its current form two full years prior to applying.~~

~~c. The organization has a certified audit of its accounts for the previous two years.~~

~~d. The organization has a commitment to professional management at least one full-time paid management (not clerical) position for 12 months per year, or equivalent volunteer personnel. Documentation would include job description, time allocation and budget commitment, if applicable.~~

~~2. Organizations which receive grants for general operations (subsidy) are eligible to apply for project grants only if:~~

~~a. The application is for a special project, clearly identified as something that would not or could not take place without a grant.~~

~~b. The project clearly demonstrates that it is a one time project. A pilot for contemplated future operation is eligible if a specific plan for absorbing it into on-going operations is presented with the application.~~

~~c. No overhead or on-going organizational costs be included as part of the project budget.~~

~~d. The grant from the MSAB would be matched at least 50-50 with funds from other sources, clearly identified for the project itself. No general budget funds of the applicant organization would be eligible as match.~~

~~F. Regional arts councils are eligible to apply only for block grants for the purpose of local/regional arts development.~~

~~G. The board may initiate new assistance categories or pilots in which applicants for assistance may be selected specifically for the way in which the board can learn from their experience.~~

~~1. No pilot assistance category will continue for longer than 2 years without the category being established on a permanent basis, or discontinued.~~

~~2. All pilot assistance categories will be specifically described as such in MSAB program information.~~

5 MCAR § 5.007 Eligibility requirements for organizations, governmental units and schools applying for grant assistance. [The following language was previously numbered § 5.006 A,B,D,E,F.]

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A. Subject to 5 MCAR § 5.012 and the other provisions of these rules, non-profit, tax-exempt organizations, schools, governmental units and departments and agencies of the state are eligible to apply for:

1. Local/regional arts development assistance from regional arts councils if:

a. This assistance is for the creation and production of arts programs or projects which are for the development or enhancement of local or regional artists or arts organizations.

b. This assistance is for local arts sponsorship projects in which $3,000 or less is requested.

c. The project submitted is not limited in access to, or only serves those attending schools, including the staff.

2. Sponsor assistance from the Minnesota State Arts Board if:

a. Schools are seeking arts-in-education assistance for the support of artist residency projects of one week (5 school days) or longer.

b. The project submitted is not limited in access to, or only serves those attending schools, including the staff.

3. General support from the Minnesota State Arts Board if:

a. The organization seeking support is an arts producing, or exhibiting organization. Public broadcasting stations, schools, universities and other organizations which primarily present rather than create or produce arts programs are not eligible to apply for this type of assistance.

b. The organization has been in existence in its current form two full years prior to applying.

c. The organization has a certified audit of its accounts for two full years prior to applying.

d. The organization has a commitment to professional management—at least one full-time paid management (not clerical) position for 12 months per year.

e. Have an annual budget of $100,000, less any other MSAB or regional arts council grants, for the fiscal year completed prior to applying for Group II, and $700,000 for Group I. This budget shall be substantiated by certified audit.

B. Organizations may only request up to 10% of their annual budgets from the general support program.

C. Organizations which receive grants for general support are ineligible to apply for special project and sponsor assistance grants from the Minnesota State Arts Board and all grants from regional arts councils.

D. Applicants for grants assistance from the Minnesota State Arts Board and regional arts councils must be able to show evidence of match through cash, revenue or grants in order to be eligible for any type of grants assistance.

5.008 ~~5 MCAR § 5.007 Procedure~~ Process for obtaining grants~~, loans and other forms of assistance~~ in all categories except regional arts council block grants.

A. Definitions. For the purpose of this rule the following terms shall have the meanings given to them.

1. "Applicant" means (a) any Minnesota resident who submits an application for a grant, ~~loan or other form of assistance,~~ or (b) any organization, department or agency of the state or political subdivision on whose behalf an application for a grant~~, or loan~~ is submitted.

2. "Authorizing official" means (a) a person, empowered to enter into contracts for and who signs the grant application of an organization, political subdivision, or department or agency of the state, or (b) in the case of individual artist applications, an individual artist who signs the grant application.

3. "Co-sponsor" means a partnership of two or more organizations and/or governmental units to present arts activities within a community or school which submits one grant application.

4.~~3.~~ "Fiscal agent" means any Minnesota non-profit, tax exempt organization or governmental unit which applies to the board on behalf of an organization or ~~individual~~ group not meeting the non-profit, tax-exempt requirements. The fiscal agent must sign the application and, if a grant is received, sign the grant letter/contract. The fiscal agent is legally responsible for the completion of the project and for the proper management of the grant funds.

5.~~4.~~ "Grant" means an allocation of funds to an applicant which ~~are~~ is to be used for the purpose(s) described in the application which are not repaid.

6.~~5.~~ "Grant contract" means the ~~notification letter~~ legally binding document signed by an authorizing official of an organization or an individual artist who has received a grant obligating him/her to perform grant activities and to fulfill the requirements stipulated in the contract.

7.~~6.~~ "Grantee" means an applicant whose application is approved for funding by the board.

~~7. "Loans" mean monies given to an applicant which are to be repaid to the board according to the conditions specified in the loan contract.~~

8. "Matching funds" means share of the financial support for a project or program raised by ~~grantee~~ applicant from sources other than MSAB. Match for a project or program cannot be made up solely of in-kind contributions. The sources for matching funds may be one or more of the following:

a. "Cash" means cash as shown by ~~Applicant must be able to prove~~ availability of ~~cash matching funds by~~ bank statements, or other indication of cash on hand and budgeted for the project or program.

b. "In kind" means ~~I~~items such as materials, labor and space which can be given a dollar value. Applicant must be able to prove that in-kind match is committed to the project or program.

c. "Revenue" means ~~A~~anticipated or actual receipts from sale of tickets or products.

d. "Other grants" means ~~G~~grants received ~~by~~ from other grant-making agencies, public or private.

10. "Project director" means person designated by an organization, political subdivision or department or agency of the state as the individual responsible for overseeing the implemention of the project or program for which the application is made.

B. All applications for grants ~~and loans~~ must be made an official application forms for the appropriate program available at the offices of the board. Applicants must use grant application forms for the appropriate fiscal year. Requests for other forms of assistance may be made directly to the board at its offices.

C. A copy of these rules and appropriate program information will be provided upon request to all applicants and ~~to others~~ the public ~~upon request.~~

D. All applications must be ~~made~~ postmarked by the deadlines set forth by the board in the current program information.

E. The application form will request the specific data needed to determine the eligibility of the individual or organization and to review the application according to the review standards.

F. ~~E.~~ All applications submitted by individual artists to the board for grants must include examples of works of art of the ~~artist~~ applicant submitting. The type of examples required and the maximum number of examples to be submitted will be specified in current program information of the board. Exceptions to these requirements may be made on application to the board.

G. ~~F.~~ All applications of an organization, political subdivision or agency or department of the state must name a project director.

H. ~~G.~~ The staff will review all applications submitted by the deadline for ~~accuracy and~~ completeness. ~~The board may convene advisory committee meetings for purposes of reviewing grant applications.~~

I. A late application will not be considered for review by the advisory committee or the board.

1. The applicant is responsible for the completeness of the application.

2. An incomplete application is not eligible for review by the advisory committee or the board.

~~I. In all cases, the advisory committee will submit its recommendations to the board along with a statement explaining its reasons for recommending acceptance or rejection of the application.~~

J. ~~H. Applicants will be notified by mail of the receipts of their applications and the need, if any, for changes or supplementary material. Failure by an applicant to provide this information may result in a rejection or deferral of the application.~~ A complete application includes the following:

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1. The appropriate application form with all spaces completed;

2. Authorizing signature(s) on the application form;

3. A complete data summary form;

4. All required resumes attached;

5. Applications from organizations have named a project director;

6. Applications from individual artists must have included required supporting materials;

7. Where applicable, a copy of the contract with the fiscal agent;

8. Postmarked or delivered by the stated deadline(s) in program information.

K. The applicant is responsible for the quality and the nature of the responses in the application form and the supporting materials.

L. ~~J.~~ Advisory committees, when reviewing applications under the standards listed in 5 MCAR § 5.010, shall ~~make one of the following recommendations to the board:~~ submit as recommendations:

1. ~~Recommend approval of~~ Full funding ~~requested amount.~~

~~a. Individual Artist committee recommendations can only be for the full requested amount.~~

~~b. The Regional Arts Development committee recommendations can only be for the full requested amount.~~

2. ~~Recommend approval at less than full requested amount.~~ Partial funding, except for individual artist grants, which can only be for the full requested amount, or,

3. ~~Recommend rejection~~ No funding.

~~4. Recommend that the board table, pending receipt of additional information, or modification.~~

M. ~~K.~~ The board shall give considerable weight to the recommendations of the advisory committees.

N. ~~L.~~ The board may request comments and recommendations from the staff on all aspects of applications.

O. ~~M.~~ The board may request a revised budget and/or project description before taking final action on grant applications.

P. ~~N.~~ The board shall make all final decisions as to approval or rejection of grant applications~~, loan applications~~ or requests for other forms of assistance.

Q. ~~O.~~ If the board ~~approves~~ awards a grant which is smaller ~~or greater~~ than the amount requested the applicant will be notified by mail, and will be required to submit a revised budget before a ~~notification letter~~ grant contract will be sent.

R. ~~P.~~ All applicants will receive a notification letter of acceptance or rejection within 45 days ~~of~~ after final review of the application by the board, except when a revised budget is necessary. In that case, applicants will receive a grant contract and notification letter within 45 days ~~of~~ after the receipt of the revised budget by the board.

~~Q. Supplementary materials will not be returned unless requested.~~

S. In the event a grant is awarded to a fiscal agent, the fiscal agent must sign the grant letter. The fiscal agent must have a written contract with the group implementing the project/program which specifies the responsibilities of each. This contract must be submitted with the application form.

T. ~~R.~~ The board will not assume responsibility for any loss or damage to materials submitted with applications.

5 MCAR § 5.009 ~~Procedures~~ Process for obtaining regional ~~arts council status,~~ block grants; regional ~~arts council~~ plan review; ~~procedures and~~ regional arts council review; re-granting and reporting requirements.

A. ~~The procedure for review of a block grant application developed by a regional arts council is as follows:~~ To be eligible to receive a regional block grant an organization shall:

1. ~~Each regional arts council shall d~~Develop ~~an~~ a ~~annual~~ biennial plan to be submitted by an ~~annually~~ announced date, determined by the board. ~~Regional arts task forces wishing to become regional arts councils must also submit an annual plan.~~

2. The ~~annual~~ plan will include:

a. A mission ~~S~~statement of goals established by the ~~regional arts council~~ organization. ~~This shall be periodically~~

~~reviewed and updated by the regional arts council.~~ The mission statement shall describe the overall philosophy and aims of the organization concerning local/regional arts development.

b. A ~~N~~needs assessment which will be carried out in a manner which ensures input from the arts community and the ~~general~~ arts-involved public. This needs assessment will be updated at intervals determined and announced by the board and the results included in the plan. The needs assessment will be conducted to determine the need to develop new or continued program ~~services~~ activities, services and grants assistance offered by the regional arts council.

c. Description of the planning process including a list of the steps in the development of the plan and the participants in the planning process. Before the plan is submitted to the board for final approval at least one public meeting must be held for the purpose of soliciting public reaction to the plan.

d. Work plan ~~includes~~ including a description of ~~program~~ services, ~~if any.~~ programs and grants assistance available from the organization and the goals and objectives of these activities as related to the needs assessment.

e. Program information which ~~will~~ describes grants and other forms of assistance available, the methods for such assistance, eligibility requirements, review standards, the review process, the terms of the grant contract with grant recipients, the time needed and process followed in paying rent recipients, and the responsibilities of the grantees.

f. The ~~O~~organizational structure ~~and membership~~ which must include bylaws, an identification of the arts experience and background requirements for the members and job description of the staff of the ~~regional arts council~~, organization, a description of the rotation system which will ensure replacement of members on a regular basis, and an outline of the open nominations process used to appoint the members.

g. ~~When~~ Where applicable, a memorandum of agreement with the regional development commission(s) or the Metropolitan Council, a letter of agreement between the ~~regional arts council~~ organization and a fiscal agent or the tax-exempt letter for non-profit organizations will be included. A memorandum of agreement shall include that application decisions on artistic merit, applicant ability, and need for project or program must be reserved for consideration only by citizen advisory committees appointed for their expertise and experience in the arts. The memorandum need only be submitted to the MSAB once, at the start of the operation of an organization as a regional arts council.

h. ~~General description of all programs and services provided with, or independent of, Arts Board funds;~~ A budget which will be a total projected budget identifying all local, regional, state and federal sources of support, public and private.

i. A grant monitoring and evaluation process description and an evaluation process description of the council itself.

B. The review of a block grant application is as follows:

1.~~3.~~ All regional ~~arts council annual~~ plans/block grant applications shall be reviewed by a regional arts development advisory committee of the board.

2. The committee will review plans/block grant applications using the review standards of merit of the proposed activities, ability of the applicant and need for the proposed activities by the organization or audience it serves as contained in 5 MCAR § 5.010 A.

3. The regional advisory committee shall submit as recommendations to the board one of the following:

a Full funding based on the Minnesota State Arts Board allocation formula;

b. Partial funding or;

c. No funding.

4. A representative of the ~~regional arts council~~ applicant organization shall have the opportunity to present the plan and respond to questions raised by either the regional arts development advisory committee, the board staff, or the board.

5. The Regional Arts Development advisory committee shall submit its recommendations to the board for final review.

6. The board shall approve, defer or reject ~~annual~~ plans submitted by the regional ~~arts councils~~ block grant applicants.

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C.~~A.7.~~ After the board review, ~~but prior to final action,~~ the ~~regional arts council~~ applicant organization shall have at least 30 days to make any revisions in the plan required by the board.

D.~~A.8.~~ The board will award only one regional block grant in each region during a fiscal year.

E. Each applicant organization receiving a regional block grant shall be designated a regional arts council.

F. Allocated funds for regions not served by a regional arts council will be administered by the MSAB with the advice of a regional arts task force.

G.~~A.9.~~ Copies of the board approved regional arts council ~~annual~~ plan will be available for distribution to the public by the regional arts council.

H. Regional arts councils are eligible to apply only for block grants for the purposes of local/regional arts development.

I. Regional arts councils receiving block grants from the board are required to follow board rules pertaining to eligibility requirements and review standards in distributing local/regional arts development grants, process for obtaining grants, provisions affecting grantees and miscellaneous provisions. These rules are 5 MCAR §§ 5.007, 5.008, 5.010, 5.011 and 5.012.

J. Regional arts councils must base decisions on local/regional arts development grant applications received through re-granting programs on the review standards listed in 5 MCAR § 5.010 A.1. These decisions must be made by citizen committees appointed for their expertise and experience in the arts according to 5 MCAR § 5.005 C.

K. Organizations which receive a grant from a regional arts council are subject to the provisions of 5 MCAR § 5.001, Provisions affecting grantees.

L.~~A.10.~~ Each regional arts council shall submit an annual ~~fiscal~~ report ~~and evaluation by~~ within ~~60~~ 90 days, after the end of the ~~board's~~ regional arts council's fiscal year which shall include:

1.~~a.~~ Total fiscal statement, not an audit, for the years in which the ~~annual~~ plan was in effect.

2.~~b.~~ ~~Review~~ Description of the relationship between the ~~proposed annual~~ approved plan and the actual grants, and other forms of assistance provided during the year with Arts Board block grant funds.

3. Report of the grants awarded, services provided and programs disseminated.

5 MCAR § 5.009 Appeals process. [Proposed for repeal.]

5 MCAR § 5.010 Standards for requests for grants~~, loans~~ and other forms of assistance.

A. ~~The board and advisory committees and regional arts councils in reviewing applications on a competitive basis will consider the following factors in order of priority:~~ Applications for special projects, sponsor assistance, local arts development and regional block grants will be reviewed primarily according to:

~~1. For organizations:~~

1.~~a.~~ The merit and artistic quality of project or program ~~in the case of project applications~~. In the case of service programs and projects the merit and quality of ~~that~~ the service being provided to the arts will be reviewed.

2. If the application is determined to be of sufficient merit and artistic quality as to indicate further review the following standards will be applied:

a.~~b.~~ The ability of the organization to accomplish the project or program they describe or the organizational goals as presented. This is demonstrated by providing evidence of a planning process, qualifications of artistic and/or administrative personnel, ~~marketing and~~ publicity efforts and previous successful efforts.

b.~~c.~~ Applicants must demonstrate demand or need for the project or program by the organization applying or the group it serves.

~~d. In the sponsor assistance category the matching funds statement required of an applicant, must show evidence of match from the participants or beneficiaries of the project or program, or the reason why such match cannot be obtained.~~

~~2. For individual artists:~~

~~a. The quality of the creative work submitted by the artist.~~

~~b. The ability of the artist to accomplish the project or plan described in the application.~~

~~c. The relationship of the application to the artist's career goals.~~

B. In the event that more applications are recommended for funding than funds are available, the advisory committee may rate the recommended applications individually to determine funding priorities. This procedure will be outlined by the MSAB and the regional arts council for each fiscal year.

C.~~B.~~ Applications for general support ~~(subsidy grants),~~ will be reviewed ~~on the following standards listed as top priority, and the remaining five of lower priority, but not differentiated among each other. These standards shall be demonstrated using the indicators specified in program information and through the application form.~~ primarily according to:

1. Artistic ~~E~~excellence and ~~L~~leadership.

a. Service to the organization's principal art form(s), i.e., preservation of artistic heritage(s), presentation of new works, new artists.

b. Serving as an example of excellence for others-setting standards.

Recognition and impact in community, region, state and nation.

c. Uniqueness of service, in nature or method.

d. Sharing of expertise.

e. Variety of program offering.

f. Qualifications and achievements of artistic leadership.

g. Qualifications, achievements and methods of selection of other principal artistic personnel and administrative personnel.

2. The application is then reviewed according to the following standards:

5 MCAR § 5.010 C.2.-5. [Renumber as 5 MCAR § 5.010 C.3.-6.]

7.~~6.~~ Size and distribution of audience/public.

a. Numbers served, by program type, if possible.

b. Numbers of subscribers and/or regular members; enumeration of individuals served.

c. Numbers of persons served ~~divided by those served~~ in headquarters facilities and those served away from home facility. ~~(tour).~~

d. Indications of audience/public demographics, if available.

e. Special ~~E~~efforts ~~for economically disadvantaged~~ to serve special constituencies.

~~C. Other forms of assistance will be available on a case by case basis dependent upon the nature of the request, and the availability of board resources in response to the request.~~

~~D. Regional arts council annual plans submitted to the board will be reviewed on the following standards:~~

~~1. Consistency with board legislation and rules.~~

~~2. Community participation in the planning process.~~

~~3. Equitability, fiscal accountability and accessibility to the grants process and other forms of assistance.~~

~~4. Consistency in the relationship among the regional arts council's goals, needs assessment and work plans.~~

~~5. Demonstrated ability of the region to carry out its plan.~~

~~6. Evidence that decisions on artistic merit, applicant ability and need for the project or program, are made only by citizen committees appointed for their expertise and experience in the arts according to~~

D. Individual artists' applications will be reviewed primarily for the quality of the artistic activity as demonstrated in the examples of the work submitted. If the artistic activity is determined to be of sufficient quality as to indicate further review the following standards will be applied:

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1. The merit of the proposed activity as this relates to the artist's ability to execute the proposed activity and an examination of the artist's proposal, submitted work and career brief.

2. Explanation of the amount requested.

E. Because it is anticipated that there will be more qualified applicants than funds available; funding decisions may be made by the board on the basis of the board's and advisory committees determination of the artistic quality as evidenced in the work submitted relative to the artistic work submitted in other applications.

~~E. Applications for grants assistance will not be accepted for review when one of the following conditions exists:~~

~~1. Artists are required to pay entry or exhibition fees in order to exhibit and/or perform in the project or program.~~

~~2. Funds are requested for capital improvement or construction, purchase or real property or endowment funds.~~

~~3. Funds are requested to account for fund deficiencies in project completed prior to the application deadline.~~

~~4. Funds are requested to pay fees for touring costs, performances or exhibitions carried out exclusively by student organizations or schools.~~

~~F. The board in addition to the criteria set forth above may allocate grant funds on a first come, first served basis to applicants who meet the procedures and standards contained herein during each fiscal year.~~

~~G. The board may give priority to one form of assistance over others during a fiscal year.~~

5 MCAR § 5.011 ~~Responsibilities of grantee~~ Provisions affecting grantees.

A. The ~~G~~grantee or authorizing official must sign and return to the board, within ~~30~~ 45 days from date of mailing, one copy of the ~~notification letter~~ grant contract and necessary attachments if notification is of grant approval. No action required on notification of ~~rejection~~ applications not recommended for funding.

B. The ~~G~~grantee must acknowledge assistance by the board on all written materials relating to the project or program such as programs, news releases and posters. Grantee must use the acknowledgement statement as found in the ~~notification letter~~ grant contract. Grantees of regional arts councils must also use the board acknowledgement statement on all materials relating to the project or program.

C. The ~~G~~grantee must notify the board in writing at any point if the program or project is changed from the way in which it was described in the grant application. This notification letter will be reviewed by the staff to ensure that the change does not make a project or program ineligible for support as eligibility is specified in these rules. Grantee will be notified in writing of the approval or non-approval of the program or project change(s).

E. The ~~G~~grantee may be required to submit a certified audit report of the organization or ~~of~~ a project funded by the board.

F. For purposes of evaluation, grantees must permit the board reasonable access to all activities supported by Arts Board funds.

5 MCAR § 5.011 F.-H. [Reletter as 5 MCAR § 5.001 G.-I.]

J.~~I.~~ A grant commitment to a grantee may be rescinded by the board if one of the following conditions exists:

1. The grantee does not return the signed ~~notification letter~~ grant contract and/or attachments with ~~30~~ 45 days of the date ~~of~~ specified by the board letter or in program information.

2. The grantee does not return a revised budget and/or project description within ~~45~~ 30 days of the date of the notification of board action by letter.

3. The grantee does not request the grant amount within ~~30~~ 45 days of the date of the grant ~~notification letter~~ contract.

K.~~J.~~ Grantee must submit a final report, within ~~30~~ 60 days of the ~~completed project or program,~~ date stated in the application as the end of the project or program. This report is to be completed by grantee ~~on forms~~ in the requested format provided by the board. Failure to submit any final reports will adversely affect the grantee's receipt of Minnesota State Arts Board grant funds.

L. Grantee must start grant activities in the same fiscal year in which the grant is received.

M. ~~K.~~ The board ~~may require that regional arts councils, which have not committed all of their great funds by April 15 of a given fiscal year, return the uncommitted grant funds to the board by May 1 of the same fiscal year~~ will annually review the regional block grant allocation formula.

N. The board may recall uncommitted regional block grant funds at the end of their fiscal year. A written request must be

made by the regional arts council and submitted to the MSAB for approval to carry-forward unexpended funds from one fiscal year to the next. This request from a regional arts council must be made by May 1 of the same fiscal year and must outline the proposed allocation for any unexpended funds in narrative form and contain a budget for such use.

O. The board may institute systems of grant payments in which such payments are contingent upon the receipt of final reports and/or board evaluation of the grantee.

5 MCAR § 5.012 ~~Advisory committees~~ Miscellaneous provisions.

~~A. The board may appoint advisory committees to review grant applications and provide recommendations on policy issues. The board may appoint advisory committees in the areas of general operating support (subsidy), individual artist assistance, production assistance, sponsor assistance, regional arts development and also regional arts task forces.~~

~~B. The board may discontinue the advisory committees as it deems necessary.~~

~~C. Members of each advisory committee shall have expertise and/or experience in a particular area of the arts, arts support or administration. Committee members will be selected by the board from among practitioners, administrators, educators, volunteer directors of arts organizations, trustees of arts organizations and consumers of arts forms. At least one member of the regional arts development panel from each region will be appointed from nominees of the designated regional arts task force or arts council. The remaining members will be selected from among the previously listed groups through the open nominations process.~~

~~D. Appointments to advisory committees shall be made by majority vote of the board. Members shall serve at the pleasure of the board for three-year terms. One-third of the terms of the members of each committee shall expire each year.~~

~~E. At least sixty days prior to expiration of terms of advisory committee members, the board will publish and post notice of such openings. Nominations will be actively solicited and accepted by the board. Nominations must be in writing and should include all pertinent information including nominees' qualifications and experience in the arts.~~

~~F. Advisory committees will, insofar as reasonably possible, be geographically balanced. However, the regional arts development panel shall have two members from each of the regions represented by a regional arts council or regional arts task force.~~

~~G. Members of the advisory committees and regional arts task forces shall be compensated for expenses incurred to attend advisory committee meetings as provided in Minn. Stat. ch. 15.059, subd. 3, except that they shall not be eligible for the per diem.~~

A. The board may initiate new assistance categories or pilots in which applicants for assistance may be selected specifically for the way in which the board can learn from their experience.

1. No pilot assistance category will continue for longer than 2 years without the category being established on a permanent basis, or discontinued.

2. All pilot assistance categories will be specifically described as such in MSAB program information.

B. Applications for organizational and individual grants assistance will not be accepted for review when one of the following conditions exists:

1. Artists are required to pay entry or exhibition fees in order to exhibit and/or perform in the project or program for which funding is sought.

2. Funds are requested for capital improvement or construction, purchase of real property or endowment funds.

3. Funds are requested to account for fund deficiencies in projects begun prior to the project start date specified by the Minnesota State Arts Board and regional arts councils in program information.

4. Funds are requested to pay fees for touring costs, performances or exhibitions carried out exclusively by student organizations or schools.

5. Funds are requested to support activities which are essentially for the religious socialization of the participants.

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C. Applications for individual artist grants assistance will not be accepted for review when one of the following conditions exists:

1. Funds are requested by individuals for tuition or other fees related to the pursuit of an academic degree.

2. Funds are requested by individuals to develop curriculum plans, teaching materials or to teach classes.

3. Funds are requested by individual artists to engage in activities such as establishing an arts organization or a commercial venture.

D. Organizations which receive grants for general support may apply for grants in pilot programs offered by the State Arts Board if the organizations meet the stated eligibility requirements of such pilot programs.

E. The board, in addition to the criteria set forth above, may ~~allocate~~ award all or most of the available grant funds ~~on a first come, first served basis to applicants who meet the procedures and standards contained herein during each fiscal year.~~ at the first deadline of each fiscal year.

F. The board may give priority to one form of assistance over others during a fiscal year.

5 MCAR § 5.013 Public participation in agency matters.

A. Any applicant who disputes the decision of the board regarding his or grant application on any issue other than artistic quality or merit may appeal the decision of the board. This appeal to the board will be conducted in the following way:

1. The applicant will submit a written request for consideration of his or her appeal within 45 days of notification of the board's decision on the application.

2. This request must state the reason(s) for the appeal.

3. The board will review the written request appealing its decision at its first meeting following the receipt of the request.

4. The board may take one of the following actions in response to the request for an appeal:

a. determine that the applicant does not show sufficient cause for an appeal.

b. direct the staff to investigate the applicant's appeal and bring a resolution of the claim to a subsequent meeting of the board.

c. request that the applicant appear before the board at a subsequent meeting and address his or her appeal at that time.

d. determine that the applicant does show sufficient cause for appeal and offer resolution to the applicant at the meeting.

e. refer the appeal to a hearing examiner as a contested case.

5. If the applicant for a grant does not receive satisfactory resolution of his or her appeal from the board, or if the board refers the appeal to a hearing examiner, this appeal will be conducted as a contested case pursuant to the Administrative Procedures Act, Minn. Stat. §§ 15.0418-15.0422.

B. There is no right of appeal for disputes of decisions of the board and/or its advisory committees with respect to artistic quality or merit, artistic excellence and leadership, and the quality of the artistic activity of the work of an individual artist.

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

Proposed Amendment and Adoption of Rules Governing the Selection and Payment of Post-Secondary Vocational Evaluators

Notice of Intent to Amend and Adopt Rules without A Public Hearing.

Notice is hereby given that the State Board of Education (State Board for Vocational Education) proposes to amend and adopt the above captioned rules, without public hearing, pursuant to Laws of 1980, ch. 615, § 7 (Minn. Stat. § 15.0412, subd. 4h).

All interested persons may submit written comment or data on these proposed rules, within 30 days of the publication of these proposed rules in the *State Register*, to:

Melvin Johnson, Manager
Operational Services, Vocational-Technical Division
548 Capitol Square Building
550 Cedar Street
St. Paul, MN 55101
Telephone: (612) 296-2421

No public hearing will be held unless seven or more persons make a written request for hearing within the 30-day comment period to the above named person.

The proposed rules may be modified if the modifications are supported by the data and views submitted. A statement of need and reasonableness is available without charge by making a written or telephone request to the above named person.

The proposed rules govern the selection and payment of post-secondary vocational evaluators. The evaluators are mandated by 20 USC Section 2312 to review programs at the thirty-three Area Vocational-Technical Institutes. These rules supplement 5 MCAR § 1.0102 A.-K., the requirements for program approval.

On-site evaluations governed by 5 MCAR § 1.0102 M. will examine the programs at the AVTIs to ensure that they do not discriminate unlawfully because of race, creed, color, religion, sex or other classes as defined in Minn. Stat. § 124.15, subd. 2 (6) or in § 363.03. If the institute does not correct noncompliance, aids may be withheld.

The selection of evaluators under 5 MCAR § 1.0102 N. shall be for demonstrated competence in the occupational field or service area to be evaluated. Competency shall be three years full-time employment within the past five years. The payment of evaluators will be in the same manner as the reimbursement of state officers. Evaluators shall receive no compensation other than reimbursement for their expenses.

Any person who desires to be informed when these proposed rules are submitted to the Attorney General for approval may do so by writing or calling the above named person.

Howard B. Casmey
Secretary, State Board of Education
(State Board for Vocational Education)

Amendments as Proposed

Chapter Six: Post-Secondary Vocational-Technical Education

5 MCAR § 1.0102 Program approval.

L. Evaluation visits shall be made by evaluators selected pursuant to N. of this section by the Commissioner of Education at the rate of seven area vocational-technical institutes per year, or more, for the purposes of conducting on-site evaluations of

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existing programs in each institute. ~~A~~ The cycle of program evaluations ~~by experts from business and industry~~ will be completed every five years. ~~On-site self~~ eEvaluations shall be submitted by the institutes to the Commissioner of Education in the intervening years.

M. The annual review conducted by the program advisory committee, as required by B.3 of this section, and the evaluations required by L. of this section shall include a review to determine whether the program is in compliance with state laws prohibiting discrimination because of race, color, creed, religion, national origin, sex, age, marital status, status with regard to public assistance or disability, as defined in Minn. Stat. § 363.03. The institute shall immediately correct any noncompliance.

N. Evaluators shall be selected by the Commissioner of Education for their demonstrated competency in the occupational field or service area to be evaluated. The term "demonstrated competency" for the purposes of this section shall mean the completion of not less than three years of successful full-time employment gained within the five year period preceding selection. Each evaluator shall be provided with guidance and materials sufficient to conduct a proper evaluation. An evaluator shall be reimbursed for travel and subsistence expenses actually and necessarily incurred by him/her in the same amount and manner as state officers and employees are reimbursed pursuant to the travel regulations promulgated by the Commissioner of Employee Relations at 2 MCAR § 2.181. No other compensation shall be paid to any evaluator for services connected with the evaluation.

State Board of Education
Department of Education
School Management Services Division

Proposed Amendments to Rules Governing Educational Aids to Nonpublic School Children

Notice of Intent to Adopt Rules without A Public Hearing

Notice is hereby given that the State Board of Education proposes to adopt the above-entitled rules without a public hearing. The commissioner has determined that the proposed adoption of these rules will be non-controversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, § 15.0412, subdivision 4h (1980).

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, § 15.0412, subdivisions 4-4f.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to:

Phillip Miller
Department of Education
915 Capitol Square Bldg.
550 Cedar St.
St. Paul, MN 55101
(612) 296-8130

Authority for the adoption of these rules is contained in Minnesota Statutes, § 123.931 *et seq.* (1978). Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from Phillip Miller upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the Statement of Need and Reasonableness, all written comments received, and the final rules as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Phillip Miller. A copy of the proposed rules is attached to this notice.

Copies of this notice and the proposed rules are available and may be obtained by contacting Phillip Miller.

Howard B. Casmey
Commissioner of Education

Amendments as Proposed

Chapter Forty-One: Textbooks, Individualized Instructional Materials, and Standardized Tests for Pupils Attending Nonpublic Schools

5 MCAR § 1.0820 Policy. In order to promote equal educational opportunity for every school child in Minnesota and to assure all Minnesota pupils and their parents freedom of choice in education, textbooks, individualized instructional materials, and standardized tests as provided by Minn. Stat. §§ 123.931~~-123.937~~ 123.947, shall be made available to pupils in nonpublic schools.

5 MCAR § 1.0821 Definitions.

~~A. "Textbook" means any book or book substitute which a pupil uses as a text or text substitute in a particular class or program in the school he regularly attends and a copy of which is expected to be available for the individual use of each pupil in this class or program, which book or book substitute shall be limited to books, workbooks, or manuals, whether bound or in looseleaf form, intended for use as a principal source of study material for a given class or group of students. The term includes only such textbooks as are available and of benefit to Minnesota public school pupils and which are secular, neutral and nonideological such that the material contained therein is not regarded as religious, spiritual, or sacred, and present events, facts and theories that pertain to religion or religious doctrine in an impartial manner.~~

~~B. "Standardized tests" means tests and scoring services available from commercial publishing organizations and which are in use in the public schools of Minnesota to measure the progress of pupils in secular subjects.~~

A. "Eligible materials" means textbooks, individualized instructional materials, and standardized tests. All textbooks and individualized instructional materials must be:

1. designed primarily for use by individual students at their desks or in small groups, in a particular class or program in the school the pupil regularly attends.

2. used by the student to reach certain educational objectives within a particular subject or course of study,

3. secular, neutral, nonideological, and not capable of diversion for religious use,

4. available and of benefit to Minnesota public school pupils, and

5. not specifically excluded from eligibility by 5 MCAR § 1.0821 B.

B. "Ineligible materials" means, in addition to educational materials excluded from eligibility by 5 MCAR § 1.0821 A., the following materials: chemicals, wall maps, wall charts, pencils, pens or crayons, notebooks, blackboards, chalk and erasers, duplicating fluids, paper, 16mm films, unexposed films, blank tapes, cassettes or videotape, instructional equipment, reference materials, and teachers' aids.

C. "Textbook" means any book, workbook, manual, or book substitute which a pupil uses as a text or text substitute, copies of which are:

1. used as a principal source of study materials for a given class or group of students, and

2. available for individual use of each pupil in the class or program.

D. "Individualized instructional materials" means educational materials in addition to textbooks which fall into any of the following areas: published materials, periodicals, documents, pamphlets, photographs, reproductions, pictoral or graphic works, filmstrips, prepared slides, prerecorded video programs, prerecorded tapes, cassettes and sound recordings, manipulative materials, desk charts, games, study prints and pictures, desk maps, models, learning kits, blocks or cubes, fiashcards, individualized multi-media systems, prepared instructional computer software programs, and prerecorded film cartridges.

E. "Standardized tests" means tests and scoring services available from commercial publishing organizations and which are in use in the public schools of Minnesota to measure the progress of pupils in secular subjects.

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F. "Secular, neutral, and nonideological" materials are materials which are not regarded as religious, spiritual, or sacred, and present events, facts, and theories that pertain to religion or religious doctrine in an impartial manner.

5 MCAR § 1.0822 State administration.

A. The Department of Education shall administer funds allocated for the purchase of ~~textbooks and standardized tests~~ eligible materials to be loaned or provided to nonpublic school pupils.

B. The Department of Education, in cooperation with the state auditor's office, shall establish proper accounting methods for fiscal control, fund accounting, and the maintenance of records for the acquisition of ~~textbooks and standardized tests~~ eligible materials to be loaned or provided to nonpublic school pupils.

C. Computation of pupil allocation available. On or before March 1 the Department of Education shall determine, from the most recent data available, the allocation available per pupil for ~~textbooks and standardized tests~~ eligible materials to be used for the following school year. The allocation per pupil shall be determined by dividing the total expenditure for ~~textbooks and standardized tests~~ eligible materials by all public school districts in the state for pupils enrolled in public schools by the average daily membership of pupils enrolled in the districts during the same fiscal year. This amount shall then be increased by a percentage equal to the percentage increase in foundation aid, between the prior school year and the coming year. Pupils in grades one through twelve are counted as one pupil each; kindergarten pupils are counted as one-half pupil each.

D. Termination of eligibility. Whenever the department receives information regarding improper use of eligible materials loaned under the program, it shall:

1. Provide prompt written notification to the pupil, the pupil's parents or guardians and the nonpublic school administrator of the alleged program abuse, and

2. Allow 30 calendar days from the date of mailing for written or oral response.

Following receipt of responses during the 30 day period, if it appears that materials may have been used contrary to law, the department shall institute Chapter 15 contested case procedures. After due consideration of all evidence presented pursuant to those procedures, if the department determines that the materials have been used contrary to law, the department shall notify the pupil, the pupil's parents or guardians, nonpublic school administrator, and the public school district or intermediary service area that:

a. The eligibility of the pupil for all materials during the current school year is terminated, and

b. The allocation for the current year for the nonpublic school must be reduced accordingly.

5 MCAR § 1.0823 Local administration.

A. Preliminary application. On or before April 1 the nonpublic school shall submit to the public school district or intermediary service area a preliminary application for participation in the textbooks, individualized instructional materials, and standardized tests aid program, for ~~textbooks and tests~~ eligible materials to be used the following school year. The preliminary application shall be on forms provided by the Department of Education and shall include:

1. An estimate of the nonpublic school pupils, kindergarten through grade twelve, who may be enrolled as of September 15 of the following school year and who may be signing ~~pupil~~ request forms for ~~textbooks and standardized tests~~ eligible materials.

2. An estimate of the total allocation available to the nonpublic pupils attending the nonpublic school for ~~textbooks and standardized tests~~ eligible materials. The estimated allocation is determined by multiplying the estimated count of participating pupils by the allocation available per pupil for ~~textbooks and standardized tests~~ eligible materials. Pupils in grades one through twelve are counted as one pupil each; kindergarten pupils are counted as one-half pupil each.

B. Purchase of materials. On or before May 1, the public school district or intermediary service area shall have completed its review of the preliminary application and shall notify the nonpublic school that it may begin submitting requests for ~~textbooks and standardized tests~~ eligible materials for the following school year based on the estimated allocation. The materials requested by the nonpublic school shall be purchased by the public school district or intermediary service area within a reasonable time of the receipt of the requests. After the materials have arrived, they shall be promptly transmitted to each nonpublic school in the public school district or intermediary service area for distribution to the pupil applicants.

C. Request form. Each year the Department of Education shall provide a form, for pupils, to be used to request textbooks, individualized instructional materials and standardized tests. This form shall be separate from the form used by pupils to request health services and the form used to request guidance and counseling services. It shall be processed as follows:

1. The nonpublic school administrator shall distribute a copy of the request form to each pupil, parent, or guardian and shall collect and maintain the forms on file.

2. A request form must be properly completed, signed, and on file with the nonpublic school by September 25, in order for that pupil to be counted on the final application form for aid.

3. The nonpublic school shall maintain on file the request forms for three years. The forms shall be available for inspection by the Department of Education, the public school district, or the intermediary service area.

D. ~~C.~~ Final application. On or before September 25 the nonpublic school shall make final application for participation in the textbooks, individualized instructional materials, and standardized test aid program to the district or intermediary service area by or on behalf of each participating nonpublic school pupil. The final application shall be on forms provided by the Department of Education and shall include:

1. A count of the nonpublic school pupils, kindergarten through grade twelve, who are enrolled as of September 15 of the current school year and ~~who have signed a separate pupil request form for textbooks and standardized tests only~~ for whom request forms have been properly completed.

2. The allocation for ~~textbooks and standardized tests~~ eligible materials to the nonpublic pupils attending the nonpublic school. The actual allocation shall be determined ~~by multiplying the allocation available per pupil for textbooks and standardized tests by the total number of participating pupils. Pupils in grades one through twelve are counted as one pupil each; kindergarten pupils are counted as one-half pupil each~~ according to 5 MCAR § 1.0822 C. above.

~~D. Nonpublic school files. The nonpublic school shall maintain on file for three years all pupil request forms for textbooks and standardized tests loaned or provided to nonpublic school pupils. The forms shall be available for inspection by the department of education, the public school district, or the intermediary service area.~~

E. Inventory. ~~Textbooks and standardized tests loaned to pupils in nonpublic schools shall be maintained on inventory by the public school district or intermediary service area except in cases of consumable or nonreusable materials. The public school district or intermediary service area may declare loaned school books unusable after five years, remove them from the inventory, and divest of them in any manner.~~ The public school district or intermediary service area shall maintain an inventory of each of the eligible materials loaned under the program for the material's useful life. The useful life of eligible materials is as follows: (a) for workbooks and manuals in which the students write—1 year, (b) paperbacks, computer programs, and audio-visual materials—3 years, (c) hardbound materials and textbooks—5 years. Thereafter the public school district or intermediary service area may divest itself of the materials in any manner it deems appropriate. A compilation of invoices, showing descriptions and destinations of eligible materials purchased under the program, satisfies the inventory requirement.

F. Reimbursement. Upon completion of the distribution of the ~~textbooks and standardized tests~~ eligible materials, each public school district or intermediary service area may claim from the Department of Education (1) the cost of materials, including the quantity of each item and the unit cost, not to exceed the allocation available, and (2) a sum for the actual cost of administration which shall not exceed five percent of the cost of the materials distributed. The administrative costs shall be in addition to the allocation available for ~~textbooks and standardized tests~~ eligible materials. Handling and shipping charges by the vendor shall be included in the allocation for ~~textbooks and standardized tests~~ eligible materials for each nonpublic school. A public school district shall not be considered a vendor.

G. Certificate of compliance. Each claim for reimbursement shall include a certificate of compliance from the public school district or intermediary service area indicating that all materials have been reviewed prior to the expenditure of public funds and are in accordance with the limitations set forth in 5 MCAR § 1.0821. The public school district shall also include a list of the ~~textbooks~~ eligible materials actually purchased, ~~which list shall include the publisher of those textbooks~~ their costs and the names of the publishers of those materials.

Chapter Forty-One-B: Health Services for Pupils Attending Nonpublic Schools

5 MCAR § 1.0860 Policy. In order to promote equal educational opportunity for every school child in Minnesota and to assure all Minnesota pupils and their parents freedom of choice in education, health services as provided by Minn. Stat. §§ 123.931~~-123.937~~ 123.947, shall be made available to pupils in nonpublic schools.

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5 MCAR § 1.0861 Definitions and general requirements.

A. "Health services" means physical and mental health services provided by licensed health services personnel or their assistants. Licensed health services personnel includes physicians, dentists, professional nurses or optometrists.

B. Health services shall not include the direct educational instruction of nonpublic pupils by health services personnel.

C. Health services shall not include those services which are required under the Special Education Law, Minn. Stat. § 120.17 (1976, as amended), or which are eligible to receive reimbursement under the Special Education Aid Law, Minn. Stat. § 124.32 (1976, as amended).

D. The public school district or intermediary service areas shall provide those specific health services which it offers to its public school pupils, provided the costs for such services do not exceed the amount allocated for health services by the Department of Education.

E. Costs relating to the provision of health services shall include (1) the salaries of licensed health services personnel and their assistants and (2) expenses for supplies, equipment, travel, and necessary in-service training and other eligible expenses that are associated with the provision of health services by the licensed health services personnel or their assistants.

F. Health services may be provided at the nonpublic school, a neutral site, or at the public school.

5 MCAR § 1.0862 State administration.

A. The Department of Education shall administer funds for the provision of health services to nonpublic school pupils.

B. The Department of Education, in cooperation with the state auditor's office, shall establish proper accounting methods for fiscal control, fund accounting, and the maintenance of records associated with the provision of health services to nonpublic school pupils.

C. Computation of pupil allocation available. On or before March 1 the Department of Education shall determine from the most recent data available the allocation available per pupil for health services to be used for the following school year. The allocation per pupil for health services shall be the average expenditure per public school pupil in average daily membership for these services by those Minnesota public elementary and secondary schools which provide health services to public school pupils. Pupils in grades one through twelve are counted as one pupil each; kindergarten pupils are counted as one-half pupil each.

D. Computation of actual allocation. Based on the year-end report filed by each district, the Department shall allot to each district or intermediary service area for the provision of health services the actual cost of the services provided during the school year. The actual allotment shall not exceed the pupil allocation available.

E. December 1 payment. On or before December 1, the Department shall distribute to the public school district or intermediary service area an amount equal to 90 percent of the approved budget.

F. Final payment. On or before September 1 following the school year, the Department shall make the final adjustment payment to the district or intermediary service area based on the year-end report.

5 MCAR § 1.0863 Local administration.

A. Preliminary application. On or before April 1 the nonpublic school shall submit to the district or intermediary service area a preliminary application for health services beginning with the following school year. The preliminary application shall be on forms provided by the Department of Education and shall include an estimate of the nonpublic school pupils, kindergarten through grade twelve, who may be enrolled as of September 15 of the following school year and who may be signing ~~pupil~~ request forms for health services. The preliminary application shall also include an assessment of the type and level of health services desired for the following school year.

B. Annual consultatoin. On or before May 1 ~~T~~the district or intermediary service area shall hold an annual consultation with the nonpublic school regarding the type, level, and location ~~at which~~ of health services for nonpublic school pupils ~~are to be offered. Final decision as to location shall be made by the public school district or intermediary service area.~~

C. Notification of services. Based on the annual consultation with the private school, ~~On or before September 1~~ the public school district or intermediary service area shall inform the nonpublic school of the type, level, and location of health services that are to be made available to the nonpublic school students ~~during the following school year~~ by August 15.

D. Request form. Each year the Department of Education shall provide a form, for pupils, to be used to request health services. This form shall be separate from the form used by pupils to request textbooks, individualized instructional materials and standardized tests and the form used to request guidance and counseling services. It shall be processed as follows:

1. The nonpublic school administrator shall distribute a copy of the request form to each pupil, parent, or guardian and shall collect and maintain the forms on file.

2. A request form must be properly completed, signed, and on file with the nonpublic school by September 25, in order for that pupil to be counted on the final application form for aid.

3. The nonpublic school shall maintain on file the request forms for three years. The forms shall be available for inspection by the Department of Education, the public school district, or the intermediary service area.

E.~~D.~~ Final application. On or before September 25 the nonpublic school shall make final application for health services to the public school district or intermediary service area by or on behalf of each participating nonpublic school pupil. The final application shall indicate the number of nonpublic school pupils who are enrolled as of September 15 and ~~have signed a separate pupil request form for health services only~~ for whom request forms have been properly completed.

F.~~E.~~ Submission of program and budget. On or before October 15 the public school district or intermediary service area shall submit to the Department of Education a program and budget of the health services that are being offered to the nonpublic school pupils for the current school year. The program and budget shall be on forms made available by the Department of Education and shall include:

1. Projected health services expenditures for salaries, supplies, equipment and other expenses, which expenditures shall not exceed the amount allocated for health services to the public school district or intermediary service area by the Department of Education. The allocation for health services is determined by multiplying the total number of participating pupils by the allocation available per pupil for health services as set forth in 5 MCAR § 1.0862 C. Pupils in grades one through twelve are counted as one pupil each; kindergarten pupils are counted as one-half pupil each.

2. Projected expenditures for health services administration, which expenditures shall not exceed an amount equal to five percent of the public school district's or intermediary service area's expenditures for health services for nonpublic school pupils and which shall be in addition to the health services allocation.

G.~~F.~~ Year-end report. On or before July 15, following each school year, the public school district or intermediary service area shall submit to the Department of Education a year-end report of health services provided to nonpublic school pupils. The report shall be on forms made available by the Department of Education.

~~G. Nonpublic school files. The nonpublic school shall maintain on file for three years all pupil request forms for health services. The forms shall be available for inspection by the department of education, the public school district or the intermediary service area.~~

Chapter Forty-One-C: Guidance and Counseling Services for Pupils Attending Nonpublic Schools

5 MCAR § 1.0880 Policy. In order to promote equal educational opportunity for every school child in Minnesota and to assure all Minnesota pupils and their parents freedom of choice in education, guidance and counseling services as provided by Minn. Stat. §§ 123.931~~-123.937~~ 123.947 ~~(1978)~~, shall be made available to secondary pupils in nonpublic schools.

5 MCAR § 1.0881 Definitions and general requirements.

A. "Guidance and counseling services" means all activities of a licensed counselor in counseling pupils and parents, providing counseling on learning problems, evaluating the abilities of pupils, assisting pupils in personal and social development and providing referral assistance.

B. Guidance and counseling services provided to nonpublic school pupils shall not include the planning or selection of particular courses or classroom activities of the nonpublic school.

C. The district where the nonpublic school is located shall provide the necessary transportation within the district boundaries between the nonpublic school and a public school or neutral site for nonpublic school pupils who are provided guidance and counseling services.

D. The public school district or intermediary service areas shall provide those specific guidance and counseling services which it offers to its public school secondary pupils, provided the costs for such services do not exceed the amount allocated for guidance and counseling services by the Department of Education.

E. Costs relating to the provision of guidance and counseling services shall include (1) the salaries of licensed guidance and counseling services personnel and their assistants and (2) expenses for supplies, equipment, travel, and other eligible expenses

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that are directly attributable to the provision of guidance and counseling services by the licensed guidance and counseling services personnel or their assistants.

F. Guidance and counseling services may be provided to nonpublic school pupils only at a neutral site or at the public school.

5 MCAR § 1.0882 State administration.

A. The Department of Education shall administer funds for the provision of guidance and counseling services to nonpublic school pupils.

B. The Department of Education, in cooperation with the state auditor's office, shall establish proper accounting methods for fiscal control, fund accounting, and the maintenance of records associated with the provision of guidance and counseling services to nonpublic school pupils.

C. Computation of pupil allocation available. On or before March 1 the Department of Education shall determine from the most recent data available the allocation available per secondary pupil in average daily membership for guidance and counseling services to be used for the following school year. The allocation available per secondary pupil for guidance and counseling services shall be the average expenditure per public secondary school pupil for these services by those Minnesota public school districts which provide guidance and counseling services to public secondary school pupils. Pupils shall be counted as one pupil each.

D. Computation of actual allocation. Based on the year-end report filed by each district, the department shall allot to each district or intermediary service area for the provision of guidance and counseling services the actual cost of the services provided in that school year. The actual allotment for guidance and counseling services for the nonpublic secondary pupils shall not exceed the total pupil allocation available.

E. December 1 payment. On or before December 1, the department shall distribute to the public school district or intermediary service area an amount equal to 90 percent of the approved allocation.

F. Final payment. On or before September 1, the Department of Education shall make the final adjustment payment to the district or intermediary service area based on the year-end report.

5 MCAR § 1.0883 Local administration.

A. Preliminary application. On or before April 1 the nonpublic school shall submit to the district or intermediary service area a preliminary application for guidance and counseling services beginning with the following school year. The preliminary application shall be on forms provided by the Department of Education and shall include an estimate of the nonpublic secondary school pupils who may be enrolled as of September 15 of the following school year and who may be signing ~~pupil~~ request forms for guidance and counseling services. The preliminary application shall also include an assessment of the type and level of guidance and counseling services desired for the following school year.

B. Annual consultation. On or before May 1 ~~T~~the district or intermediary service area shall hold an annual consultation with the nonpublic school regarding the type, level, and location ~~at which~~ of guidance and counseling services for nonpublic school pupils. ~~are to be offered. Final decision as to location shall be made by the public school district or intermediary service area.~~

C. Notification of services. Based on the annual consultation with the private school, ~~On or before September 1~~ the public school district or intermediary service area shall inform the nonpublic school of the type, level, and location of guidance and counseling services that are to be made available to the nonpublic school students by August 15 ~~during the following school year~~.

D. Request form. Each year the Department of Education shall provide a form, for pupils, to be used to request guidance and counseling services. This form shall be separate from the form used by pupils to request textbooks, individualized instructional materials and standardized tests and the form used to request health services. It shall be processed as follows:

1. The nonpublic school administrator shall distribute a copy of the request form to each pupil, parent, or guardian and shall collect and maintain the forms on file.

2. A request form must be properly completed, signed, and on file with the nonpublic school by September 25, in order for that pupil to be counted on the final application form for aid.

3. The nonpublic school shall maintain on file the request forms for three years. The forms shall be available for inspection by the Department of Education, the public school district, or the intermediary service area.

E. ~~D.~~ Final application. On or before September 25 the nonpublic school shall make final application for guidance and counseling services to the public school district or intermediary service area by or on behalf of each participating nonpublic school pupil. The final application shall indicate the number of nonpublic school pupils who are enrolled as of September 15 and

~~have signed a separate pupil request form for guidance and counseling services only~~ for whom request forms have been properly completed.

F. ~~E.~~ Submission of program and budget. On or before October 15 the public school district or intermediary service area shall submit to the Department of Education a program and budget of the guidance and counseling services that are being offered to the nonpublic school pupils for the current school year. The program and budget shall be on forms made available by the Department of Education and shall include:

1. Projected guidance and counseling services expenditures for salaries, supplies, equipment and other eligible expenses, which expenditures shall not exceed the amount allocated for guidance and counseling services to the public school district or intermediary service area by the Department of Education. The allocation for guidance and counseling services is determined by multiplying the total number of participating secondary pupils by the allocation available per pupil for guidance and counseling services as set forth in 5 MCAR § 1.0882 C. Pupils shall be counted as one pupil each.

2. Projected expenditures for guidance and counseling services administration, which expenditures shall not exceed an amount equal to five percent of the public school district's or intermediary service area's expenditures for guidance and counseling services for nonpublic school pupils and which shall be in addition to the guidance and counseling services allocation.

G. ~~F.~~ Year-end report. On or before July 15, following each school year, the public school district or intermediary service area shall submit to the Department of Education a year-end report of guidance and counseling services provided to nonpublic school pupils. The report shall be on forms made available by the Department of Education.

~~G. Nonpublic school files. The nonpublic school shall maintain on file for a period of three years all pupil request forms for guidance and counseling services. The forms shall be available for inspection by the department of education, the public school district or the intermediary service area.~~

Department of Health
Health Systems Division

Proposed Rules Implementing, Enforcing, and Administering the Minnesota Certificate of Need Act, Minn. Stat. §§ 145.832 to 145.845, and Repealing State Planning Agency Certificate of Need Rules, 10 MCAR §§ 1.201 to 1.210

Notice of Hearing

A public hearing concerning the proposed new rules captioned-above will be held in Room 111, William Mitchell College of Law, 875 Summit Avenue, St. Paul, Minnesota, on June 9, 1981, commencing at 9:00 a.m. Persons attending the hearing may park either on Summit Avenue or at the William Mitchell parking lot between Summit Avenue and Grotto, two blocks east of the school. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to ask questions and make comments. 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 to Jon L. Lunde, Hearing Examiner, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, telephone: (612) 296-5938, either before the hearing or before the close of the hearing record which shall remain open at least five working days after the hearing is adjourned. The Hearing Examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. All such statements will be entered into and become part of the record. For those wishing to submit written statements or exhibits, it is requested that at least two (2) copies be furnished. In addition, it is suggested, to save time and avoid duplication, that those persons, organizations, or associations having a common viewpoint or interest in these proceedings join together where possible and present a single statement in behalf of such interests. The rule hearing procedure is governed by Minn. Stat.

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§§ 15.0411-15.0417 and 15.052 and by 9 MCAR (Minnesota Code of Agency Rules) §§ 2.101-2.113. If you have any questions about the procedure, call or write the Hearing Examiner.

The statutory authority for the Commissioner of Health to adopt these rules is contained in Minn. Stat. § 145.834 (1980). In addition to this general directive to adopt such rules as are necessary to implement, enforce, and administer the Certificate of Need Act (hereinafter "Act"), Minn. Stat. §§ 145.832 to 145.845 (1980), specific areas authorized to be addressed by rules or procedures are contained in Minn. Stat. §§ 145.834, 145.835, subds. 4 and 5, 145.836, subd. 2, 145.837, subds. 1 and 2(5), 145.84, and 145.845 (1980). Furthermore, a general grant of authority to adopt procedural rules is contained in Minn. Stat. § 15.0412, subd. 3 (1980).

The new rules repeal the existing rules of the State Planning Agency, 10 MCAR §§ 1.201 to 1.210 (formerly SPA 201 to 210), which were promulgated pursuant to Minn. Stat. §§ 145.71 to 145.831 (1978), the Certificate of Need Act in effect prior to August 1, 1979, and constitute an entirely new set of rules intended for the implementation, enforcement, and administration of the existing Act. In doing so, the rules cover the following subjects:

1. General provisions regarding definitions, membership of the health systems agency and its governing body, conflicts of interest, ex parte communication, extension of the review period, computation of time periods specified in rules or the Act, evasions of the Act, and guide to interpreting the rules;

2. Rules governing the submission of the notice of intent, the determination of applicability of the Act to a project, the acquisition of equipment by physicians, and the granting of waivers to projects subject to the Act;

3. Rules governing the review process, procedures, and criteria including the submission and content of the application for certificate of need, the determination of completeness of the application, the Health Systems Agency hearing process, and procedures for reaching recommendations on certificate of need applications, the review criteria, the procedures for revisions of a project, the content of the hearing record, and the commissioner's determination;

4. Rules governing consolidated review process and determination by the commissioner of life support transportation service projects which are subject to both the Act and Minn. Stat. § 144.802;

5. Rules governing post-determination actions including reconsideration of the commissioner's determination, amendment of an issued certificate of need, transfer of an issued certificate of need, expiration of a certificate of need, submission of periodic reports, and investigations;

6. Rules governing applications from health maintenance organizations including the basis of review, the entities which qualify for exemption from review, conditions for exemption, procedures, criteria for review, and provisions for judicial review.

A free copy of the rules may be obtained by contacting Kent Peterson, Minnesota Department of Health, 717 Delaware Street Southeast, Minneapolis, Minnesota 55440, telephone (612) 296-5365. Additional copies will be available at the hearing. If you have any questions about the rules, please contact Mr. Peterson.

Twenty-five (25) days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Administrative Hearings. This Statement of Need and Reasonableness will include all of the evidence which the agency intends to present at the hearing to justify both the need for and the reasonableness of the proposed rule. The agency intends to present only a summary of the Statement of Need and Reasonableness at the hearing; however, additional evidence may be submitted in response to questions raised by interested persons. You are therefore urged to both review the Statement of Need and Reasonableness before the hearing and to attend the hearing. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge. Additional copies will be available at the hearing.

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 Mr. Peterson, in the case of the agency's submission or resubmission to the Attorney General.

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11, (1980) as any individual:

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

b. Who spends more than $250, not including his own traveling expenses and membership dues, in any year for the

purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

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

April 16, 1981

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

Rules as Proposed (all new material)

7 MCAR § 1.661 General provision.

A. Purpose.

1. These rules, 7 MCAR §§ 1.661 to 1.665, are intended to govern the implementation, enforcement and administration of the Minnesota Certificate of Need Act. The rules do not repeat provisions of the Act which are clear and complete without rules; therefore, the Act should be read with the rules. References to the Act are made in these rules in order to assist the public in cross-referencing the Act with the rules.

2. The commissioner has, within the limits of the Act, developed review procedures and criteria which involve a minimum period of time, require only essential information, and involve the least cost for the applicant, the health systems agency (HSA), and the department. These rules promote health planning cooperation by health care facilities and health systems agencies before the certificate of need review and encourage health system innovations and alternatives, as well as beneficial price competition.

B. Definitions. The definitions contained in Minn. Stat. § 145.833 apply to the terms as used in these rules. Some of the terms defined in Minn. Stat. § 145.833 are also defined in these rules in order to clarify certain sections or parts of the statutory language. Unless the context clearly requires otherwise, the following terms shall have the meaning ascribed to them:

1. "Act" means the Minnesota Certificate of Need Act, Minn. Stat. §§ 145.832 to 145.845.

2. "AIP" means annual implementation plan as defined in the Act, Minn. Stat. § 145.833, subd. 11.

3. "Application" means the submission by a person of the information required by 7 MCAR § 1.663 A. in requesting the issuance of a Certificate of Need.

4. "Capital expenditure" means any expenditure, regardless of type of financing mechanism, including gifts, donations and other philanthropic activities, utilized to purchase, acquire, renovate, remodel or substantially alter or modify real property, buildings, fixtures, equipment or a service. Whenever real property, buildings, fixtures or equipment are acquired by capitalized lease or any type of rental agreement, that capital expenditure for lease or rental agreement shall be the fair market value at the date upon which the agreement is executed. Expenditures which, under generally accepted accounting principles, are properly chargeable as an expense of operation and maintenance are not capital expenditures. Capital expenditures include the total of all anticipated expenditures for a single undertaking with interdependent or interrelated components whether or not any individual expenditure exceeds the threshold of the Act.

5. "Category," as used in Minn. Stat. § 145.833, subd. 5 (a) (2), means classification of beds within a health care facility according to licensure (such as, general hospital, psychiatric, alcoholic, boarding care home and supervised living) or classification of beds within a health care facility according to certification status under the provisions of Title XVIII and XIX of the Social Security Act (such as skilled nursing care, intermediate nursing care and intermediate care for the mentally retarded and persons with related conditions).

6. "Commissioner" means the Commissioner of Health and includes any duly authorized representative of the commissioner.

7. "Construction or modification" means:

a. Any erection, building, alteration, renovation, reconstruction, conversion of any existing building, modernization, improvement, expansion, extension or other acquisition by or on behalf of a health care facility which:

(1) Requires a total capital expenditure in excess of $150,000; or

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(2) Changes the bed capacity of a health care facility by more than ten beds or more than ten percent of the facility's total licensed bed capacity, whichever is less, over a two year period following the most recent bed capacity change, in a way which:

(a) Increases the total number of beds; or

(b) Changes the distribution of beds among various categories; or

(c) Relocates beds from one physical facility or site to another.

b. Any capital expenditure in excess of $150,000 by or on behalf of a health care facility used to acquire diagnostic or therapeutic equipment. If the equipment is being updated rather than totally replaced, the capital expenditure will be based upon the cost of the equipment parts to be replaced, or added cost of manufacturer's labor and installation as well as any financing costs incurred according to generally accepted accounting principles.

c. Any expansion or extension of the scope or type of existing health service by a health care facility which requires a capital expenditure in excess of $50,000 during any consecutive 12 month period for that service. Change in scope or type of existing service means the difference between the range and nature of the present service and the range and nature of the services contemplated under the proposal. An expansion or extension does not occur if there is solely increased efficiency of operations or increased square footage or spatial allocation. Expansion or extension shall occur if at least one of the following factors is directly associated with the proposed project:

(1) An increase in volume of services provided;

(2) The ability to perform treatments or procedures not previously performed;

(3) An increase in personnel associated with the capital expenditure;

(4) A change in proportion of patient mix; or

(5) A change in geographic source or referrals to the facility.

d. Any establishment of a new health care facility.

e. Any reviewable predevelopment activity by or on behalf of health care facility.

f. Any establishment by a health care facility of a new institutional health service, other than a home health service, which is to be offered in or through that facility and which was not offered on a regular basis in or through that facility prior to the twelve months before that service which will be offered under the terms of the proposal.

8. "Direct patient care service" means any health service designed to provide diagnosis, treatment, nursing, preventive, rehabilitative or habilitative care to any person.

9. "Exemption" means the decision by the commissioner to authorize an HMO or health care facility to proceed with a project reviewable under the Act, without request for a waiver or application for a certificate of need.

10. "Evidence" means any exhibit, oral or written testimony or other data or information submitted to an HSA prior to the close of the public hearing for the purpose of affecting the determination of whether a certificate of need should be issued.

11. "Health Maintenance Organization" or "HMO" means any organization which operates or proposes to operate pursuant to Minn. Stat. §§ 62D.01 to 62D.29.

12 "Hearing body" means:

a. The governing body of an HSA;

b. In the case of the Metropolitan Council, the Metropolitan Health Board; or

c. For HSAs other than the Metropolitan Council, a project review committee, the membership of which conforms to the requirements of Minn. Stat. § 145.845 and 7 MCAR 1.661 C.2.b.

13. "HSA" means health systems agency as defined in the Act, Minn. Stat. § 145.833, subd. 7.

14. "HSP" means health systems plan as defined in the Act, Minn. Stat. § 145.833, subd. 10.

15. "Institutional health service" means any health service as defined in the Act, Minn. Stat. § 145.833, subd. 3, wherever and however that health service is provided.

16. "Long range development plan" means a health care facility's written description of its present and anticipated configuration of health services which is developed in consideration of the HSP for the health care facility's health service area.

17. "On behalf of" means in the interests of, at the behest of, or for the benefit of, a health care facility or other entity.

18. "Predevelopment activity" means any activity by or on behalf of a health care facility or any person which involves

architectural designs, plans, working drawings, specifications, feasibility studies, surveys, site acquisitions, contractual agreements, legal services, fund-raising and any other related pursuit and which occurs with intention to embark upon a program of construction or modification.

a. "Reviewable predevelopment activity" means any predevelopment activity which occurs with intention to offer or develop a new institutional health service if:

(1) The predevelopment activity would require an expenditure in excess of $150,000; or

(2) The predevelopment activity involves any arrangement or committment for financing the new institutional health service.

b. "Non-reviewable predevelopment activity" means any predevelopment activity not included in 7 MCAR § 1.661 B.18.a.

19. "Patient" means any person receiving care in a health care facility and is synonymous with the term "resident."

20. "Project" means the proposed construction or modification. Project is used synonymously with proposal.

21. "Provider" means any person:

a. Whose primary occupation involves, or involved within the last 12 months previous to appointment, provision of health services to individuals or the administration of health care facilities or other health service activities;

b. Who is, or was, within the 12 months previous to appointment, employed by a health care facility as a health or mental health professional;

c. Who has a fiduciary interest in or position with a health care facility or other entity which has the provision of health services as its primary purpose;

d. Who has, or has had within the twelve months previous to appointment a material financial interest (more than one-fifth of the person's gross annual income) from any one or a combination of the following:

(1) Fees or other compensation for research into or instruction in the provision of health care;

(2) Producing or supplying drugs or other materials, articles or devices for individuals in the provision of, research into, or instruction in health care;

(3) Issuing any policy or contract of individual or group health insurance, health service plan or health maintenance organization;

(4) Any other material financial interest in rendering of a health service; or

e. Who is a spouse of an individual described in items a., b., c. or d. above.

22. "Recommendation of the HSA" means the report of the HSA to the commissioner which contains its recommendation as to what action should be taken with respect to judging applications complete or incomplete, if a project is subject to review, if a waiver should be granted or if a certificate of need should be issued. The recommendation includes submission to the commission of all information presented by the applicant and delineation of all rationale developed by the HSA to support its recommendation.

23. "Region" means the geographic area designated by the Secretary of the United States Department of Health and Human Services upon recommendation of the Governor to be under the jurisdiction of an HSA for the purposes of health systems planning.

24. "Requestor" means a licensed medical doctor or a group of licensed medical doctors, however legally organized.

25. "State Health Plan" means the document, developed by the SPA, which addresses statewide health needs and incorporates the HSPs of all Minnesota HSAs pursuant to 42 U.S.C. 300k, Section 1524 (c) (2) (A and B).

26. "SPA" means the State Planning Agency established pursuant to Minn. Stat. §§ 4.10 to 4.17.

C. Membership of health systems agencies and their governing bodies.

1. Membership of HSA. HSAs may specify in their corporate bylaws provisions regarding eligibility for membership, categories of members and similar items.

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2. Membership for the HSA governing body.

a. Each HSA shall select from its membership a governing body to conduct its business and to carry out its duties and functions. The Metropolitan Council shall use its health board to advise it, and may delegate any of its functions and duties to the health board and its staff. The establishment of a governing body shall not prohibit any delegation of HSA duties and functions to staff. Documentation of any such delegation shall be filed with the commissioner.

b. The membership of the governing body, and the health board of the Metropolitan Council shall, in addition to complying with the requirements of Minn. Stat. § 145.845:

(1) Be chosen by election or other appropriate method approved by SPA and consistent with provisions of 42 U.S.C. 300k, *et seq.* for a term of office not to exceed three years. No director may serve more than six consecutive years.

(2) Include only residents of, or individuals having their principal place of business in, the region in which the HSA has jurisdiction.

c. The membership of all HSA committees or subcommittees making recommendations to the governing board of an HSA or the Health Board of the Metropolitan Council on proposals for a certificate of need shall consist of a majority of consumers, and shall include representatives of the interests of providers.

D. Conflicts of interest.

1. No HSA member or other person who assists the HSA in the review of a project may participate at any level of review, formally or informally, in discussing or voting upon any project for a certificate of need if a conflict of interest exists. Persons having a conflict of interest, however, may participate in the proceedings in the same manner as any party who is not a member of a hearing body, or the Metropolitan Council.

2. A conflict of interest exists when a person:

a. Has a direct or indirect financial interest in the applicant;

b. Has a contract or has had within the preceding twelve months a contractual, creditor or consultative relationship with the applicant;

c. Is an employee, director, trustee, officer or has another fiduciary relationship with the applicant; or

d. Is a spouse of any person listed in a., b., or c. above.

3. A person who is a member of a hearing body or the Metropolitan Council and who has a conflict of interest shall declare it in writing to the HSA before it starts its review of the application or when it becomes apparent to him that he has such a conflict.

4. Any person may question the HSA orally or in writing as to whether or not a conflict of interest exists in regard to any person involved in the review of a project on behalf of an HSA. The HSA shall determine in such case whether a conflict of interest exists. Its findings shall be included in the recommendation of the HSA.

5. Any person who has a conflict of interest as determined pursuant to 7 MCAR § 1.661 D.3. and 4. shall be so identified in the recommendation of the HSA.

6. The minutes of the HSA hearing or meeting at which a project is being considered shall record a person having a conflict of interest as "absent" rather than "abstaining due to conflict of interest." Such a person shall not be counted in determining whether a quorum is present for the application being reviewed.

7. Nothing in this rule precludes any HSA from adopting bylaws or other procedures for determining conflicts of interest which are more stringent than these rules.

E. Ex parte communication.

1. "Ex parte communication" means a written or oral communication by any person as to the merits of an application which is not in a hearing record and with respect to which notice to all parties is not given. The term does not include any requests for status reports on any application, or any communication among HSAs, the SPA and the commissioner or their staffs which relates solely to information found in a hearing record, the Act, these rules or any application or request for formal action under the Act.

2. Ex parte communication to or among the HSAs, the SPA, the commissioner or their staffs and any other party, is prohibited, except when the communication relates to an allegation of material misrepresentation, inaccuracy or omission in information necessary to determine whether an action under the Act should be taken.

3. Ex parte communication received by the HSA, SPA or commissioner shall not be considered in the review of the project and shall not be part of the record.

F. Extension of review period.

1. The applicant, the HSA or the commissioner may request that the time periods for review as prescribed in the Act and these rules be extended.

2. The party requesting the extension shall notify the other two parties in writing specifying the length of the extension and the reasons therefor.

3. Within five working days of receipt of the request, the other two parties shall notify the requesting party in writing whether they agree to the extension. If all three parties agree to the extension, the new time period shall be in effect. If the parties do not agree to the extension, the time periods in effect prior to the making of the request shall remain in effect.

4. Time periods shall be deemed directory and not mandatory.

G. Time computation.

1. In computing any period of time prescribed or allowed by these rules or by any applicable statute, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

2. Whenever a person has the right or is required to do some act or take some proceeding within a prescribed period after the service of a document upon him, or whenever some service is required to be made in a prescribed period before a specified event, and the document is served by mail, the time period shall begin to run, under the terms described above, upon receipt of the document and not upon it being mailed. However, an act or event which must be accomplished within a specific time period, shall be considered complete upon mailing of the document.

H. Evasions.

1. A project is a single undertaking when its component parts have been jointly planned, when fiancing arrangements are made to cover the entire project or when component parts are so interdependent or interrelated that separate review would be inconsistent with the purpose of the Act.

2. The annual capital expenditure budget or long range development plan of the health care facility or health maintenance organization does not necessarily constitute a single undertaking.

I. Interpretation of rules. Interpretation of these rules shall be governed by the provisions of Minn. Stat. ch. 645 except in so far as its provisions are in conflict with the definitions or other provisions of the Act or these rules which relate to construction or interpretation of these rules.

7 MCAR § 1.662 Determination of applicability and waivers.

A. Submission of notice of intent.

1. Any person shall submit a notice of intent to the appropriate HSA when planning to embark upon a program of construction or modification* prior to engaging in any predevelopment activities with respect to the program of construction or modification.

2. The notice of intent shall be submitted in writing to the HSA at least 60 days prior to the submission of an application. No HSA shall accept or act upon an application until proper notice has been given.

3. Within ten days of receipt of a notice, the HSA shall forward a copy of such notice to the commissioner and to SPA. Upon receipt of a notice proposing construction or modification, the HSA shall notify the applicant of the schedule for submission of a certificate of need application as established pursuant to 7 MCAR § 1.663 A.

4. The notice of intent shall:

a. Identify the nature of:

(1) Architectural services;

*The reader is advised to refer to the definition of "construction or modification" pursuant to 7 MCAR § 1.661 B.7.

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(2) Professional consulting services; or

(3) Fund-raising services;

b. Identify the name, address, contact person, and planned commencement date for activities listed above;

c. Describe the proposed construction or modification;

d. Estimate the capital expenditure associated with the construction or modification;

e. Specify the intended location or neighborhood of the project; and

f. Estimate the date of commencement of the construction or modification.

5. A notice of intent submitted by an applicant shall not preclude any other person from submitting a notice of intent for a similar undertaking.

6. A notice of intent shall be valid for a one year period within which time an application or an updated notice of intent may be submitted to the HSA.

7. If the applicant provides written verification that the necessity for an application could not have been reasonably anticipated 60 days prior to submission of an application for a certificate of need, the commissioner may reduce the time requirement for advanced submission of a notice of intent to less than sixty days.

B. Determination of applicability.

1. Written determination of applicability of the Act shall be made by the commissioner when an informational request for such determination is submitted from any person directly affected by the proposed construction or modification. Such request may be submitted at any time regardless of whether a notice of intent has been submitted. The foregoing shall not prohibit the commissioner from making his own determination, regardless of whether a notice of intent has been submitted, as to whether a proposed undertaking is subject to review under the Act as part of his general authority to enforce the provisions of the Act.

2. The HSA or the commissioner, when necessary to obtain all relevant information in order to make a recommendation or to make the final determination respectively, may request additional clarifying information about the proposed undertaking. Any information requested shall relate to the provisions of Minn. Stat. § 145.833, subd. 5, and to 7 MCAR § 1.661 B.7. Failure to supply the information in a timely manner shall be sufficient grounds for determining that the proposed undertaking is subject to the Act.

3. Upon receipt of a request for determination of applicability, the HSA shall within 30 days submit a recommendation to the commissioner as to the applicability of the Act to the subject of the request. Within 30 days of receipt of the recommendation from the HSA, the commissioner shall review the matter and the HSA recommendation and shall notify the applicant in writing as to whether the Act is applicable to the subject of the request and the reasons for the decision.

C. Acquisition of equipment by physicians.

1. A requestor proposing to purchase, lease, or otherwise acquire diagnostic or therapeutic equipment which requires a total capital expenditure in excess of $150,000 for one or more related items of diagnostic or therapeutic equipment shall submit a notice to the HSA and the commissioner of the proposed equipment acquisition. Such notice shall contain the following information:

a. The legal structure or organization of the requestor;

b. A description of the equipment which is proposed to be acquired;

c. The proposed location of the equipment;

d. The estimated capital expenditure necessary to acquire the equipment as well as an estimate of those capital expenditures needed for installation and other related costs;

c. The source of funds to be used to acquire the equipment;

f. The source and estimated volume of patients utilizing the proposed equipment for the first three years of operation;

g. The party responsible for the operation of the proposed equipment;

h. The recipient of revenue generated by the proposed equipment;

i. The party responsible for any financial losses from the operation of the proposed equipment;

j. Delineation and description of the nature of any proposed existing formal or informal arrangement with a health care facility for use of equipment, including the proportions of total patients who will be either inpatients or outpatients of a health care facility during the time such equipment will be used on or for them; and

k. Whether the requestor desires a public hearing.

2. Within 20 days of receipt of the notice, the commissioner shall decide whether the information submitted pursuant to 7 MCAR § 1.662 C.1. is complete.

a. If the commissioner decides that the information is not complete, he shall immediately notify the requestor and specify in detail why the information is incomplete and what additional data must be submitted. A determination of incompleteness may occur under the following conditions:

(1) The items specified in 7 MCAR § 1.662 C.1. have not been fully answered or the answers need clarification; or

(2) The answers provided raise additional questions which must be answered in order to fully understand the situation.

b. The 60 day period in which the commissioner must decide whether the proposed acquisition is designed to circumvent the Act shall not commence to run until the commissioner determines that the notice is complete.

3. Within twenty days after the commissioner determines the notice is complete, the HSA shall forward comments to the commissioner regarding the proposed acquisition of the equipment and may request that a hearing be held.

4. If a hearing is requested by the requestor or the HSA, a public hearing shall be held pursuant to the Administrative Procedure Act. The hearing results shall be considered to be fact-finding and advisory to the commissioner.

5. The following factors shall be considered in determining whether a proposed acquisition is designed to circumvent the Act:

a. The projected proportion of patients who will use the equipment while also being inpatients or outpatients of a health care facility if such inpatient use is not on a temporary basis, such as a result of a natural disaster, major accident or equipment failure;

a. The projected proportion of patients who will use the equipment while also being inpatients or outpatients of a health care facility if such inpatient use is not on a temporary basis, such as a result of a natural disaster, major accident or equipment failure;

b. The existence of a relationship between the requestor and a health care facility for purposes of making available the proposed equipment to the health care facility;

c. The needs for a health care facility to purchase such equipment if the proposed equipment were not acquired by the requestor;

d. The accrual of material benefit from the proposed acquisition to a health care facility and that, if the acquisition were made by the health care facility, the project would be reviewable under the Act; or

e. The existence of other information which shows that the acquisition of the equipment will result in circumvention of the Act.

6. Within 60 days of determining the notice to be complete, the commissioner shall review the notice, any hearing record and hearing examiner recommendation and any information submitted by the requestor, HSA and other persons, and make a decision as to whether the proposed acquisition is designed to circumvent the Act. The applicant and the HSA shall be informed in writing of the commissioner's decisions and underlying rationale.

7. If the commissioner decides that the proposed acquisition is designed to circumvent the Act, a certificate of need must be obtained according to the process described by the Act and these rules.

D. Waivers.

1. A proposed construction or modification involving an existing health care facility may be granted a waiver based upon the information forwarded by the HSA with its recommendation and the determination of the commissioner that the factors in 7 MCAR § 1.662 D.2. are substantially fulfilled and that any one of the following situations exists:

a. The proposed construction or modification falls within the situations described in Minn. Stat. § 145.835, subd. 4 (a)

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or (b).* Additional examples or items that come with subd. 4(b) are business related equipment, telephone systems, energy conservation measures, warehouse storage, activities space, real estate acquisition and other projects of a like nature.

b. The proposed project is solely for acquisition of diagnostic or therapeutic equipment which is to replace existing equipment only when the existing and replacement equipment have approximately the same capabilities.

c. The proposed project:

(1) Is subject to Minn. Stat. § 145.833, subd. 5 (a)(2);**

(2) Is not reviewable under any other provisions of the Act or these rules; and

(3) If approved, would have no material impact on health planning consideration or on the provisions of health services within the facility's health service area.

d. The proposed project is solely to conduct reviewable predevelopment activity pursuant to 7 MCAR § 1.661 B.18.a.

e. The proposed project is solely for acquisition of an existing health care facility and the change is not reviewable under the provisions of the Act other than 7 MCAR § 1.661 B.7.a.(1).

2. The following factors shall be substantially fulfilled as a prerequisite for granting of waivers:

a. The proposed project shall not result in an increase in patient charges of more than five percent over existing charges in either the average charge for all patients or the average charge for those patients who will benefit from the project. The five percent shall be calculated after including any projected inflation increases based upon, for hospitals, the allowable increase limit established by the commissioner pursuant to 7 MCAR § 1.504 and, for other health facilities, a comparable inflation indicator established by a government agency.

b. The applicant has documented that the project:

(1) Is not unnecessarily duplicative of similar services in the facility's service area;

(2) Will not be underutilized compared with minimal utilization rates consistent with the efficient delivery of health care; and

(3) Will not otherwise result in an ineffective or inefficient operations.

c. The proposed project conforms to the facility's long range development plan and to the guidelines, criteria and goals for such services in the applicable HSP, AIP and the State Health Plan.

3. The request for a waiver shall be submitted by the applicant to the HSA at the same time as submission of a notice of intent for a proposal would have been submitted and shall include the following information:

a. Description of the project;

b. Estimated capital expenditures;

c. Annual operating budget of the current year;

d. Anticipated impact of the project on facility costs and patient charges; and

e. Information pertaining to the factors for a waiver specified in 7 MCAR § 1.662 D.2.b.

4. The HSA shall not proceed with a recommendation until complete information is received. If any additional

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*Minn. Stat. § 145.835, subd. 4. Waivers.

A proposed construction or modification may be granted a waiver from the requirements of section 145.834 by the commissioner of health if, based on the recommendation of the health systems agency, the commissioner determines that: (a) The proposed capital expenditure is less than three percent of the annual operating budget of the facility applying for a waiver, and the expenditure is required solely to meet mandatory federal or state requirements of the law; or (b) The construction or modification is not related to direct patient care services such as parking lots, sprinkler systems, heating or air conditioning equipment, fire doors, food services equipment, building maintenance, or other constructions or modifications of a like nature.

**Minn. Stat. § 145.833, subd. 5(a)(2).

Subd. 5 "Construction or modification" means:

(a) Any erection, building, alteration, reconstruction, modernization, improvement, extension, lease or other acquisition, or other purchase, lease or other acquisition of diagnostic or therapeutic equipment, by or on behalf of a health care facility which:

(2) Changes the bed capacity of a health care facility in a manner which increases the total number of beds, or distributes beds among various categories, or relocates beds from one physical facility or site to another, by more than ten beds or more than ten percent of the licensed bed capacity, whichever is less, over a two year period.

information is requested of an applicant, it shall be relevant to the eligibility standards specified in 7 MCAR § 1.662 D.1. and the factors specified in 7 MCAR §§ 1.662 D.2.

5. Within 30 days of the receipt of a request accompanied by complete information, the HSA shall submit to the commissioner its recommendation for granting or denying the waiver. This recommendation shall be accompanied by supporting rationale based on the applicable item in 7 MCAR § 1.662 D.1. and the factors in 7 MCAR § 1.662 D.2. and all information submitted by the applicant.

6. Within 30 days of receipt of the recommendation of the HSA, the commissioner shall notify the applicant and the HSA of the decision.

7. Emergency waivers may be granted by the commissioner if the need for the project is a result of fire, tornado, flood, storm damage or other similar disasters.

a. The applicant shall submit a written request for an emergency waiver to the commissioner with a corresponding copy sent to the HSA. This request shall describe the project, estimated cost and type of disaster which occurred.

b. Within three working days, the HSA shall forward a recommendation and comments to the commissioner.

c. Within five working days of the receipt of the request from the applicant, the commissioner shall notify the applicant and HSA of the decision to grant or deny an emergency waiver.

d. An emergency waiver shall be granted if the need for the project is a result of fire, tornado, flood, storm damage or other similar disaster, and if both of the following conditions are found to exist:

(1) Adequate health care facilities are not available for the people who previously used the applicant facility; and

(2) The projected repair does not exceed the guidelines and goals for such services in the applicable health systems plan or State Health Plan.

e. A request for an emergency waiver shall be limited in nature and scope to only those repairs necessitated by fire, tornado, flood, storm damage or similar disasters.

8. For purposes of Minn. Stat. § 145.842 and for the periodic reports in 7 MCAR § 1.664 E. of these rules, granting of a waiver of certificate of need review shall be considered to have the same effect as issuance of a certificate of need.

9. The applicant shall resubmit a request for a waiver if the construction or modification for which a waiver was initially granted is not commenced, as described in 7 MCAR § 1.664 C., within 18 months of the granting of waiver or within 90 days of the granting of an emergency waiver.

10. A project may not be separated into component parts if the granting of a waiver for one part would not subject the remaining parts to certificate of need review and if taken together, the project constitutes a single undertaking which is reviewable under the Act. If, however, the remaining component parts of a project would still be subject to review, a waiver may be requested for a specific component part of a project.

7 MCAR § 1.663 Review process, procedures, and criteria.

A. Submission and contents of application for certificate of need.

1. The commissioner shall establish a schedule specifying dates when applications may be submitted to the applicable HSA. The schedule may be revised periodically by the commissioner subject to a 60 day notice which shall be printed in the *State Register* and shall be provided to each HSA by written notice. The schedule shall provide that applications may be submitted not less frequently than every 30 days.

2. Fourteen copies of an application for certificate of need shall be submitted. The HSA, immediately upon receipt of the application, shall send a copy to both the commissioner and the SPA.

3. The application shall be submitted on a form prepared by the commissioner and available through the HSA. Forms shall be printed for:

a. Hospitals;

b. Nursing homes and boarding care homes; and

c. Supervised Living Facilities certified or proposing to be certified as intermediate care facilities for the mentally

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retarded and persons with related conditions. This form shall allow substitution of acceptable alternative sets of pertinent information which have been prepared for the Department of Public Welfare to carry out its responsibility for determination of need, location and programming for the mentally retarded and for the purposes of program licensure and rate setting. In order to be acceptable substitutes, alternative sets of information shall be identifiable according to the topics specified in 7 MCAR § 1.663 A.4.; and

d. Other applicants.

4. The following information and other clarifying information shall be considered to be germane to the project and shall be in a prescribed form, as related to each type of application described in 7 MCAR § 1.663 A.3.

a. Description of the project.

(1) A description of any building or services to be constructed, modified or provided, including a comparison to existing building and services.

(2) A description of the present number and kinds of staff positions and those new staff positions to be created by the project, as well as the basis for anticipation of the successful recruitment of these new staff positions.

(3) A statement from the architect or other construction specialist describing the status of the project's conformance with applicable building codes and state licensure and federal certification requirements for physical plants.

(4) A description of the methods and projected costs of providing energy for operating the project, as well as methods of conserving energy.

(5) A statement of the anticipated dates for commencement and completion of the project.

b. Financial aspects of the project.

(1) Capital expenditures and financing.

(a) The estimated total capital expenditure for the project. There shall be a breakdown of the total capital expenditure based upon the following eight categories. The information provided with respect to each category shall include the major component expenditures within the category.

(i) Predevelopment activity;

(ii) Site acquisitions;

(iii) Land improvements;

(iv) New construction of buildings;

(v) Renovations of buildings;

(vi) Fixed equipment;

(vii) Movable equipment; and

(viii) Financing costs and any contingencies.

(b) A description of the effect of this project on the general solvency of the applicant, including the future effect on financial indicators, including ratio of debts to total assets, operating revenue to total assets, operating revenue to fixed assets, total revenue to fixed assets and interest to total expense plus interest.

(c) A description of the availability and method of financing, including the amount of all projected loans, refinancing of existing debt (if any), estimated interest rate and the projected debt service amount as a percentage of the cost per patient day, or, for hospitals, as a percentage of cost per adjusted admission, as defined in 7 MCAR § 1.472 U.

(2) Operating costs. An estimate of the total annual operating costs upon completion of the project for at least five years. The total annual operating costs shall include anticipated salary requirements of new staff. The estimated costs shall conform with the cost centers and other requirements of at least one of the following:

(i) The requirements for cost allocation under Title XVIII of the Social Security Act, 42 U.S.C. § 1395, *et seq.;*

(ii) The requirements for cost allocation under Title XIX of the Social Security Act, 42 U.S.C. § 1396a, *et seq.;*

(iii) The requirements for cost allocation under Minn. Stat. 144.695-144.703 (Minnesota Hospital Rate Review System); or

(iv) The cost allocation requirements utilized in generally accepted reports by applicants to any other agency or program of the State of Minnesota.

(3) Revenue.

(a) An estimate of the total annual revenue of the health care facility upon completion of the project for at least five years.

(b) A description of the anticipated effect of the project for the first five years of operation on the total patient charges per outpatient visit or service if applicable, and in the case of hospital projects, the total patient charges per adjusted admission as defined in 7 MCAR § 1.472 U. Average patient charges by service which are affected by the project shall be detailed.

(c) Where a health care facility does not already exist, a projection of the anticipated patient charges for the first five years of operation.

c. Geographic area to be served.

(1) A narrative description of and graphic identification of the health care facility's service area or areas, in terms of standard political boundaries.

(2) An identification of patient origin data, local surveys and other sources utilized in determining the service area of the project.

d. Requirements of the population served.

(1) Current and projected population for the next 20 years by applicable demographic categories, such as age, sex and occupational status, which will be served by the project and identification of sources of the information.

(2) Incidence and prevalence rates of diagnoses or conditions within the population related to the services proposed.

(3) The impact of the project upon the health needs of people who have traditionally experienced difficulties in obtaining equal access to health care.

(4) A description of the applicant's performance during the past five years related to access to health services including:

(a) Extent to which the facility met its obligations, if any, under Federal regulations or State rules requiring provision of uncompensated care, community services or access to programs receiving federal financial assistance;

(b) The extent to which Medicare, Medicaid and medically indigent patients are served by the applicant; and

(c) The range of methods by which a person may have access to its services, such as, outpatient services, admission by house physicians or admission by physicians in the community.

e. Relationship to other health care facilities.

(1) Existing institutions within and contiguous to the proposed project that offer, or propose to offer, the same or similar service;

(2) The occupancy or utilization rates of the similar existing institutions during the past five years;

(3) The anticipated effect that the project will have on existing facilities and services; and

(4) The relationship of the project to health professional training programs, biomedical and behavioral research projects and medical referral facilities.

f. A description of the consumer choice plans and programs with which the applicant participates including:

(1) Current and five-year projected number of consumers involved and

(2) Methods of public information regarding cost and quality of health services.

g. Anticipated need for the facility or service to be provided by the project and identification of the factors which create the need, including at least the following:

(1) Data, information and findings collected by the applicant which establish need for each service component of the project; and

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(2) Relationship of the project to the facility's long range development plan.

h. Occupancy and utilization rates.

(1) Occupancy rates for the health care facility, based on both licensed beds and on beds which are set-up and staffed, for the following:

(a) Each of the past five years;

(b) Each of the preceding 12 months; and

(c) Each of the first five years after completion, including explanation of assumptions.

(2) Utilization rates for the health services related to the projected project for the following:

(a) Each of the past five years;

(b) Each of the preceding 12 months; and

(c) Each of the first five years after completion, including explanation of assumptions.

i. A copy of all survey reports from the Minnesota Department of Health, as well as voluntary survey groups, related to the quality of care provided by the health care facility during the past three years of operation.

j. Alternatives which were considered and found not to be acceptable as a substitute for the project and the reasons why they were determined to be unacceptable.

k. Relationship of project to the HSP, AIP and State Health Plan including established planning objectives pertaining to cost, availability, accessibility, need, quality and financial viability of health services.

B. Determination of completeness.

1. Within ten days of the receipt of an application the HSA shall review the application's contents and forward a recommendation to the commissioner and SPA as to whether it is complete. If the recommendation states that the application is incomplete, the HSA shall identify the sections which it found to be incomplete, and explain why it concluded that they were incomplete. A determination of incompleteness may occur under the following conditions:

a. The items specified in 7 MCAR § 1.663 A.4. have not been fully addressed or the information needs clarification.

b. The information provided raises additional questions which must be answered in order for the HSA and commissioner to perform their review under the Act and these rules.

2. Within ten days of receipt of the recommendation from the HSA, the commissioner, after reviewing the application in conjunction with the HSA recommendation and comments, shall notify the applicant, HSA and SPA in writing as to whether the application is complete. If the application is declared incomplete, the applicant shall be informed what additional information must be submitted.

a. If the applicant submits the required additional information to the HSA, SPA and commissioner within five working days of receipt of the commissioner's determination, the commissioner shall review the new information and notify the applicant, HSA and SPA within five working days of receipt of the new information as to whether the application is complete. The result of this clause is that the application may be found to be complete without being deferred to another cycle of reviews.

b. If the required information is submitted after five working days, but within 60 days of receipt of the commissioner's determination, the complete review will be made according to the schedule specified pursuant to 7 MCAR § 1.663 A.1. The result of this clause is that the application is considered for completeness in the next cycle of the commissioner's completeness determination process.

c. If an applicant has not fully responded to a request for additional information within 60 days of the request, the incomplete application shall be returned to the applicant.

3. A determination that an application is complete shall mean only that information has been given pertaining to each component part of the application as prescribed in 7 MCAR § 1.663 A.4. Determination that the application is complete shall carry no implication with respect to the quality of the information nor shall it preclude the HSA or the commissioner from requesting additional clarifying information during the review period.

4. The 60 day review period on the HSA level shall commence on the date that the HSA receives the notice from the commissioner that the application has been determined to be complete.

C. HSA hearing process and procedures for determining recommendations on certificate of need applications. No proposal may be reviewed nor may any recommendation on an application be made by an HSA in a manner which does not comply with the Act or these rules.

1. Upon determination by the commissioner that the application is complete, the HSA shall schedule the date, time and place of a public hearing at which a determination will be made as to whether to recommend issuance of a certificate of need.

2. Notice of the hearing shall be published in a legal newspaper as required in Minn. Stat. § 145.837, subd. 2(2). The notice shall contain a brief description of the project and the date, time and place of the hearing. A separate notification shall be mailed to all other affected persons, including at least the applicant, any contiguous HSA and all health care facilities located in the applicant's proposed service area. This separate notification shall contain information similar to that in the published notice, except that contiguous HSAs shall be requested to provide written comment prior to the public hearing or to appear at the public hearing to offer an opinion as to the need for the project and the factual basis for that opinion.

3. A hearing body shall conduct the public hearing. The chairman of the hearing body, or a member designated by the chairman, shall be the presiding officer and shall conduct the hearing and rule on all motions and on the admissibility of all evidence and testimony. The presiding officer shall designate a hearing secretary who shall tape record the proceedings and provide to the commissioner a verbatim transcript or a written summary of the hearing.

4. A majority of the members of the hearing body shall constitute a quorum. No hearing may be held or recommendation made or other action be taken unless a quorum is present.

5. The hearing body, if other than the governing body of the HSA, shall forward its recommendation, findings of fact, conclusions and all evidence to the governing body, which shall vote on the project as required in 7 MCAR § 1.663 C.7. The governing body shall not hear or receive evidence other than that forwarded by the committee unless it holds an additional hearing after first publishing a notice of hearing pursuant to the Act and 7 MCAR § 1.663 C.2.

6. All interested persons shall be given the opportunity to be heard, to be represented by counsel, to present any relevant oral or written evidence and to examine and cross-examine witnesses. The applicant and any person who testifies orally or otherwise submits evidence or testimony at the hearing shall be subject to questioning by any member of the hearing body. All relevant evidence shall be heard and considered, and the inadmissibility of such evidence in a court of law shall not be grounds for its exclusion. Evidence presented in the form of governmentally issued or sponsored planning documents, studies and guidelines, such as The State Health Plan, shall be given substantial weight but shall not be considered conclusive. The hearing may be recessed to another day if the hearing body find that additional evidence or time is necessary. When the presiding officer determines that all available and relevant evidence has been heard, the hearing body shall then commence its deliberations.

7. The hearing body, if other than the governing body of the HSA, and the governing body, after receipt of a hearing body's recommendation and necessary deliberation, shall vote on the project as follows:

a. After a motion has been made with respect to the project, each member present and qualified to vote, including the chairman or presiding officer, shall vote, or abstain from voting, on the motion. The vote of each member, or the fact of his abstention, shall be recorded in the minutes of the hearing or meeting.

b. No member may vote on behalf of a member not present.

c. A motion for approval of a project shall not pass unless a majority of the members voting, including abstentions, vote in favor of the motion. Failure to obtain a majority vote in favor of approval shall constitute the recommendation of denial.

d. An approval of the project with revisions may be recommended based upon findings of fact, conclusions and supporting evidence pursuant to 7 MCAR § 1.663 G.

(1) Within 30 days after the receipt of the HSA recommendation, the applicant shall notify the HSA and the commissioner by certified mail as to whether it accepts or rejects the revisions.

(2) If the applicant does not respond or rejects the revisions, the recommendation of the HSA to the commissioner shall remain as a recommendation for approval with revision including the findings of fact and conclusions which support revision of the application.

8. The recommendation of the HSA shall be forwarded to the commissioner and SPA in the format prescribed in 7 MCAR § 1.663 G.

9. If the applicant decides to withdraw from the review, it shall so inform the HSA and the commissioner in writing.

D. Consolidated review of Life Support Transportation Service projects. If a project subject to review under the Act is also

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subject to review under the process described in Minn. Stat. § 144.802 for the licensure of life support transportation services, a single consolidated review of the project may occur in conformance with Minn. Stat. §§ 144.802 and 145.836 and the recommended process described in attachment. In order to facilitate consolidated review of such projects, the HSA shall upon agreement of the applicant pursuant to Minn. Stat. § 145.837, subd. 3, extend its certificate of need review period from 60 to 90 days to coincide with the 90 day life support transportation service licensure review period prescribed in Minn. Stat. § 144.802, subd. 3(d). Within that 90 day period, the HSA shall make both recommendations to the commissioner. If mutual agreement pursuant to Minn. Stat. § 145.837, subd. 3, cannot be reached, the HSA shall attempt to make both the licensure and certificate of need recommendations within the 60 day period. If the HSA finds that making both recommendations within the 60 day period is not possible, it shall make the certificate of need recommendation within the 60 day period and a separate licensure recommendation within 90 days, as requested by Minn. Stat. § 144.802, subd. 3(d).

E. Review criteria. In reviewing a proposal, the HSA and the commissioner shall consider all evidence in the record and shall evaluate the evidence based upon the following factors, where applicable. In addition, these factors shall be specifically addressed in the findings of fact and conclusion required by 7 MCAR § 1.663 G.

1. Health plans and population needs.

a. The relationship of the project to and the degree to which it is consistent with the applicable HSP, AIP and State Health Plan.

b. The relationship of the project to and the degree to which it is consistent with the applicant's long range development plan.

c. The need for the project as determined by past, present and future utilization data with specific attention given to the following:

(1) Utilization rates of similar facilities within the facility's health service area for the most recent five years;

(2) Utilization rates of the existing facility or service for the most recent five years; and

(3) Five-year projected utilization rate for the proposed expanded facility or service.

d. The need for the project based upon the population requirements of the affected service area with specific attention given to the following:

(1) The population required to support the project, examined by demographic categories such as age, sex and occupational status;

(2) Incidence and prevalence rates of diagnoses or conditions within the population related to the services proposed by the project;

(3) The contribution of the project in meeting the health needs of people who have traditionally experienced difficulties in obtaining equal access to health care, in particular low income persons, racial and ethnic minorities, women, handicapped persons and other groups identified as priorities in the HSP. If the project involves a reduction, elimination or relocation of a health service, consideration shall be given to the extent which the project will affect the ability of affected members of these above priority groups to obtain needed health care.

(4) The past performance of the applicant in meeting its obligations, if any, under the applicable Federal regulations or state rules requiring provisions of uncompensated care, community service or access by minorities and handicapped persons to programs receiving Federal financial assistance, including the existence of any substantiated civil rights access complaints against the applicant.

(5) The extent to which Medicare, Medicaid, and medically indigent patients are served by the applicant.

(6) The extent to which the applicant offers a range of methods by which a person may have access to its services, such as, outpatient services, admission by house physicians or admission by personal physicians in the community.

2. Alternative approaches and system-wide effects.

a. The availability and adequacy of other less costly or more effective health care facilities and services which may serve as alternatives or substitutes for the whole or any part of the project.

b. The relationship of the project to the existing health care system in the area, including the possible economies and improvements which may be derived from operation of joint, cooperative or shared health care resources. Specific consideration shall be given the following:

(1) The effect of the project on use, capacity, and supply of existing health care facilities and services.

(2) The possibility of increasing referrals to other health care providers to achieve higher utilization of existing resources.

(3) The degree to which the project facilitates the development of an integrated system of services among health care providers.

(4) The possibility of consolidating services with other health care providers.

(5) The existence of formal arrangements established between the applicant and other health care providers to provide similar or supportig services to that being proposed.

c. Preferred alternative uses of resources included in the application, including such resources as health care providers, management personnel and funds for both capital and operational needs, for the provision of other health services by the applicant, as identified by the applicable HSP, AIP and State Health Plan.

d. The effect of the project on the clinical needs of health professional training programs in the area, including access of such programs to the project.

e. The needs for and availability of services and facilities for osteopathic physicians and patients.

3. Competition among similar services. Improvements or innovations in the financing and delivery of the proposed health services which foster price competition in a way that promotes quality assurance and cost effectiveness. Such consideration shall include:

a. The degree of participation by the applicant in consumer choice health plans and programs, such as health maintenance organizations and preferred medical provider programs and

b. The existence of methods by which public information regarding cost and quality of health services will be provided to potential consumers and payors.

4. Applicant and project attributes.

a. The availability of resources, including health manpower, management personnel, physical facilities and funds for capital and operating needs for the project.

b. The immediate and long-term financial feasibility of the project with specific analysis of the following:

(1) The comparison of the anticipated revenues with the anticipated expenses including an analysis of whether or not the estimated revenues and expenses appear accurate; and

(2) The impact of the project upon the immediate and long-term financial solvency of the facility.

c. The impact of the project on operational costs and patient charges with specific analysis of the following:

(1) The reasonableness of the proposed cost of the project compared to similar projects; and

(2) The reasonableness of proposed operating costs and impact on patient costs and charges compared with similar services in similar health care facilities.

d. The organizational and other relationship of the project to ancillary or support services including an analysis of the following:

(1) The availability of necessary ancillary or support services and arrangements made by the applicant for provision of those services;

(2) The development of multi-institutional arrangements for sharing support services.

e. The costs and methods of providing energy for the operation of the project including consideration of methods for conserving energy.

f. The quality of care as reflected in the most recent survey reports from the Minnesota Department of Health and other generally accepted survey organizations.

5. Special considerations. The review criteria specified above shall be considered in light of the special needs and circumstances of any applicant meeting at least one of the descriptions listed in this section as it relates to the project.

a. The special needs and circumstances of medical teaching, research facilities and referral facilities which provide a substantial portion of their services or resources, or both, to individuals outside of the health service area. Consideration shall be given as to whether:

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(1) The instruction, studies or consultation provided by the applicant is coordinated with other medical teaching, research facilities and referral facilities in the multi-health service area served by the applicant; and

(2) The project contributes to meeting the health service needs of the residents of the health service area.

b. The special needs and circumstances of biomedical and behavioral research projects which are designed to meet a national need for which local conditions offer special advantages.

c. The special needs of hospitals to convert excess beds to long-term care or other alternative functions, but only where the termination of all acute care services is proposed and only if a need for the number of proposed long-term care beds can be shown to be consistent with the HSP.

F. Revisions.

1. A project may be revised by the applicant, the HSA or the commissioner at any time during the review process if:

a. The revision is acceptable to the HSA and the applicant; and

b. The revision is within the scope of the project as initially proposed.

2. For purposes of the Act and these rules, a revision shall be considered to be within the scope of the project as initially proposed if the revision is clearly and closely related to the proposed construction or modification and does not directly involve health services, physical plant, equipment or other services unrelated to the project as initially proposed.

G. Content of record. After making its recommendation, the HSA shall submit to the commissioner three copies of the complete record, absent the application which is part of the record and previously submitted to the commissioner. It shall include at least the items listed in this rule and when forwarded to the commissioner shall be in the following order:

1. A cover letter which includes:

a. Pertinent dates relating to the review including, but not limited to, dates of submission of application, determination of completeness, meetings of project review committee, holding of the public hearing and recommended action by the HSA;

b. Description of the project;

(1) If the project voted upon by the HSA is the same as proposed in the application, a summary only shall be provided; or

(2) If prior to the vote of the HSA, the project has been revised upon agreement of the HSA and applicant, a detailed description as revised shall be provided.

c. Estimated capital cost of the project; and

d. The recommendation of the HSA limited solely to a statement whether or not a certificate of need should be issued, denied or issued with revisions. Any revision shall be stated.

2. Proof of publication of the notice of the public hearing;

3. A summary of evidence presented at the public hearing;

4. The recommendation of the HSA which shall contain the following parts:

a. Findings of fact which shall be based upon each applicable review criterion in 7 MCAR § 1.663. E. provided however that for each project recommended for approval, written findings shall take into account the current accessibility of the facility as a whole and shall be based upon the criteria listed in 7 MCAR § 1.663 E.1.d. (1), (3), (4), (5) and (6);

b. Conclusions which shall be based on the findings of fact;

c. A recommendation which shall be based on conclusions; and

d. A record of the vote of each member of the HSA on all motions made with regard to the project.

5. Copies of all written evidence considered by the HSA as follows:

a. HSA staff reports and attachments;

b. Committee reports and attachments;

c. Any relevant coorespondence between the HSA and the applicant;

d. All additional evidence submitted by the applicant if not inserted into specific sections of the application; and

e. Any relevant evidence submitted by other affected persons including comments from contiguous HSAs.

H. Determination by commissioner.

1. The role of the commissioner in deciding whether or not a certificate of need should be issued is that of a final, independent decision maker. While the commissioner must base his review on the record presented by the HSA, his review is not merely in an appellate capacity and thus he is not required to adopt the HSA recommendation merely because it is supported by evidence in the record.

2. The commissioner shall review the application and the record presented by the HSA. The review shall include a determination as to whether the procedural requirements of the Act and these rules have been substantially met. The review by the commissioner may include other information not in the HSA record but only in order to assess the necessity of a remand to the HSA for further consideration.

3. Within 30 days of receipt of the recommendation of the HSA, the commissioner shall make one of the following decisions based upon the record as considered in light of the review factors in 7 MCAR § 1.663 E.

a. Issue a certificate of need. If the commissioner's decision is consistent with the HSA recommendation, the commissioner may adopt the findings and conclusions of the HSA by reference.

b. Issue a revised certificate of need.

(1) The commissioner may issue a decision conditionally approving a project for a certificate of need provided that the HSA and applicant agree to specified revisions. Rationale shall be set forth for each revision proposed by the commissioner. The decision shall also specify that the application shall be denied or remanded if the applicant or HSA reject the revisions.

(2) If the commissioner proposes a revision of the project, notice shall be mailed to the applicant and the HSA so informing them. Within 30 days after receipt, the applicant and the HSA shall inform the commissioner in writing as to whether or not they accept the revision.

(3) During the 30 days, the commissioner may amend his final decision by modifying the revisions as proposed with the approval of the HSA and the applicant.

(4) The 30 day period in which reconsideration can be requested pursuant ot Minn. Stat. § 145.838, subd. 2, or judicial review pursuant to Minn. Stat. §§ 15.0424 and 145.838, subd. 3, shall commence to run after receipt by the commissioner of the written notice specifying whether or not the HSA and applicant accept the revisions proposed by the commissioner, or if no notice is received, at the end of the 30 day period provided for in section b.

(5) If the HSA and applicant accept the revision, the commissioner shall issue a certificate of need and notify the HSA and SPA.

c. Deny a certificate of need. If a project is denied, the commissioner shall set forth in writing rationale for the action and notify the applicant, the HSA and the SPA. If the commissioner's decision is consistent with the HSA recommendation, the commissioner may adopt the findings and conclusions of the HSA by reference.

d. Remand the application to the HSA.

(1) A remand may occur if, during the review of the HSA record, the commissioner finds that one or more of the following conditions exist and determines that a remand will materially aid in the decision-making process.

(a) Findings of fact were not supported by the record;

(b) Findings of fact were based on inaccurate information in the record;

(c) Significant issues relating to review criteria and other provisions of rules were not addressed by the HSA;

(d) Significant evidence within the record was not addressed by the HSA;

(e) Conclusions were not supported by findings of fact;

(f) Conclusions were based on inaccurate findings of fact;

(g) Significant conclusions were not drawn from findings of fact; or

(h) The recommendation was not supported by the conclusions.

(2) The commissioner shall provide the HSA and the applicant with written rationale for the remand action and instructions for further HSA review.

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(3) Within 60 days of receipt of the remand, the HSA shall comply with the commissioner's instructions, hold another public hearing to review the project and forward a recommendation to the commissioner and the SPA.

I. Determination by the commissioner: life support transportation service projects. For projects subject to review under the Act and also subject to review under the process described in Minn. Stat. § 144.802 for the licensure of life support transportation services, the commissioner shall make a certificate of need decision as provided in 7 MCAR § 1.663 H.3. If the HSA submits a certificate of need recommendation and indicates that the life support transportation service licensure recommendation will be submitted separately, and decision of the commissioner to issue a certificate of need in such a case shall not constitute a decision by the commissioner to issue a life support transportation service license.

7 MCAR § 1.664 Post determination actions.

A. Post determination appeals.

1. If the decision of the commissioner is consistent with the recommendation of the HSA, any person aggrieved by the decision may seek judicial review pursuant to Minn. Stat. § 145.838, subd. 3.

2. If the decision of the commissioner is contrary to the recommendation of the HSA, any person may, pursuant to Minn. Stat. § 145.838, subds. 2 and 3, either request the commissioner to reconsider his decision or seek judicial review.

a. A reconsideration request shall be submitted to the commissioner in writing within 30 days after receipt of the decision by either the HSA or the applicant. The request shall address the applicable condition specified in Minn. Stat. § 145.838, subd. 2(a) to (d). Within 30 days after receiving the reconsideration request, the commissioner shall determine whether to reconsider his decision.

b. If the commissioner determines his decision should be reconsidered, the matter shall be remanded to the HSA. The HSA shall conduct a new public hearing. The record of the second hearing shall include the record of the previous hearing(s) on the application. The HSA shall issue a new recommendation within 60 days of receipt of the remand from the commissioner.

c. If the commissioner determines that his decision should not be reconsidered, the HSA or the applicant may within 30 days request an administrative hearing pursuant to Minn. Stat. § 145.838, subd. 2.

3. Any aggrieved person may seek judicial review of the commissioner's decision rendered pursuant to Minn. Stat. § 145.838, subd. 1 or of the hearing examiner's decision rendered pursuant to Minn. Stat. § 145.838, subd. 2 by instituting an action pursuant to Minn. Stat. § 15.0424.

B. Amendment of certificate.

1. After a certificate of need has been issued and before completion of the project, an applicant may find it desirable or necessary to modify the approved project. The types of changes in or modifications to a project are described in 7 MCAR § 1.664 B.2., 3., and 4. When more than one type of change or modification is proposed, the change shall be reviewed according to the type of change which is most stringent. The effect of those changes on the issued certificate of need are as follows:

a. Changes and modification which are immaterial in nature or result (see 7 MCAR § 1.664 B.2.) shall not require any additional certificate of need review.

b. Changes and modifications which are minor in nature or result (see 7 MCAR § 1.664 B.3.) shall not be made unless the commissioner, after review and recommendation by the HSA, issues an amended certificate of need. The review conducted by the HSA and commissioner shall be limited to determining whether or not the changes or modifications are minor as defined in 7 MCAR § 1.664 B.3., that the changes or modifications fall within the scope of the project as initially approved for a certificate of need, and that the evidence supporting the certificate of need as initially issued supports the changes or modifications.

c. Changes and modifications which are significant in nature or results (see 7 MCAR § 1.664 B.4.) require the submission of a new application and require a full certificate of need review.

2. The following are immaterial changes:

a. Changes in spatial allocation or design;

b. Change in architectural plans to correct a facility's structural deficiencies or to comply with governmental rules or regulations;

c. An increase of less than 10% in the capital expenditure of the project, excluding inflation costs not projected at the time of application for a certificate of need; or

d. Other changes in project detail which will nevertheless result in the implementation of the project as approved.

3. The following are minor changes:

a. An increase of at least 10% but not more than 20% of the capital expenditure of the project, excluding inflation costs not projected at the time of application for a certificate of need;

b. Deletions of portions of the originally approved project;

c. Change in financing mechanism;

d. Change in the selection of health services equipment if not technologically different from that approved in the certificate; or

e. Change in bed capacity of a facility in a manner which increases the total number of beds, or distributes beds among various categories, by fewer than ten beds or ten percent of the licensed bed capacity, whichever is less.

4. The following are significant changes:

a. An increase equal to or in excess of 20% of the capital expenditure of the project, excluding inflation costs not projected at the time of application for a certificate of need;

b. Change in the type or scope of health service which was originally approved in the certificate;

c. Change in the selection of health services equipment if technologically different from that approved in the certificate;

d. Change in the geographical location if such change is relevant to the commissioner's reasons for approval of the certificate of need project; or

e. Change in bed capacity of a facility by more than ten beds or ten percent of the licensed bed capacity; or

f. Changes in the project which raise new material issues not previously considered by the HSA or commissioner.

5. The applicant, prior to implementing any minor change in the project, shall submit a written request for an amended certificate to the HSA.

a. The request shall contain a narrative comparison of the approved project and the proposed changes, a description of the cost implications and rationale for the proposed changes.

b. Within 30 days, the HSA shall review the request and forward all information submitted, a recommendation and rationale to the commissioner.

c. Within 30 days of receipt of the HSA recommendation, the commissioner shall review the applicant's request and the recommendation of the HSA and notify the applicant and the HSA in writing of the decision and reasons therefor.

6. The issuance of an amended certificate of need shall not result in the extension of the 18 month period which the applicant has to commence the project under the original certificate of need.

7. If a proposed amendment is not approved, the applicant shall either proceed under the certificate of need as initially issued or shall proceed through a full certificate of need review as a new applicant.

C. Expiration of certificate.

1. Notification of termination date. Each certificate of need or waiver shall specify the termination date pursuant to Minn. Stat. § 145.839.

2. Renewal of certificate or waiver.

a. If a project which had been granted a certificate of need or waiver has not commenced within 18 months, the applicant may submit information to the HSA and commissioner which updates the application and may request renewal of the certificate or waiver for a period up to 18 months.

b. Within 30 days of receipt of the request for renewal of the certificate of need or waiver, the HSA shall submit a recommendation to the commissioner as to whether the project or the reasons for approving the project have changed materially since the issuance of the certificate or waiver. If neither the project nor the reasons for approving the project have changed, renewal of the certificate of waiver shall be recommended.

c. Within 30 days of receipt of the HSA recommendation regarding renewal, the commissioner shall determine

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whether renewal shall be granted based upon the HSA recommendation regarding renewal. Renewal may be granted for a period up to 18 months.

3. In the case of a construction project, the commissioner shall use the following criteria in determining whether the project has commenced:

a. Whether final working drawings and specifications have been approved by the Minnesota Department of Health;

b. Whether construction contracts have been let;

c. Whether a timely construction schedule has been developed stipulating dates for the beginning, various stages and completion of construction;

d. Whether all zoning and building permits have been secured;

e. Whether significant physical alteration of the site has been made and is continuing in accordance with the construction schedule; and

f. Whether other factors related to the above conditions exist.

4. In the case of a project solely involving the acquisition of equipment, the commissioner shall consider the following factors in determining whether the project has commenced:

a. Whether a final purchase order or lease arrangement for all component parts of the equipment has been executed; and

b. Whether the equipment has been delivered and installed or a firm delivery date has been set and a specific schedule has been established for commencing procedures.

5. In the case of offering of a service which does not require facility construction or equipment acquisition, the commissioner shall consider the following factors in determining whether the project has commenced:

a. Whether the new service has been introduced within the facility; and

b. Whether appropriate personnel, as set forth in the application, have been identified and an employment arrangement has been executed for commencing services on a specific schedule.

D. Transfer of certificate or waiver.

1. A certificate of need or waiver shall not be transferred independently of the project with which it is associated. A certificate of need or waiver and the associated project shall not be transferred without the prior approval of the commissioner. A transfer shall be approved by the commissioner if the information submitted pursuant to this section indicates that there will be no material changes in the project as originally approved in the certificate of need or waiver that has been issued.

2. An entity proposing to purchase or otherwise acquire the project and associated certificate of need or waiver shall apply for a transfer by submitting the following information to the HSA and the commissioner:

a. A statement that it agrees to be bound by all the terms and conditions of the certificate of need or waiver originally granted for the project;

b. The financial aspects portion of a certificate of need application or waiver request; and

c. A list of any changes or modifications it proposes to make in the project.

3. Within 30 days after receipt of this information, the HSA shall review the transfer request and shall submit its recommendation to the commissioner. Within 30 days after receipt of the recommendation, the commissioner shall inform the entity requesting the transfer, the HSA and the SPA as to whether or not the transfer has been approved and the reasons for the decision.

E. Periodic report.

1. Within 60 days after completion of a project for which a certificate of need was issued or a waiver granted, the applicant shall submit actual capital expenditure information related to the project to the commissioner and the HSA. The information submitted shall compare the estimated costs as outlined in the application with actual costs. A breakdown of costs, as specified in 7 MCAR § 1.663 A.4.b. (1) (a), shall be submitted.

2. If a discrepancy of more than 5% exists between estimated and actual costs in any of the reported line items or the total project cost, the applicant shall explain why the discrepancy occurred and indicate the additional impact on operating costs and patient charges resulting from the additional capital expenditures related to the project.

3. Completion of a project shall mean the earlier of the following:

a. The last payment for construction costs and other fees related to the project is made, not including debt service related to the project; or

b. The involved service is used for its intended purpose.

4. If the involved service is used for its intended purpose before the last related payment is made, an interim report shall be submitted utilizing actual and projected expenditures. In this case, the final report shall be submitted within 60 days after the last payment is made. Additional periodic reports may be required in connection with a revision to a project according to 7 MCAR § 1.663 F.

5. The requirements of this section shall apply to certificates of need and waivers issued or granted since August 1, 1979. If the project was completed prior to the effective date of these rules, the report shall be submitted within 60 days after the effective date of these rules.

F. Investigations. For the purposes of enforcement of the Act, the commissioner shall have access to all financial and other records of any entity subject to the Act.

7 MCAR § 1.665 Applications from health maintenance organizations.

A. An HMO shall be subject to certificate of need review, unless exempt under 7 MCAR § 1.665 C., if it proposes, or undertakes on behalf of an inpatient health care facility, a project involving:

1. Any erection, building alteration, reconstruction, modernization, improvement, extension, lease, equipment purchase or other acquisition related to inpatient institutional health services which requires, or would require if purchased, a total capital expenditure in excess of $150,000, and which, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance;

2. The obligation of any capital expenditure related to a change in the bed capacity of a health care facility by more than ten beds or more than ten percent of the facility's total licensed bed capacity, whichever is less, over a two year period following the most recent bed capacity change, in a way which:

a. Increases or decreases the total number of beds;

b. Redistributes beds among various categories; or

c. Relocates beds from one physical facility or site to another.

3. The obligation of any capital expenditure which is associated with:

a. The addition of an institutional health service which was not offered within the previous twelve months; or

b. The termination of an institutional health service.

4. The addition of an institutional health service which was not offered during the twelve month period before the month in which the service would be offered, and which entails annual operating costs of at least $75,000; or

5. Acquisition of an existing health care facility if the institutional health services or bed capacity, according to 7 MCAR § 1.665 A.2., will be changed as a result of the acquisition.

B. The following entities may qualify for exemption from certificate of need review if the conditions of 7 MCAR § 1.665 C. are met.

1. An HMO;

2. A combination of HMOs;

3. A health care facility which primarily serves inpatients if it is:

a. Owned or proposed to be owned, by an HMO or HMOs; or

b. Governed by a controlling body which is composed of over fifty percent principal officers or board members of the HMO or HMOs; or

4. A health care facility, or a portion of a health care facility, leased by an HMO or HMOs for a term of at least 15 years.

C. The conditions which must be met to qualify for exemption are:

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1. The applicant shall be "qualified" under Title XIII of the Public Health Services Act, 42 U.S.C. § 300e or the applicant shall satisfactorily document to the commissioner that the HMO or HMOs have substantially fulfilled the requirements of Title XIII of the Public Health Services Act, 42 U.S.C. § 300e.

2. At least 50,000 persons shall be enrolled in the pertinent HMO(s) and shall have reasonable access to the proposed project; and

3. At least 75 percent of the potential patients shall be enrolled in the pertinent HMO(s).

D. The following procedures shall be followed in applying for exemption of an HMO project from certificate of need review.

1. An application for exemption shall be submitted to the commissioner, HSA and SPA. The application shall describe the project for which an exemption is sought and shall contain information demonstrating that the HMO meets the conditions for exemption specified in 7 MCAR § 1.665 C.

2. The HSA or the commisssioner, in order to make a recommendation or to make the final determination, may request additional clarifying information about the project. Any information requested shall be pertinent to the provisions of 7 MCAR § 1.665 B. and C. Failure to supply the information in a timely manner shall constitute sufficient grounds for determining that the entity is not eligible for exemption.

3. Within 30 days after the receipt of the request, the HSA shall forward its recommendation and all evidence to the commissioner. Within 30 days of the receipt of the HSA recommendation, the commissioner shall notify the HMO and the HSA of the decision to grant or deny the exemption and the reason therefor. The commissioner shall approve an application for exemption if the applicable requirements of 7 MCAR § 1.665 B. and C. have been met or will be met on the date the proposed activity will be undertaken.

E. The project granted exempt status may not be sold or leased, a controlling interest in a project may not be acquired and a health care facility described in 7 MCAR § 1.665 B. 3. and 4. may not be used in a manner other than proposed in the project unless:

a. The commissioner issues a certificate of need approving the sale, lease, acquisition, or use; or

b. Upon request, the commissioner grants exempt status to such entity.

F. 7 MCAR § 1.661 through 1.664 shall apply to the review of a certificate of need application submitted by an entity listed in 7 MCAR § 1.665 B. for a non-exempt project. Notwithstanding the general review criteria in 7 MCAR § 1.663 E., if an entity listed in 7 MCAR § 1.665 B. applies for a certificate of need, the commissioner shall approve the project if he finds that:

1. Approval of the project is required to meet the needs of the members of the HMO and of the reasonably anticipated new members of the HMO; and

2. The HMO is unalbe to provide, through services or facilities which can reasonably be expected to be available to the HMO, its health services in a reasonable and cost-effective manner which is consistent with the basic method of operation of the HMO and which makes these services available through physicians and other health professionals associated with it. In assessing the availability of these services from other providers, the HSA and commissioner shall consider only whether the services from these providers:

a. Would be available under a contract of at least five years duration;

b. Would be available and conveniently accessible through physicians and other health professionals associated with the HMO;

c. Would cost no more to the HMO than if the services were provided by the HMO; and

d. Would be available in a manner which is administratively feasible to the HMO applicant.

G. Any party aggrieved by a decision of the commissioner pursuant to 7 MCAR § 1.665 D. may seek judicial review of the commissioner's decision by instituting action pursuant to Minn. Stat. § 15.0424.

[Repealer clause. State Planning Agency rules 10 MCAR §§ 1.202 to 1.210 (formerly SPA 201 to 210) are hereby repeal.]

ATTACHMENT
RECOMMENDED PROCEDURE FOR HSA CONSOLIDATED REVIEW OF LIFE SUPPORT TRANSPORTATION SERVICE PROJECTS

Relevant Provisions of Certificate of Need Act and Rules

Minn. Stat. § 145.836 APPLICATION FOR CERTIFICATE OF NEED. Subdivision 1. Application procedure. Applications for certificate of need shall be submitted to the health systems agency serving the area in which the proposed construction or modification is to take place. Prior to acting on the application and within ten days of receipt, the health systems agency shall send a copy to the commissioner of health and to the state planning agency with a recommendation that the application be considered either complete or incomplete. The commissioner of health shall determine that the application is initially complete or incomplete within ten days of receipt of a recommendation from a health systems agency. If the application is incomplete, it is not to be considered to be submitted to the health systems agency or the commissioner and it shall be returned stating the specific needs to be met in order for the application to be considered complete.

7 MCAR § 1.663 B. Determination of completeness.

1. Within ten days of the receipt of an application the HSA shall review the application's contents and forward a recommendation to the commissioner and SPA as to whether it is complete. If the recommendation states that the application is incomplete, the HSA shall identify the sections which it found to be incomplete, and explain why it concluded that they were incomplete. A determination of incompleteness may occur under the following conditions:

a. The items specified in 7 MCAR § 1.663 A.4 have not been fully addressed or the information needs clarification.

Relevant Provisions of Life Support Transportation Service Law (Minn. Stat. §§ 144.801 - 144.8091)

Minn. Stat. § 144.802 LICENSING Subd. 3.(a) Each prospective licensee and each present licensee wishing to offer a new type or types of life support transportation service, to establish a new base of operation, or to expand a primary service area, shall make written application for a license to the commissioner on a form provided by the commissioner. The commissioner shall promptly send notice of the completed application to the health systems agency or agencies, the community health service agency or agencies, and each municipality and county in the area in which life support transportation service would be provided by the applicant. The commissioner shall publish the notice, at the applicant's expense, in the state register and in a newspaper in the municipality in which the service would be provided, or if no newspaper is published in the municipality or if the service would be provided in more than one municipality, in a newspaper published at the county-seat of the county or counties in which the service would be provided.

Recommended Procedure for Consolidated HSA Review (Includes All the Requirements of Both Statutes and Assumes Certificate of Need Review Period Has Been Extended to 90 Days Pursuant to 7 MCAR § 1.663 D.

A. Submission of applications and determinations of completeness

The applicant shall submit a completed licensure application to the commissioner and should also submit a copy to the appropriate HSA. Simultaneously, the applicant should submit a completed certificate of need application to the appropriate HSA.

1. Within ten days of the receipt of the certificate of need application, the HSA shall review the application's contents and forward a recommendation to the commissioner and SPA as to whether it is complete. If the recommendation states that the application is incomplete, the HSA shall identify the sections which it found to be incomplete, and explain why it concluded that they were incomplete. A determination of incompleteness may occur under the following conditions:

a. The items specified in 7 MCAR § 1.663 A.4 have not been fully addressed or the information needs clarification.

b. The information provided raises additional questions which must be answered in order for the HSA and commissioner to perform their review under the Act and these rules.

2. Within ten days of receipt of the recommendation from the HSA, the commissioner, after reviewing the certificate of need application in conjunction with the HSA recommendation and comments, shall notify the applicant, HSA, and SPA in writing as to whether

b. The information provided raises additional questions which must be answered in order for the HSA and commissioner to perform their review under the Act and these rules.

2. Within ten days of receipt of the recommendation from the HSA, the commissioner, after reviewing the application in conjunction with the HSA recommendation and comments, shall notify the applicant, HSA and SPA in writing as to whether the application is complete. If the application is declared incomplete, the applicant shall be informed what additional information must be submitted.

a. If the applicant submits the required additional information to the HSA, SPA and commissioner within five working days of receipt of the commissioner's determination, the commissioner shall review the new information and notify the applicant, HSA and SPA within five working days of receipt of the new information as to whether the application is complete. The result of this clause is that the application may be found to be complete without being deferred to another cycle of reviews.

b. If the required information is submitted after five working days, but within 60 days of receipt of the commissioner's determination, the complete review will be made according to the schedule specified pursuant to 7 MCAR § 1.663 A.1. The result of this clause is that the application is considered for completeness in the next cycle of the commissioner's completeness determination process.

c. If an applicant has not fully responded to a request for additional information within 60 days of the request, the incomplete application shall be returned to the applicant.

3. A determination that an application is complete shall mean only that information has been given pertaining to each component part of the application as prescribed in 7 MCAR § 1.663 A.4. Determination that the application is complete shall carry no implication with respect to the quality of the information nor shall it preclude the commissioner's request for additional information.

both the licensure and the certificate of need applications are complete. If either application is declared incomplete, the applicant shall be informed what additional information must be submitted.

a. If the applicant submits the required additional certificate of need information to the HSA, SPA and commissioner within five working days of receipt of the commissioner's determination, the commissioner shall review the new information and notify the applicant, HSA and SPA within five working days of receipt of the new information as to whether the application is complete. The result of this clause is that the certificate of need application may be found to be complete without being deferred to another cycle of reviews.

b. If the required certificate of need information is submitted after five working days, but within 60 days of receipt of the commissioner's determination, the complete review will be made according to the schedule specified pursuant to 7 MCAR § 1.663 A.1. The result of this clause is that the certificate of need application is considered for completeness in the next cycle of the commissioner's completeness determination process.

c. If an applicant has not fully responded to a request for additional certificate of need information within 60 days of the request, the incomplete certificate of need application shall be returned to the applicant.

d. The applicant should submit any additional information requested to complete the licensure application within the time frames specified in 2 a.-c. so as to assume a consolidated HSA hearing and consolidated determination by the commissioner.

3. If both applications are determined to be complete, the commissioner shall promptly send notice of the completed applications to the HSA(s), community health service agency or agencies, and each municipality and county in the area in which the life support transportation

clude the HSA or the commissioner from requesting additional clarifying information during the review period.

4. The 60 day review period on the HSA level shall commence on the date that the HSA receives the notice from the commissioner that the application has been determined to be complete.

Minn. Stat. § 145.837, Subd. 2. Review procedures. In reviewing complete applications, the health systems agency shall:

(1) Hold a public hearing;

(2) Provide notice of the public hearing by publication in a legal newspaper of general circulation in the area for two successive weeks at least ten days before the date of such hearing and notify affected persons which shall include at least the applicant and other persons subject to review, contiguous health systems

Minn. Stat. § 144.802, subd. 3

(b) Each municipality, county, community health service, and other person wishing to make recommendations concerning the disposition of the application shall make written recommendations to the health systems agency in its area within 30 days of the publication of notice of the application.

Minn. Stat. § 144.802, subd. 3

(c) The health systems agency or agencies shall:

(1) hold a public hearing in the municipality in which the services base of operation is or will be located;

(2) provide notice of the public hearing in the newspaper or newspapers in which notice service would be provided by the applicant. The commissioner shall publish this notice, at the applicant's expense, in the *State Register*, and in a legal newspaper of general circulation in the municipality in which the service would be provided. If no legal newspaper of general circulation is published in the municipality, or if the service would be provided in more than one municipality, the notice shall be published in a legal newspaper of general circulation published at the county seat of the county or counties in which the service would be provided.

4. A determination that a certificate of need application is complete shall mean only that information has been given pertaining to each component part of the application as prescribed in 7 MCAR § 1.663 A.4. Determination that the application is complete shall carry no implication with respect to the quality of the information nor shall it preclude the HSA or the commissioner from requesting additional clarifying information during the review period.

5. The 90 day review period on the HSA level shall commence on the date that the HSA receives the notice from the commissioner that the applications have been determined to be complete.

B. Any municipality, county, community health service agency, or other person wishing to make recommendations concerning the dispositions of the applications shall make recommendations to the HSA within 30 days of the publication of notice of the applications pursuant to A.3.

C. HSA hearing process and procedures for determining recommendations on consolidated review of certificate of need and life support transportation service licensure applications.

1. Upon determination by the commissioner that the applications are complete, the HSA shall schedule the date and time of a public hearing at which a determination will be made as to whether to recommend issuance of a certificate of need and licensure of a life support

agencies, the health care facilities located in the health service area and which provide institutional health services, and the rate review agency;

(3) Allow any interested person the opportunity to be heard, to be represented by counsel, to present oral and written evidence, and to confront and cross-examine opposing witnesses at the public hearing;

(4) Provide a transcript of the hearing at the expense of any individual requesting it, if the transcript is requested at least three days prior to the hearing;

(5) Make written findings of fact and recommendations concerning the application. The commissioner of health shall promulgate by rule the required findings of fact which shall address the criteria specified in subdivision 1, and the provisions of the National Health Planning and Resources Development Act, 42 U.S.C., Section 300k, et seq. The findings of fact and recommendations shall be available to any individual requesting them; and

(6) Follow any further procedure not inconsistent with sections 145.832 to 145.845 or sections 15.0411 to 15.052, which it deems appropriate.

Within 60 days after the commissioner has determined the application to be complete, the health systems agency shall make its recommendation to the commissioner of health. The health systems agency shall either recommend that the commissioner of health issue, deny or issue with revisions a certificate of need for the proposed construction or modification. The reasons for the recommendation shall be set forth in detail.

7 MCAR § 1.663 C. HSA hearing process and procedures for determining recommendations on certificate of need applications.

No proposal may be reviewed nor may any recommendation on an application be made by an HSA in a manner which does not comply with the Act or these rules.

was published under part (a) for two successive weeks at least ten days before the date of the hearing;

(3) allow any interested person the opportunity to be heard, to be represented by counsel, and to present oral and written evidence at the public hearing;

(4) provide a transcript of the hearing at the expense of any individual requesting it; and

(5) follow any further procedure not inconsistent with chapter 15, which it deems appropriate.

(d) The health systems agency or agencies shall review and comment upon the application and shall make written recommendations as to its disposition to the commissioner within 90 days of receiving notice of the application. In making the recommendations, the health systems agency or agencies shall consider and make written comments as to whether the proposed service, change in base of operations, or expansion in primary service area is needed, based on consideration of the following factors:

(1) the relationship of the proposed service, change in base of operations or expansion in primary service area to current health systems and annual implementation plans;

(2) the recommendations or comments of the governing bodies of the counties and municipalities in which the service would be provided;

(3) the duplication, if any, of life support transportation services that would result from granting the license;

(4) the estimated effect of the proposed service, change in base of operation of expansion in primary service area on the public health;

(5) whether any benefit accruing to the public health would outweigh the costs associated with the proposed service, change in base of operations, or expansion in primary service area.

The health systems agency or agencies shall re-

transportation service. The hearing shall be scheduled to be held in the municipality in which the service's base of operations is or will be located.

2. Notice of the hearing shall be published in the legal newspaper(s) in which notice of the applications was published pursuant to A.3. The notice shall contain a brief description of the project and the date, time and place of the hearing. A separate notification shall be mailed to all other affected persons, including at least the applicant, any contiguous HSA, and all health care facilities located in the applicant's proposed service area. This separate notification shall contain information similar to that in the published notice, except that contiguous HSAs shall be requested to provide written comment prior to the public hearing or to appear at the public hearing to offer an opinion as to the need for the project and the factual basis for that opinion.

3. A hearing body shall conduct the public hearing. The chairman of the hearing body, or a member designated by the chairman, shall be the presiding officer and shall conduct the hearing and rule on all motions and on the admissibility of all evidence and testimony. The presiding officer shall designate a hearing secretary who shall tape record the proceedings and provide to the commissioner a verbatim transcript or a written summary of the hearing. A majority of the members of the hearing body shall constitute a quorum. No hearing may be held or recommendation made or other action taken unless a quorum is present:

The hearing body, if other than the governing body of the HSA, shall forward its recommendation, findings of fact, conclusions and all evidence to the governing body, which shall vote on the project as required in 7 MCAR § 1.663 C.7. The governing body shall not hear or receive evidence other than that forwarded by the committee unless it holds an additional hearing after first publishing a notice of hearing pursuant to the Act and 7 MCAR § 1.663 C.2.

1. Upon determination by the commissioner that the application is complete, the HSA shall schedule the date, time and place of a public hearing at which a determination will be made as to whether to recommend issuance of a certificate of need.

2. Notice of the hearing shall be published in a legal newspaper as required in Minn. Stat. § 145.837, subd. 2 (2). The notice shall contain a brief description of the project and the date, time, and place of the hearing. A separate notification shall be mailed to all other affected persons, including at least the applicant, any contiguous HSA and all health care facilities located in the applicant's proposed service area. This separate notification shall contain information similar to that in the published notice, except that contiguous HSAs shall be requested to provide written comment prior to the public hearing or to appear at the public hearing to offer an opinion as to the need for the project and the factual basis for that opinion.

3. A hearing body shall conduct the public hearing. The chairman of the hearing body, or a member designated by the chairman, shall be the presiding officer and shall conduct the hearing and rule on all motions and on the admissibility of all evidence and testimony. The presiding officer shall designate a hearing secretary who shall tape record the proceedings and provide to the commissioner a verbatim transcript or a written summary of the hearing.

4. A majority of the members of the hearing body shall constitute a quorum. No hearing may be held or recommendation made or other action taken unless a quorum is present.

5. The hearing body, if other than the governing body of the HSA, shall forward its recommendation, findings of fact, conclusions and all evidence to the governing body, which shall vote on the project as required in 7 MCAR § 1.663 C.7. the governing body shall not hear or receive evidence other than that forwarded by the committee unless it holds an additional hearing. The hearing body shall recommend that the commissioner either grant or deny a license or recommend that a modified license be granted. The reasons for the recommendation shall be set forth in detail. The health systems agency or agencies shall make the recommendations and reasons available to any individual requesting them.

6. All interested persons shall be given the opportunity to be heard, to be represented by counsel, to present any relevant oral or written evidence, and to examine and cross-examine witnesses. The applicant and any person who testifies orally or otherwise submits evidence or testimony at the hearing shall be subject to questioning by any member of the hearing body. All relevant evidence shall be heard and considered, and the inadmissibility of such evidence in a court of law shall not be grounds for its exclusion. The hearing may be recessed to another day if the hearing body finds that additional evidence or time is necessary. When the presiding officer determines that all available and relevant evidence has been heard, the hearing body shall then commence its deliberations.

7. The hearing body, if other than the governing body of the HSA, and the governing body, after receipt of a hearing body's recommendation and necessary deliberation, shall vote on the project as follows:

a. After a motion has been made with respect to the project, each member present and qualified to vote, including the chairman or presiding officer, shall vote, or abstain from voting, on the motion. The vote of each member, or the fact of his abstention, shall be recorded in the minutes of the hearing or meeting.

b. No member may vote on behalf of a member not present.

c. A motion for approval of a project shall not pass unless a majority of the members voting, including abstentions, vote in favor of the motion. Failure to obtain a majority vote in favor of approval shall constitute the recommendation of denial.

d. An approval of the certificate of need project with revisions may be recommended based upon findings of fact, conclusions and supporting evidence pursuant to 7 MCAR § 1.663 G.

(1) Within 30 days after receipt of the HSA recommendation, the applicant shall notify

ing after first publishing a notice of hearing pursuant to the Act and 7 MCAR § 1.663 C.2.

6. All interested persons shall be given the opportunity to be heard, to be represented by counsel, to present any relevant oral or written evidence, and to examine and cross-examine witnesses. The applicant and any person who testifies orally or otherwise submits evidence or testimony at the hearing shall be subject to questioning by any member of the hearing body. All relevant evidence shall be heard and considered, and the inadmissibility of such evidence in a court of law shall not be grounds for its exclusion. The hearing may be recessed to another day if the hearing body finds that additional evidence or time is necessary. When the presiding officer determines that all available and relevant evidence has been heard, the hearing body shall then commence its deliberations.

7. The hearing body, if other than the governing body of the HSA, and the governing body, after receipt of a hearing body's recommendation and necessary deliberation, shall vote on the project as follows:

a. After a motion has been made with respect to the project, each member present and qualified to vote, including the chairman or presiding officer, shall vote, or abstain

(1) Within 30 days after receipt of the HSA recommendation, the applicant shall notify the HSA and the commissioner by certified mail as to whether it accepts or rejects the revisions.

(2) If the applicant does not respond or rejects the revisions, the recommendation of the HSA to the commissioner shall remain as a recommendation for approval with revision including the findings of fact and conclusions which support revision of the application.

8. The recommendation of the HSA shall be forwarded to the commissioner and SPA in the format prescribed in 7 MCAR § 1.663 G.

9. If the applicant decides to withdraw from the review, it shall so inform the HSA and the commissioner in writing.

the HSA and the commissioner by certified mail as to whether it accepts or rejects the revisions.

(2) If the applicant does not respond or rejects the revisions, the recommendation of the HSA to the commissioner and shall remain as a recommendation for approval with revision including the findings of fact and conclusions which support revision of the application.

8. The certificate of need recommendation of the HSA shall be forwarded to the commissioner and SPA in the format prescribed in 7 MCAR § 1.663 G.

9. The licensure recommendation of the HSA shall be to issue, deny or issue with modifications a life support transportation service license. The licensure recommendation shall contain the HSA's written and detailed comments as to whether the proposed service, change in base of operations, or expansion in primary service area is needed, based on consideration of the factors specified in Minn. Stat. § 144.804, subd. 3 (d).

10. If the applicant decides to withdraw from the review, it shall so inform the HSA and the commissioner in writing.

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 15.0412, subd. 4, have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

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

Department of Natural Resources

Adopted Amendments to the Lower St. Croix River Water Surface Use Rules

The rule amendment proposed and published at *State Register*, Volume 5, Number 33, pp. 1252-1253, February 16, 1981 (5 S.R. 1252) is now adopted with the following amendments:

Amendments as Adopted

6 MCAR § 1.2220 Lower St. Croix water surface use.

D. Restricted speed zones.

2. No motorboat shall be operated in excess of a slow-no-wake speed in the following areas:

f. In that area known as ~~Anderson~~ Andersen Bay, located approximately at mile 20.0.

Pollution Control Agency

Adopted Temporary Rule Governing Sewage Sludge Disposal

Notice is hereby given by the Minnesota Pollution Control Agency that the temporary rule proposed and published at *State Register*, Volume 5, Number 23, pp. 935-947, December 8, 1980 (5 S.R. 935) was approved by the Attorney General April 10, 1981 with the following amendments:

Temporary Rule as Adopted

6 MCAR § 4.8050 Temporary sewage sludge disposal standards.

A. Intent. Improper design, location and operation of sewage sludge disposal ~~facilities~~ sites adversely affect the public health, safety and welfare by causing pollution, impairment and destruction of the state's natural resources. In accordance with the authority granted in Minn. Laws of 1980, chapter 564, article XI, section 6, this rule establishes temporary standards for the design, location and operation of sewage sludge disposal ~~facilities~~ sites and provides procedures for administration of this rule. It is the intent of this rule to maximize the beneficial use or recycling of sewage sludge, while ensuring that the public health, safety and welfare is not impaired by such practices.

B. Definitions. For the purpose of this rule, the following terms shall have the meanings defined herein:

1. Adequate drainage — A system, designed according to or equivalent to Soil Conservation Service engineering criteria, which will remove excess water from land by means of subsurface drains.

2. Agency — the Minnesota Pollution Control Agency.

3. Animal feed — Any crop grown for consumption by animals, such as pasture crops, forage, and grain.

4. Available nitrogen — ~~Nitrogen which can be readily absorbed by growing plants or leached by percolating waters.~~ Nitrogen which is present in inorganic forms that are useable by plants, and which may be determined by procedures set out in Table 3, Appendix B.

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

5. Background soil pH — The pH of the soil prior to the addition of substances ~~intended to~~ that alter the hydrogen ion concentration.

6. Cation Exchange Capacity (CEC) — A measure of the potential quantity of readily exchangeable positive ions that the soil can attract and retain, expressed in milliequivalents per 100 grams of soil. ~~(See Appendix A)~~ The CEC may be estimated on the basis of soil texture and organic matter content using procedures set out in Appendix A, or by direct analysis, either by the summation method for distinctly acid soils or the sodium acetate method for neutral, calcareous, or saline soils. (''Methods of Soil Analysis, Agronomy Monograph No. 9'' C. A. Black, ed., American Society of Agronomy, Madison, Wi. pp. 891-901, 1965.)

~~Class A Sewage Treatment System — As determined using 6 MCAR 5.002.~~

7. Continuous storage — The storage of sewage sludge for a period greater than ~~six~~ seven months at a ~~facility~~ site not located at the place of sewage sludge generation. Sewage sludge is continuously delivered and removed from the ~~facility~~ site on a regular rotational basis depending on the surplus of or demand for sewage sludge.

8. Crops for direct human consumption — Crops that are consumed by humans without processing to minimize pathogens prior to distribution to the consumer.

9. Dewatered sewage sludge — Sewage sludge with sufficient solids content such that it has no free water and can be transported and handled as a solid material.

10. Director — The Executive Director or other designated representative of the Minnesota Pollution Control Agency.

11. Disease vector — Rodents, flies, and mosquitoes capable of transmitting disease to humans.

12. Disposal — As defined in Minnesota Laws of 1980, ch. 564, Art. I, § 3, subd. 9, which is the discharge, deposit, injection, dumping, spilling, leaking, or placing of any waste into or on any land or water so that the waste or any constituent thereof may enter the environment or be emitted into the air, or discharged into any waters, including ground waters.

13. Dry run — A drainage pathway, either natural, altered, or artificial, with definable banks, which is capable of conducting confined runoff from adjacent lands.

14. Fallow — Land that is uncropped and kept cultivated throughout a growing season.

15. Food-chain crops — Tobacco, crops grown for human consumption, and animal feed for animals whose products are consumed by humans.

~~Heavy metals — Usually, but not always, those metals which have specific gravities greater than 5.0; including but not limited to, cadmium (Cd), chromium (Cr), copper (Cu), lead (Pb), mercury (Hg), nickel (Ni), and zinc (Zn).~~

16. Hundred year flood plain — As defined in 6 MCAR § 4.8051 for flood plain, which is, the areas adjoining a watercourse which has been or hereafter may be covered by a large flood known to have occurred generally in Minnesota and reasonably characteristic of what can be expected to occur on an average frequency in the magnitude of the 100 year recurrence interval.

17. Incorporation — The mixing of sewage sludge with topsoil, concurrent with application or within 48 hours thereafter, by means such as injection, discing, mold-board plowing, chisel plowing or rototilling to a minimum depth of six inches.

18. Interim storage — The storage of dewatered sewage sludge for a period of ~~six months or less at a landspreading sewage sludge disposal facility~~ greater than one month but not exceeding seven months at a landspreading site not located at the place of sewage sludge generation. Sewage sludge is delivered to the ~~facility~~ site with intentions of being landspread as soon as conditions permit, where it cannot be immediately spread because of soil conditions, snow depths, wet periods, cropping seasons, or periods of conflicting land use.

19. Landspreading — Placement of sewage sludge in or on soil at rates where the quantity of nutrient and non-nutrient elements and soil conditioning materials is consistent with the biochemical assimilative capacity of the soil-plant systems.

20. Leachate — Liquid that has passed through or emerged from sewage sludge or sewage sludge amended soil and contains soluble, suspended or miscible materials removed from such wastes.

~~Lease — Any oral or written agreement between a political subdivision and a landowner.~~

21. Pasture crops — Crops such as legumes, grasses, grain stubble and stover which are consumed by animals while grazing.

22. Pathogens — Organisms, chiefly microorganisms, including viruses, but also including all forms of animal parasites, that are capable of producing an infection or disease in a susceptible host.

23. Perched water table — As defined in 6 MCAR § 4.8022.

24. Person — As defined in Minn. Stat. § 116.06, subd. 8, which is any human being, any municipality or other governmental or political subdivision or other public agency, any public or private corporation, any partnership, firm, association, or other organization, any receiver, trustee, assignee, agent, or other legal representative of any of the foregoing, or any other legal entity, but does not include the Pollution Control Agency. Pursuant to Minnesota Laws of 1980, ch. 564, Art. I, § 3, subd. 23, person shall also not include the Waste Management Board.

25. Political subdivision — As defined in Minnesota Laws of 1980, ch. 564, Art. I, § 3, subd. 24, which is any municipality, corporation, governmental subdivision of the state, local government unit, special district, or local or regional board, commission, or authority authorized by law to plan or provide for waste management.

26. Process to Further Reduce Pathogens (PFRP).

a. Composting — ~~Using the within-vessel composting method, the sewage sludge is maintained at operating conditions of 55°C or greater for three days. Using the static aerated pile composting method, the sewage sludge is maintained at operating conditions of 55°C or greater for three days. Using the windrow composting method, the sewage sludge attains a temperature of 55°C or greater for at least 15 days during the composting period and during the high temperature period, there must be a minimum of five turnings of the windrow.~~

The aerobic thermophilic decomposition of organic constituents to a relatively stable, humus-like material. High temperature composting methods which will further reduce pathogens are:

window — an unconfined composting process involving periodic aeration (mixing) of uninsulated compost piles. At least five turnings must occur during a period of fifteen days when the temperature of the mixture is at least 55°C.

static aerated pile — an unconfined composting process involving mechanical aeration of insulated compost piles. The sewage sludge in the insulated pile is maintained at operating conditions of 55°C or greater for three days.

within vessel — a confined composting process involving mechanical mixing of compost under controlled environmental conditions so that the sewage sludge is maintained at operating conditions of 55°C or greater for three days.

b. Heat drying — A process by which dewatered sewage sludge cake is dried by direct or indirect contact with hot gases, and moisture content is reduced to 10 percent or lower. Sewage sludge particles must reach temperatures in excess of 80°C, or the wet bulb temperature of the gas stream in contact with the sewage sludge at the point where it leaves the dryer must be in excess of 80°C.

c. Heat treatment — A process by which liquid sewage sludge is heated to temperatures of 180°C for 30 minutes.

d. Thermophilic aerobic digestion — A process by which liquid sewage sludge is agitated with air or oxygen to maintain aerobic conditions at residence times of 10 days at 55-60°C. ~~with a volatile solids reduction of at least 38 percent.~~ The level of volatile solids in the sewage influent must be reduced by at least 38 percent after processing.

e. Other methods — Other methods or operating conditions are acceptable if pathogens and vector attraction of the sewage sludge (volatile solids) are reduced to an extent equivalent to the reduction achieved by any of the above methods.

27. Process to Significantly Reduce Pathogens (PSRP).

a. Aerobic digestion — A process conducted by agitating sewage sludge with air or oxygen to maintain aerobic conditions at residence times ranging from 60 days at 15°C to 40 days at 20°C. ~~with a volatile solids reduction of at least 38 percent~~. The level of volatile solids in the sewage influent must be reduced by at least 38 percent after processing.

b. Air drying — A process by which liquid sewage sludge not exceeding nine inches in depth is allowed to drain and/or dry on underdrained sand beds, or paved or unpaved basins. ~~in which the sludge is at a depth of nine inches.~~ A minimum of three months is needed, two months of which temperatures average on a daily basis above 0°C.

c. Anaerobic digestion — A process conducted in the absence of air at resident times raning from 60 days at 20°C to 15 days at 35°C to 55°C. with a volatile solids reduction of at least 38 percent. The level of volatile solids in the sewage influent must be reduced by at least 38 percent after processing.

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d. Composting — Using the within-vessel, static aerated pile, or windrow composting methods, the sewage sludge is maintained at minimum operating conditions of 40°C for 5 days. For four hours during this period the temperature exeeds 55°C.

e. Lime stabilization — A process by which sufficient lime is added to produce a pH of 12 after 2 hours of contact.

f. Other methods — Other methods or operating conditions are acceptable if pathogens and vector attraction of the sewage sludge (volatile solids) are reduced to an extent equivalent to the reduction achieved by any of the above methods.

28. Public access control — Conditions which will control unauthorized access to the site. Fencing or posting of appropriate signs is necessary if the site is likely to be frequented by the general public. If the site is remote, or used for agricultural purposes, fencing and posting are not required if inadvertant public contact is deemed unlikely.

29. Residential development — A concentration of human residences equaling or exceeding ten residences within ten acres.

30. Root crops — Plants whose edible parts are grown below the soil surface.

31. Sewage sludge — ~~As defined in Minnesota Laws 1980, Chapter 564, Art. I, Sec. 3, Subd. 29, which is t~~The solids and associated liquids in municipal wastewater which are encountered and concentrated by a municipal wastewater treatment plant ~~for disposal at a sewage sludge disposal facility~~. Sewage sludge does not include incinerator residues and grit, scum, or screenings removed from other solids during treatment.

~~Sewage sludge disposal facility — As defined in Minnesota Laws 1980, Chapter 564, Art. I, Sec. 3, Subd. 30, which is property owned or leased by a political subdivision and used for interim or final disposal or landspreading of sewage sludge.~~

~~a. Dedicated sewage sludge disposal facility is any facility that is devoted to and managed for the primary function of sewage sludge storage, composting, or landspreading.~~

~~b. Non-dedicated sewage sludge disposal facility is any facility that is devoted to and managed for the primary function of crop production, around which sewage sludge landspreading and interim storage is scheduled and managed.~~

32. Sewage sludge solids — The total, over-dry (105°C) solids in sewage sludge.

33. Site — Publicly or privately owned or leased property used for landspreading, composting, or continuous storage of sewage sludge.

34. Soil pH — A measure of the acidity or alkalinity of soil. A soil pH value of 7.0 is neutral. The value is obtained by sampling the soil to the depth of nine inches and analyzing by the electrometric method. ("Methods of Soil Analysis, Agronomy Monograph No. 9," C. A. Black, ed., American Society of Agronomy, Madison, Wisconsin, pp. 914-926, 1965.)

35. Soil texture — The relative proportion of the soil separates sand, silt and clay.

a. Coarse texture: USDA textural classification sands and loamy sands ~~and sandy loams~~.

b. Medium texture: USDA textural classification sandy loams, loams, silt loams, and silts.

c. Fine texture: USDA textural classification clay loams and clays.

36. Spray application — Liquid sewage sludge application by sprinkling devices such as center pivots and stationary or movable spray irrigation mechanisms.

37. Spring — Any natural surface discharge of ground water large enough to flow in a small rivulet.

38. Surface application — Sewage sludge spread on the surface of the land and not incorporated into the soil within 48 hours of application.

39. Temporary storage — The storage of dewatered sewage sludge for a period of less than one month at a landspreading site not located at the place of sewage sludge generation.

40. Ten year flood plain — The lowland and relatively flat areas adjoining surface waters which are inundated by a flood, which can be expected to occur, on an average, of once in ten years; or the land area to which flood waters have a ten percent chance of ununding in any given year.

41. USDA — United States Department of Agriculture.

42. Vegetation.

a. Low density — Plant systems characterized by the production of bunch grasses and sparse, slow growing broadleaf and woody vegetation.

b. High density — Plant systems characterized by sod forming grasses and the production of dense, rapidly growing broadleaf and woody vegetation.

43. Water table — As defined in 6 MCAR § 4.8022 with the exception of a perched water table condition which will not be considered as a water table.

C. Applicability.

~~1. This rule shall apply only to persons identified in Section C.2. utilizing sewage sludge disposal practices which involve landspreading, composting or storage. Incineration of sewage sludge is governed by 6 MCAR § 4.0028. Disposal of sewage sludge in sanitary landfills is governed by 6 MCAR §§ 4.6001-.6011.~~

~~2. Paragraphs F. and G. shall apply to:~~

~~a. All political subdivisions.~~

~~b. All persons who own or operate dedicated sewage sludge disposal facilities.~~

~~3. Permits and letters of approval~~

~~a. The following persons shall obtain a State Disposal System Permit pursuant to this rule subject to the following conditions if the sewage sludge disposal facility is not presently permitted or approved by the Agency:~~

~~(1) Class A Sewage Treatment Systems, Other Than Systems Under The Control of The Metropolitan Waste Control Commission~~

~~(a) If a political subdivision owns the sewage sludge disposal facility, the political subdivision shall be the applicant and permittee.~~

~~(b) If a person other than a political subdivision owns the dedicated sewage sludge disposal facility, the owner, the operator, and the political subdivision shall be co-applicants and co-permittees.~~

~~(2) Metropolitan Waste Control Commission Sewage Treatment Systems~~

~~(a) If the Metropolitan Waste Control Commission owns the sewage sludge disposal facility, the Metropolitan Waste Control Commission and the Metropolitan Council shall be co-applicants and co-permittees.~~

~~(b) If a person other than the Metropolitan Waste Control Commission owns the dedicated sewage sludge disposal facility, the owner, the operator, and the Metropolitan Waste Control Commission shall be co-applicants and co-permittees.~~

~~b. If a political subdivision, including the Metropolitan Waste Control Commission, operates a Class A Sewage Treatment System and a person other than the political subdivision owns the non-dedicated sewage sludge disposal facility, the political subdivision shall obtain a Letter of Approval pursuant to this rule if the sewage sludge disposal facility is not presently permitted or approved by the Agency.~~

~~c. Applicants required under Section C.3.a.(1) and under Section C.3.b. by political subdivisions other than the Metropolitan Waste Control Commission shall be submitted within 60 days of the effective date of this rule. If such applications are submitted in a timely manner and if such person is in compliance with Sections F and G of this rule, such persons shall not be deemed in violation of the Permit or Letter of Approval requirements of this rule. Permits required under Section C.3.a.(2) and Letters of Approval required of the Metropolitan Waste Control Commission under Section C.3.b. shall be issued prior to the usage of the proposed sewage sludge disposal facility.~~

1. Landspreading and temporary and interim storage.

a. The following persons shall comply with the requirements of Section F — Requirements for Landspreading and Temporary and Interim Storage of Sewage Sludge:

(1) Political subdivisions that landspread sewage sludge

(2) Persons who own or lease landspreading sites that meet criteria in C.1.b.(2) and (3).

(3) Persons who are under contract to (1) or (2) above to landspread sewage sludge.

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b. The persons identified in C.1.a. shall obtain, and be co-permittees of, a State Disposal Systems Permit if they operate a sewage sludge landspreading site which meets the following criteria:

(1) The sewage sludge is generated by the Metropolitan Waste Control Commission, and

(2) The landspreading site is greater than 40 acres in size, and

(3) The sewage sludge is proposed to be landscaped at the site for five (5) or more consecutive years, or the cumulative loading of lead, zinc, copper, nickel, or cadmium to the landspreading site will exceed 80% of the maximum allowable limit as provided in Sections F.2. and F.3.

c. The Metropolitan Waste Control Commission shall obtain a Letter of Approval for sewage sludge landspreading sites are meeting the criteria set forth in Section C.1.b.(2) and (3) unless they possess a current approval from the agency.

2. Composting and continuous storage.

a. The following persons shall comply with the requirements of Section G — requirements for composting and/or continuous storage of sewage sludge.

(1) Political subdivisions that continuously store or compost sewage sludge.

(2) Persons who own or lease a site used for the continuous storage or composting of sewage sludge.

(3) Persons that are under contract to (1) or (2) above to conduct a continuous storage or composting operation.

b. The persons identified in C.2.a. shall obtain, and be co-applicants and co-permittees of, a State Disposal Systems Permit if they continuously store or compost sewage sludge generated by any sewage treatment system.

3. Incineration. Incineration of sewage sludge is governed by 6 MCAR § 4.0028.

4. Landfilling. Disposal of sewage sludge in sanitary landfills is governed by 6 MCAR §§ 4.6001-4.6012.

5. Applications required under C.2.b. must be submitted within 60 days of the effective date of this rule, with the exception of applications by the Metropolitan Waste Control Commission. The Metropolitan Waste Control Commission must submit an application prior to conducting the proposed sewage sludge management operation.

D. Contents of applications for Letter of Approval and Permit.

1. Applications for Letters of Approval for ~~non-dedicated~~ sewage sludge disposal ~~facilities~~ sites shall include the following specific information, plus any other information necessary to determine the potential impact of the proposed ~~facility~~ operations on ground water, surface water, soil, vegetation or air.

a. Sewage sludge characterization, to include:

(1) Description of the method, retention times, temperatures, and chemical doses used to stabilize the sewage sludge.

(2) Physical and chemical characteristics of the sewage sludge to include:

(a) total solids.

(b) total volatile solids.

(c) pH.

(d) nitrogen (kjeldahl, ammonia, and nitrate).

(e) total heavy metals (zinc, copper, lead, nickel, cadmium, chromium, mercury).

(f) total polychlorinated biphenyls (PCBs).

(g) other parameters that may be necessary include:

(i) soluble salts.

(ii) specific microorganism populations.

(iii) fats, oils and greases.

(iv) toxic organic compounds.

~~(3) Description of industrial contributors to the sewer system which may discharge toxic organic chemicals, the~~

~~type and quantity of chemicals discharged, evaluation of the concentrations of such chemicals in the sewage sludge an the significance of such concentrations.~~

b. Site characterization, to include:

(1) Copies of soil survey maps, if available, and topographic maps ~~plat maps~~ delineating the boundaries of the specific landspreading and stockpiling area and providing the legal description, including township, range, section and quarter sections.

(2) Acreage of the site.

(3) Name and address of landowner.

(4) Map or aerial photo which shows the location of and approximate distance to each of the following features, if within ¼ mile of the site:

(a) surface waters, including dry runs, streams, springs, flowages, ponds, lakes, or wetlands.

(b) ten year flood plains for ~~non-dedicated facilities~~ Letter of Approval applications and hundred year flood plains for ~~dedicated facilities~~ Permit applications.

(c) sinkholes, caves, rock outcrops, mines, pits or quarries.

(d) potable water supply wells or surface intakes.

(e) places of habitation, business or recreational areas.

(f) property lines.

(g) road rights of way.

(h) airports.

(5) Approximate degree (percent) of landslopes at the site.

(6) Approximate depths to ~~ground water~~ the water table and bedrock as obtained from soil Conservation Service soil survey maps or maps of comparable or greater detail or by actual site investigations.

(7) Approximate quantity of sewage sludge previously applied at site.

(8) Soil test results from at least one composite sample taken from at least 15 locations to a depth of 9 inches for each 40 acres of landspreading area. Required parameters include:

(a) USDA textural classification.

(b) organic matter percent.

(c) extractable phosphorus (Bray's No. 1 extractant).

(d) exchangeable potassium (ammonium acetate extractant).

(e) pH (1:1 w/w soil-water suspension).

~~(f) lime requirement to pH 6.5.~~

(f) ~~(g)~~ soluble salts (specific conductance-mmhos/cm).

(g) ~~(h)~~ cation exchange capacity ~~(as estimated from the procedures set out in Appendix A).~~

c. ~~Facility~~ Site management, to include:

(1) Description of the proposed method(s) of sewage sludge disposal.

(2) Name and address of the person who will be operating and managing the proposed sewage sludge disposal ~~facility~~ site.

(3) Description of the ~~lease for~~ agreement for sewage sludge application to the site.

(4) Maximum annual application rate (tons of sewage sludge solids/acre/year, based on nitrogen or cadmium additions whichever is limiting).

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(5) Description of the crops to be grown or dominant vegetation at the site and the intended use of the crops.

(6) Estimated cumulative sewage sludge loading rate at the site (tons of sewage sludge solids/acre, based on cumulative heavy metal limits).

(7) Description of how public access to the site is proposed to be limited.

d. Provisions for interim sewage sludge storage at the site when it is unavailable or inaccessible for immediate landspreading.

(1) Description of the necessity for storage at the site.

(2) Location of the storage area delineated on maps submitted pursuant to D.1.b. (1) of this rule.

(3) Description of how sewage sludge is to be stored.

(4) Acreage of the sewage sludge storage area.

(5) Quantity of sewage sludge to be stored.

(6) Expected duration of storage before landspreading.

(7) Description of precautions or practices to minimize or prevent leachate, runoff or nuisance conditions from the storage area.

2. Application for Permit. Applications for State Disposal System Permits ~~for dedicated sewage sludge and disposal facilities~~ shall include the following specific information, plus any other information necessary to determine the potential impact of the ~~facility~~ operation on ground water, surface water, soil, vegetation or air.

a. Sewage sludge characterization as prescribed in D.1.a. of this rule.

b. Site characterization as prescribed in D.1.b. of this rule, plus the following information:

(1) Description of surface and subsurface characteristics at and within ¼ mile of the site. Specific characteristics that shall be considered include soils, surficial and bedrock geology, surface waters, surface and subsurface drainage and ground water elevations and flow.

(2) A discussion of the potential for surface runoff or drainage from the ~~facility~~ site to surface water and/or low areas having shallow water tables. A description of any provisions or practices that will be utilized to control surface runoff or drainage.

(3) A discussion of the potential for leachate generation during and following rainfall events and subsequent movement to ground water. A description of the provisions or practices that will be utilized to control leaching and protect ground water quality.

(4) A discussion of the potential for pathogen movement from the proposed ~~facility~~ site to the surrounding environment via wind currents and disease vectors. A description of the provisions or practices that will be utilized to control pathogen dispersions.

(5) A discussion of the potential for odor generation impacting the surrounding area. A description of the provisions or practices that will be utilized to control odors. Land use and zoning within ¼ mile of the ~~facility~~ site shall also be described.

c. Information prescribed in D.1.b.(7) and (8) need not be submitted for composting or continuous storage sewage sludge disposal ~~facilities~~ sites, but a map showing the locations of and distance to all nursing homes and hospital within ½ mile shall be submitted for composting sites.

d. Description of management provisions at landspreading ~~sewage sludge disposal facilities~~ sites as prescribed in D.1.c. of this rule.

e. Description of management and operational provisions at composting sewage ~~sludge disposal facilities~~ sites, which shall include:

(1) Types of bulking agent to be used.

(2) Ratio of sewage sludge to bulking agent.

(3) Method to be used for mixing the sewage sludge with the bulking agent.

(4) Estimated temperatures that the compost will attain and the period of time the temperatures will be sustained.

(5) Length of time compost will be cured.

(6) The quantity and source of sewage sludge to be delivered to the facility on a weekly or monthly basis, whichever is more applicable.

(7) A comprehensive survey of proposed and potential users and markets of the sewage sludge compost. A description of the methods and areas of distribution.

f. Description of management and operational provisions at continuous storage ~~sewage sludge disposal facilities~~ sites as prescribed in D.1.d. of this rule. Also, the quantity and source of sewage sludge to be delivered to the ~~facility~~ site on a weekly or monthly basis, whichever is more applicable.

E. Administration of Letter of Approval and Permit Programs.

1. Administration of State Disposal System Permits ~~for dedicated sewage sludge disposal facilities~~ shall be governed by rule 6 MCAR § 4.8036.

2. Administration of Letters of Approval ~~for non-dedicated sewage sludge disposal facilities~~ shall be governed by the following procedures:

a. Review. All applications shall be reviewed for completeness by the director. If the application is incomplete ~~or otherwise deficient~~, the director shall promptly advise the applicant of such incompleteness ~~or deficiency~~. Further processing of the application may be suspended until the applicant has supplied the necessary informtion ~~or otherwise corrected the deficiency~~.

b. Preparation of preliminary determinations. The director shall make a preliminary determination regarding a completed application. This preliminary determination shall include a proposed determination to issue or to deny the approval sought in the application.

(1) If the preliminary determination is to deny an approval, the director shall notify the applicant in writing and include the specific reasons for denial. The applicant may request an appearance before the agency to appeal the denial pursuant to agency rules of procedure, 6 MCAR § 4.3003.

(2) If the preliminary determination is to issue an approval, the procedures set out in E.2.c. and E.2.d. shall apply.

c. Public participation.

(1) The director shall provide notice of the application and a copy of the draft Letter of Approval to the following persons and other persons known by the director to have an interest in the proposed approval.

(a) Applicant.

(b) Owner and occupier of land proposed to be used for sewage sludge disposal.

(c) City or township and county officials of area where sewage sludge disposal ~~facility~~ site is located.

(2) Any interested person, including the applicant, may within 14 days following the date of issuance of the notice submit written comments on the application and the proposed approval to the director.

(3) All written comments submitted during the comment period shall be retained and considered in the formulation of final determinations concerning the application.

d. Final determination.

(1) The director shall attempt to resolve all comments prior to a final determination concerning the application. If such comments have been resolved, the director shall issue or deny the approval.

(2) If all comments cannot be resolved, the application shall be presented to the agency, who shall issue or deny the approval.

(3) All persons submitting comments on the application and the proposed approval shall be notified of the final determination concerning the application.

e. Denial of approval. Approval shall be denied if:

(1) The proposed ~~sewage sludge disposal facility~~ site does not comply with this rule and other applicable state or federal laws or rules; or

(2) Such approval is likely to cause pollution, impairment or destruction of the air, water, land or other natural resources of the state and there is a feasible and prudent alternative.

f. Modification, suspension and revocation of Letters of Approval. A Letter of Approval may be modified, suspended or revoked in accordance with the requirements of 6 MCAR § 4.8036.

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g. Duration of approvals. The Letter of Approval shall establish the term of the approval. In no case shall such term exceed the term of the political subdivision's National Pollutant Discharge Elimination System or State Disposal System sewage treatment system permit.

h. Enforcement. A Letter of Approval issued to a political subdivision pursuant to this rule shall become part of the political subdivision's National Pollutant Discharge Elimination System or State Disposal System sewage treatment system permit and shall be enforceable to the same extent as the permit.

F. Requirements for ~~sewage sludge disposal facilities used for~~ landspreading and temporary and interim storage of sewage sludge.

1. Disease control. The landspreading of sewage sludge shall be managed in such a manner to minimize the potential for disease transmission to animals and humans.

a. Sewage sludge shall, at a minimum, be treated by a Process to Significantly Reduce Pathogens (PSRP) prior to landspreading.

b. Sewage sludge shall be treated by a Process to Further Reduce Pathogens (PFRP) in the following cases:

(1) If crops for direct human consumption are to be grown within 18 months of sewage sludge application and there will be contact between the sewage sludge and the edible portion of the crop.

(2) Public access to the landspreading ~~facility~~ site is not controlled for 12 months.

c. If sewage sludge is to be applied to land used for pasturing livestock or for growing forage crops, the pasturing or harvesting of the crop shall not be permitted for at least one month following the last sewage sludge application unless the sewage sludge was treated by a PFRP.

2. Soil ph and cadmium application. The landspreading of sewage sludge shall be managed in such a manner to minimize the potential for cadmium uptake by food-chain crops.

a. The pH of the soil/sewage sludge mixture shall be 6.5 or greater at the time of each sewage sludge application or shall be adjusted to and maintained at 6.5 or greater immediately after sewage sludge application and before growing food-chain crops.

b. Annual cadmium application shall not be more than 0.5 pounds per acre on land used for the production of tobacco, leafy vegetables or root crops grown for human consumption. For other food-chain crops, the annual cadmium application shall not exceed two pounds per acre.

c. Cumulative cadmium application shall not exceed:

Soil Cation Exchange Capacity (meq/100g)	Maximum Cumulative Cadmium Application (LBS/A)	
	Background Soil pH Less Than 6.5*	Background Soil pH 6.5 or Greater
0-5	5	5
5-15	5	10
>15	5	20

3. Cumulative heavy metal additions. The total quantity of sewage sludge applied to a ~~facility~~ site shall be managed in such a manner to prevent excessive heavy metal accumulation in the soil and subsequent potential plant and food-chain toxicity. Sewage sludge application to a ~~facility~~ site shall be terminated when the sum addition of any one metal equals the level given below for that particular metal and soil.

Metal	Total Heavy Metal Addition (LBS/A		
	Soil Cation Exchange Capacity (meq/100g)		
	0-5	5-15	>15
Lead	500	1000	2000

*For soils with a background pH of less than 6.5, the cumulative cadmium application rate can be the same as for soils with a background pH of 6.5 or greater provided that the pH of the soil/sewage sludge mixture is adjusted to and maintained at 6.5 or greater whenever food-chain crops are grown.

Zinc	250	500	1000
Copper	125	250	500
Nickel	50	100	200

4. Sewage sludge application rates. The landspreading of sewage sludge shall be conducted in such a manner to minimize nitrate movement to ground water and minimize the build-up of soluble salts in soil.

a. Sewage sludge application rates, combined with other known nitrogen sources, shall supply no more nitrogen than the amount required by the crop to be grown. The rate of sewage sludge application shall be determined using the method outlined in Appendix B.

b. Sewage sludge application to a ~~facility~~ site shall be suspended whenever the electrical conductivity of a saturation extract of soil exceeds four millimhos/centimeter (soluble salt test).

5. Persistent organic chemical limitations. The landspreading of sewage sludge shall be managed in such a manner to minimize the build-up of polychlorinated biphenyls (PCBs) and other persistent organic chemicals in soil.

a. Sewage sludge containing concentrations of PCBs equal to or greater than 10 mg/kg (dry weight) shall be incorporated into the soil when applied to land used for producing food-chain crops.

b. Sewage sludge containing concentrations of PCBs equal to or greater than 50 mg/kg (dry weight) shall not be landspread.

~~c. Sewage sludge application rates and the operation of a facility shall be managed such that the threat of contamination by toxic organic chemicals to surface water, ground water, soil and vegetation is minimized.~~

6. Separation distances. The landspreading of sewage sludge shall be managed in such a manner as to include adequate buffer zones. The buffer zones shall suitably isolate the ~~facility~~ operation, thereby reducing potential impacts to neighboring residents, potable water supplies, ground water and surface waters.

a. For medium and fine textured soils, at least 3 feet of soil shall exist between the soil surface and the water table and/or bedrock. For coarse textured soils and sandy loams, this separation distance shall be at least 6 feet.

b. A distance of at least 200 feet from any potable water supply well, with the exception of test or monitoring wells, shall be maintained.

c. ~~A distance of at least 50 feet from any property line or road right-of-way shall be maintained.~~ The land application of sewage sludge shall be conducted such that sewage sludge is not applied to adjoining property or to road right-of-ways.

d. A distance of at least ~~500~~ 200 feet from any place of habitation and a distance of at least 600 feet from any residential development ~~or~~ business or area used for recreational purposes shall be maintained, unless written permission is obtained from the appropriate party.

e. Separation distances prescribed in parts c. and d. above shall be increased 6-fold where sewage sludge is applied by pressurized spray.

f. A distance of at least 200 feet for coarse-textured soils and at least 300 feet for medium and fine textured soils shall be maintained from any dry run, pond, lake, stream, spring, ~~flowage,~~ or ten year flood plain ~~shall be maintained~~ where sewage sludge is surface applied during the months of May to October, inclusive. ~~This~~ These separation distances shall be doubled (400 and 600 feet) where sewage sludge is surface applied during the months of November to April, inclusive.

g. A distance of at least 100 feet from any dry run, pond, lake, stream, spring, ~~flowage,~~ or ten year flood plain shall be maintained where sewage sludge is ~~injected or immediately~~ incorporated into the soil.

7. Temporary sewage sludge storage. The temporary stockpiling of dewatered sewage sludge at a site shall be managed in such a manner to minimize the potential for adverse environmental effects. The sewage sludge stockpiled at a site shall be landspread as soon as possible.

a. Separation distances for temporary sewage sludge stockpiles shall be the same as those presented in F.6.a., F.6.b., F.6.d. and F.6.f. for sewage sludge landspreading.

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b. Temporary sewage sludge stockpiles shall not be located within 200 feet of any road right of way or adjoining property without the written permission of the owner.

c. Temporary storage of sewage sludge is prohibited for a period in excess of one month.

8. ~~7.~~ Interim sewage sludge storage. The interim stockpiling of dewatered sewage sludge at a ~~facility~~ site shall be managed in such a manner to minimize the potential for adverse environmental effects. The sewage sludge stockpiled at a ~~facility~~ site shall be landspread as soon as possible.

a. Interim sewage sludge stockpiles shall be placed at least 1000 feet from any place of habitation, business, area used for recreation, or potable water supply well, unless written permission is obtained from the appropriate party.

b. Interim sewage sludge stockpiles shall be placed at least 1000 feet from any dry run, pond, lake, stream, spring, ~~flowage,~~ or ten year flood plain, unless the stockpiles are bermed to a height of 1 foot or if the stockpiles are downgradient from the features mentioned, in which case the separation distance may be reduced to 200 feet.

c. Interim sewage sludge stockpiles shall not be allowed on land with greater than 2% slope, unless the stockpiles are bermed to a height of 1 foot, in which case the maximum land slope may be increased to 6%.

d. Interim sewage sludge stockpiles shall not be ~~stockpiled~~ located on soils ~~of~~ having ~~permeability~~ permeabilities greater than 6 inches per hour throughout the top six feet, unless the stockpiles are underlain by an impervious or absorbent material, such as clay, crushed and packed limestone, plastic, straw or woodchips.

e. ~~A~~ Wherever interim sewage sludge stockpiles are located, a minimum distance of 6 feet shall exist between the soil surface and the water table. ~~wherever sewage sludge is stockpiled.~~

f. Interim storage of sewage sludge is prohibited for a period in excess of ~~six~~ seven months.

9. ~~8.~~ Prohibited sites and other limitations.

a. Sewage sludge shall not be disposed of on or into any cave, sinkhole or wetland ~~mine, gravel pit, or quarry, or wetland, or on any land without theowner's permission~~. Except as part of a reclamation project, sewage sludge shall not be disposed of in or on any mine, gravel pit or quarry.

b. Sewage sludge shall not be applied on any land without the permission of the owner.

c. ~~b.~~ Sewage sludge shall not be applied to coarse sands or gravel soils.

d. ~~c.~~ Organic soils (peat) shall not be utilized for sewage sludge application unless adequately drained.

e. ~~d. Individual~~ Daily surface applications of liquid sewage sludge shall not exceed:

coarse textured soil—25,000 gallons per acre
medium textured soil—15,000 gallons per acre
fine textured soil—10,000 gallons per acre

f. ~~e.~~ Sewage sludge shall not be applied to land that is to be left in fallow during the summer months (May to September, inclusive).

g. ~~f.~~ Surface application of sewage sludge shall not be allowed on land with a slope greater than 6%. Subsurface application or immediately incorporated application of sewage sludge shall not be allowed on land with a slope greater than 12%.

h. ~~g.~~ Sewage sludge shall be applied to land in such a manner as to provide uniform spreading (application) over the entire site.

i. ~~h.~~ The boundary of a ~~an application~~ landspreading site shall be identified prior to and during application with the use of conspicuous flags placed every 100 feet along its border unless apparent boundaries, such as fence rows, roads, tree lines, steep slopes, etc., exist.

10. ~~9.~~ Requirement for record-keeping and annual reporting.

a. A record-keeping system shall be initiated and maintained by the political subdivision to verify compliance with the rules and limitations herein. The information recorded in such a system shall include the following:

(1) Required sewage sludge composition data pursuant to D.1.a.

(2) Soil test data for application sites used during the year, pursuant to D.1.b.(8).

(3) The location of the landspreading and stockpile sites on a topography or soil survey map and the number of acres to which sewage sludge was applied.

(4) The amount of sewage sludge applied (tons sewage sludge solids/acre).

(5) The known amount of available nitrogen applied per year (lbs/acre).

(6) The amount of cadmium, zinc, lead, nickel, and copper applied per year and cumulatively (lbs/acre).

(7) Vegetation grown on each site during the year.

(8) A description of any adverse environmental, health, or social effects, complaints, management problems, or other difficulties encountered during the year due to sewage sludge disposal.

(9) Results of any other required monitoring, i.e., ground water, soils, vegetative tissue, etc.

(10) A report of any action not in conformance with the Letter of Approval, Permit, or this rule.

b. The records and information prescribed above shall be organized into a report to be submitted annually to the Agency no later than 60 days following the end of the reporting year (by March 1). If any of the information was submitted as part of an application for a Permit or Letter of Approval it need not be re-submitted.

G. Requirements for ~~sewage sludge disposal facilities used for~~ composting and/or continuous storage of sewage sludge.

1. Disease control.

a. Sewage sludge shall be treated by a PSRP and/or by a PFRP prior to storage or composting, unless, in the case of composting, the composting operation qualifies as a PSRP or a PFRP.

b. Composting ~~sewage sludge disposal facilities~~ operations shall not be located within ¼ mile of any hospital or nursing home.

c. Public access to composting and continuous storage sewage sludge disposal ~~facilities~~ sites shall be controlled.

2. General limitations.

a. ~~The operation of a~~ A continuous storage ~~sewage sludge disposal facility~~ site shall be ~~conducted~~ managed in such a manner as to minimize ground water and surface water pollution, soil contamination, public health, safety and welfare hazards, and nuisance conditions.

b. The operation of a composting ~~sewage sludge disposal facility~~ site shall be conducted in such a manner as to minimize ground water and surface water pollution, soil contamination, public health, safety and welfare hazards, and nuisance conditions.

c. Necessary precautions and safeguards shall be undertaken in the disposal/distribution of sewage sludge compost such that ground water and surface water pollution, soil contamination, public health, safety and welfare hazards, and nuisance conditions are minimized.

d. The removal and final disposal of sewage sludge from a continuous storage sewage sludge disposal ~~facility~~ site shall comply with all requirements and limitations set forth in Section F of this rule.

e. A ~~facility~~ site used for sewage sludge composting or continuous storage shall not be utilized as a ~~facility~~ site for final disposal. Sewage sludge or sewage sludge compost shall be removed from the ~~facility~~ site regularly (periodically) for final disposal.

3. Record-keeping and annual reporting.

a. A record-keeping system shall be initiated and maintained by the permittee to verify compliance with the requirements and limitations herein. The information recorded in such a system shall include the following:

(1) Required sewage sludge composition data as outlined in D.1.a. of this rule.

(2) The quantity of sewage sludge delivered to the ~~facility~~ site.

(3) The quantity of sewage sludge or sewage sludge compost removed from the ~~facility~~ site.

(4) A list of the locations to which the sewage sludge or sewage sludge compost was delivered after removal from the composting or continuous storage sewage sludge disposal ~~facility~~ site.

(5) A description of the precautions and safeguards employed in the disposal/distribution of sewage sludge compost.

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(6) Results of any required monitoring, i.e., ground water, surface water, soil, etc.

(7) A description of any adverse environmental, health, or social effects, complaints, management problems, or other difficulties encountered ~~due to the operation of the sewage sludge facility~~ as a result of sewage sludge continuous storage or composting operations.

(8) A report of any action not in compliance with the Permit or this rule.

b. The records and information prescribed above shall be organized into a report to be submitted quarterly to the agency no later than 60 days following the end of the reporting quarter.

H. Severability. If any provision of this rule or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect other provisions of this rule or application of any other part of this rule which can be given effect without application of the invalid provision. To this end the provisions thereof are declared to be severable.

I. Variance. ~~In any cases where upon application of the responsible person or persons, the Agency finds that by reason of exceptional circumstances the strict enforcement of any provision of this rule would cause undue hardship, that disposal of the sewage sludge is necessary for the public health, safety or welfare, or that strict conformity with this rule would be unreasonable, impractical or not feasible under the circumstances, the Agency in its discretion may permit a variance therefrom upon such conditions as it may prescribe for prevention, control or abatement of pollution in harmony with the general purpose of this rule and the intent of applicable state and federal law~~. Any person may apply for a variance from any requirements of this rule. Such variances shall be applied for and acted upon by the agency in accordance with Minn. Stat. § 116.07 subd. 5 (1980) and other applicable statutes and rules.

Appendix A

Estimate of Soil Cation Exchange Capacity

Using the values of soil texture and organic matter percentage, as determined by appropriate soil test procedures, a particular soil's cation exchange capacity can be estimated by using the table given below:

Cation Exchange Capacity

(milliequivalents/100 gms)

	Soil Organic Matter Level		
Texture	**Low (<2%)**	**Medium (2-4%)**	**High (>4%)**
Coarse	0-5	5-15	5-15
Medium	5-15	5-15	>15
Fine	>15	>15	>15

NOTE: It is recognized that soil cation exchange capacity (CEC) is not the only factor important in setting levels of metal additions to soil. It is used as an index which is proportional to the ability of a soil to minimize or limit heavy metal availability. Other soil chemical processes that are proportional to exchange reactions and also reduce the availability of heavy metals are sorption and precipitation reactions and metal complexation.

Appendix B

Determination of Sewage Sludge Application Rate Based on Crop Nitrogen Requirements

Sewage sludge application rates shall be based upon sewage sludge nitrogen availability, carry-over nitrogen supplied by past sewage sludge applications, available nitrogen added by manures or fertilizers, soil texture, and crop nitrogen requirements and yield goals.

Step 1

Based on cropping practices and soil texture, determine the maximum allowable available nitrogen level from Table 1 or 2.

Step 2

Determine carry-over nitrogen from the previous years sewage sludge application using the following formula:

~~Carry-over N = (% organic sewage sludge N) × (lbs./acre) (tons sewage sludge solids applied per acre)~~

Carry-over N (lbs./acre)=(% organic sewage sludge N)×(tons sewage sludge solids applied per acre)

If sewage sludge was not applied the previous year, carry-over nitrogen is zero.

Step 3

Subtract carry-over nitrogen and nitrogen added from other sources (e.g. fertilizer, animal manure), if known, from the maximum allowable available nitrogen level.

Step 4

Determine the available nitrogen in sludge using the appropriate formula in Table 3.

Step 5

Divide the maximum allowable available nitrogen level (lbs./acre) from Step 3 by the available nitrogen in sludge (lbs./ton) from Step 4 to obtain the sewage sludge application rate in tons of solids per acre per year.

Table 1

Maximum Allowable Available Nitrogen Levels for Various Crops, Yields and Soil Textures

		Maximum Allowable Available Nitrogen Level (lbs./acre) —Soil Texture—		
Crop	Yield/Acre	Coarse	Medium	Fine
Alfalfa	4 ton	180	210	230
	6 ton	280	340	370
Barley	80 bushel	100	110	120
Bluegrass	3 ton	180	210	230
Corn	75 bushel	100	120	130
	100 bushel	130	150	160
	125 bushel	150	180	190
	150 bushel	180	210	230
	175 bushel	210	250	270
Oats	75 bushel	80	90	100
	100 bushel	130	150	160
Soybeans	30 bushel	120	140	150
	40 bushel	180	210	230
	50 bushel	230	270	300
	60 bushel	280	340	370
Wheat	50 bushel	100	120	130
	75 bushel	160	180	190

Table 2

Maximum Allowable Available Nitrogen Levels for Non-Cropped, Non-Harvested Areas

	Maximum Allowable Available Nitrogen Level (lbs/acre) ----------Soil Texture----------		
Degree of Vegetative Cover	Coarse	Medium	Fine
High density	75	100	125
Low density	50	75	100

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Table 3

Formulas for Determination of Available Nitrogen in Sewage Sludge
(pounds of available nitrogen per ton of sewage sludge solids)

Type of Stabilization	Application Method	Formula
Digested	Surface . . .	(% organic-N × 4) + (%NH_3-N × 10)
	Incorporated or Injected . .	(% organic-N × 4) + (% NH_3-N × 15)
Chemically or Physically	Surface . . .	(% organic-N × 6) + (% NH_3-N × 10)
Stabilized or Unstabilized	Incorporated or Injected . . .	(% organic-N × 6) + (% NH_3-N × 15)

Department of Public Welfare
Mental Health Bureau

Adopted Temporary Rules Governing Standards for Approval of Mental Health Centers and Mental Health Clinics for Insurance Reimbursement

The proposed temporary DPW Rule 29 (12 MCAR § 2.029) published at *State Register*, Volume 5, Number 34, p. 1298, February 23, 1981 (5 S.R. 1298) was adopted on the 31st day of March, 1981, approved by the Office of the Attorney General on the 3rd day of April, 1981, and filed the 17th of April, 1981, with the following amendments:

12 MCAR § 2.029 D.6. Competent: Having qualifications and abilities in assessment, diagnosis and treatment strategies ~~to provide certain mental health services,~~ based on experience, education~~,~~ and training ~~and personal characteristics; having qualifications in assessment, diagnosis and treatment strategies, and the ability to work well with certain categories of clients.~~

D.18. Mental health practitioner: A staff member not in E.3.d., E.3.e., or E.3.~~f.~~g. providing clinical services under the direct supervision of a mental health professional, with ~~identifiable training and~~ areas of competence, and either a) bachelor's degree in a mental health field from an accredited college or university and one year of supervised clinical experience; b) three years of supervised clinical experience; c) a graduate student formally assigned to the center or clinic by their accredited college or university; or d) a masters or other graduate degree in a mental health field from an accredited college or university.

D.20. Mental illness: A condition with physiological, psychological, and/or social components, which results in an inability to interpret the environment realistically and in an impaired functioning in primary aspects of daily living such as personal relations, living arrangements, work, and recreation~~. For purposes of reimbursement under the terms of this rule, mental illness shall mean a condition~~ and is listed in the International Classification of Diseases (ICD-9-CM) whose classification category and code is included in the range 290.0-302.99 or 306.0-315.99, or the corresponding code in the American Psychiatric Association Diagnostic and Statistical Manual (DSM-III), Axes I, II or III.

E.1.b. Each mental health center or clinic shall have a case record and individual treatment plan for each client for whom treatment services are reimburseable through group health insurance or subscriber contract. The case record shall include ~~a)~~ i. the DSM-III or ICD-9-CM diagnosis; ~~b)~~ ii. indications of clinical services received by the client, including peer review and consultation notes; ~~c)~~ iii. the treatment plan; and ~~d)~~ iv. at the closing of the case, a statement of treatment outcome. Case records shall be maintained sufficiently to determine good practice. The individual treatment plan, based upon a diagnostic assessment of mental illness, shall be jointly developed by the client and mental health professional. The plan shall include ~~a)~~ i. client or family history; ~~b)~~ ii. statement of the presenting problem as seen by the client; ~~c)~~ iii. measurable treatment goals; and ~~d)~~ iv. treatment strategy. Clinical services shall be provided in accordance with the plan, and updated as needed with the client. A mental health professional shall be responsible for the treatment of each client.

E.1.c. Clinical services shall be appropriate to the presenting problem, age, sex, socioeconomic and ethnic background of the client, and provided in the least restrictive manner. ~~Clinical services shall be provided in accordance with existing professional codes of ethics.~~ Appropriateness of clinical service is subject to review through quality assurance standards (Section E.2).

E.1.d. If the appropriate treatment and/or the client desired treatment is not available at the mental health center or clinic, the facility, ~~shall make~~ with the consent of the client, may facilitate appropriate referrals ~~for the client.~~

E.2.c. Each mental health clinic or center shall ensure that the client has been informed by the multidisciplinary staff member(s) of the staff's assessment of the problem; treatment alternatives; possible outcomes and side effects of treatment modalities; staff recommendations for treatment; approximate length, cost and hoped for outcome of treatment; the prospective client's rights and responsibilities if (s)he consents to the treatment plan; staff rights and responsibilities; the Government Data Practices Act; and procedures for reporting alleged violations of client rights. If the client is considering chemotherapy, hospitalization, or other medical treatment, the appropriate medical staff member shall inform the client of the treatment alternatives, action of the medication or medical procedure, and its possible side effects.

E.2.e. Each mental health center or clinic shall have an established staff supervision procedure~~. A staff organization chart~~ and documentation of the ongoing nature and existence of supervisory activity ~~shall be required~~. A staff organization chart shall be required.

E.2.f. Each mental health center or clinic shall have an established internal utilization review system. The system shall permit periodic examination of an ~~agency's~~ center or clinic operations to determine if resources are being used effectively and efficiently, and review of the cost and quality of clinical services delivered. Utilization data is to be compiled and documentation of the application of such information to ~~agency~~ center or clinic operations shall occur annually.

E.2.h. Each mental health center or clinic shall ensure that assignment for treatment is made to an appropriate staff member, competent in the recommended treatment strategy and in treating the individual client characteristics. Clinical services shall be provided in accordance with existing professional codes of ethics.

E.2.j. Each mental health clinic or center shall develop procedures for the ~~investigation and/or~~ reporting of suspected abuse or neglect of clients ~~in accordance with the Vulnerable Adults Act, Minnesota Laws, 1980, Chapter 542; Reporting of Maltreatment of Minors, Minn. Stat. § 626.556; and existing professional codes of ethics.~~

E.3.a. Each applicant mental health center and clinic shall employ a multidisciplinary staff in psychology, psychiatry and related disciplines consistent with any personnel standards developed pursuant to Minn. Stat. § 214 for any human services occupation now credentialed or which may be credentialed by the state. Employment records shall be maintained sufficiently to determine the clinical services qualifications and terms and conditions of employment for each multidisciplinary staff person.

E.3.e. The mental health professional staff shall include a clinical social worker with a masters degree in social work from an accredited college or university or its equilvalent with at least two (2) years of post-masters supervised experience in direct clinical services and/or a clinical psychiatric registered nurse with a masters degree from an accredited college or university or its equivalent who is licensed under the Section Minn. Stat. § 148.171-148.285 with at least two years of post-masters supervised experience in direct clinical services. A minimum of ~~one (1)~~ forty (40) hours of supervisory contact per ~~week~~ year is required to classify clinical experience as supervised.

E.e.g. The mental health professional staff may also include clinical, counseling, or health care psychologists with a master's degree from an accredited college or university or its equivalent with at least two (2) years of post-master's supervised experience in direct clinical services or who is licensed under Minn. Stat. §§ 148.88-148.99; and/or a person with a masters degree from an accredited college or university or its equivalent in an allied mental health field, which degree is established by the person's official transcript to minimally include 36 semester hours of graduate course work in clinical theory and supervised clinical work, with at least two (2) years of post-master's supervised experience in direct clinical services. A minimum of ~~one (1)~~ forty (40) hours of supervisory contact per ~~week (35~~ year ~~hours of clinical services)~~ is required to classify clinical experience as supervised.

F.2. When a completed application has been received, the commissioner shall begin the formal review, including the on-site survey. Documentation of standards, as ~~agency~~ clinic or center policy and as procedures implemented in the provision of clinical services, shall be reviewed. If implementation of a procedure is too recent to be reliably documented, a written statement of the planned implementation shall be accepted as documentation on the initial application. The review shall minimally include the following:

F.2.b. Review of written ~~agency~~ center or clinic policy and procedures for provision of clinical services in a multidisciplinary manner, and documentation of how the procedures are actually in effect on an ongoing basis.

F.2.C.(1) A written ~~agency~~ center or clinic policy on continuing education for all multidisciplinary staff providing clinical

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services, and an assessment of staff professional education and training needs, with the ~~agency~~ center or clinic responsible for showing the relevancy of the continuing education to the identified training needs of its staff.

F.2.C.(7) Internal utilization review written policy and procedures, including the annual application of information to ~~agency~~ center or clinic operations.

H.2. The approval shall be issued only for the ~~location(s) and~~ mental health center or clinic named in the application, and shall not be transferable or assignable to another ~~location or~~ center or clinic. The approval shall be issued only for the location(s) named in the application and shall not be transferable or assignable to another location, unless the commissioner is notified in writing at least 24 hours in advance of such change, and the notification attests that compliance with all provisions of the rule and authorizing statute are maintained.

Department of Transportation

Adopted Rules Relating to Operating Standards for Special Transportation Service

The above-captioned rules (14 MCAR §§ 1.7001-1.7013), proposed and published at *State Register,* Volume 5, Number 16, pp. 633-642, October 20, 1980 (5 S.R. 633) are now adopted, with the following amendments:

Rules as Adopted

14 MCAR § 1.7001 Scope.

A. These standards apply to special transportation service provided on a regular basis by a public or private person that is designed exclusively or primarily to serve individuals who are elderly, handicapped, disabled or economically disadvantaged and who are unable to use regular means of transportation.

B. These standards do not apply to transportation provided by:

1. A common carrier operating on fixed routes and schedules;

2. A taxi;

3. A volunteer driver using a private automobile which belongs to the volunteer;

4. A school bus as defined in Minn. Stat. § 169.01, subd. 6; or

5. An ambulance regulated under Minn. Stat. ch. 144. However, these standards shall apply to ambulances when they are providing special transportation services.

14 MCAR § 1.7002 Authority. These standards are adopted pursuant to the requirements of Minn. Stat. § 174.30, subds. 2 and 5.

14 MCAR § 1.7003 Definitions.

A. "Ambulance" has the meaning given to it in Minn. Stat. § 144.801, subd. 2.

B. "Attendant" means a person who assists in the transportation of passengers in special transportation service vehicles, but who does not drive the vehicle.

C. ~~B.~~ "Commissioner" means the commissioner of transportation.

D. ~~C.~~ "Common carrier" means a regular route common carrier operating on fixed routes and schedules as defined in Minn. Stat. § 221.011, subd. 9.

E. ~~D.~~ "Disabled" means handicapped.

F. ~~E.~~ "Economically disadvantaged" means eligible for any form of public assistance provided for by state law.

G. ~~F.~~ "Elderly" means age 55 and older.

H. ~~G.~~ "Handicapped" means having a physical or mental impairment that limits one or more major life activities.

I. ~~H.~~ "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

J. ~~I.~~ "Motor vehicle" has the meaning given to it in Minn. Stat. § 169.01, subd. 3.

K. ~~J.~~ "Municipality" has the meaning given to it in Minn. Stat. § 466.01, subd. 1.

L. ~~K.~~ "Person" means every natural person, firm, partnership, corporation, association and body politic.

M. ~~L.~~ "Physical or mental impairment" means any physiological disorder or condition or anatomical loss; any mental or psychological disorder and specific learning disabilities and includes but is not limited to, such diseases and conditions as

orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, mental retardation, emotional illness, drug addiction and alcoholism.

N. ~~M.~~ "Provider" means a public or private entity or person who operates special transportation service vehicles.

O. ~~N.~~ "Regular basis" means providing more than an average of 12 round trips per month in any calendar year in a single vehicle or transporting more than 30 passengers per month, whichever is less.

P. ~~O.~~ "School bus" has the meaning given to it in Minn. Stat. § 169.01, subd. 6.

Q. ~~P.~~ "Semi-ambulatory" means having the ability to walk with difficulty ~~and~~ or with the aid of ~~a prosthetic or orthetic device.~~ an artificial limb or personal assistance device such as a brace, a cane, a crutch or a walker.

R. ~~Q.~~ "Special transportation service" means motor vehicle transportation provided on a regular basis by a public or private person that is designed exclusively or primarily to serve individuals who are elderly, handicapped, disabled or economically disadvantaged and who are unable to use regular means of transportation.

S. ~~R.~~ "State" has the meaning given to it in Minn. Stat. § 3.732, subd. 1, clause (1).

T. ~~S.~~ "Variance" means permission to comply in a manner other than that specified.

U. ~~T.~~ "Vehicle" means a motor vehicle used to provide special transportation service.

14 MCAR § 1.7004 Compliance.

A. No person shall provide special transportation service without a current annual certificate of compliance issued by the commissioner.

1. A certificate of compliance shall be issued when the standards set forth in these rules have been met.

2. A certificate of compliance shall be issued to a provider who transports an occupied wheelchair in a vehicle only if the vehicle has been issued a current numbered certificate by the Commissioner of Public Safety pursuant to Minn. Stat. § 299A.14.

B. No special transportation service provider shall provide, offer to provide or represent itself as capable of providing life support transportation service unless it is licensed as required by Minn. Stat. § 144.802.

14 MCAR § 1.7005 Certification.

A. Application for a certificate of compliance shall be made on forms provided by the commissioner. Application forms for certificates of compliance may be obtained from any Department of Transportation district office. All applications shall be delivered or mailed to the Minnesota Department of Transportation, Division of Public Transportation, Transportation Building, St. Paul, Minnesota 55155.

B. Applicants shall submit the following information to the commissioner:

1. A provider application form containing the following information:

a. whether the application is new or a renewal;

b. the name, address, telephone number and area served by the provider;

c. the type of service provided, such as fixed route, route deviation, dial a ride, variable schedule, fixed schedule or other;

d. the category of passengers served (elderly, handicapped, disabled or economically disadvantaged);

e. for each vehicle:

(1) make and year;

(2) seating capacity;

(3) completed checklists showing whether each vehicle carries the safety equipment required by 14 MCAR § 1.7009 B. 1.;

f. if the vehicle will carry an occupied wheelchair;

(1) whether the vehicle is equipped with an approved wheelchair securement device;

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(2) the date that the wheelchair securement device was approved by the Commissioner of Public Safety and the number on the certificate issued by the Commissioner of Public Safety;

g. the name and title of the person who is responsible for the provider's special transportation service;

h. the name and address of each driver, stating whether each complies with the standards set forth in these rules. This information shall be provided annually when the application for a certificate of compliance is filed.

2. A certificate of insurance which shall be mailed to the Department of Transportation by the applicant's insurer.

C. A certificate of compliance shall be granted when the ~~commissioner determines that the~~ applicant complies with the standards set forth in these rules.

D. All applications shall be processed and a certificate of compliance issued or denied in writing within thirty days of the receipt of the complete application by the commissioner and receipt of the certificate of insurance.

E. When a certificate is granted, the provider shall be issued a numbered certificate of compliance which lists each certified vehicle and shows the month and year in which the certification expires.

F. The commissioner shall maintain a record of all certificates of compliance showing the date issued, renewed or revoked.

14 MCAR § 1.7006 Renewal.

A. Thirty to sixty days prior to the expiration of any certificate of compliance, the provider shall request renewal of the certificate on a form provided by the commissioner.

B. The commissioner shall grant or deny requests for renewal in writing prior to the expiration date of the current certificate.

C. A new certificate listing each certified vehicle and showing the month and year in which the certification expires shall be issued to the provider.

14 MCAR § 1.7007 Inspection.

A. Upon receipt of a complaint that any certified provider does not comply with the standards set forth in these rules, the commissioner shall conduct an inspection of the provider's records and vehicles. The inspection shall be conducted within four weeks of receipt of the complaint.

B. All complaints shall be documented and a record maintained of the name and address of the person making the complaint, the date and reason for the complaint and the result of the inspection.

C. The commissioner shall notify any provider not less than 1 week in advance of an inspection and shall conduct the inspection at the provider's office or garage.

D. Inspections conducted under these standards shall comprise:

1. Examination of the records listed in 14 MCAR § 1.7011 A.; and

2. Examination of the vehicles to determine whether the provider complies with the requirements of 14 MCAR § 1.7009 B.

E. Failure to permit an inspection as provided in this section shall be grounds for immediate suspension of the provider's certificate of compliance until the provider permits the inspection.

14 MCAR § 1.7008 Enforcement.

A. Any provider found in violation of any provision of these rules shall be given a thirty day written notice to correct the violation. When the violation threatens the life or safety of passengers, the commissioner shall require the provider to remove the driver or vehicle from operation immediately.

B. At the expiration of thirty days, the commissioner ~~shall~~ may conduct an inspection to determine whether the violation has been corrected. In the case of violations other than those involving vehicle equipment, the provider may mail evidence of compliance to the department.

C. ~~If the violation is not corrected within thirty days, the commissioner shall revoke the certificate of compliance after holding a hearing upon reasonable notice to the provider.~~ If the violation has not been corrected, the commissioner shall suspend the certificate of compliance until the provider complies with the provisions of 14 MCAR § 1.7001 to 14 MCAR § 1.7013. No suspension shall occur unless the commissioner has held a hearing, after thirty days notice to the provider, at which the provider has had the opportunity to show cause why the certificate of compliance should not be suspended. Repeated violations may result in revocation of the certificate.

D. Any enforcement hearing conducted pursuant to these standards shall be conducted in accordance with Minn. Stat. ch. 15.

14 MCAR § 1.7009 Standards for operation of vehicles.

A. Personnel.

1. No driver shall operate a special transportation service vehicle unless that driver:

a. has visual acuity of 20/40 in each eye corrected and a field of vision of at least seventy degrees in the horizontal meridian of each eye; and

b. does not have a hearing loss greater than thirty db in the better ear with or without a hearing aid; and

c. has no current medical condition which interferes with the ability to drive safely.

2. Every two years each driver shall obtain, on a form prescribed by the commissioner, a physician's statement that the driver has no current medical condition which interferes with his or her ability to drive safely. This shall be obtained prior to employment as a driver of a special transportation service vehicle. Employees of facilities which are licensed by the Department of Health or the Department of Public Welfare and required by either of those departments to provide a physician's statement of health on a regular basis may substitute that form or statement for the form required in this section.

3. Each driver ~~or an~~ shall be able to perform a vehicle safety inspection and each driver and attendant in the case of a vehicle which is staffed by a driver and an attendant, shall be able to ~~perform a vehicle safety inspection,~~ assist a passenger into the vehicle and operate a wheelchair lift or ramp if the vehicle is equipped with it.

4. Each driver shall also meet the following criteria:

a. possess a ~~Minnesota~~ driver's license which is valid for the type of vehicle which he or she drives;

b. be at least eighteen years of age and have not less than one year of experience as a licensed driver; and

c. have a driving record clear of revocations, suspensions and cancellations for the past three years except for suspensions which result from unpaid parking tickets.

5. By January 1, 1982, each driver and attendant shall successfully complete a first aid or emergency care course of not less than four hours which shall include instruction in the following elements:

a. treatment of shock;

b. control of bleeding;

c. airway management;

d. prevention and treatment of frostbite and exposure to cold;

e. prevention and treatment of heat exhaustion and heat stroke;

f. identification of sudden illness such as stroke, heart attack, convulsions, fainting and seizures; and

g. appropriate use of emergency medical assistance services;

6. By January 1, 1982, each driver and attendant who transport passengers seated in wheelchairs or who assist passengers in transferring from a wheelchair to a vehicle shall complete a minimum of eight hours training in the techniques of transporting and assisting elderly and physically handicapped passengers which shall include instruction in the following elements:

a. discussion of characteristics of the aging process and major disabling conditions;

b. discussion of common assistive devices used by elderly and handicapped persons;

c. discussion of attitudes toward elderly and handicapped persons which includes the participation of handicapped and elderly persons;

d. instruction in methods of handling wheelchairs;

e. instruction in moving, lifting and transferring passengers;

f. guidelines for transporting handicapped persons; and

g. instruction in the operation of lifts, ramps and wheelchair securement devices if the vehicle to be operated is equipped with them.

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7. By January 1, 1982, each driver and attendant who transport elderly and physically handicapped passengers who do not use wheelchairs or who transport passengers who do not transfer from a wheelchair to a seat in the vehicle shall complete a minimum of four hours training in the techniques of transporting and assisting elderly and physically handicapped passengers, which shall include instruction in the elements listed in 14 MCAR § 1.7009 A.6.a., b., c. and f.

8. Each driver and attendant shall receive instruction in the use of the fire extinguisher.

9. A driver or attendant hired after October 1, 1981, who has not completed the required training prior to providing special transportation service, shall do so within ninety days after beginning to provide such service. Copies of certificates indicating successful completion of courses shall be maintained in the provider's files.

10. Each driver and attendant must successfully complete a refresher first aid or emergency care course every three years. The refresher course shall include instruction in the elements listed in 14 MCAR § 1.7009 A.5.

B. Equipment.

1. Each vehicle when in use shall carry the following safety equipment:

a. one five pound, dry chemical fire extinguisher, A:B:C type, bearing a tag indicating that it has been serviced within the preceding year;

b. an emergency first aid kit in a dustproof container, labeled "FIRST AID," and stored in a location visible to the driver. The kit shall contain at least the following items:

(1) six 4″ × 4″ sterile gauze pads;

(2) two soft roll bandages 6″ × 5 yards;

(3) adhesive tape; and

(4) scissors;

c. a spare tire and jack unless the vehicle is radio-equipped and the provider has a service contract which enables him to summon assistance to change the tire or to summon a substitute vehicle;

d. an operable flashlight;

e. if a vehicle carries children who weigh less than ~~fifty~~ forty pounds, there shall be available in the vehicle a child restraint system which meets the requirements of federal motor vehicle safety standard no. 213, 49 C.F.R. § 571.213;

f. three emergency warning triangles. Both faces of each triangle shall consist of red reflective and orange fluorescent material. Each of the three sides of the triangular device shall be seventeen to twenty-two inches long and shall be two to three inches wide. The units shall be kept clean and in good repair and stored so as to be readily available when needed;

g. from October 1 to April 30, each vehicle shall carry an ice scraper and a blanket;

h. all vehicles with interior fuse boxes shall carry extra electrical fuses.

2. All seats shall be securely fastened to the floor or frame of the vehicle and all vehicles purchased after January 1, 1981 shall have a usable seat belt for each person being transported and for the driver.

3. All ramps shall have a slip-proof surface to provide traction and one end of the ramp shall be secured to the floor of the vehicle when the ramp is in use.

4. A vehicle which is equipped with a wheelchair lift and which carries semi-ambulatory persons who use the wheelchair lift shall be equipped with either a wheelchair lift with an adjustable or removable ~~railings~~ railing which ~~are~~ is thirty-six inches high on ~~two~~ one ~~sides~~ side of the lift or with a folding wheelchair stored on the vehicle when it is in use.

5. Vehicles which carry occupied stretchers or litters shall comply with securement device requirements of the Department of Health contained in 7 MCAR § 1.603 C.4. and C.1.b.

C. Operation.

1. All vehicles shall be maintained and operated in compliance with Minn. Stat. ch. 169 and rules adopted pursuant to that chapter.

2. All providers shall conduct or cause to be conducted, a daily visual safety inspection of the following items:

a. coolant level;

b. lights, turn signals, hazard flashers;

c. tires;

d. windshield wipers and washer fluid;

e. mirrors;

f. fuel level.

3. All providers shall conduct or cause to be conducted a vehicle safety inspection once each ~~a~~ week or every 1000 miles, whichever comes first. The date and mileage at each safety inspection and a notation of needed repairs and replacements shall be made in a driver's logbook which shall be maintained in the vehicle or in the provider's files. The safety inspection shall include inspection of the following items:

a. coolant level;

b. oil level;

c. lights, turn signals, hazard flashers;

d. tires and tire pressure;

e. brake, parking brake and brake fluid level, if visible in the engine compartment;

f. instrument panel;

g. horn;

h. windshield wipers and washer fluid;

i. fan belt;

j. mirrors, inside and outside;

k. wheelchair ramps and lifts and lift electrical systems, if applicable; and

l. wheelchair or stretcher securement device, if applicable.

4. Smoking shall be prohibited in vehicles at all times. A sign stating "NO SMOKING" shall be posted in the vehicle so that it is visible to all passengers.

5. Drivers and passengers shall use seat belts at all times in vehicles which are equipped with them and drivers shall instruct each passenger to use the seat belt. Children who weigh less than ~~fifty~~ forty pounds shall use approved child restraint systems at all times.

6. When any vehicle is stopped for any emergency purpose or is disabled on the roadway or shoulder of any highway outside a business or residence district during the time when lighted lamps must be displayed, the driver shall promptly place an emergency warning triangle on the roadway on the traffic side of the vehicle ten feet from the vehicle in the direction of approaching traffic. A second emergency warning triangle shall be placed approximately 100 feet from the vehicle in the direction of approaching traffic. If the vehicle is stopped or disabled on any one-way roadway, the driver shall place an additional warning triangle approximately 200 feet from the vehicle in the direction of approaching traffic.

D. Maintenance.

1. All vehicles shall be maintained in accordance with the manufacturer's recommended maintenance schedule or an improved schedule based on actual vehicle operating conditions.

2. Providers shall correct any deficiency which might interfere with the safe operation of the vehicle before the vehicle is placed in service.

3. Windows and lights shall be kept clean.

4. Interior of vehicles shall be clean and in good repair.

14 MCAR § 1.7010 Insurance.

A. Each provider shall have in effect an insurance plan which provides the following minimum coverage for each vehicle:

1. Basic economic loss benefits as required by Minn. Stat. ch. 65B;

2. Residual liability coverage in the following minimum amounts:

a. private providers; $100,000 for bodily injury to, or death of any one person in a single accident, subject to a

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

maximum of $300,000 for bodily injuries to, or the death of two or more persons in a single accident, and $50,000 for destruction of, or damage to property in a single accident, or if the policy is written on a single limit basis, $300,000 per occurrence;

b. municipalities; $100,000 for bodily injury to, or death of any one person in a single accident, subject to a maximum of $300,000 for bodily injury to, or death of two or more persons in a single accident, and $50,000 for destruction of, or damage to property in a single accident;

c. the state; $100,000 for bodily injury to, or death of any one person in a single accident, subject to a maximum of $500,000 for bodily injury to, or death of two or more persons in a single accident, and $100,000 for destruction of, or damage to property in a single accident.

3. Uninsured motorist coverage as required by Minn. Stat. ch. 65B.

B. Each provider shall obtain a certificate of insurance for the special transportation service vehicles which it operates. The provider's insurer shall mail the certificate of insurance to the Minnesota Department of Transportation, Division of Public Transportation, Transportation Building, St. Paul, Minnesota 55155. The certificate shall show the vehicles covered by the policy and the policy limits. The insurer shall notify the department in writing ten days prior to the termination of coverage by either party.

C. A provider ~~shall~~ may qualify as a self-insurer by providing evidence that it has complied with the requirements of Minn. Stat. § 65B.48, subd. 3.

14 MCAR § 1.7011 Records.

A. Each provider shall maintain files containing the following information:

1. For each driver, a driver's application form which contains the following information:

a. the name, address and birthdate of the driver;

b. the driver license number and the class of the license;

c. whether the driver has had at least one year of driving experience;

d. whether the driver's license has been revoked, suspended or cancelled within the three year period prior to this application;

e. the date on which the driver successfully completed at least four hours of training in first aid as required by 14 MCAR § 1.7009 A.5.;

f. the date on which the driver successfully completed training in the techniques of transporting and assisting elderly and physically handicapped passengers as required by 14 MCAR § 1.7009 A.6. or 7. whichever is applicable;

g. the date and location at which driver was trained in the use of the fire extinguisher;

2. For each driver, the physician's statement~~,~~ that the driver has no current medical condition which interfers with his or her ability to drive safely;

3. For each attendant, an attendant's application form which contains the following information:

a. the name and address of the attendant;

b. the date on which the attendant successfully completed at least four hours of training in first aid as required by 14 MCAR § 1.7009 A.5.;

c. the date on which the attendant successfully completed training in the techniques of transporting and assisting elderly and physically handicapped passengers as required by 14 MCAR § 1.7009 A.6. or 7. whichever is applicable;

d. the date and location at which the attendant was trained in the use of the fire extinguisher;

4. All correspondence with the commissioner, including the certificate of compliance;

5. All accident records;

6. A record of all insurance claims arising from the operation of the vehicle;

7. Service records for each vehicle indicating the date, the odometer reading and the nature of the repair or replacement each time the vehicle was serviced;

8. The driver's logbook for each vehicle, unless the logbook is maintained in the vehicle.

B. The following documents shall be maintained in each vehicle:

1. A card showing the name of the insurance company which insures the vehicle and the telephone number of the insurance agent;

2. Accident report forms;

3. A card showing local emergency telephone numbers.

14 MCAR § 1.7012 Certification of training courses.

A. All training courses shall be approved by the commissioner prior to being offered to fulfill the requirements of these rules.

B. The application for approval of a training course shall be made on a form prescribed by the commissioner. A course shall be approved if it meets the following minimum standards:

1. It shall include instruction in the elements required by these standards;

2. The application shall specify when and where the instructor has previously taught the course;

3. The name, address, employment and relevant training of the instructor must be shown;

4. The name and address of any institution which is sponsoring the course must be shown.

C. Instructors.

1. A first aid course shall be taught by any person who is a licensed physician, registered nurse, licensed practical nurse, a paramedic, an emergency medical technician, ~~or~~ a certified first aid instructor or a physician's assistant.

2. Passenger assistance technique training shall be taught by any person who is a licensed physician, registered nurse, registered physical therapist, registered occupational therapist, public health nurse or other health professional who has had work experience with physical disabilities, aging and communication disorders or by a team which includes one of those persons.

D. Applications for approval of training courses shall be granted or denied in writing by the commissioner within thirty days of receipt of the complete application.

14 MCAR § 1.7013 Variance.

A. The commissioner may grant a variance from any of these rules except 14 MCAR § 1.7004.

1. A variance shall be granted if the applicant shows that:

a. the rationale for the rule or rules in question can be met or exceeded by the specific alternative practice which the applicant proposes to substitute:

b. the application of the rule in question would impose an excessive burden on the applicant; and

c. the granting of the variance will not adversely affect the public health and safety.

2. The commissioner shall set forth in writing the reasons for granting or denying the variance, within thirty days of receiving the application. If the variance is denied, the applicant may, within thirty days of receiving notice of the denial, request a contested case hearing.

3. Any special transportation service provider that is granted a variance shall comply with the alternative practice specified in its successful application for a variance.

B. ~~4.~~ Any special transportation service provider that has been granted a variance shall immediately notify the Department of Transportation if any material change occurs in the circumstances which justified granting the variance.

C. ~~5.~~ A variance shall be revoked if a material change occurs in the circumstances which justified granting the variance, or if the applicant fails to comply with the alternative practice specified in the application for a variance.

14 MCAR § 1.7014 to 1.7050 [Reserved for future use.]

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

SUPREME COURT

Decisions Filed Friday, April 24, 1981

Compiled by John McCarthy, Clerk

51530/Sp. State of Minnesota v. Gregory Keith Johnson, Appellant. Ramsey County.

Trial court properly denied pretrial motion to suppress confession by a defendant who, although refusing to sign a written form waiving his *Miranda* rights, had expressly added that he nonetheless wished to talk with the officers.

Affirmed. Peterson, J.

50451, 51546/29 In the Matter of the Application of Gayle Lecy, *et al.*, for Certificate Authorizing the Renville County State Bank of Renville to Transact Business in that Name at the Intersection of S.E. 5th St. and U.S. Highway 212, in the City of Renville, County of Renville, State of Minnesota. O'Connor Brothers State Bank of Renville, *et al.*, petitioners-objectors, Appellants, v. Department of Commerce of the State of Minnesota v. Gayle Lecy, *et al.*, applicants-intervenors. Ramsey County.

The Commerce Commission's determination of the applicant bank's trade area was supported by substantial evidence in the record. The trial court erred in substituting its own trade area determination for that of the Commission.

The Commerce Commission's decision to grant the bank application was supported by substantial evidence in the record.

Reconsideration of the standard of review of administrative decisions would not alter the result in this case.

Discovery obtained from administrative decision makers under *Mampel v. Eastern Heights State Bank of St. Paul*, 254 N.W.2d 375 (Minn. 1977), is limited to written interrogatories and certain specified areas of inquiry.

Affirmed in part; reversed in part; remanded to the district court for further proceedings, consistent with this opinion. Todd, J.

51336/Sp. Josephine Constance St. George, petitioner, v. John Duane St. George, Appellant. Hennepin County.

A County Attorney has authority under Minn. Stat. § 518.611 (1980) to represent a private party with respect to enforcement of child support obligations and obligations to pay maintenance through a wage assignment, regardless of whether the private party receives public assistance.

A County Attorney has implied authority to represent a private party with respect to visitation rights when visitation issues have been raised in a proceeding when the county attorney is otherwise validly representing such party.

Affirmed in part and reversed in part. Yetka, J.

51952/Sp. Steven A. Volstad, petitioner, Appellant v. State of Minnesota. Hennepin County.

District court properly denied petition for postconviction relief which was based on mistaken contention that petitioner's conduct was based on same conduct as earlier finding of criminal contempt, for which petitioner was punished.

Affirmed. Yetka, J.

51078/Sp. Thomas Sabraski v. Northern States Power Company, Appellant and Kathleen A. Kowitz, Appellant. Benton County.

Defendants are entitled to a new trial based upon prejudice resulting from irregularities in the proceedings affecting the jury's verdict.

Reversed and remanded for a new trial. Scott, J. Took no part, Simonett, J.

51366/Sp. State of Minnesota v. Barry R. Gross, Appellant. Hennepin County.

Trial court did not clearly abuse its discretion in admitting other-crime evidence.

Evidence of defendant's guilt of aggravated forgery-uttering was sufficient.

Affirmed. Wahl, J.

50889/339 (1980) State of Minnesota v. Jane Douglass Hoyt, Appellant, Hennepin County.

Although defendant has asserted a first amendment claim, we do not reach the constitutional issue presented because the case has been disposed of on other grounds.

42 C.F.R. 405.1121(k) (1980) and Minn. Stat. § 144.651 (1980) grant enforcement authority to patients, residents or guardians, not to third persons.

A license to be on property constitutes a claim of right defense to a charge of criminal trespass.

Express or implied consent of a nursing home resident or a resident's guardian to visitation by a third-party gives rise to a license to use the means of ingress and egress to make such visitation possible.

Reversed. Amdahl, J. Dissenting, Scott J.

51000/Sp. Independent School District No. 534 v. City of Stewartville, defendant and third party plaintiff, Appellant v. Consulting Engineers Diversified Inc., Third Party Defendant and Layne Minnesota Company, *et al.*, Third Party Defendants. Olmsted County.

Where subsequent to the filing of an appeal from an order compelling arbitration, the status of some of the parties, including the parties subject to the arbitration agreement, is changed by reason of a district court order, the issues raised on appeal based upon the prior status of the parties are rendered moot. Furthermore, any decision of this court concerning the present status of the parties would constitute a de novo review inasmuch as the district court has not had an opportunity to consider the case in light of its present posture.

The district court order is vacated and the case remanded. Amdahl, J.

51271/Sp. State of Minnesota v. Randolph Lloyd Roy, Appellant. Anoka County.

Trial court did not err in denying motion to suppress evidence seized in search of defendant incident to his arrest or eyewitness identification evidence which defendant contended was tainted by suggestive identification procedures, and trial court did not coerce the verdicts.

Affirmed. Amdahl, J.

50610, 50611/386 In the Matter of the Irrevocable Inter Vivos Trust Established by R. R. Kemske by Trust Agreement Dated October 24, 1969 (50610) and In the Matter of the Revocable Inter Vivos Trust Established by R. R. Kemske by Trust Agreement Dated October 17, 1972 (50611), State Bank & Trust Company of New Ulm v. Carol J. Melzark, *et al.*, Appellants v. State Bank & Trust Company of New Ulm. Brown County.

Appellants claim the district court appellate panel improperly evaluated a corporate trustee's standard of care, a state bank's standard of care, the yields from multiple trusts, and evidence of alternative investments. In the context of the proceedings below, none of these issues has merit.

A trustee cannot be charged with improper self-dealing where the settlor, under no duress or undue influence, and in clear and unmistakable language, expressly waives liability for self-dealing.

A trial court's finding that the early and middle 1970's "were not a good period for mutual funds generally" is not an indisputable fact intended for judicial notice under Rule 201 of the Minnesota Rules of Evidence.

Where trustee mismanagement is alleged, an objector must demonstrate not simply that, in hindsight, better investments were available. Rather it must be shown that prudent investors, at the time of the transactions in controversy, would have chosen these better available investments. Here, where the trustee's expert testified the investments when made were prudent and the objectors have offered no expert testimony, the objectors relied on hindsight and have failed to sustain their burden of proof.

It is not a collateral attack on a probate court order to claim a breach of a trustee's duty to object to the executor's final account—even when the trustee is also the executor.

Affirmed in part and reversed in part. Simonett, J. Concurring in part and dissenting in part, Yetka, J.

50929/Sp. Manuel Lopez, Relator v. Owatonna Manufacturing Company and Commissioner of Economic Security. Department of Economic Security.

Where the employer had reliable medical information of the employee's good health, it was unreasonable to insist upon written compliance with the company medical policy. In the context of the employee's language difficulties, noncompliance could not be considered voluntary termination. Minn. Stat. § 268.08, subd. 1(1) (1980).

Reversed and remanded. Simonett, J.

Opinions Filed April 17, 1981

81-105/Sp. In the Matter of the Welfare of Roderick Jenkins. Hennepin County.

Juvenile court did not err in its findings or abuse its discretion in determining that the public safety would be endangered by keeping juvenile in the juvenile court system, and therefore juvenile court's decision to grant reference motion pursuant to Minn. Stat. § 260.125 (1980) is affirmed.

Affirmed. Sheran, C. J.

81-245/Sp. State of Minnesota, Appellant v. Joseph Grinnel Cizl. Ramsey County.

There were no mitigating factors present in this case constituting "substantial and compelling circumstances" justifying departure, in the form of a stay of execution of a gross misdeameanor sentence, from the Sentencing Guideline's presumptive

stayed felony sentence; trial court on remand has option of either not pronouncing a sentence length and staying imposition of sentence or imposing a felony prison sentence of 1 year and 1 day and staying execution of it.

Remanded for resentencing. Sheran, C. J.

STATE CONTRACTS

Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over $2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over $10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal.

Department of Health

Notice of Request for Proposals for Study of the Health Effects Associated with A High Voltage DC Power Line

The Minnesota Department of Health requires the services of a qualified consultant organization to conduct a study and present a documented report on "An Epidemiologic Study of Health Effects Associated With the CPA/UPA High Voltage DC Power Line in West Central Minnesota." The study is designed to record the occurrence of symptoms and signs of illness (including stress) in people at varying distances from the line and with varying types of exposure.

Estimated fee range—$200,000

Time contract award—June 5, 1981 (Please Note: Contract award is contingent on obtaining necessary funding.)

Firms/individuals desiring consideration should send their response to:

Mary Sullivan, Coordinator
CU-TR-1 Health Effects Study
Minnesota Department of Health
717 Delaware Street SE
Minneapolis, Minnesota 55440
(612) 296-5293

Request for Proposal is available on request.

All responses should be sent in no later than 5:00 p.m., May 26, 1981.

Hubbard County Highway Department

Notice of Availability of Contract for Supplying Aerial Photogrametry and Mapping Services

Hubbard County in cooperation with the Office of State Aid, Minnesota Department of Transportation requires the services of a qualified consultant to supply aerial map for the design of approximately ten miles of proposed highway to be known as the Great River Road.

Services will include preparation of fifty scale ortho maps indicating two foot contours and appropriate labeling. Maps will cover a 1000′ wide area along the proposed route.

Firms interested in this project may obtain sketch plans of the project route by writing to the address listed below. All technical proposals will be submitted on the firm's own letterhead and must include completed federal forms SF 254 and SF 255.

All technical proposals must be submitted by noon, May 15, 1981, and inquiries of interest should be directed to:

Doug Goriesky
County Highway Engineer
Route 4, Box 5A
Park Rapids, MN 56470

Metropolitan Council

Request for Proposal for Checkpoint Paratransit Demonstration Study

The Metropolitan Council solicits a proposal for entering into a contract for the performance of a Checkpoint Paratransit Demonstration study. The study would be funded by a Section 6 planning grant for which the council has submitted an application to the Urban Mass Transportation Administration (UMTA). The study is contingent upon final approval of the grant from UMTA. The proposal should be submitted in five (5) copies and forwarded to the Metropolitan Council, 300 Metro Square Building, St. Paul, Minnesota 55101, Attention: Natalio Diaz, Project Manager. The Council, by this RFP, does not promise to accept the lowest, or any other, proposal and specifically reserves the right to reject any or all proposals, to waive any formal proposal requirements, to investigate the qualifications and experience of any proposer, to reject any provisions in any proposal, to obtain new proposals, or to proceed to do the work otherwise. All proposals received in the council office no later than 5 p.m. on June 8, 1981 will be considered by the council; and in the event that a proposal is accepted, the council will notify the successful proposer in writing within 30 days following its consideration of the proposal.

Requests for copies of the RFP should be directed to Mr. Natalio Diaz at (612) 291-6341.

Department of Public Welfare
Faribault State Hospital

Notice of Request for Proposals for Medical Services

Notice is hereby given that Faribault State Hospital, Mental Health Division, Department of Public Welfare, is seeking the following services for the period of July 1, 1981-June 30, 1982; these services as requested by the Administrator of the Faribault State Hospital.

1. A radiological consultant group to provide services at the Faribault State Hospital upon the request of the Medical Director, at times mutually agreed upon by both parties. The duties shall involve radiological consultations for residents/patients of Faribault State Hospital, which consists of interpretation and diagnosis of X-ray films of chest, skull, skeleton, abdomen, gall bladder, kidneys, etc., performance of fluoroscopic examination of chest, stomach, intestines, colon, etc., as requested by staff physicians. In addition, supervision of the X-ray Department in regard to equipment, methodology, safety, etc., will be included in this consultation service. The estimated amount of this contract will not exceed $11,000.

2. The services of a physician group to provide weekend coverage at Faribault State Hospital upon request of the Medical Director, by making rounds in the Medical Hospital and taking all emergency calls; the preceding service to be performed at the Faribault State Hospital. The estimated amount of this contract will not exceed $13,000.

Response for the above services must be received by May 26, 1981. Direct inquiries to:

Don Cummings, Accounting Officer
Faribault State Hospital
Faribault, Minnesota 55021
(507) 332-3301

Department of Transportation

Notice of Request for Proposals for Counseling Services

The Minnesota Department of Transportation is accepting proposals for a professional psychologist to provide professional counseling service for the purpose of resolving problems adversely affecting the ability of employees to perform in a proficient and productive manner. The contractor will conduct training courses for supervisors and managers in the appropriate techniques used in motivating employees as well as providing guidance to employees who may be suffering emotional trauma associated with potential layoffs or career changes necessitated by reduced program activity.

The contractor must possess:

1. A doctorate in Psychology.
2. A license as a professional psychologist.

3. 4 years experience in the practice of Clinical Psychology.

4. Experience as a professional counselor with an employer of 1,000 or more employees ranging from managers and professionals to trade persons, technicians, and clerks.

A contract for the requested services will commence July 1, 1981 and terminate on June 30, 1982. The compensation limit during the contract period is $30,000 with payment not to exceed $30.00 per hour. Payment will be made monthly for the hours listed on the monthly report. Services are to be provided to Mn/DOT employees at least 3 days in each work week.

Qualified professionals should submit their resumes and work plan proposals not later than June 17, 1981.

Roger W. Durbahn
Assistant Personnel Director
Minnesota Department of Transportation
315 Transportation Building
St. Paul, Minnesota 55155

Waste Management Board

Notice of Request for Proposals for Contractual Services to Prepare A Report on Hazardous Waste Management

The Minnesota Waste Management Board is seeking proposals from qualified consulting firms to prepare a report on hazardous waste management for submittal to the Legislative Commission on Waste Management. The report must include a state hazardous waste management plan.

The Waste Management Act (Minn. Stat. § 115A.01 *et seq.*) requires the Waste Management Board to thoroughly evaluate all feasible and prudent alternatives to disposal of hazardous waste, including waste reduction, separation, pretreatment, processing, and resource recovery. The report must identify the hazardous waste management methods which will best achieve this objective and strategies for encouraging development of these technologies. The estimated cost of this project is $150,000.

Prospective responders who have any questions or who would like a copy of this Request for Proposal may call or write:

Steve Riner
Waste Management Board
123 Thorson Building
7323 58th Avenue North
Crystal, MN 55428
(612) 536-0816

Deadline for submission of proposals is 4:30 p.m., June 1, 1981. Responders must have broad based experience in the fields of hazardous waste management, industrial processes, economics, and environmental law.

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Department of Agriculture Agronomy Services Division

Notice of Special Local Need Registration for Benlate

Pursuant to Minn. Stat. § 18.A.23 and 3 MCAR § 1.0338 B., the Minnesota Department of Agriculture on April 17, 1981 issued a Special Local Need Registration for Benlate Fungicide manufactured by E. I. Du Pont De Nemours & Company, Wilmington, Delaware 19898.

The Commissioner of Agriculture, based upon information in the application, has deemed it in the public interest to issue such a registration, and has deemed that the information in the application indicates that the pesticide does not have the potential for unreasonable adverse environmental effects.

In addition to the uses prescribed on the product label, this Special Local Need Registration permits a reduced gallonage of carrier when applying this fungicide by aircraft for control of white mold on beans.

The application and other date required under Minn. Stat. §§ 18A.22, subd. 2 (a-d), 18A.23, and 40 CFR 162.150-162.158, subpart B relative to this registration (identified as SLN # MN 81-0012) is on file for inspection at:

Minnesota Department of Agriculture
Pesticide Control Section
90 West Plato Blvd.
Saint Paul, Minnesota 55107
Phone: (612) 296-6121

A federal or state agency, a local unit of government, or any person or group of persons filing with the commissioner a petition that contains the signatures and addresses of 500 or more individuals of legal voting age has thirty (30) days to file written objections with the Commissioner of Agriculture regarding the issuance of this Special Local Need Registration. Upon receipt of such objections and when it is deemed in the best interest of the environment or the health, welfare, and safety of the public, the Commissioner of Agriculture shall order a hearing pursuant to Minn. Stat. ch. 15, for the purpose of revoking, amending, or upholding this registration.

April 21, 1981

Mark W. Seetin, Commissioner
Department of Agriculture

Notice of Special Local Need Registration for Buctril

Pursuant to Minn. Stat. § 18.A.23 and 3 MCAR § 1.0338 B., the Minnesota Department of Agriculture on April 17, 1981 issued a Special Local Need Registration for Buctril manufactured by Rhone-Poulenc Chemical Company, Monmouth Junction, NJ 08852.

The Commissioner of Agriculture, based upon information in the application, has deemed it in the public interest to issue such a registration, and has deemed that the information in the application indicates that the pesticide does not have the potential for unreasonable adverse environmental effects.

In addition to the uses prescribed on the product label, this Special Local Need Registration permits the use of this pesticide to be tank mixed with Hoelon to control weeds in wheat and barley.

The application and other data required under Minn. Stat. §§ 18A.22, subd. 2 (a-d), 18A.23, and 40 CFR 162.150-162.158, subpart B relative to this registration (identified as SLN # MN 81-0011) is on file for inspection at:

Minnesota Department of Agriculture
Pesticide Control Section
90 West Plato Blvd.
Saint Paul, Minnesota 55107
Phone: (612) 296-6121

A federal or state agency, a local unit of government, or any person or group of persons filing with the commissioner a petition that contains the signatures and addresses of 500 or more individuals of legal voting age has thirty (30) days to file written objections with the Commissioner of Agriculture regarding the issuance of this Special Local Need Registration. Upon receipt of such objections and when it is deemed in the best interest of the environment or the health, welfare, and safety of the public, the Commissioner of Agriculture shall order a hearing pursuant to Minn. Stat. ch. 15, for the purpose of revoking, amending, or upholding this registration.

April 21, 1981

Mark W. Seetin, Commissioner
Department of Agriculture

Notice of Special Local Need Registration for Herbicide 273

Pursuant to Minn. Stat. § 18.A.23 and 3 MCAR § 1.0338 B., the Minnesota Department of Agriculture on April 17, 1981 issued a Special Local Need Registration for Herbicide 273 manufactured by Pennwalt Corporation, Philadelphia, PA 19102.

The Commissioner of Agriculture, based upon information in the application, has deemed it in the public interest to issue such

a registration, and has deemed that the information in the application indicates that the pesticide does not have the potential for unreasonable adverse environmental effects.

In addition to the uses prescribed on the product label, this Special Local Need Registration permits the use of this pesticide to be tank mixed with Betanol, Betanex, Dowpon M, and Pyramin W, for weed control in sugar beets.

The application and other data required under Minn. Stat. §§ 18A.22, subd. 2 (a-d), 18A.23, and 40 CFR 162.150-162.158, subpart B relative to this registration (identified as SLN # MN 81-0013) is on file for inspection at:

Minnesota Department of Agriculture
Pesticide Control Section
90 West Plato Blvd.
Saint Paul, Minnesota 55107
Phone: (612) 296-8379

A federal or state agency, a local unit of government, or any person or group of persons filing with the commissioner a petition that contains the signatures and addresses of 500 or more individuals of legal voting age has thirty (30) days to file written objections with the Commissioner of Agriculture regarding the issuance of this Special Local Need Registration. Upon receipt of such objections and when it is deemed in the best interest of the environment or the health, welfare, and safety of the public, the Commissioner of Agriculture shall order a hearing pursuant to Minn. Stat. ch. 15, for the purpose of revoking, amending, or upholding this registration.

April 21, 1981

Mark W. Seetin, Commissioner
Department of Agriculture

Notice of Special Local Need Registration for Guthion 2 Flowable

Pursuant to Minn. Stat. § 18A.23 and 3 MCAR § 1.0338 B., the Minnesota Department of Agriculture on April 17, 1981 issued a Special Local Need Registration for Guthion 2 Flowable manufactured by Mobay Chemical Corporation, Kansas City, MO 64120.

Commissioner of Agriculture, based upon information in the application, has deemed it in the public interest to issue such a registration, and has deemed that the information in the application indicates that the pesticide does not have the potential for unreasonable adverse environmental effects.

In addition to the uses prescribed on the product label, this Special Local Need Registration permits the use of this pesticide to control insects on potatoes.

The application and other data required under Minn. Stat. §§ 18A.22, subd. 2 (a-d), 18A.23, and 40 CFR 162.150-162.158, subpart B relative to this registration (identified as SLN # MN 81-0010) is on file for inspection at:

Minnesota Department of Agriculture
Pesticide Control Section
90 West Plato Blvd.
Saint Paul, Minnesota 55107
Phone: (612) 296-8379

A federal or state agency, a local unit of government, or any person or group of persons filing with the commissioner a petition that contains the signatures and addresses of 500 or more individuals of legal voting age has thirty (30) days to file written objections with the Commissioner of Agriculture regarding the issuance of this Special Local Need Registration. Upon receipt of such objections and when it is deemed in the best interest of the environment or the health, welfare, and safety of the public, the Commissioner of Agriculture shall order a hearing pursuant to Minn. Stat. ch. 15, for the purpose of revoking, amending, or upholding this registration.

April 21, 1981

Mark W. Seetin, Commissioner
Department of Agriculture

Ethical Practices Board

Request for Advisory Opinion Re: Campaign Finance Voluntary Dues Checkoff

The Minnesota State Ethical Practices Board solicits opinions and comments on the following request for an advisory opinion which will be discussed at its May 15, 1981 Board meeting. Written comments concerning the opinion request should be forwarded to arrive at the Board's office prior to May 12, 1981.

Ms. Mary Ann McCoy, Executive Director
Minnesota State Ethical Practices Board
41 State Office Building
St. Paul, Minnesota 55155

Dear Ms. McCoy:

The purpose of this letter is to request an advisory opinion from the State Ethical Practices Board pursuant to Minnesota Statutes § 10A.02, subd. 12, regarding the use of a "voluntary checkoff". We are asking for the Board's opinion as to whether the use of a voluntary checkoff by the Lawyers Public Affairs Commission (LAWPAC) in seeking contributions from the Minnesota State Bar Association members, as outlined below, would be in compliance with Minnesota law.

LAWPAC is a voluntary, non-profit, unincorporated, non-partisan committee of individual members of the legal profession and others. LAWPAC contributes funds only to Minnesota legislative candidates and to Senate and House DFL and I-R caucuses. LAWPAC receives funding primarily from individual Minnesota lawyers; however, some funds are received from partnerships and law firm pacs. In order to expand its base of support, and increase available funds, the trustees of LAWPAC wish to implement a voluntary checkoff on the dues statement of the Minnesota State Bar Association (MSBA).

If permitted, LAWPAC would include a section on the MSBA dues statement which would allow members to make a contribution to LAWPAC, if they so desired. A contribution sum of $10.00 would be suggested. Those members that "checked off" the contribution statement would be instructed to add the amount of their contribution to the total MSBA dues shown elsewhere on the dues statement. In addition, those members would be instructed to see the reverse side of the dues statement if their dues were to be paid by a corporate or partnership check or if the member were a judge. On the reverse side the following statements would be printed: (1) that Minnesota law requires partnerships contributing over $100.00 per year to file with the Ethical Practices Board; and if the firm does not wish to do so, the firm member should contribute by personal check; (2) that Minnesota law prohibits corporate contributions and members of such organizations should make contributions by personal checks; and (3) that the Code of Judicial Conduct prohibits judges from making contributions to LAWPAC.

Also on the MSBA's dues statement immediately following the LAWPAC contribution section would be a statement announcing that the LAWPAC space on the statement is paid for by LAWPAC. It is the intention of LAWPAC to fully compensate MSBA for all services rendered, for expenses incurred in placing a checkoff on its dues statement and for collecting and recording amounts received as LAWPAC contributions.

In order to efficiently handle the accounting, and to insure that LAWPAC would not receive any corporate contributions, a separate bank account would be established. This account would be that of the unincorporated association of the MSBA and the LAWPAC. Any check which contained both MSBA dues and LAWPAC contributions would be deposited in this special account. Separate checks would then be written from this account to LAWPAC and MSBA. If the LAWPAC contribution portion of the check were for some reason unacceptable, the check would still be placed in this third account and segregated. The amount that represented the MSBA dues would be forwarded by check to the MSBA. The amount which represented the improper LAWPAC contribution would then be returned by this third account check to the remitter.

It is our impression that the procedure outlined above would be in compliance with all applicable law. However, because this specific question has not yet been presented to the State Ethical Practices Board, we are seeking some assurance from you that this procedure is proper before we proceed. If you need any additional information concerning our proposed checkoff system, please contact the undersigned.

Very truly yours,

Tim Groshens, Administrator
Lawyers Public Affairs Commission

Department of Health
Community Services Division

Notice of Public Hearing Regarding Fiscal Year 1982 Minnesota State Plan of Program Operations and Administration, for the Special Supplemental Food Program for Women, Infants, and Children (WIC)

Pursuant to the requirement of regulations issued by the United States Department of Agriculture under Section 3 of Public Law 95-627 which amends Section 17 of the Child Nutrition Act of 1966, the Minnesota Department of Health will sponsor one public meeting to enable the general public to participate in the development of the Fiscal Year 1982 Minnesota State Plan of

Program Operations and Administration for the Special Supplemental Food Program for Women, Infants, and Children (WIC). Copies of the draft Plan will be available for public inspection on request.

The meeting will be held Friday, May 22, 1981 at the Department of Transportation, Arden Hills Training Center, 1900 West County Road I, New Brighton, Minnesota. The meeting will begin at 10:00 a.m. and will be concluded upon the presentation of all testimony. Registration will begin at 9:30 a.m.

Any citizen or group may submit either written or oral testimony at the meeting. Testimony will be given on a first come, first served basis.

For further information, contact the Minnesota Department of Health, WIC Program, 717 Delaware Street S.E., Minneapolis, Minnesota (612) 296-5233.

Metropolitan Council

Public Hearing on the Proposed Procedure for Adopting or Amending General Metropolitan Council Plans

The Metropolitan Council will hold a public hearing on Tuesday, May 26, 1981 at 5:15 p.m. in the Metropolitan Council Chambers, 300 Metro Square Building, St. Paul, Minnesota 55101, on the proposed procedure for adopting or amending general Metropolitan Council plans. All interested persons are encouraged to attend the hearing and offer comments. Persons wishing to speak may register to do so in advance by contacting the council's public hearing coordinator at 291-6421. Those registering first will be scheduled first. Written comments may also be submitted until June 9, 1981, to John Hoeft, Metropolitan Council staff counsel. Copies of the proposed procedure are available free of charge from the council's Public Information Office at 291-6464.

Department of Transportation

Petition of the City of Minneapolis for A Variance from State Aid Standards for Street Width

Notice is hereby given that the City Council of the City of Minneapolis has made a written request to the Commissioner of Transportation for a variance from minimum design standards for street width along West Grant Street between LaSalle Avenue and Nicollet Avenue.

The request is for a variance from 14 MCAR § 1.5032, H.1.c. Rules for State Aid Operations under Minnesota Statute, Chapters 162 and 163 (1978) as amended, so as to permit a minimum roadway width of 48 feet with no parking permitted instead of a roadway width of 50 feet.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

Dated this 27th day of April, 1981.

Richard P. Braun
Commissioner of Transportation

Petition of the City of Anoka for A Variance from State Aid Standards for Street Width

Notice is hereby given that the City Council of the City of Anoka has made a written request to the Commissioner of Transportation for a variance from minimum design standards for street width along 2nd Avenue from Jackson Street to Harrison Street.

The request is for a variance from 14 MCAR § 1.5032, H.1.c. Rules for State Aid Operations under Minnesota Statute, Chapters 162 and 163 (1978) as amended, so as to permit a minimum roadway width of 44 feet instead of a width of 46 feet.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

Dated this 27th day of April, 1981.

Richard P. Braun
Commissioner of Transportation

Petition of the City of St. Cloud for A Variance from State Aid Standards for Street Width

Notice is hereby given that the City Council of the City of St. Cloud has made a written request to the Commissioner of Transportation for a variance from minimum design standards for street width along 3rd Street North between 31st Avenue North and West City Limits.

The request is for a variance from 14 MCAR § 1.5032, H.1.c. Rules for State Aid Operations under Minnesota Statute, Chapters 162 and 163 (1978) as amended, so as to permit a minimum roadway width of 60 feet with no parking permitted instead of a roadway width of 68 feet.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

Dated this 27th day of April, 1981.

Richard P. Braun
Commissioner of Transportation

Petition of the City of St. Paul for A Variance from State Aid Standards for Street Width

Notice is herby given that the City Council of the City of St. Paul has made a written request to the Commissioner of Transportation for a variance from minimum design standards for street width along White Bear Avenue between C.N.W.R.R. and Larpenteur Avenue.

The request is for a variance from 14 MCAR § 1.5032 H.1.c. Rules for State Aid Operations under Minnesota Statute, Chapters 162 and 163 (1978) as amended, so as to permit a minimum roadway width of 44 feet with no parking permitted instead of a roadway width of 50 feet.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

Dated this 27th day of April, 1981.

Richard P. Braun
Commissioner of Transportation

Petition of the City of St. Paul for A Variance from State Aid Standards for Street Width

Notice is hereby given that the City Council of the City of St. Paul has made a written request to the Commissioner of Transportation for a variance from minimum design standards for street width along Johnson Parkway between East 7th Street and Prosperity Avenue.

The request is for a variance from 14 MCAR § 1.5032 H.1.c. Rules for State Aid Operations under Minnesota Statute, Chapters 162 and 163 (1978) as amended, so as to permit a minimum roadway width of 44 feet with no parking permitted between East 7th Street and Case Avenue and 36 feet with no parking permitted between Case Avenue and Prosperity Avenue instead of a roadway width of 52 feet.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

Dated this 27th day of April, 1981.

Richard P. Braun
Commissioner of Transportation

STATE OF MINNESOTA

OFFICE OF THE STATE REGISTER

State Register and Public Documents Division
117 University Avenue
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Briefly/Preview—Senate news and committee calendar; published weekly during legislative sessions. Contact Senate Public Information Office, Room B29 State Capitol, St. Paul MN 55155, (612) 296-0504.

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This Week—weekly interim bulletin of the House. Contact House Information Office.

Arts Board
2500 Park Avenue
Attn: Mary Sulerud
Minneapolis, Minn 55404

MAY 5 1981

SAB-81-002-GB

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA STATE ARTS BOARD

In the Matter of the Proposed Adoption of Rules of the State Arts Board Governing Review of Requests for and Distribution of Grants, Loans and Other Forms of Assistance.

REPORT OF THE CHIEF HEARING EXAMINER

The above-entitled matter came on for review by the Chief Hearing Examiner pursuant to the provisions of Minn. Stat. § 15.0412, subd. 4d (1980) which provides in part:

> If the [hearing examiner's] report contains a finding that the proposed rule is substantially different from that which was proposed at the public hearing, or that the agency has not met the requirements of section 15.0412, subdivisions 4 through 4f, it shall be submitted to the chief hearing examiner for approval. If the chief hearing examiner approves the finding of the hearing examiner, he shall advise the agency of actions which will correct the defects, and the agency shall not adopt the rule until the chief hearing examiner determines that the defects have been corrected. If the chief hearing examiner determines that the need for and reasonableness of the rule has not been established pursuant to subdivision 4, clause (c), and if the agency does not elect to follow the suggested actions of the hearing examiner to correct that defect, then the agency shall submit the proposed rule to the legislative commission to review administrative rules for the commission's advice and comment. The agency shall not proceed to adopt the rule until it has received and considered the advice of the commission; provided, that the agency is not required to delay adoption longer than 30 days after the commission's receipt of the agency's submission.

Based upon a review of the record in this proceeding, the Chief Hearing Examiner hereby approves the Report of the Hearing Examiner in all respects and specifically as to any finding of substantial change or of failure to comply with Minn. Stat. § 15.0412, subd. 4-4f (1980) or of failure to establish need for and reasonableness of the proposed rule, except as noted in the succeeding paragraph.

In Conclusion 2 of his report, the Examiner concludes that the failure of the agency to make any presentation of facts establishing the need for or reasonableness of the rule amendment discussed at Finding 13, either at the hearing or in the agency's Statement of Need and Reasonableness, is a procedural defect. This conclusion, if correct, would have the effect of preventing the agency from proceeding further unless the defect is cured as recommended by the Examiner. Minn. Stat. § 15.0412, subd. 4d, provides that when the Examiner and the Chief Hearing Examiner find a failure of an agency to establish need and reasonableness, the agency may "appeal" the decision to the Legislative Commission to Review Administrative Rules. The statute does not differentiate between a situation, as in this case, where an agency presents no facts, and one where an agency presents insufficient facts, nor will the Chief Hearing Examiner. With respect to the failure of the agency to

See new language p. 7 –

comply with Rule 9 MCAR § 2.104 by failing to discuss the proposal in its Statement of Need and Reasonablenss, that rule provides for a recessing of the hearing as the "penalty" for noncompliance. Therefore, the Chief Hearing Examiner agrees with the Examiner's Finding 13 but concludes that rather than it being a "procedural" defect (even though it could technically be labeled as such), it is a failure by the agency to establish either the need for or reasonableness of the proposed rule, which determination may be "appealed" to the Legislative Commission to Review Administrative Rules.

In order to correct the defects enumerated by the Hearing Examiner, the agency shall either take the action recommended by the Hearing Examiner or reconvene the rule hearing if appropriate. If the agency chooses to reconvene the rule hearing, it shall do so as if it is initiating a new rule hearing, complying with all substantive and procedural requirements imposed on the agency by law or rule.

If the agency chooses to take the action recommended by the Hearing Examiner, it shall, prior to submitting the rules to the Attorney General for review, submit to the Chief Hearing Examiner a copy of the rules as initially published in the State Register, a copy of the rules as proposed for final adoption in the form required by the State Register for final publication, and a copy of the agency's Findings of Fact and Order Adopting Rules. The Chief Hearing Examiner will then make a determination as to whether the defect in regard to substantial change and the requirements of Minn. Stat. § 15.0412, subd. 4-4f (1980) have been corrected.

Should the agency make changes in the rules other than those recommended by the Hearing Examiner, it shall also, prior to submitting the rule to the Attorney General, submit the complete record to the Chief Hearing Examiner for a review in regard to substantial changes.

Dated: July 20th, 1981.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

SAB-81-002-GB

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA STATE ARTS BOARD

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE STATE ARTS BOARD GOVERNING REVIEW OF REQUESTS FOR AND DISTRIBUTION OF GRANTS, LOANS AND OTHER FORMS OF ASSISTANCE.

ORDER OF THE
CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on June 12, 1981, before George A. Beck, a Hearing Examiner of the State Office of Administrative Hearings, 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 State Arts Board and;

WHEREAS, the State Arts Board has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, subd. 4-4f; and

WHEREAS, the State Arts Board has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. §§ 15.0412, subd. 4e and 15.052, subd. 4, and 9 MCAR § 2.111; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and the State Arts Board has cured the defects in the rules as required.

NOW, THEREFORE, upon receipt of this Order, the State Arts Board has the responsibility of submitting the complete hearing record and the rules as adopted by the State Arts Board to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. § 15.0412, subd. 4e and 4f.

Dated: July 31, 1981.

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA

BOARD OF THE ARTS

In the Matter of the Proposed Adoption
of Rules of the State Arts Board
Governing Review of Requests for and
Distribution of Grants, Loans and Other
Forms of Assistance

FINDINGS OF FACT
AND CONCLUSIONS

The above entitled matter came on for hearing before Hearing Examiner George Beck on the 12th day of June, 1981. at 9:00 A.M. in the hearing room of the Office of Administrative Hearings, 1745 University Avenue, St. Paul, Minnesota, after proper notice required by Minnesota statutes §§ 15.0412 was served upon all persons, associations, and other interested groups registered with the State Arts Board 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 upon the records, files, and proceedings herein, I find the following:

That the changes recommended by the hearing examiner and the office of the revisor of statutes clarify the proposed rules and that these changes are adopted as being needed and reasonable by the Board of the Arts.

STATE OF MINNESOTA

EXECUTIVE DIRECTOR

AMENDED STATEMENT OF NEED AND REASONABLENESS SUBMITTED BY THE MINNESOTA STATE ARTS BOARD, JULY 1, 1981.

RECEIVED
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ADMINISTRATIVE HEARINGS
Board Exh. No. 19
File No. SAB-81-902-6
Date 7/1/81

Introduction

The Minnesota State Arts Board wishes to thank Jack Rueler, Mixed Blood Theatre, Phyllis Jane Rose, At the Foot of the Mountain Theatre and Marion Peters Angelica, Metropolitan Regional Arts Council for providing testimony at the June 12, 1981 hearing on the proposed amendments to MSAB rules and regulations. The first part of this statement (I) summarizes the role of government support of the arts, the duties of the MSAB and how agency grant categories reflect a balanced approach to fulfilling these duties. This summary provides additional contextual information for the development of these rules and clarifies some of the points raised at the hearing regarding the role of the MSAB in support of the arts.

In the second part of the statement (II) the agency provides additional arguments for its proposed rule on limited eligibility of recipients of operational grants for other MSAB and regional arts council grants. Finally, the agency in section (III) offers a refutation of testimony in support of continuing state-wide impact as an eligibility requirement for the category of general support.

I. The role of government in support of the arts:

Support of the arts from federal and state governments is a relatively recent concept. The federal agency which supports the arts, the National Endowment for the Arts, was created in 1965. The Minnesota State Arts Board was created in 1966. The role of these agencies in support of the arts was based on the model of philanthropic foundations. However, the federal and state arts agencies from their inception viewed their support of arts organizations and individuals as limited in amount and scope, a tool to "leverage" more private support of the arts and a means to help organizations better serve the public. Organizations and individuals seeking public support were informed that this support was available through specific categories to ensure access by all sectors of the arts community and the public in competing for funds. Further, organizations

and individuals receiving public funds were obligated to ensure that arts programs, projects and activities of the highest quality were available to the broadest audience possible.

A. The role and responsibility of the MSAB in support of the arts:

The Minnesota State Arts Board has been established by statute as the official agency of the state which "stimulate(s) and encourage(s) the creation, performance and appreciation of the arts in the state". It undertakes to fulfill this duty through several activities, defined by statute, which include: "(a) receive and consider any requests for grants, loans, or other forms of assistance; (b) advise and serve as a technical resource at the request of sponsoring organizations (applicants) and political subdivisions in the state on programs relating to the arts; (c) advise and recommend on existing or proposed activities of the departments of the state relating to the arts; (d) accept gifts and grants to the board and distribute the same in accordance with the instructions of the donar insofar as the instructions are consistent with law; (e) promulgate by rule procedures to be followed by the board in receiving and reviewing requests for grants, loans or other forms of assistance; (f) promulgate by rule standards consistent with this chapter to be followed by the board in the distribution of grants, loans and other forms of assistance; (g) distribute according to the above procedures and standards grants, loans and other forms of assistance for artistic activities to departments and agencies of the state, political subdivisions, sponsoring organizations and, in appropriate cases, to individuals engaged in the creation or performance of the arts; provided that a member of the board shall not participate in deliberations or voting on assistance to groups or persons in which that member has an interest as officer, director, employee or recipient; (h) appoint advisory committees which the board determines are essential to the performance of its powers and duties under this section; provided that no member of an advisory committee shall within two years prior to his appointment have received or applied for in his own name a grant, loan

or other form of assistance from the board or its predecessor."

Implicit in the responsibilities of the board is that the board exists to serve the citizens of the state through its assistance of the arts community. Inherent in this commitment is that all sectors of the arts community and the public have equal access to the forms of assistance offered by the MSAB. The MSAB after several years of experimenting with providing direct arts programming itself in the form of exhibitions and artist residencies, elected in 1975 to support the arts in Minnesota primarily through grant assistance.

The MSAB elected to focus on grantmaking in response to a number of factors. Minnesota has a large number of well developed and vital arts organizations, estimated to number 600. Minnesota has a growing network of schools, libraries and community organizations which actively present the arts, in addition to their other responsibilities/activities, estimated to number 2,000. Minnesota has an established system of arts service organizations in virtually every metropolitan area of the state. These arts service organizations offer artists, arts organizations and arts audiences a variety of programs including ticket and service voucher programs, economic impact studies, artist career counseling etc. Minnesota has one of the most comprehensive systems of regional arts councils, and correspondingly, of arts development activities in the country. Currently 11 regional arts councils serve all of the development regions of the state. Finally, Minnesota has nearly 10,000 practicing artists, making the state one of the top ten in the country in terms of resident artists.

The wealth of artists and arts organizations creates a situation in which MSAB efforts to provide its own arts programs and services, which are not related to grants categories, would be duplicative and wasteful. However, many state arts agencies around the country do offer services and programs because organizations and individuals in these states do not have capacity to offer these arts activities.

B. MSAB responsibility to provide a comprehensive spectrum of grant categories which serve all sectors of the arts community and the public:

The MSAB undertook the amendment of its rules to clarify further existing grant categories in response to several changes in the availability of public support for the arts at the state and federal levels and to achieve several objectives related to these changes.

1. Agency grant categories:

Currently, the agency operates four categories of grants assistance. These functional categories were created in response to statutory provisions which described the various types of eligible grant applicants. These categories provide an effective budgeting and planning tool which enables the agency to accommodate some of the financial needs of artists, arts organizations and those non-profit organizations undertaking arts activities.

These categories are:

General Support

Unrestricted operating grants (of up to 10% of an organization's cash revenue budget) which support arts organizations with annual cash revenue budgets of $100,000 or more in Group II and of $700,000 or more in Group I.

Sponsor Assistance

Matching project grants in support of touring performances, exhibitions, screenings, workshops, artist residencies which are presented by community organizations and schools to the citizens of a town, neighborhood, city etc.

Regional Arts Councils

Block grants in support of the services, administration, programs and grant-making activities of regional arts councils.

Individual Artists Assistance

Non-matching grants in support of the professional work and development of individual artists.

In developing a spending plan (see attachment A) and in creating a regional allocation formula (see attachment B) the agency attempts to preserve a balance of individual artist/sponsor/arts organization/regional needs and within the regional allocation a balance of metropolitan region 11 needs and non-metropolitan area needs. The percentage of the budget allocated to each grants category is developed in response to the perceived financial need of a client group, in relation to past granting history (see attachment C) and the state's economic situation. The percentages of the spending plan allocated to each grants category show a consistent pattern from year to year. In recognition of the growing needs of arts organizations the board made certain adjustments in its spending plan. These will be discussed in greater detail later in this document.

2. Changes in the arts community and availability of public and private support: The private sector in this state has been exceptionally supportive of arts organizations. Nearly 29% of the money awarded by the private sector to charitable causes each year supports arts activities. With few exceptions, it does not appear that there will be an increasing amount of private sector giving to offset public sector cut-backs.

In 1976 the Minnesota Governor's Commission on the Arts Report recommmended that arts organizations receive 20% of their annual income from public sector sources. This recommendation was made in a year in which the agency received an appropriation of $4 million for the biennium, an increase of 400% over the previous biennium. By contrast, the most recent agency appropriation for FY 82-83 was $4.5 million, a decrease of 6% over last biennium. In addition, the Reagan administration has recommended that the budget of the NEA be cut in half in fiscal year 82.

Meanwhile, the number of arts organizations has increased dramatically. In 1975, when the Governor's Commission on the Arts Report was researched, 233 arts organizations were examined. In 1978, when the Arts Resource and Information Center published a directory of non-profit arts organizations in Minnesota, the number of organizations listed had grown to 580. Given the available public dollar resources it is clear that there is a greater demand for support that can be provided by this sector, much less to achieve the goal of 20% of the aggregate budgets of arts organizations.

3. Objectives of rules amendments:

In response to these conditions the MSAB sought to accomplish the following through an amendment of agency rules.

a. To make eligibility requirements quantifiable which are applied by staff prior to application review.
b. To develop understandable eligibility requirements which would allow applicants to choose the public funding source (MSAB or regional arts council) which can provide the most meaningful support.
c. To clarify and reassert the responsibility of the MSAB to ensure that within distinct grants categories the potential group to be served would have fair and reasonable access to assistance.
d. To clarify the responsibilities of the applicant for submission of timely and complete applications.
e. To reaffirm the responsibilities and risks of the applicant in choosing to participate.
f. To monitor the balance of support provided by the MSAB to each segment of the arts community as recommended by the Legislative Audit Commission Report.

II. The argument for limited eligibility (5 MCAR 5.007.[redacted]):

The rule which specifies that recipients of general support grants cannot apply for other agency grants or regional arts council grants is one which extends a restriction which was in the previous rules. Prior to this proposed new rule, arts organizations which received general support grants were permitted to apply for project grants only in cases in which special projects were presented for review and the matching funds for these projects came from sources other than the operational budget of the applicant organization. Effective administration and monitoring of this rule was nearly impossible. The concept of a "special project" was subject to very broad interpretation by the applicant. Essentially a "special project" became the cost of any activity of an arts organization that an unrestricted operating grant didn't cover. This rule carefully delineates eligibility and clarifies the scope of each of the grant categories offered.

Regional arts councils exist to provide grants in support of arts development projects/programs and developing arts organizations at the local and regional level. While the MSAB cannot meet all of the fiscal needs of arts organizations, permitting arts organizations which have received substantial grants ($10,000-over $100,000) to compete at a regional level throws off the balance of a support mechanism which has been created through regional arts councils which provides opportunities for organizations that by budget size, development needs and length of time of existence cannot apply for any grants except those available from regional arts councils. Attachment D shows that the average amount recommended in support of general support applicants is almost 3 times the amount recommended for other applicants. If general support applicants were not competing for these funds a larger number of grants for emerging organizations would be available.

A similar problem exists in the sponsor assistance category. In fiscal year 82 only $133,800 is available to support touring activities throughout the state. These funds support the touring of many Minnesota artists and arts organizations and provide opportunities for communities and schools to experience the arts

directly. It again is inequitable for sponsors to be forced to compete with recipients of unrestricted operational support, when the Sponsor Assistance program is the only category of support available to many sponsors, as most are not arts organizations and thus ineligible for General Support. Finally, the MSAB is concerned that the testimony advanced at the hearing affects only the group with a budget size of $100,000-$699,999. Rules are developed with a concern for access of groups to the appropriate category of support. Any change in the eligibility of one type of organization, by necessity, affects the eligibility of all others.

The MSAB contends that the real concern for this eligibility provision is the fear of arts organizations that they would receive a grant which would not be of sufficient size to assist them in a meaningful way and thus, be cut-off from other grants. While the arts organizations feel this risk should not be theirs, these rules continually underscore that any grants which are not entitlement grants are inherently competitive and involve an element of risk.

The MSAB has actively sought to resolve the monetary issue which seems to be the point here. In fiscal year 82 the MSAB will have $300,000 available in addition to the $220,900 allocated in state funds to support groups with budgets between $100,000 - $699,999. These additional funds are from the McKnight Foundation and have been given to the MSAB to support arts organizations in both general support groups. The collective annual budget of organizations in Group II is nearly $6 million. The available grants budget from all sources will provide nearly 10% support of <u>all</u> eligible Group II applicants. This would seem to eliminate the need of these organizations to seek funding in a patchwork fashion from as many public sources as possible.

Finally, in response to the concerns that many have raised regarding the uncertainty of where an organization applies there seems to be some misunderstanding of the application situation for general support applicants.

Because the MSAB has a deadline in a category prior to the deadline for general support applications, the MSAB has urged general support applicants to submit eligible project applications for this deadline. The review in this grant category will proceed as scheduled. In the event that general support applicants receive a grant it will be awarded. However, if the same general support applicants are successful in securing a general support grant, and the eligibility requirement is approved, a grant from general support would be made that is net the amount given in other grants from the MSAB or regional arts councils.

III. State-wide arts resources as an eligibility requirement of general support applicants:

The MSAB would concur with Ms. Angelica that an important recommendation of the 1976 Governor's Commission on the Arts Report was that the MSAB should set guidelines for the arts in each region and the state and classify the arts resources as state arts resources and regional arts resources. However, the MSAB would argue that the proposed rules achieve that end in a clearer way than previous rules. The concept of "state-wide impact" does not seem to be a definition with which there is a consensus of opinion in the arts community. In meetings with constituents, the MSAB heard various arguments which suggested that impact in a community was more important in determining state-wide impact than touring/outreach, or that touring was the only indicator, or that national reputation was the single determiner, etc. At best, these conflicting points-of-view can only be reconciled subjectively. However, a primary objective of amending these rules was to make eligibility requirements less subjective. It was vital then to establish an eligibility requirement which would create clearly defined constituencies for the MSAB and regional arts councils. The eligibility requirement of budget size is based on extensive research of the primary applicants of the MSAB and regional arts councils. It succinctly establishes which level is the primary resource for arts organizations seeking public support. The

MSAB has not abandoned the concept of "state-wide impact" as a consideration, however, it has been incorporated into the review standards. An examination of the review standard 5 MCAR §§ 5.010 C.1. will show this.

Conclusion

These rules reflect quality of opportunity, not an egalitarianism resolutely blind to the question of merit. If public funding has equal access as a primary consideration of eligibility requirements, the rules must be clear, fair, specific and avoid emphasizing any special interests in eligibility requirements for all grant categories. These rules are clear and permit applicants to have a choice as to which grant categories suit their needs. To the extent that these requirements are restrictive, it is to establish clearly the roles of the MSAB and regional arts councils in support of arts organizations. Further, these requirements allow arts organizations to compete fairly for limited funds without undue pressure on any grant category which would result if applications were submitted from those who have already received substantial support.

Attachment A

		Budget Submitted to Legislature	%		Board Changes
PROGRAM ONE ADMINISTRATIVE SERVICES					
	ST	365,639		ST	365,639
	FED	167,700		FED	167,700
ADMINISTRATIVE SERVICES	TOTAL	$533,339	20%	TOTAL	$533,339
PROGRAM 2 PRODUCTION ASSISTANCE					
General Support One	ST	914,700		ST	
	FED	35,000		FED	
	TOTAL	$949,700	35%	TOTAL	$850,000
General Support Two	ST	62,200		ST	
	FED	59,000		FED	
	TOTAL	$121,200	5%	TOTAL	$220,900
Special Project Grants	ST	-0-		ST	
	FED	47,700		FED	
	TOTAL	$ 47,700	1%	TOTAL	-0-
Individual Artist Grants	ST	70,200		ST	
	FED	44,000		FED	
	TOTAL	$114,200	4%	TOTAL	$114,200
	ST	$1,047,100		ST	
	FED	185,700		FED	
PROGRAM TWO	TOTAL	$1,232,800	45%	TOTAL	
PROGRAM 3 SPONSOR ASSISTANCE					
General Sponsor Grants	ST	80,600		ST	
	FED	53,200		FED	
	TOTAL	$133,800	5%	TOTAL	~~$133,800~~
Arts In Education	ST	-0-		ST	
	FED	108,700		FED	
	TOTAL	$108,700	4%	TOTAL	~~$156,400~~
	ST	80,600		ST	
	FED	161,900		FED	
PROGRAM THREE	TOTAL	$242,500	9%	TOTAL	
PROGRAM 4 REGIONAL ARTS DEVELOPMENT					
Regrants	ST			ST	
	FED			FED	
	TOTAL			TOTAL	
Program/Services	ST			ST	
	FED			FED	
	TOTAL			TOTAL	
	ST	676,600		ST	
	FED	-0-		FED	
PROGRAM FOUR	TOTAL	$676,600	26%	TOTAL	$676,600
	ST	1,804,300		ST	1,804,300
	FED	347,600		FED	347,600
TOTAL OF GRANT PROGRAMS		$2,151,900	80%	TOTAL	$2,151,900
	ST	2,169,939		ST	2,169,939
	FED	515,300		FED	515,300
TOTAL AGENCY BUDGET	TOTAL	$2,685,239	100%	TOTAL	$2,685,239

ADMINISTRATION	Budget Submitted to Legislature	%	Board Changes
Program 1 Administrative Services			
Personal Services (A)	$329,739		
Rents and Leases	36,500		
Advertising	-0-		
Repair Services	500		
Printing and Binding	41,000		
Consultant Services	-0-		
Professional and Technical (B)	29,200		
Data Processing Services	-0-		
Purchased Services (C)	5,000		
Communications (Postage-Phone)	27,300		
Travel in state	30,000		
Travel out state	5,000		
Fees and Other Fixed Charges (D)	18,100		
Supplies and Materials	6,000		
Equipment	5,000		
	$533,339		

Attachment B

REGIONAL
FY82 BLOCK GRANT FORMULA

REGION	FY81	MINORITY OPINION	MAJORITY OPINION	ADMIN	SPONSORSHIP
1	22,910	28,085	26,224	14,096	2,820
2	17,475	23,181	21,962	14,096	2,532
3	59,973	63,463	56,823	14,212	4,888
4	37,992	43,217	39,316	14,096	3,705
5	27,306	32,988	30,436	14,096	3,105
6E	-	29,559	27,442	-	2,902
6W	66,611	22,700	21,555	28,192	2,504
8	-	33,801	31,146	-	3,152
7E	22,421	28,446	26,529	14,096	2,840
7W	40,312	46,075	41,752	14,096	3,869
9	41,289	46,015	41,701	14,096	3,866
10	69,376	72,458	64,587	16,147	5,413
11	304,335	206,612	247,127	61,757	18,704
TOTAL	710,000	676,600	676,600		60,300

APPENDIX A

CONTRIBUTION OF MSAB FUNDS TO MAJOR ARTS ORGANIZATIONS:

GENERAL SUPPORT GRANTS - FY 1980

	RECIPIENT	TOTAL BUDGET	MSAB GRANT	%*
1.	Greater Twin Cities Youth Symphony	$ 185,500	$ 12,000	6.5
2.	Plains Art Museum	222,810	22,000	9.9
3.	Walker Art Center	3,014,100	115,000	3.8
4.	Chimera Theatre	841,560	35,000	4.2
5.	Rochester Art Center	137,000	12,000	8.8
6.	Minnesota Opera	839,000	85,000	10.1
7.	St. Paul Chamber Orchestra	1,400,000	90,000	6.4
8.	Minnesota Dance Theatre	965,500	70,000	7.3
9.	Children's Theatre	1,486,362	82,000	5.5
10.	Cricket Theatre	560,475	42,000	7.5
11.	Minnesota Orchestra	7,692,000	190,000	2.5
12.	Guthrie Theatre	4,529,000	180,000	4.0
13.	Minneapolis Society of Fine Arts	1,380,181	145,000	10.5
	TOTAL:	$23,069,073	$1,080,000	4.7

*MSAB grant as a percentage of each organizational budget.

Source: Minnesota State Arts Board, 1980.

ATTACHMENT D

Region 11 (metropolitan Twin Cities area)- Applications Recommended for Funding

	GENERAL SUPPORT APPLICANTS	OTHER APPLICANTS
FY 79		
# of orgs.	10	71
Total $ req.	$113,569	$226,185
Low recomm.	1,000	455
High recomm.	27,500	12,865
Average	11,357	3,186
FY 80		
# of orgs.	13	81
Total $ req.	$200,998	$427,588
Low recomm.	5,000	200
High recomm.	45,000	29,500
Average	15,461	5,279
FY 79-80 Average Total		
# of orgs.	23	152
Total $ req.	$314,567	$653,773
Low recomm.	1,000	200
High recomm.	45,000	29,500
Average	13,677	4,301

All Other Regions- Applications Recommended for Funding

	GENERAL SUPPORT APPLICANTS	OTHER APPLICANTS
FY 79-80 Average Total		
# of orgs.	9	60
Total recomm.	$ 47,020	$87,164
Average	5,224	1,452

DRAFT

Admin Services	McKnight			
Includes Payroll Adj	ST	365639		
	FED	167,700		
	TOTAL	533,339	16.3%	
General Support One	McKnight	250,000		
	ST	815,000		
	FED	35,000		
	TOTAL	1,100,000	33.5%	
General Support Two	McKnight	300000		
	ST	161,900		
	FED	59000		
	TOTAL	520,900	15.9%	
Individual Artists	ST	70,200		
	FED	88,000		
	TOTAL	158,200	4.8%	
General Sponser	ST	80600		
	FED	53,200		
	TOTAL	133,800	4.1%	
Arts in Education	ST			
	FED	156,400		
	TOTAL	156,400	4.8%	
Regional	McKnight			
	ST	676,600		
	FED			
	TOTAL	676,600	20.6%	
TOTAL	McKnight	550,000		
	ST	2,169,939		
	FED	559,300		
	TOTAL	3,279,239.	100%	

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ATTACHMENT F

RULES CHANGES PROPOSED AT THE HEARING ON JUNE 12, 1981. These changes have the concurrence of the Minnesota State Arts Board

5 MCAR S S 5.007 Eligibility requirements for organizations, governmental units and schools applying for grant assistance.

A. 3. a. (page 10 of the proposed rules) would now read:

The organization seeking support is an arts producing or exhibiting organization. Public broadcasting stations, schools, universities, colleges, libraries, governmental units, chambers of commerce and other community service organizations are not eligible for this type of support.

b. The organization has been in existence two full years prior to applying.

d. The organization has paid professional management.

e. The organization has a cash revenue budget of $100,000 for the fiscal year completed prior to applying for group II, and $700,000 for Group I. This budget shall be substantiated by certified audit.

Board Exh. No. 1
File No. SAB-81-002-05
Date 6/12/81

RECEIVED
MAY 15 1981
ADMINISTRATIVE HEARINGS

STATEMENT OF NEED AND REASONABLENESS
MINNESOTA STATE ARTS BOARD

INTRODUCTION

The Minnesota State Arts Board, created and operated under the terms of Minnesota Statutes, chapter 139.07 - .17, is charged to "stimulate and encourage the creation, performance and appreciation of the arts in the state." In carrying out the mandates of this chapter, as well as additional mandates incorporated in its appropriation law, the agency operates with a professional staff of arts administrators, reporting to a board of eleven citizens who are appointed by the governor with the advice and consent of the senate. It is this board which is empowered to establish the agency policies, contained in these rules and regulations, and to make all decisions regarding the conduct of agency business.

The board, in carrying out its statutory responsibility to promulgate rules, promulgates rules which are procedural in nature. The Minnesota State Arts Board first adopted these rules in 1977 and has amended them in 1978. The existing rules have been in effect approximately three years. The new rules have been proposed to clarify and refine the existing rules and in response to the ruling of the Office of Administrative Hearings in the contested case involving the Arts Board and Terrance J. Lappin, and the board requested Legislative Audit Commission study of the agency's individual artist assistance program.

In undertaking its mandate the agency uses two principal sources of funds: a biennial legislative appropriation and funds from the National Endowment for the Arts, the federal arts agency.

The MSAB is principally a grants-making agency. The funds awarded support the work of individual artists or the presentation of artistic programs/projects, or the operation of arts organizations. Grants may be awarded to non-profit, tax-exempt organizations or individual artists. At this time the agency offers grants in four program areas: 1) general support, operational funds in support of arts organizations with annual budgets in excess of $100,000; 2) individual artists assistance, grants that support new work; or the continuation of work of individual artists; 3) sponsor assistance, grants that support the presentation of touring arts events or artist residencies in communities and schools; and 4) regional arts councils, grants that support the services, programs and regranting activities of regional arts councils. The grants awarded by the agency are not entitlement grants. Organizations and individuals must meet the eligibility standards specified in these rules. Applicants are also reviewed according to standards contained in the rules. The review process is a competitive one which results in only one grant being awarded for every four applications received.

A major principle of agency operation is the use of citizen advisory committees in order to advise the board in the development of policy and, most importantly, in the review of grant applications. Advisory committee members serve without compensation, except for reimbursement of expenses related to meeting attendance. The use of citizen advisory committees is permitted by statute, and represents a commitment on the part of the

Arts Board to see that a diverse group of artists, administrators, educators, and members of the arts-interested public participate in a meaningful way in the review of grant applications which may affect them. In the previous rules an open nominations process for selecting advisory committee members was established. These rules focus on the issue of conflict-of-interest and provide specific situations in which a conflict is present. It is the intent of the Arts Board to insure, insofar as it can be determined, that advisory committee members do not participate in the review of any applications, if they have affiliations with grant applicants which may constitute a conflict-of-interest.

The primary purpose of the rules is to provide those who seek grants assistance from the agency with a clear understanding of the policies of the Minnesota State Arts Board. These policies are developed as a result of public meetings with advisory committees, the board and other interested members of the public. The rules hearing is a culmination of the response of the public to these policies which they have helped to develop.

The Minnesota State Arts Board is the only state arts agency in the country which promulgates rules and regulations. The arts are subjective disciplines, not easily proscribed by rules or governmental programs or procedures. Thus, public sector arts policy touches sensitive political issues such as urban versus rural points of view, large versus small organization needs, and the concept of governmental support of leisure-time activities, all of which are greater issues than the Arts Board alone can address.

These rules reflect a recognition of the fact that the State Arts Board has an ongoing obligation to develop a basic understanding of the purpose of its public sector support of the arts. Thus, each of the main chapters of the rules, eligibility requirements, the review process, and review standards, is a statement as to how the State Arts Board uses grants in support of the arts to encourage activities identified as being in the public interest.

Of primary interest to the public are the standards by which applicants are reviewed to determine if a grant award should be made. The eligibility and review standards in these rules recognize the somewhat dualistic mandate of the agency to take risks beyond the conventional or classic art forms in the support of the arts and also to promote accessibility to the arts. Specifically, eligibility standards address the necessary limits of each of the agency's grants programs. Briefly summarized, the agency, cannot and should not be all things to all people in the support of the arts. Review standards are not so readily quantifiable. In these rules the State Arts Board reasserts the validity of the merit of artistic quality of an arts organization, arts project or work of art as being the most important standard of review. When reviewing applications the board seeks to ensure that the public is being served through their involvement in the support of the presentation or creation of quality artistic works. Further, the recipient of public support must be held accountable to accomplish the results as

stated in the request for such support. Assessing the merit or quality of the artistic work of an applicant arts organization or an individual artist is the primary consideration in determining either the ability of an applicant to achieve his/her own artistic goals or the need for the artistic work of an applicant with respect to the art form, or the audience/public.

Finally, these rules offer a more comprehensive process by which grant applicants may appeal the decisions of the board. The board is supportive of any applicant who wishes a hearing before an examiner and this type of appeal remains available. However, the board would like to be more accessible and amenable to resolving applicant appeals, if possible, before these become contested cases.

The need for and reasonableness of each rule individually is as follows:

5 MCAR § 5.002 Purpose of the rules. (Page 1)[1/]

This rule is amended to clarify the role of the board; which is primarily to offer grants assistance. When agency rules were first promulgated, the agency looked forward to a time in which loans and other forms of assistance would be offered. However, these two types of assistance have never been realized, nor are they likely to be in the next four years. The addition of new language further clarifies that the standards and review processes described in these rules are related only to requests for grants assistance.

1/ All page references will be to the copy of the proposed rules. The numbering of the rules, unless otherwise indicated, refers to the numbering in the proposed rules.

5 MCAR § 5.003 Whom the rules govern. (Page 1)

This rule has been amended to remove any reference to loans. More significantly, the rule is amended in response to a changing relationship between the MSAB and the regional arts councils it supports with grant funds. The regional arts councils have developed significantly since the rules were last amended. This development is accurately reflected in the relationship between the Arts Board and the regional councils as set forth at 5 M.C.A.R. § 5.009 I and in the grants contracts awarded to the arts councils.

5 MCAR § 5.004 Definitions. (Page 2)

5.004.A. This definition is amended to clarify the relationship of advisory committees to the board. It also reflects the Arts Board's point-of-view that the main role of advisory committee members is to review grant applications. Discussion of and recommendations on public arts policy are valuable to the board. However, this latter activity should not supersede the review of applications.

5004.B. This definition is amended so that the types of services which a regional arts council undertakes with a block grant from the Arts Board are no longer restricted.

5004.D. This definition is amended as certified audits are almost always conducted on an organization's total activities, not just a single project or program. Thus, an audit may qualify under this definition if it covers an entire organization, so long as the audit includes the funded program or project.

5.004.E. This definition is amended to clarify that this term is only used by the agency in a discussion of the activities of a regional arts council.

5.004.F. The definition "local" is deleted as it has not provided a meaningful way of defining the impact of arts programs or services offered by organizations.

Our experience indicates that the use of geographic terms to discuss impact is unworkable for applicants to the Minnesota State Arts Board or regional arts councils. It has also been problemmatic in its use by advisory committees attempting to measure the impact of applicant organizations, programs or projects.

5.004.F. General support is an established type of grants assistance offered by the Arts Board. This category of grant support is a combined program which includes general operating support, a category which the MSAB has offered for five years, and a pilot category offered in FY 81, general program support. Both provide unrestricted, operational grants for arts organizations. This rule thus simply combines two nearly identical programs into one. The rule also clarifies for grant applicants the important differences between this program of grants assistance and others. Understanding these differences is critical to the submission of eligible grant applications.

5.004.G. This definition has been expanded in response to the fact that this type of grant is to encourage public access to the arts in addition to its creation and production.

5.004.H. This definition "multi-regional" is deleted as it has not provided a meaningful way of defining the impact of arts programs or services offered by organizations. Our experience indicates that the use of geographic terms to discuss impact is unworkable for applicants to the Minnesota State Arts Board or regional arts councils. It has also been problematic in its use by advisory committees attempting to measure the impact of applicant organizations, programs or projects.

5.004.H. This definition is relettered, changed from I to H, and contains only grammatical changes.

5.004.I. (Page 3) This definition is relettered and its sole additional word clarifies that program information is primarily an aid to those seeking grants assistance.

5.004.J. This definition is necessary because there has been some confusion on the part of applicants regarding the difference between project grants and operational grants. The definition will also aid appiicants in distinguishing between the types of grants offered by the MSAB and those offered by the regional arts councils.

5.004.K. through Q. These definitions have all been relettered. Other changes include:

5.004.K. In this definition the term regional arts task force is deleted as all regions are now represented by regional arts councils.

5.004.L. The additional words in this definition clarify that a regional arts council's autonomy is over the use of block grant funds, rather than over the decision about its receipt of the block grant from the MSAB.

5.004.N. (Page 4) The original definition did not adequately describe the re-granting activity. This definition clarifies this term.

5.004.O. This definition has been clarified to state that the services governed by these rules are the publications, workshops, technical assistance, etc. offered by the Minnesota State Arts Board and regional arts councils.

5.004.P. This new definition describes another established type of grants assistance available from the MSAB and regional arts councils. This definition clarifies for grant applicants the important differences between one program of grants assistance and another. Understanding these differences is critical to the submission of eligible grant applications.

5.004.Q. The word "development" has been deleted in this definition since there has been no need to tie assistance to development region boundaries. Experience has shown the "development" definition to be impractical.

5.MCAR § 5.005 (old) Requests for information. (Page 4)

This rule is proposed for repeal as it is no longer necessary to direct the public, through agency rules, on how it can obtain information about the board and its activities. The agency

provides several publications, free-of-charge, which are sent to its mailing list of nearly 12,000. Further, it is easy to call or stop at the MSAB office to request materials a member of the public might need to have regarding the MSAB and its activities. Finally, the board's obligation to provide information is already covered by the Minnesota Government Data Practices Act, Minnesota Statutes, chapter 15.1611 to 15.1698.

5 MCAR § 5.005 (new) Advisory committees. (Page 4)

Most of the language in this chapter was previously numbered 5 MCAR § 5.012 A.-G. The changes made in the wording of letters A.-G. from the previous set of rules include the following:

5.005 A. This section has been changed from the existing rules to describe the role of advisory committees exclusively in terms of the review of grant applications. While the board has used, and continues to use, the services of advisory committee members in providing recommendations on policy issues, the board seeks more flexibility in seeking advice on policy issues. The proposed changes allow the board to appoint advisory committees other than those named and change the title of an advisory committee without amending the rules.

5.005 B., E., G. (Page 5) No changes are proposed in these rules as compared to the existing rules.

5.005 C. This section has been changed from the previous rules as the system of appointing designated nominees of regional arts councils results in advisory committee members who have affiliations which constitute conflict-of-interest.

5.005 D. This section has been amended to permit the board to appoint advisory committee members for terms less than three years.

5.005 F. This section has been amended to delete the requirement that the regional advisory committee have a certain representation from each region. Continuing this system of designated appointments is contrary to the conflict-of-interest provisions of section H. of this chapter.

5.005 H. (Page 6) This part of the chapter represents a significant step for the board in seeking to solve the problem of affiliations of advisory committee members with grant applicants. This rule defines the conditions under which an affiliation would constitute a conflict-of-interest were an advisory committee member to discuss and vote on the application in question.

Section H states the general rule in the first paragraph that any advisory panel member must disclose any "direct financial or employment interest" relating to an applicant that is "reasonably likely to affect his/her impartiality". Section H. 1. then goes on to give some more particularized definition to the type of affiliation which falls within the meaning of the rule. The section is needed to assure that conflicts of interest do not occur and to assure disclosure of conflicts or potential conflicts. In implementing this rule the Arts Board will make every attempt to appoint advisory committee members who do not have affiliations. However, in the event a situation occurs in which an advisory

committee member has an affiliation that may pose a conflict, the Arts Board follows a procedure similar to the one stated in the law and rules of the Ethical Practices Board in that advisory committee members must abstain from the discussion and vote on the application in question. The Minnesota State Arts Board Procedures Manual provides a detailed description of the procedures by which the MSAB insures that members of advisory committees will not find themselves in situations which will present a conflict-of-interest. Briefly, this procedure requires that, to the extent possible, the MSAB appoint members of advisory committees who do not have the affiliations described in these rules. In the event it is determined that an advisory committee member has an affiliation with an applicant, the advisory committee member, at the request of the board, does not participate in the review of any grant applications in that category for the deadline in question. If additional members are needed for a particular advisory committee the board looks for new members of the committee from the pool of available nominees, generated by the open nominations process.

5 MCAR § 5.006 Eligibility requirements for individuals applying for grant assistance. (Page 6)

This chapter of the rules is simply a reorganization of the presentation of eligibility standards in the individual artist category. For purposes of clarity the rules have been amended so that eligibility standards for individuals are presented in a different chapter than those for organizations.

5.006 A.B. (old) These provisions are proposed for deletion as they pertain only to organizations and are not appropriate to this chapter. These provisions appear in essentially this form in the following chapter.

5.006 C.1-5. (old) The limitations stated in this section are proposed for repeal because these represent more stringent eligibility standards than the MSAB feels are fair to impose on this category. The new rules proposed allow anyone to apply for a grant with minimal limitations on their ability to apply. The eligibility criteria are simply that: 1) the individual be a Minnesota resident; 2) the individual be representing himself/herself; 3) the individual must not have received a grant within the previous fiscal year; and 4) an individual may submit only one application annually.

5.006. A. (new) (Page 7) The two new provisions are necessary because the individual artist assistance program is supported by Minnesota tax dollars. Therefore, it is reasonable to support only Minnesota artists with these funds. The second criterion is necessary because this type of grant is designed to assist the independent working artist and not an organization or a group. The MSAB has several other types of grants which can assist artists if they wish to work in nonprofit, tax-exempt organizations.

5.006. B. (new) This criterion is an amendment of existing 5.006 C. 5 which is necessary because the agency has only a limited amount of grant support to offer individual artists, so it would be reasonable to require that grant recipients wait at least a year

before applying for another grant. The amendment of the language in this letter reflects a clarification of this point.

5.006. C. (new) This requirement is introduced because the MSAB receives many more applications from artists than it can support. There are only sufficient funds to support 50-60 grants each year and the MSAB annually receives in excess of 400 applications in this category. Allowing artists to request support for projects in a variety of disciplines places the artist in a situation of "hedging his/her bets" as opposed to presenting a grant application which is a request to support his/her best idea.

5.006 D. - G. (old) (Page 8) The remaining provisions of this chapter have all been deleted as these provisions are relevant only to organizations. These provisions, as amended, appear in the next chapter of these rules.

5 MCAR § 5.007 Eligibility requirements for organizations, governmental units and schools applying for grant assistance. (Page 9)

This chapter is devoted entirely to the eligibility requirements of organizations applying for grants assistance from the MSAB or regional arts councils. It is structured to present these eligibility requirements in a way which is consistent with the type of grants programs offered by both the Minnesota State Arts Board and regional arts councils. The chapter does not provide substantially new requirements but collects various provisions dealing with organizations and places these in one chapter.

5.007 A.1. This section is similar to that found in the existing rules. It has been amended to include a cross-reference to 5 MCAR § 5.012 which contains provisions which may also affect an applicant's eligibility for MSAB grants. Further, new A.1 extends the provisions found in existing 5.006 B. This rule is necessary as it logically extends the definition of the type of grants provided by regional arts councils. Beginning in FY 82 the regional arts councils will offer sponsor assistance (see 5.007 A.2.) along with the MSAB. Eligibility requirements aid the applicant in distinguishing when it is appropriate to apply to one funding source or another. These eligibility requirements also assist the applicant in understanding the intention of public sector support of arts organizations, projects, or programs.

5.007 A.2.a. (Page 10) This rule is necessary as it states the requirements of the National Endowment for the Arts for awarding federal money in grants that support artist residency projects in schools. Arts organizations applying for assistance to provide these types of projects to schools must also offer 5-day (working days totalling 20 hours per week) residencies if seeking funds from the MSAB in support of their arts-in-education programs.

5.007 A.2.b. This specifies that the public's access to these projects or programs should not be restricted. This provision is a rewritten version of the existing rule 5.006 D. The rule is necessary to insure that the public has fair access to all MSAB supported arts activities.

In preparation of these rules a letter c. was inadvertently left off the final copy of rules. This letter would read as follows:

c. This assistance is for projects in which more than $3,000 is requested.

This addition to the rule is necessary as a correlative to the rule 5.007 A.1.b. above regarding the type of sponsor assistance projects offered by regional arts councils. This clarifies which projects are accepted for review by the MSAB and which are accepted for review by regional arts councils.

5.007 A.3. This rule is a re-working of 5.006 E. in the existing rules. Requirements in the proposed new rules in items 5.007 A.3.b.,c.,d. are virtually identical to the existing rules. The requirements in the proposed new rules in 5.007 A.3.a. and e. are necessary to establish specific eligibility requirements for this category in light of the previous amendments of these rules in which definitions such as "multi-regional" have been proposed for repeal as unworkable. This rule is also necessary as it extends the definition of this type of assistance offered by the Minnesota Arts Board. Because general support is an unrestricted grant, the eligibility and review standards are the most stringent of any MSAB grant program. The requirements described are the only measurable way for the MSAB to determine that an organization is of sufficient administrative and artistic stability to warrant consideration for this type of support. In addition, eligibility is limited to those organizations exclusively in the business of creating, producing, or

exhibiting the arts. This is necessary and reasonable in furthering the mandate of the MSAB to support the arts rather than organizations engaged in other activities.

5.007. B. This rule establishes the maximum amount of state support for an organization which the MSAB will provide. This limit is consistent with the amount of funding available from the agency and past granting history in which grantee organizations received 4-8% of their total annual budgets in state funding.

5.007. C. This rule amends 5.006 E.2. in the existing rules. The MSAB has permitted recipients of operational grants to apply for other grants from the MSAB and regional arts councils provided they met the requirements of finding new funds to support the project and could demonstrate that it was a unique activity. This amended rule is necessary and reasonable to insure that MSAB grant funds are equitably provided to eligible applicants judged to meet the review standards by the board. The largest single grants budget of the MSAB is the fund available to provide general support grants (nearly 40% of the agency's budget). By contrast the other organizational grant categories of sponsor assistance and project assistance represent only 8% of the agency's budget. Regional arts councils also have limited funds available. The primary source of all regional arts council grant funds is the MSAB. Thus, to avoid situations in which organizations which receive general support are able to apply for other MSAB funds, and to give applicants, which may not be eligible for general support, an opportunity to compete

for the limited dollars available, the MSAB feels that it is vital at this time to restrict recipients of general support to receiving only that grant. If an applicant does not receive a general support grant, an eligible applicant may seek other project grants, from regional arts councils or the MSAB. General support grant recipients are not the only grantees restricted from applying for other types of MSAB grants. Regional arts councils may only apply for a block grant from the Arts Board regional arts council program.

5.007. D. This rule is necessary as the MSAB and regional arts councils, as public funding sources, should not provide tax-generated funds as the exclusive support of any arts project, program or organization. In the existing rules, the cash-matching funds concept is a review standard in the sponsor assistance category. However, the board, through its experience, has determined that this provision is more appropriate as an eligibility requirement of all organizational applicants.

5 MCAR § 5.008 Process for obtaining grants, in all categories except regional arts council block grants. (Page 11)

This rule has been amended to reflect the intent of these rules which is to guide grant applicants. Additionally, in response to a contested case decision (Lappin versus the Minnesota State Arts Board), this rule has been substantially amended to clearly define what is meant by a complete grant application, and the obligations of applicants to insure that the applications submitted are complete.

5.008 A.1. This definition has been amended to reflect the fact that loans and other forms of assistance are not the topic of these rules.

5.008 A.2. This definition is amended to clarify who is an authorizing official in an application from an individual artist.

5.008 A.3. A new definition "co-sponsor" has been introduced to clarify an existing situation in the grant application process. With funding for arts programs/projects becoming more competitive many organizations are cooperatively undertaking arts activities. This is a situation which the MSAB would like to encourage.

5.008 A. 4-7 These definitions are renumbered.

5.008 A.4. This definition is amended to clarify that the fiscal agent is only used in applications on behalf of organizations, as opposed to individual artists.

5.008 A.5. (Page 12) The change in this definition is grammatical.

5.008 A.6. This definition has been amended as a result of a recommendation by the Legislative Audit Commission. This definition now makes documents such as the grant application and a signed grant letter a formal legal contract between the MSAB and the grant recipients.

5.008 A.8. Grant applicants to the MSAB are required to match the grant from the agency on a dollar-for-dollar basis. This definition clarifies the types of monetary funds and service donations which can be used to match MSAB funds.

5.008. B. (Page 13) The amendments to this rule are necessary as applicants must submit the correct application form, or the application is considered ineligible. Each of the three application forms in use by the MSAB asks questions which are instrumental to determining whether or not an application meets stated eligibility requirements and review standards.

5.008. C. The new rule clarifies who receives agency information.

5.008. D. The most common means for submitting a grant application is by mail. This rule has been amended to reflect this. However, applications will continue to be accepted by other means provided that these applications are received by the deadlines set forth by the board.

5.008. E. (Page 14) This rule is necessary as it states the purpose of the application form.

5.008. F.-T. These rules have all been relettered.

5.008.F. This rule has been amended to clarify the amount of supporting material required as part of an individual artist application.

5.008. H. This rule has been amended to clarify the role of the staff in reviewing grant applications. The change in this rule corresponds to the new rules on complete applications.

The two subpoints listed in letter I. of these rules should be placed in this provision, letter H. The subpoints are:

1. The applicant is responsible for the completeness of the application.

2. An incomplete application is not eligible for review by the advisory committee or the board. These provisions were inadvertantly placed in I. instead of H.

These provisions are necessary because the previous rules were ambiguous as to who was responsible for insuring that an application was submitted as complete. These rules make completeness a responsiblity of the applicant. This is necessary in light of the number of applications received by the MSAB. The MSAB provides assistance to an applicant who requests it and application writing workshops prior to the grant deadline. However, the agency does not have the administrative ability to provide this same service once applications have been submitted. Therefore, after potential applicants have had an opportunity to participate in publicly offered workshops, clinics and meetings it seems reasonable to expect the applicant to apply this knowledge to completing a form.

5.008. I. This rule sets forth what action will be taken by the board if applications are late or incomplete. This rule would be more appropriate if it concluded the sequence of rules regarding completeness, rather than being in the middle of this sequence. The board requests that this rule be relettered K and the remaining rules be relettered as follows: J. becomes I., K. becomes J.

5.008.(old) I. This rule is being deleted as advisory committees provide recommendations to the board on applications based on the review standards contained in these rules. There are no additional reasons for taking action on applications other than these standards. Accordingly, the recommendations reflect the rules' criteria.

5.008. J. This rule is necessary so that incomplete applications are no longer considered eligible for review by the board or its advisory committees. The board has an obligation to set forth the conditions under which an application is deemed incomplete. These conditions are ones which are easily understood by applicants, and further, can be readily discerned by the MSAB staff.

5.008 K. (Page 15) This rule clarifies that the board is not responsible for an applicant's responses, with respect to the artistic intent of a project or program or organization, beyond specifying the quantity and format of artistic materials submitted as part of an application.

5.008 L. This rule is amended to describe the nature of advisory committee recommendations to the board. The board maintains provision of full funding to individual artist applicants because the amount individuals may request is already limited. Unlike organizational applicants, individual artists do not present detailed budgets for projects which lend themselves to a discussion of supporting one type of expense over another. The board also does

not need to specify in the rules that applications are tabled. As a result of the completeness requirements of these rules the advisory committees and the board should no longer be reviewing applications which are in any way incomplete with respect to the form or supporting materials.

5.008. P. (Page 16) This rule is amended to reflect the fact that the MSAB does not have a loan program, nor is it likely to in the immediate future.

5.008. Q. This rule is amended to clarify: 1) the board action on grants; 2) that the board awards grants which are for the amount requested or smaller; 3) that it is the grant contract which is the vital document involved in transactions with applicants.

5.008. R. This rule clarifies the action taken by the MSAB staff to notify the applicant of the action taken by the board on applications.

5.008. S. This rule is necessary in order that the MSAB can determine that the fiscal agent is an eligible applicant for MSAB grants. Further, this rule assists applicants engaged in this type of relationship by providing a framework in the form of a contract for project implementation.

5 MCAR § 5.009.(old) Appeals Process. (Page 16)

The agency proposes eliminating this rule as it is written and creating in its place a new chapter, "Public Participation in Agency Matters." This new chapter provides the same appeal process which was originally in this chapter and offers to the MSAB

potential resolution of claims against board decisions rather than requiring that every claim automatically become a contested case.

5 MCAR § 5.009.(new) Process for obtaining regional block grants; regional plan review; re-granting and reporting requirements. (Page 16)

This rule has been amended in large part to further delineate the grantor to grantee relationship of the Minnesota State Arts Board to regional arts councils. This rule chapter is numbered 5 MCAR 5.008 in the existing rules.

5.009. A. This rule has been amended to describe better the eligibility requirements of regional arts councils for block grants and to state these in a way which sets forth these requirements systematically. This is necessary as regional arts councils submit a narrative document containing the information specified in these rules, rather than an actual application form.

5.009. A.1. (Page 17) This provision has been amended because the board seeks two year plans from regional arts councils rather than one year plans. This promotes the board's interest in long-range planning. Much of the language referring to regional arts task forces has been eliminated because all regions are now represented by regional arts councils.

5.009. A.2. a.-i. These rules have been amended to accomplish the following: a.-define what the MSAB is seeking in a mission statement; b.-h.-better specify the relationship of the needs assessment to the work plan of a regional arts council; and i.-to implement for the first time, a system of evaluating regional

arts councils and their grantees. The evaluation of all grantees is an increasingly important part of MSAB policy and operations.

5.009. B. 1.-3. (Page 18) The new language proposed for these rules is significant in that for the first time regional arts councils will be reviewed according to the same review standards used for other organizational applicants. When regional arts councils were first initiated it was reasonable to review these organizations only in relation to standards which dealt primarily with completing an effective, public, planning process in the arts, and other administrative abilities. However, now that there are fully functioning regional arts councils in all regions it is appropriate to review the work of these councils in terms of the quality of their work and their contribution to the arts of the state. In addition, the regional arts councils also provide arts services and programs, and these can only be assessed in relation to the review standards which have already been established for the review of these types of programs when offered by other arts organizations. Finally, the change in the standards of review reflects consistency in the evaluation of all organizational grants so as to allow comparison of these requests and the organization's contribution to the arts. The MSAB also believes that regional arts councils must be fairly competitive, like all other applicants, and that the board reserve the right not to fund a regional arts council, or to provide only partial support of its activities.

5.009. C. (Page 19) This rule is re-lettered and amended to clarify the relationship of the MSAB to the regional arts council, as an applicant, at this point in the consideration of the block grant.

5.009. D. This rule is re-lettered.

5.009. E. This rule is necessary to complete the cycle of review and thus, designation of a regional arts council.

5.009. F. This rule is necessary to assure that if an applicant for a regional block grant receives no funding or partial funding, funds allocated to a region are still distributed within that region in support of arts activities.

5.009. G. This rule is re-lettered and amended to clarify that the plan submitted is no longer annual.

5.009. H.-J. (Page 20) These rules were previously contained in different chapters of agency rules. Specifically,

5.009. H. This rule is found in the existing rules as 5 MCAR § 5.006.F.

5.009. I. This rule is an amendment of one found in the existing rules as 5 MCAR § 5.003. b. The amendments of the existing statement specifically make reference to the chapters of proposed rules which affect regional arts councils. This is done to clarify which chapters substantially affect regional arts councils and the circumstances in which these rules are applied.

5.009. J. This rule is a reworded version of 5 MCAR § 5.1010 D.6 The intent of this rule, as amended is the same as the existing rule. It was reworded to be consistent with the language in this chapter of the rules.

5.009. K. This rule establishes that grant recipients who receive regional arts council funds (which are state monies) must follow the same rules as those receiving MSAB funds. The rule assures that the regranted funds are properly awarded.

5.009. L. This rule has been amended to provide regional arts councils with the time needed before submitting a final report to close their books on a fiscal year.

5.009. L.1. This rule is amended to remove the reference to an "annual" plan.

5.009. L.2. This rule is amended to clarify what type of documentation of a fiscal year the MSAB is seeking from regional arts councils.

5.009 L.3. This rule is necessary as the MSAB needs more information from regional arts councils regarding their grant-making activities.

5 MCAR § 5.010 Standards for review of requests for grants. (Page 21)

5.010. A.-D. These rules have been amended to clarify the priority each standard has in the review of applications. Although the review standards are stated somewhat differently in each category of grants assistance, the intent is the same for all grants offered, that the applications be reviewed primarily according to

the merit and artistic quality of an activity. If any application meets that standard, it would be reviewed according to the ability of the applicant and the demonstrated demand or need for an activity by the applicant or the groups it serves. These review standards establish the nature and scope of public sector support of the arts. Clearly the standards, as established, point out again that public sector funds are not designated as a mechanism which can provide substantial support for all artists, arts organizations, or others engaged in arts activies. Within the scope of MSAB grant programs and the review process, the original intent of awarding of public dollars to advance the arts must be reflected. Thus, these review standards address themselves not only to the quality of the artistic experience or work, but also to the access the public/audience will have to these activites when completed. These standards, when used in the review of artists or arts organizations insure that the grant recipient will be held accountable to accomplish the results specified in the application and intended with the support. Review standards, as well as the grant-making process, are not intended as an assessment of who creates good art and who does not. Rather, these standards are a necessary and reasonable assertion by the Board of its priorities in allocating its limited resources and in assuring that public support is for the public good.

Specific changes in these rules include:

5.010.A. This rule is amended to facilitate the reorganization of review standards under the headings of each grants category rather than very broad categories such as "individuals" or "organizations". As explained earlier in this statement, the MSAB is proposing that regional arts councils be reviewed according to the same standards used for review of other arts organizations and arts activities. This will provide consistency in standards of review.

5.010.A.2. This rule establishes the priority of standards in the review of applications. It should be noted that while the first standard deals exclusively with the merit and artistic quality of projects or programs, decisions related to the remaining standards are not made disassociated from the first standard of review.

5.010.A.2.a. This rule is amended to clarify the type of personnel credentials examined in a review of an organization's ability to execute a project or program. The reference to "marketing" has been deleted because it is a term which is not workable in the review of applications of this type.

5.010.A.2.b. This provision is amended to clarify the intent of the standard with respect to the concept of "need".

5.010.A.2.d. (old) This provision is proposed for repeal because this requirement is more appropriate to considerations of eligibility, rather than standards of review.

5.010.A.2. (old) These provisions are proposed for repeal because the agency is proposing review standards for individual artists which are more relevant to the scope of the grants offered by the MSAB.

5.010.B. (Page 22) This rule is necessary because of the situation described in the rule itself. The MSAB proposes this rule to clarify for the applicant the action which will be taken in these situations.

5.010.C. This rule is amended to better state the priority of standards of review for this grants category.

5.010.C.1. The change is necessary to make the punctuation consistent.

5.010.C.1.b. This change is necessary to clarify that an organization is reviewed in terms of its local artistic contributions as well as its national ones.

5.010.C.1.g. This change is necessary because administrative personnel may often contribute to the success of an arts organization as much as artistic personnel.

5.010.C.2. This rule is necessary to adequately describe the order in which standards for this category are considered.

5.010.C.7. This rule has been amended to clarify how one arrives at who is served by an arts organization and, in turn, how extensive a public must be served by these organizations.

5.010.C. (Page 23) This rule is proposed for repeal as the agency offers assistance only in the form of grants, and this chapter is concerned with the standards used in the review of grants.

5.010.D. This rule is proposed for repeal as the standards for review of regional arts councils are proposed in 5.010.A. (See earlier explanation.)

5.010.D. This rule is necessary as it delineates the standards for review of individual artist applications. Further, these standards specify that the artistic work, as provided in examples submitted by the artist, is as much a part of the application as the actual form submitted by the artist. It should be noted that, while the first standard deals with quality of artistic work, decisions related to the remaining standards are not made disassociated from the first standard of review.

5.010.E. (Page 24) This rule is necessary so that the Board can conduct a review of individual artist work in which the work of one artist in a given discipline can be compared to the work of another artist in the same discipline.

5.010.E.-G. These rules have been moved to 5 MCAR § 5.012. Miscellaneous provisions.

5 MCAR § 5.011 Provisions affecting grantees. (Page 24)

The changes in these rules are made in response to recommendations made by the Legislative Audit Commission and further clarify that when a grant is awarded a grant application becomes a legal and binding contract between the MSAB and the grant recipient.

5.011.A. This rule is amended to provide more time for the grantee to return the necessary agreements with the Board to the office. The rule again emphasizes the documents which must be returned. This rule is related to 5.011.K. It is understood that grantees with delinquent final reports are bound by the provision that the grant contract and attachments be signed and returned within 45 days of mailing. Since a grant contract and request for payment form cannot be sent until the final report(s) have been received, the grantee with final reports outstanding will need to move rapidly to insure that delinquent final reports and the necessary attachments and grant contract are all returned in 45 days. This strict interpretation is reasonable as grantees with outstanding final reports will have received numerous reminders to submit reports. Thus, these granteees should not be given additional time to submit already late reports.

5.011.B. This rule is amended to specify that the primary document in the grants transaction is the grant contract.

5.011.C. (Page 25) This rule is amended to clarify when a grantee should submit an amended grant application. It is also necessary to state that a grantee cannot amend a grant application in any way that violates eligibility requirements which affect all other applicants.

5.011.E. This rule is amended for clarity.

5.011.F. This rule is necessary because it enables the Board to properly evaluate MSAB supported activities. By "activities" the MSAB means access to all records and other documentation of MSAB supported projects, programs, services and/or organizations.

5.011.J., K., O. The changes in these rules state the conditions under which a grant may be rescinded and make the submission of a final report on a grant, a condition of future funding. These rules are necessary as MSAB grant recipients have been remiss in submitting final reports in a timely manner. These rules insure that the Board can take reasonable steps to see that these reports are submitted, for the benefit of the grantees as well as the Board, and thus, fairly account for its grant expenditures. Specifically, the changes include:

5.011.J. This rule is amended to refer to the primary documentation in the grant transaction, the grant contract. The number of days has been changed in all cases to reflect the time needed by grantee, or the Board, to respond to the situations described.

5.011.K. This rule is amended to give the grantee a more reasonable amount of time to complete and submit a final report. This rule also states the penalty for non-submission of these reports. The Board feels the penalty is reasonable in that grantees may still apply for funds, but these funds, if granted, will not be forthcoming until final reports are filed.

5.011.L. (Page 26) This rule is necessary in order for the MSAB to comply with state rules and legislation regarding payment of agency obligations of one fiscal year with the funds of that same fiscal year. Thus, grantees must start grant activities and request payment in the same fiscal year so that the MSAB can begin payment on these grant obligations.

5.011.M. This new rule is necessary because the components of this formula, particularly population, are not static and may vary each year.

5.011.N. This rule is an amended version of the rule preceding it. The new provisions make a request for carry-forward by a regional arts council consistent with stipulations placed on other grantees regarding changes in projects or programs.

5.011.O. This rule is necessary as it permits the Board to pay grants in installments. This is helpful in situations in which the grant supports a particularly risky endeavor.

5 MCAR § 5.012 Miscellaneous provisions. (Page 26)

This chapter of the rules formerly contained the rules governing the Board's advisory committees. The first rules deleted (A.-F.) are now in chapter 5.005 of these rules.

5.012.A., B., F. (Page 27) These rules are ones which were in other chapters of previous MSAB rules. These rules have been placed in this chapter in an effort to better present the requirements of the Board.

5.012.A.1.-2. This rule is in the existing rules as 5 MCAR § 5.006.G. It is not amended here in any way.

5.012.B.1.-4. (Page 28) This rule is in the existing rules as 5 MCAR § 5.010.E.1.-4. It is amended to include all types of grant assistance offered, and to clarify in item 3 that projects can not begin befoe applicants know the disposition of their applications. The latter provision assures that applicants do not begin projects or programs without sufficient funding.

5.012.B.5. This is the only new provision introduced in this section. The MSAB does not feel that it is within its mandate to support arts activities which are part of church services, e.g. Sunday mass or service. While a church building can be a valuable community performance space, the Board is anxious to avoid supporting any worship activity which would be an inappropriate mixing of church and state affairs.

5.012.C. This rule was amended to clarify the intention of MSAB support of the work of individual artists. With limited funds, the MSAB clearly seeks to support the "creation and performance . . . of works of the imagination" as set forth in the MSAB statute, rather than offer scholarships, teaching aids or business capital to artists.

5.012.D. This rule was amended to allow the Board the flexibility to create new categories of assistance which may be of value to any grant applicant/constituent. In the interests of creating a pilot grant program which would be as informative as

possible, it would seem reasonable to allow as many eligible applicants to apply in a pilot program as we can. Pilot programs may be in the area of sponsor assistance, or special projects or in a particular art discipline, e.g. film, crafts, etc. Usually the agency creates a pilot category of grants to support underserved disciplines of the arts or reach applicants that have had little access to grant assistace from the agency. Recently, the agency provided a pilot category of general program support which tested the concept of offering unrestricted grants to smaller arts organizations of less than state-wide impact. It is now a component of a program of unrestricted grants offered to eligible arts organizations with budgets greater than $100,000.

5.012.E. (Page 29) This rule is clarified to express the intention of the rule as originally written; that it is possible for the Board to award all of its grant funds after one deadline.

5.012.F. This rule is in the existing rules as 5 MCAR § 5.010.G. It is not amended here in any way.

5 MCAR § 5.013 Public participation in agency matters. (Page 29)

This rule is a replacement for 5 MCAR § 5.009 which is proposed for repeal. This rule provides a formal process for the Board to follow in considering appeals of its decisions. This process is necessary and reasonable for a number of reasons. If an applicant is dissatisfied with an MSAB decision, the applicant should feel free to address the Board formally and request resolution. A number of applicants have expressly requested this

option. While the contested case is an important aspect of the appeal process proposed in these rules, it is a measure of "last resort". Before the contested case stage is reached, the rule simply provides a first and more flexible step.

The rule also clarifies the existing rule which restricts the basis upon which a appeal can be made. Appeals can not be brought based upon disputes of artistic merit. While the Board recognizes that it and its advisory committees are not an infallible source of artistic evaluation, the comparison and evaluation of the merit of a project is in the final analysis an exercise of judgment of artistic quality. Particularly in the field of art, these judgments are unique to the individual and not appropriate for appellate review.

Board members and the members of its advisory committee are appointed because of their stated expertise and interest in the arts. Every effort is made to obtain unbiased and qualified panel members who are called upon to exercise a professional, and yet very individual judgment.

The Board is concerned that if appeals are permitted on these grounds that there would be little satisfaction which could be offered by the Board. The result might be a contested case in which those who have neither artistic interest nor expertise would be compelled to render artistic judgments. More importantly, the standard of artistic merit is not one which is applied as a way of classifying, even tempoarily, any artist or arts organization. It

is a standard which is applied to a particular application in the context of numerous competing applications.

In the Matter of the Proposed Adoption of Rules of the State Arts Board Governing Procedures and Standards for the Review of Grant Applications

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, (Special Assistant Attorney General) Brad Engdahl do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

Brad P. Engdahl
(Special Assistant Attorney General)

Dated: September 1, 1981

In the Matter of the Proposed Adoption of Rules of the State Arts Board Governing Review of Requests for and Distribution of Grants, Loans and Other Forms of Assistance

AFFIDAVIT OF MAILING NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

Mary Sulerud, being first duly sworn, deposes and says:

That on the 22nd day of September, 1981, in the City of Minneapolis, County of Hennepin, State of Minnesota, she served the attached Notice of Submission to the Attorney General by depositing in the United States mail at said City of Minneapolis, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who requested notice that the rules in the above-entitled matter have been submitted to the Attorney General.

Mary Sulerud

Subscribed and sworn to before me
this 22nd day of September, 1981.

Notary Public

STATE OF MINNESOTA

BOARD OF THE ARTS

In the Matter of the Proposed Adoption of Rules of the State Arts Board Governing Review of Requests for and Distribution of Grants, Loans and Other Forms of Assistance

NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minnesota Statutes, section 15.0412:

PLEASE TAKE NOTICE that the above-encaptioned rules have been submitted to the Office of the Attorney General on this date, 22nd, September, 1981, for review as to form and legality. Pursuant to 1 MCAR S S 1.206 b., the Attorney General will not approve the rules for at least 10 calendar days after receipt to allow any person or association time to comment on the legality of the rules, after which that Office will complete its review. If you desire to comment on the legality of the above-captioned rules, you should direct your comments to the Office of the Attorney General, G-25 State Administration Building, 50 Sherburne Avenue, Saint Paul, Minnesota 55155, telephone (612) 296-7030. Please note that the above-cited rule of the Attorney General also provides that a copy of any written comments submitted to the Attorney Genera; must be submitted simultaneously to this agency.

If you are interested in determining what changes, if any, were made in the proposed rules after the hearing and before submission to the Attorney General, you may contact Mary Sulerud, Minnesota State Arts Board, 2500 Park Avenue, Minneapolis, Minnesota,55404, (612) 341-7179.

OFFICE OF THE REVISOR OF STATUTES
Disapproval of Form of Rules

__v__ The form of the attached rules is not approved. The revisor requests the changes described below before the rules will be approved.

See attached

Steven C. Cross
Revisor of Statutes

Name: Ann L. Bateson

Title: _____

Phone: _____

- -

_____ The changes requested by the revisor are approved by the agency.

_____ The changes requested by the revisor are not approved by the agency

_____
Agency's Representative

- -

_____ The attorney general agrees that the changes requested by the revisor are form changes, not substantive changes.

_____
Assistant Attorney General

Use strikeouts and underlining only to show changes in the adopted rules from the text of the rules as they appeared in the State Register. Use single underlining to show the additions. If you make this correction you will automatically correct many technical accuracies in the draft you submitted, such as the mispelling of practitioners in 5 MCAR 5.005 C.

Page 1, line 3, complete the entry so that it matches the headnote on the rule

Page 1, line 5, complete the entry so that it matches the headnote on the rule

Page 1, lines 12-14, make the entry and the rule headnote correspond

Page 1, lines 15 and 16, make the entry and the rule headnote correspond

Page 5, line 22, strike "ch." and insert §

Page 6, line 16, strike "recipient" and insert "receipt"

Page 9, line 25, after "serves" insert an underlined comma

Page 10, line 4, delete 5 MCAR § 5.007

Page 10, line 6, after "serves" insert an underlined comma

Page 10, line 13, strike the comma after "producing"

Page 11, line 4, before "5.008" insert "5 MCAR §"

Page 11, line 8, strike "(a)" and insert "a."

Page 11, line 9, strike "(b)" and insert "b."

Page 11, line 12, strike "(a)" and insert "a."

Page 11, line 12, strike the comma after "person"

Page 11, line 14, strike "(b)" and insert "b."

Page 11, line 19, underline the hyphen in "tax-exempt"

Page 12, line 2, strike "which" and insert ". The funds"

Page 12, line 14, after "following" insert "cash, in-hand items, revenue or other grants."

Page 13, line 15, underline "on" and before it insert and strike "an" which appeared in the State Register

Page 14, lines 17 and 18, 5 MCAR § 5.008 I. as published in the State Register contained lines 1 and 2. Your rule does not show them as published or as stricken. You must show the 1 and 2 as good text or show it as stricken text. From the context, it seems you meant to strike 1 and 2 under I.

Page 15, line 8, strike "postmarked or delivered" and insert "postmark or delivery"

Page 15, line 21, strike the comma after "or"

Page 16, line 6, after "requested" insert an underlined comma and delete the comma after "mail"

Page 17, line 25, after "paying" insert and strike "rent" which appears in the State Register and underline the word "grant" which follows

Page 18, line 3, after "council" strike the comma

Page 19, line 5, underline the "a." when showing changes from the rule as proposed in the State Register

Page 19, line 6, insert an underlined semicolon before the "or" and strike the semicolon after the "or"

Page 20, line 7, contains a reference to 5 MCAR § 5.008, as well as other sections. 5 MCAR § 5.008 deals with the process for obtaining grants except regional arts council grants, so the reference seems incorrect. 5 MCAR § 5.009 covers the process for obtaining regional arts council review for block grants. Change the reference if you originally wrote it incorrectly.

Page 20, line 10, contains a reference to 5 MCAR § 5.010 A.1. Should the cite be to that or to 5 MCAR § 5.010 A?

Page 20, line 14, after the section sign insert and strike "5.001" which appeared in the State Register. Underline "5.011"

Page 20, line 16, strike the common after "days"

Page 20, line 24, remove the strike marks unless the intent is to say that 5 MCAR § 5.009 is not repealed. If so, the new 5 MCAR § 5.009 would have to be repealed.

Page 22, line 22, strike the semicolon and insert an underlined period

Page 24, line 2, change the semicolon to a comma

Page 24, line 3, strike "committees" and insert "committee's"

Page 24, line 25, after "actions" insert "is"

Page 25, line 14, after the section sign insert and strike "5.001" which appeared in the State Register and underline "5.011"

Page 29, line 8, after "or" insert "her"

Page 30, line 7, don't underline the period after 15.052

State Arts Board

Review Of Requests For And
Distribution Of Grants, Loans
And Other Forms Of Assistance

Contents

Rule

~~5 MCAR § 5.005 Requests for information.~~

5 MCAR § 5.005 Advisory committees.

5 MCAR § 5.006 Eligibility requirements for individuals ~~and organizations.~~ This is not the whole heading

~~5 MCAR § 5.007 Procedures for obtaining grants, loans and other forms of assistance.~~

5 MCAR § 5.007 Eligibility requirements for organizations. This is not the whole heading

~~5 MCAR § 5.008 Procedures for obtaining regional arts council status, regional arts council review procedures and regional arts council reporting requirements.~~

5 MCAR § 5.008 ~~Procedure~~ Process for obtaining grants, ~~loans and other forms of assistance~~ in all categories except regional arts council block grants.

~~5 MCAR § 5.009 Appeals process.~~

5 MCAR § 5.009 Process for obtaining regional block grants; ~~block grant application~~ review; regional arts council review; re-granting; and reporting requirements.

5 MCAR § 5.010 Standards for review of requests for grants, ~~loans and other forms of assistance.~~ This does not read the same as the heading for 5.010

5 MCAR § 5.011 ~~Responsibilities of grantee.~~ Provisions affecting grantees.

5 MCAR § 5.012 ~~Advisory committees.~~ Miscellaneous provisions.

5 MCAR § 5.013 Public participation in agency matters.

5 MCAR § 5.002 Purpose of the rules. The purpose of these rules is to set forth procedures and standards to be followed by the board in receiving, considering and reviewing requests for and distribution of grants. ~~, loans, and other forms of assistance.~~ Any actions taken by the board, its staff and advisory committees related to the review and distribution of grants must be clearly based on the standards in rule form. Explanation of actions requested by applicants must be offered in the context of the standards in rule form.

5 MCAR § 5.003 Whom the rules govern. ~~A.~~ These rules govern the board; advisory committees; regional arts councils; and all individuals, organizations, departments, and agencies of the state and political subdivisions who wish to receive grants ~~, loans,~~ or other forms of assistance from the board. ~~and/or from regional arts councils.~~

~~B. Regional arts councils receiving block grants from the Board are required to follow Board rules pertaining to eligibility requirements and general standards in distributing local/regional arts development grants, loans and other forms of assistance which utilize Board funds.~~

5 MCAR § 5.004 Definitions. For the purpose of these rules, the following terms shall have the meanings given to them:

A. "Advisory committee" means a group of citizens ~~selected and convened~~ appointed by the board to review and make recommendations on ~~policy and distribution of forms of~~ grants assistance offered by the board, or make recommendations on public arts policy matters.

B. "Block grant" means grants to regional arts councils for the purpose of providing ~~program~~ services, re-grants, and direct programming for local/regional arts development.

C. [unchanged.]

D. "Certified audit report" means a document prepared and signed by a certified public accountant showing the total fiscal activity of the organization regarding a project or program.

E. "Direct programming" means the implementation ~~by a regional arts council~~ of arts production or arts sponsorship activities by a regional arts council.

~~F. "Local" means program or service distribution and organizational impact within a specific municipality or county.~~

F. "General support" means a program that provides unrestricted operational grants assistance to eligible organizations which meet the standards contained in these rules.

G. "Local/regional arts development" means programs or projects which are for the development or enhancement of local or regional artists, ~~or~~ art resources, or art audiences.

~~H. "Multi-regional" means program or service distribution and organizational impact over more than one of the State's official development regions.~~

H.~~I.~~ "Other forms of assistance" means publications, or staff consultation or workshops with individuals or groups who have developed, or are interested in

developing, projects or programs in the arts but need advise on matters such as, but not limited to, budgeting, administration, production and technology.

I. ~~J.~~ "Program information" means any document(s) issued ~~annually~~ describing programs and services of the board which includes instructions, deadlines, and other aids for the applicant seeking board grants assistance. Program information may clarify and explain standards contained in rule form, but such clarification shall not be considered standards or criteria itself.

J. "Project" means an activity or series of closely-related activities for which funds are requested from the MSAB or a regional arts council. The activity or series of activities must be completed within 24 months of the notification of the receipt of a grant in support of the activities.

K. ~~L.~~ "Regional" means program or service distribution and organizational impact within the geographic area served by a ~~regional arts task force or~~ regional arts council. Formal combinations of two or more development regions under one regional arts council will be regarded as one region for this purpose.

L. ~~M.~~ "Regional arts council" means an organization or a group designated by the Board to make final decisions on the utilization of block grant funds granted to them for local/regional arts development.

M. ~~N.~~ "Regional arts task force" means an advisory committee of the Board which reviews applications for local arts development projects serving the region(s) the arts task force represents. A regional arts task force may also be an advisory committee to a regional development commission or the Metropolitan Council.

1. ~~Each regional arts council shall d~~Develop ~~an annual~~ biennial plan to be submitted by an ~~annually~~ announced date, determined by the Board. ~~Regional arts task forces wishing to become regional arts councils must also submit an annual plan.~~

2. The ~~annual~~ plan will include:

a. A mission Sstatement of goals established by the ~~regional arts council.~~ organization. ~~This shall be periodically reviewed and updated by the regional arts council.~~ The mission statement shall describe the overall philosophy and aims of the organization concerning local/regional arts development.

b. A Nneeds assessment which will be carried out in a manner which ensures input from the arts community and the ~~general~~ arts-involved public. This needs assessment will be updated at intervals determined and announced by the Board and the results included in the plan. The needs assessment will be conducted to determine the need to develop new or continued program ~~services~~ activities, services and grants assistance offered by the regional arts council.

c. Description of the planning process including a list of the steps in the development of the plan and the participants in the planning process. Before the plan is submitted to the board for final approval at least one public meeting must be held for the purpose of soliciting public reaction to the plan.

d. Work plan ~~includes~~ including a description of ~~program~~ services, ~~if any.~~ programs and grants assistance available from the organization and the goals and objectives of these activities as related to the needs assessment.

e. Program information which ~~will~~ describes grants and other forms of assistance available, the methods for such assistance, eligibility requirements, review standards, the review process, the terms of the grant contract with grant recipients, the time needed and process followed in paying grant recipients, and the responsibilities of the grantees.

f. The organizational structure ~~and membership~~ which must include bylaws, an identification of the arts experience and background requirements for the members and job description of the staff of the ~~regional arts council~~, organization, a description of the rotation system which will ensure replacement of members on a regular basis, and an outline of the open nominations process used to appoint the members.

g. ~~When~~ Where applicable, a memorandum of agreement with the regional development commission(s) or the Metropolitan Council, a letter of agreement between the ~~regional arts council~~ organization and a fiscal agent or the tax-exempt letter for non-profit organizations will be included. A memorandum of agreement shall include that application decisions on artistic merit, applicant ability, and need for project or program must be reserved for consideration only by citizen advisory committees appointed for their expertise and experience in the arts. The memorandum need only be submitted to the MSAB once, at the start of the operation of an organization as a regional arts council.

h. ~~General description of all programs and services provided with, or independent of, Arts Board funds;~~ A budget which will be a total projected budget identifying all local, regional, state and federal sources of support, public and private.

i. A grant monitoring and evaluation process description and an evaluation process description of the council itself.

B. The review of a block grant application is as follows:

1. ~~3.~~ All regional ~~arts council annual~~ plans /block grant applications shall be reviewed by a regional arts development advisory committee of the Board.

2. The committee will review plans/block grant applications using the review standards of merit of the proposed activities, ability of the applicant and

need for the proposed activities by the organization or audience it serves as contained in 5 MCAR § 5.010 A.

3. The regional advisory committee shall submit as recommendations to the board one of the following:

a. Full funding based on the Minnesota State Arts Board allocation formula;

b. Partial funding or;

c. No funding.

4. A representative of the ~~regional arts council~~ applicant organization shall have the opportunity to present the plan and respond to questions raised by either the regional arts development advisory committee, the board staff, or the board.

5. The Regional Arts Development advisory committee shall submit its recommendations to the board for final review.

6. The board shall approve, defer or reject ~~annual~~ plans submitted by the regional ~~arts councils.~~ block grant applicants.

C. ~~A.7.~~ After the board review, ~~but prior to final action,~~ the ~~regional arts council~~ applicant organization shall have at least 30 days to make any revisions in the plan required by the board.

D. ~~A.8.~~ The board will award only one regional block grant in each region during a fiscal year.

E. Each applicant organization receiving a regional block grant shall be designated a regional arts council.

F. Allocated funds for regions not served by a regional arts council will be administered by the MSAB with the advice of a regional arts task force.

G. ~~A.9.~~ Copies of the board approved regional arts council ~~annual~~ plan will be available for distribution to the public by the regional arts council.

H. Regional arts councils are eligible to apply only for block grants for the purposes of local/regional arts development.

I. Regional arts councils receiving block grants from the board are required to follow board rules pertaining to eligibility requirements and review standards in distributing local/regional arts development grants, process for obtaining grants, provisions affecting grantees and miscellaneous provisions. These rules are 5 MCAR § 5.007, 5.008, 5.010, 5.011 and 5.012.

J. Regional arts councils must base decisions on local/regional arts development grant applications received through re-granting programs on the review standards listed in 5 MCAR § 5.010 A.1. These decisions must be made by citizen committees appointed for their expertise and experience in the arts according to 5MCAR § 5.005 C.

K. Organizations which receive a grant from a regional arts council are subject to the provisions of 5 MCAR § 5.011, Provisions affecting grantees.

L. ~~A. 10.~~ Each regional arts council shall submit an annual ~~fiseal~~ report ~~and evaluation by~~ within ~~60~~ 90 days, after the end of the ~~Board's~~ regional arts council's fiscal year which shall include:

1. ~~a.~~ Total fiscal statement, not an audit, for the years in which the ~~annual~~ plan was in effect.

2. ~~b.~~ ~~Review~~ Description of the relationship between the ~~proposed annual~~ approved plan and the actual grants, and other forms of assistance provided during the year with Arts Board block grant funds.

3. Report of the grants awarded, services provided and programs disseminated.

~~5 MCAR § 5.009 Appeals process.~~ Proposed for repeal.

5 MCAR § 5.010 Standards for requests for grants~~,-loans~~ and other forms of assistance.

A. ~~The-Board-and-advisory-committees-and-regional-arts-councils-in-reviewing applications-on-a-competitive-basis-will-consider-the-following-factors-in-order of-priority:~~ Applications for special projects, sponsor assistance, local arts development and regional block grants will be reviewed ~~primarily~~ according to:

~~1.--For-organizations:-~~

1.~~a.~~ The merit and artistic quality of project or program. ~~in-the-case-of project-applications.~~ In the case of service programs and projects the merit and quality of ~~that~~ the service being provided to the arts will be reviewed.

2. If the application is determined to be of sufficient merit and artistic quality as to indicate further review the following standards will be applied:

a.~~b.~~ The ability of the organization to accomplish the project or program they describe or the organizational goals as presented. This is demonstrated by providing evidence of a planning process, qualifications of artistic and/or administrative personnel, ~~marketing-and~~ publicity efforts and previous successful efforts.

b.~~e.~~ Applicants must demonstrate demand or need for the project or program by the organization applying or the group it serves.

~~d.--In-the-sponsor-assistance-category-the-matching-funds-statement ..... required-of-an-applicant,-must-show-evidence-of-match-from-the-participants-or beneficiaries-of-the-project-or-program,-or-the-reason-why-such-match-cannot-be obtained.~~

~~2.--For-individual-artists:-~~

~~a.--The-quality-of-the-creative-work-submitted-by-the-artist.~~

~~b.--The-ability-of-the-artist-to-accomplish-the-project-or-plan-described in-the-application.~~

~~e.--The relationship of the application to the artist's career goals.~~

B. In the event that more applications are recommended for funding than funds are available, the advisory committee may rate the recommended applications individually to determine funding priorities. This procedure will be outlined by the MSAB and the regional arts council for each fiscal year.

C.~~B.~~ Applications for general support ~~(subsidy grants),~~ will be reviewed ~~on the following standards listed as top priority, and the remaining five of lower priority, but not differentiated among each other. These standards shall be demonstrated using the indicators specified in program information and through the application form.~~ primarily according to:

1. Artistic ~~E~~excellence and ~~l~~leadership.

a. Service to the organization's principal art form(s), i.e., preservation of artistic heritage(s), presentation of new works, new artists.

b. Serving as an example of excellence for others-setting standards.

Recognition and impact in community, region, state and nation.

c. Uniqueness of service, in nature or method.

d. Sharing of expertise.

e. Variety of program offering.

f. Qualifications and achievements of artistic leadership.

g. Qualifications, achievements and methods of selection of other principal artistic personnel and administrative personnel.

2. The application is then reviewed according to the following standards:

[5 MCAR § 5.010 C. 2.-5. Renumber as 5 MCAR § 5.010 C. 3.-6.]

~~7.6.~~ Size and distribution of audience/public

a. Numbers served, by program type, if possible.

b. Numbers of subscribers and/or regular members; enumeration of individuals served.

c. Numbers of persons served ~~divided by those served~~ in headquarters facilities and those served away from home facility. ~~(tour).~~

d. Indications of audience/public demographics, if available.

e. Special Efforts ~~for economically disadvantaged.~~ to serve special constituencies.

~~C. Other forms of assistance will be available on a case by case basis dependent upon the nature of the request, and the availability of Board resources in response to the request.~~

~~D. Regional arts council annual plans submitted to the Board will be reviewed on the following standards:~~

~~1. Consistency with Board legislation and rules.~~

~~2. Community participation in the planning process.~~

~~3. Equitability, fiscal accountability and accessibility to the grants process and other forms of assistance.~~

~~4. Consistency in the relationship among the regional arts council's goals, needs assessment and work plans.~~

~~5. Demonstrated ability of the region to carry out its plan.~~

~~6. Evidence that decisions on artistic merit, applicant ability and need for the project or program, are made only by citizen committees appointed for their expertise and experience in the arts according to~~

D. Individual artists' applications will be reviewed ~~primarily~~ for the quality of the artistic activity as demonstrated in the examples of the work submitted. If the artistic activity is determined to be of sufficient quality as to indicate further review the following standards will be applied:

1. The merit of the proposed activity as this relates to the artist's ability to execute the proposed activity and an examination of the artist's proposal, submitted work and career brief.

2. Explanation of the amount requested.

E. Because it is anticipated that there will be more qualified applicants than funds available; funding decisions may be made by the board on the basis of the board's and advisory committees determination of the artistic quality as evidenced in the work submitted relative to the artistic work submitted in other applications.

~~E.--Applications for grants assistance will not be accepted for review when one of the following conditions exists:~~

~~1.--Artists are required to pay entry or exhibition fees in order to exhibit and/or perform in the project or program.~~

~~2.--Funds are requested for capital improvement or construction, purchase of real property or endowment funds.~~

~~3.--Funds are requested to account for fund deficiencies in project completed prior to the application deadline.~~

~~4.--Funds are requested to pay fees for touring costs, performances or exhibitions carried out exclusively by student organizations or schools.~~

~~F.--The Board in addition to the criteria set forth above may allocate grant funds on a first come, first served basis to applicants who meet the procedures and standards contained herein during each fiscal year.~~

~~G.--The Board may give priority to one form of assistance over others during a fiscal year.~~

5 MCAR § 5.011 ~~Responsibilities of grantee.~~ Provisions affecting grantees.

A. The Ggrantee or authorizing official must sign and return to the board, within ~~30~~ 45 days from date of mailing, one copy of the ~~notification letter~~ grant contract and necessary attachments if notification is of grant approval. No action required on notification of ~~rejection.~~ applications not recommended for funding.

B. The Ggrantee must acknowledge assistance by the Board on all written materials relating to the project or program such as programs, news releases and posters.

Grantee must use the acknowledgement statement as found in the ~~notification-letter.~~ grant contract. Grantees of regional arts councils must also use the board acknowledgement statement on all materials relating to the project or program.

C. The Ggrantee must notify the board in writing at any point of the program or project is changed from the way in which it was described in the grant application. This notification letter will be reviewed by the staff to ensure that the change does not make a project or program ineligible for support as eligibility is specified in these rules. Grantee will be notified in writing of the approval or non-approval of the program or project change(s).

E. The Ggrantee may be required to submit a certified audit report of the organization or ~~of~~ a project funded by the board.

F. For purposes of evaluation, grantees must permit the Board reasonable access to all activities supported by Arts Board funds.

[5 MCAR § 5.011 F.-H. Reletter as 5 MCAR § 5.011 G.-I.]

J.~~I.~~ A grant commitment to a grantee may be rescinded by the board if one of the following conditions exists:

1. The grantee does not return the signed ~~notification-letter~~ grant contract and/or attachments with ~~30~~ 45 days of the date ~~of~~ specified by the Board letter or in program information.

2. The grantee does not return a revised budget and/or project description within ~~45~~ 30 days of the date of the notification of Board action by letter.

3. The grantee does not request the grant amount within ~~30~~ 45 days of the date of the grant ~~notification-letter~~ contract.

K.~~J.~~ Grantee must submit a final report, within ~~30~~ 60 days of the ~~completed project or program,~~ date stated in the application as the end of the project or program. This report is to be completed by grantee ~~on forms~~ in the requested format provided by the board. Failure to submit any final reports will adversely affect

the grantee's receipt of Minnesota State Arts Board grant funds.

L. Grantee must start grant activities in the same fiscal year in which the grant is received.

M.~~K.~~ The board ~~may require that regional arts councils, which have not committed all of their grant funds by April 15 of a given fiscal year, return the uncommitted grant funds to the Board by May 1 of the same fiscal year.~~ will annually review the regional block grant allocation formula.

N. The board may recall uncommitted regional block grant funds at the end of their fiscal year. A written request must be made by the regional arts council and submitted to the MSAB for approval to carry-forward unexpended funds from one fiscal year to the next. This request from a regional arts council must be made by May 1 of the same fiscal year and must outline the proposed allocation for any unexpended funds in narrative form and contain a budget for such use.

O. The board may institute systems of grant payments in which such payments are contingent upon the receipt of final reports and/or board evaluation of the grantee.

5 MCAR §§ 5.012 ~~Advisory committees.~~ Miscellaneous provisions.

~~A. The Board may appoint advisory committees to review grant applications and provide recommendations on policy issues. The Board may appoint advisory committees in the areas of general operating support (subsidy), individual artist assistance, production assistance, sponsor assistance, regional arts development and also regional arts task forces.~~

~~B. The Board may discontinue the advisory committees as it deems necessary.~~

~~C. Members of each advisory committee shall have expertise and/or experience in a particular area of the arts, arts support or administration. Committee members will be selected by the Board from among practitioners, administrators, educators, volunteer directors of arts organizations, trustees of arts organizations and~~

~~consumers of arts forms. At least one member of the regional arts development panel from each region will be appointed from nominees of the designated regional arts task force or arts council. The remaining members will be selected from among the previously listed groups through the open nominations process.~~

~~D. Appointments to advisory committees shall be made by majority vote of the Board. Members shall serve at the pleasure of the Board for three year terms. One third of the terms of the members of each committee shall expire each year.~~

~~E. At least sixty days prior to expiration of terms of advisory committee members, the Board will publish and post notice of such openings. Nominations will be actively solicited and accepted by the Board. Nominations must be in writing and should include all pertinent information including nominees' qualifications and experience in the arts.~~

~~F. Advisory committees will, insofar as reasonably possible, be geographically balanced. However, the regional arts development panel shall have two members from each of the regions represented by a regional arts council or regional arts task force.~~

~~G. Members of the advisory committees and regional arts task forces shall be compensated for expenses incurred to attend advisory committee meetings as provided in Minn. Stat. ch. 15.059, subd. 3, except that they shall not be eligible for the per diem.~~

A. The board may initiate new assistance categories or pilots in which applicants for assistance may be selected specifically for the way in which the board can learn from their experience.

1. No pilot assistance category will continue for longer than 2 years without the category being established on a permanent basis, or discontinued.

2. All pilot assistance categories will be specifically described as such in MSAB program information.

B. Applications for organizational and individual grants assistance will not be accepted for review when one of the following conditions exists:

1. Artists are required to pay entry or exhibition fees in order to exhibit and/or perform in the project or program for which funding is sought.

2. Funds are requested for capital improvement or construction, purchase of real property or endowment funds.

3. Funds are requested to account for fund deficiencies in projects begun prior to the project start date specified by the Minnesota State Arts Board and regional arts councils in program information.

4. Funds are requested to pay fees for touring costs, performances or exhibitions carried out exclusively by student organizations or schools.

5. Funds are requested to support activities which are essentially for the religious socialization of the participants.

C. Applications for individual artist grants assistance will not be accepted for review when one of the following conditions exists:

1. Funds are requested by individuals for tuition or other fees related to the pursuit of an academic degree.

2. Funds are requested by individuals to develop curriculum plans, teaching materials or to teach classes.

3. Funds are requested by individual artists to engage in activities such as establishing an arts organization or a commercial venture.

D. Organizations which receive grants for general support may apply for grants in pilot programs offered by the State Arts Board if the organizations meet the stated eligibility requirements of such pilot programs.

E. The board~~, in addition to the criteria set forth above,~~ may ~~allocate~~ award all or most of the available grant funds ~~on a first come, first served basis to applicants who meet the procedures and standards contained herein during each fiscal year.~~ at the first deadline of each fiscal year.

F. The board may give priority to one form of assistance over others during a fiscal year.

5 MCAR §§ 5.013 Public participation in agency matters.

A. Any applicant who disputes the decision of the board regarding his or grant application on any issue other than artistic quality or merit may appeal the decision of the board. This appeal to the board will be conducted in the following way:

1. The applicant will submit a written request for consideration of his or her appeal within 45 days of notification of the board's decision on the application.

2. This request must state the reason(s) for the appeal.

3. The board will review the written request appealing its decision at its first meeting following the receipt of the request.

4. The board may take one of the following actions in response to the request for an appeal:

a. determine that the applicant does not show sufficient cause for an appeal.

b. direct the staff to investigate the applicant's appeal and bring a resolution of the claim to a subsequent meeting of the board.

c. request that the applicant appear before the board at a subsequent meeting and address his or her appeal at that time.

d. determine that the applicant does show sufficient cause for appeal and offer ~~resolution~~ settlement to the applicant at the meeting.

e. refer the appeal to a hearing examiner as a contested case.

5. ~~If the applicant for a grant does not receive satisfactory resolution of~~ Following the appeal to the board if the applicant continues to dispute the decision of the board regarding his or her appeal from the board, or if the board refers the appeal to a hearing examiner, this appeal will be conducted as a contested case pursuant to the Administrative Procedures Act, Minn. Stat., §§ 15.0418-.0422 and 15.052.

B. There is no right of appeal for disputes of decisions of the board and/or its advisory committees with respect to artistic quality or merit, artistic excellence and leadership, and the quality of the artistic activity of the work of an individual artist.

N.~~O.~~ "Re-granting" means the process of allocating block grant funds ~~to arts funding applicants to a regional arts council~~ for the purpose~~(s)~~ of funding arts projects or programs or services described in the applications to regional arts councils.

O.~~K.~~ "~~Program s~~Services" means non-grant activities including, but not limited to, information services, technical and consultative services, planning, reporting, evaluation, and other program development efforts that are provided by the Minnesota State Arts Board and/or regional arts councils.

P. "Sponsor assistance" means a program which provides grants assistance to eligible organizations, which meet the standards contained in these rules, that host arts events by contracting for the services of another organization or individual to provide arts programming to their community.

Q.~~P.~~ "State-wide" means program or service distribution and organizational impact throughout most or all of the ~~development~~ regions of the state.

5 MCAR §§ 5.005 Proposed for repeal.

5 MCAR §§ 5.005 Advisory committees. [The following language was previously numbered 5 MCAR §§ 5.012 A.-G.]

A. The board may appoint advisory committees to review grant applications.

B. The board may discontinue any advisory committee, as it deems necessary.

C. Members of each advisory committee shall have expertise and/or experience in a particular area of the arts, arts support or administration. Committee members will be selected by the board from among practioners, administrators, educators, volunteer directors of arts organizations, trustees of arts organizations and other participants in the arts.

D. Appointments to advisory committees shall be made by majority vote of the board. Members shall serve at the pleasure of the board for appointment-terms of no longer than three years. Appointments to advisory committees shall be made so that the appointment-terms of at least one-third of the membership of each committee shall expire in each year.

E. At least sixty days prior to expiration of the appointment-terms of any advisory committee member, the board will publish distribute and post notice of such openings. Nominations will be actively solicited and accepted by the Board. Nominations must be in writing and should include all pertinent information including nominees' qualifications and experience in the arts.

F. Advisory committees will, insofar as reasonably possible, be geographically balanced.

G. Members of the advisory committees and regional arts task force shall be compensated for expenses incurred to attend advisory committee meetings as provided in Minn. Stat. ch. 15.059, subd. 3, except that they shall not be eligible for the per diem.

H. Any member of an advisory panel with a direct financial or employment interest relating to any grant application before the advisory panel, or with a professional, employment or financial interest relating to any individual artist applicant, which ~~interest is reasonably likely to affect his/her impartiality or judgement in the review will be instructed to~~ inform the board of such an affiliation prior to the review of grant applications.

1. Affiliation of an advisory panel member with an applicant includes:

a. receipt of direct financial benefit from the applicant organization or project being reviewed;

b. serving as an employee or governing board member of an applicant organization being reviewed;

c. serving with or without payment as a consultant to an applicant on the application being reviewed;

d. familial relationship with an applicant or a staff or board member of an applicant organization;

e. recent recipient of free tickets or other benefits from an applicant being reviewed.

2. The MSAB will annually screen panel members for affiliations which may constitute conflict-of-interest.

5 MCAR § 5.006 Eligibility requirements for individuals, ~~organizations, governmental units and schools~~ applying for grant assistance.

~~A. Arts Board assistance is available to individuals, non-profit, tax-exempt organizations, schools and governmental units and departments and agencies of the state.~~

~~B. Local/regional arts development assistance is available to non-profit, tax-exempt organizations or units of government, including schools. This assistance is for the creation and production of arts programs or projects which are for the~~

~~development or enhancement of local or regional artists or arts resources.~~

~~C. Arts Board grants assistance is available to the following individual applicants:~~

~~1. Artists who directly produce new works of art such as, but not limited to, playwrights, composers, librettists, creative prose writers, independent filmmakers, video artists, visual artists, craftspeople, choreographers, poets, fiction writers, conceptual artists and artists working in multi media fields.~~

~~2. Arts teachers, only if the teacher is pursuing professional development as an artist, not as a teacher.~~

~~3. Individual artists, who have received a MSAB Fellowship grant, cannot apply for another Fellowship grant until two fiscal year. after the receipt of the Fellowship grant.~~

~~4. Students, those who are pursuing either full time or part time a performance or academic degree in their creative field, may not apply for Fellowships, but may apply for Project or Works in Progress grants.~~

A. Subject to 5MCAR § 5.012 and the other provisions contained in these Rules an individual artist is eligible for grants assistance only if that artist is:

1. A resident of Minnesota according to the voting requirements of the state;

2. Not involved in executing work initiated or completed by another individual or organization as their agent, or not solely involved in the organization or presentation of other artists' works.

B. ~~C.~~ ~~5.~~ An individual artists, who has ~~have~~ received a ~~Project or Works in Progress~~ Minnesota State Arts Board individual artist grant, ~~cannot~~ may not apply for another ~~Project or Works in Progress~~ individual artist grant until one fiscal year after the receipt of such ~~the Project or Works in Progress~~ grant.

C. An individual artist may not submit more than one application each fiscal year.

~~D. Production grants assistance and Sponsor grants assistance are not available to schools if the project submitted is limited in access to, or only serves those attending school, including the staff.~~

E.--Grants-assistanee-for-general-operations-(Subsidy)-is-only-available-to to-arts-producing,-exhibiting-or-edueational-(non-aeademie-i.e.,-do-not-offer eurrieular-programs)-organizations.

1.--Organizations-may-apply-for-general-operations-(Subsidy)-grants-only if:

a.-State-wide-or-multi-region-impaet-is-demonstrated-by-program-dissemination,-publie-partieipation-or-artistie-leadership.

b.-The-organization-has-been-in-existence-in-its-current-form-two full-years-prior-to-applying.

e.--The-organization-has-a-eertified-audit-of-its-aeeounts-for-the previous-two-years.

d.--The-organization-has-a-eommitment-to-professional-management-at-least-one-full-time-paid-management-(not-elerieal)-position-for-12-months-per-year,-or equivalent-volunteer-personnel.--Doeumentation-would-inelude-job-deseription, time-alloeation-and-budget-eommitment,-if-applieable.

2.--Organizations-whieh-reeeive-grants-for-general-operations-(subsidy) are-eligible-to-apply-for-projeet-grants-only-if:

a.--The-applieation-is-for-a-speeial-projeet,-elearly-identified-as something-that-would-not-or-eould-not-take-plaee-without-a-grant.

b.--The-projeet-elearly-demonstrates-that-it-is-a-one-time-projeet.--A pilot-for-eontemplated-future-operation-is-eligible-if-a-speeifie-plan-for absorbing-it-into-on-going-operations-is-presented-with-the-applieation.

e.--No-overhead-or-on-going-organizational-eosts-be-ineluded-as-part of-the-projeet-budget.

~~d.--The grant from the MSAB would be matched at least 50-50 with funds from other sources, clearly identified for the project itself.--No general budget funds of the applicant organization would be eligible as match.~~

~~F.--Regional arts councils are eligible to apply only for block grants for the purpose of local/regional arts development.~~

~~G.--The Board may initiate new assistance categories or pilots in which applicants for assistance may be selected specifically for the way in which the Board can learn from their experience.~~

~~1.--No pilot assistance category will continue for longer than 2 years without the category being established on a permanent basis, or discontinued.~~

~~2.--All pilot assistance categories will be specifically described as such in MSAB program information.~~

5 MCAR § 5.007 Eligibility requirements for organizations, governmental units and schools applying for grant assistance. [The following language was previously numbered §§5.006 A,B,D,E,F]

A. Subject to 5 MCAR §§ 5.012 and the other provisions of these rules non-profit, tax-exempt organizations, schools, governmental units and departments and agencies of the state are eligible to apply for:

1. Local/regional arts development assistance from regional arts councils if:

a. This assistance is for the creation and production of arts programs or projects which are for the development or enhancement of local or regional artists or arts organizations.

b. This assistance is for local arts sponsorship projects in which $3,000 or less is requested.

c. The project submitted is not limited in access to, or only serves those attending schools, including the staff.

2. Sponsor assistance from the Minnesota State Arts Board if:

~~a. Schools are seeking arts in education assistance for the support of artist residency projects of one week (5 school days) or longer.~~

a. All applicants identified in 5 MCAR § 5.007 A. submit projects which are within the definition of sponsor assistance in 5 MCAR § 5.004 P. of these rules.

b. The project submitted is not limited in access to, or only serves those attending schools, including the staff.

c. This assistance is for projects in which more than $3,000 is requested.

d. In those cases in which a school is an applicant and is seeking arts-in-education assistance, the project to be supported must be an artist residency project of one week (5 school days) or longer.

3. General support from the Minnesota State Arts Board if:

a. The organization seeking support is an arts producing, or exhibiting organization. Public broadcasting stations, schools, universities, ~~and other organizations which primarily present rather than create or produce arts programs~~ colleges, libraries, governmental units, chambers of commerce and other community service organizations are not eligible to apply for this type of assistance.

b. The organization has been in existence ~~in its current form~~ two full years prior to applying.

c. The organization has a certified audit of its accounts, for ~~the previous~~ two full years prior to applying.

d. The organization has ~~a commitment to~~ paid professional management. ~~at least one full time paid management (not clerical) position for 12 months per year.~~

e. ~~Have an annual budget of $100,000, less any other MSAB or regional arts council grants,~~ The organization has a cash revenue budget of $100,000 for the fiscal year completed prior to applying for Group II, and $700,000 for Group I. This budget shall be substantiated by certified audit.

B. Organizations may only request up to 10% of their annual budgets from the general support program.

C. Organizations which receive grants for general support are ineligible to apply for special project and sponsor assistance grants from the Minnesota State Arts Board and all grants from regional arts councils.

D. Applicants for grants assistance from the Minnesota State Arts Board and regional arts councils must be able to show evidence of match through cash, revenue or grants in order to be eligible for any type of grants assistance.

~~5.007~~ 5.008 ~~Procedure~~ Process for obtaining grants, ~~loans and other forms of assistance~~ in all categories except regional arts council block grants.

A. Definitions. For the purpose of this rule the following terms shall have the meanings given to them.

1. "Applicant" means (a) any Minnesota resident who submits an application for a grant, ~~loan or other form of assistance,~~ or (b) any organization, department or agency of the state or political subdivision on whose behalf an application for a grant, ~~or loan~~ is submitted.

2. "Authorizing official" means (a) a person, empowered to enter into contracts for and who signs the grant application of an organization, political subdivision, or department or agency of the state, or (b) in the case of individual artist applications, an individual artist who signs the grant application.

3. "Co-sponsor" means a partnership of two or more organizations and/or governmental units to present arts activities within a community or school which submits one grant application.

~~4.~~ 3. "Fiscal agent" means any Minnesota non-profit, tax-exempt organization or governmental unit which applies to the Board on behalf of an organization or ~~individual~~ group not meeting the non-profit, tax-exempt requirements. The fiscal agent must sign the application and, if a grant is received, sign the grant letter/contract. The fiscal agent is legally responsible for the completion of the project and for the proper management of the grant funds.

5.4. "Grant" means an allocation of funds to an applicant which ~~are~~ is to be used for the purpose(s) described in the application which are not repaid.

6.5. "Grant contract" means the ~~notification letter~~ legally binding document signed by an authorizing official of an organization or an individual artist who has received a grant obligating him/her to perform grant activities and to fulfill the requirements stipulated in the contract.

7.6. "Grantee" means an applicant whose application is approved for funding by the Board.

~~7.--"Loans" mean monies given to an applicant which are to be repaid to the Board according to the conditions specified in the loan contract.~~

8. "Matching funds" means share of the financial support for a project or program raised by ~~grantee~~ applicant from sources other than MSAB. Match for a project or program cannot be made up solely of in kind contributions. The sources for matching funds may be one or more of the following:

a. Cash. means cash as shown by ~~Applicant must be able to prove~~ availability of ~~cash matching funds by~~ bank statements, or other indication of cash on hand and budgeted for the project or program.

b. In Kind. means ~~I~~items such as materials, labor and space which can be given a dollar value. Applicant must be able to prove that in kind match is committed to the project or program.

c. Revenue. means ~~A~~anticipated or actual receipts from sale of tickets or products.

d. Other Grants. means ~~G~~grants received ~~by~~ from other grant-making agencies, public or private.

10. "Project director" means person designated by an organization, political subdivision or department or agency of the state as the individual responsible for overseeing the implementation of the project or program for which the application is made.

B. All applications for grants ~~and loans~~ must be made on official application forms for the appropriate program available at the offices of the Board. Applicants must use grant application forms for the appropriate fiscal year. Requests for other forms of assistance may be made directly to the Board at its offices.

C. A copy of these rules and appropriate program information will be provided upon request to all applicants and ~~to others~~ the public ~~upon request~~.

D. All applications must be ~~made~~ postmarked by the deadlines set forth by the Board in the current program information.

E. The application form will request the specific data needed to determine the eligibility of the individual or organization and to review the application according to the review standards.

F. ~~E.~~ All applications submitted by individual artists to the board for grants must include examples of works of art of the ~~artist~~ applicant submitting. The type of examples required and the maximum number of examples to be submitted will be specified in current program information of the Board. No exceptions will be made to these requirements ~~may be made on application to the Board.~~

G. ~~F.~~ All applications of an organization, political subdivision or agency or department of the state must name a project director.

H. ~~G.~~ The staff will review all applications submitted by the deadline for ~~accuracy and~~ completeness. ~~The Board may convene advisory committee meetings for purposes of reviewing grant applications.~~

1. The applicant is responsible for the completeness of the application.

2. An incomplete application is not eligible for review by the advisory committee or the board.

I. A late application will not be considered for review by the advisory committee or the board.

~~I. In all cases, the advisory committee will submit its recommendations to the Board along with a statement explaining its reasons for recommending acceptance or rejection of the application.~~

J ~~H.~~ ~~Applicants will be notified by mail of the receipts of their applications and the need, if any, for changes or supplementary material. Failure by an applicant to provide this information may result in a rejection or deferral of the application.~~ A complete application includes the following:

1. The appropriate application form with all spaces completed;

2. Authorizing signature(s) on the application form;

3. A complete data summary form;

4. All required resumes attached;

5. Applications from organizations have named a project director;

6. Applications from individual artists must have included required supporting materials;

7. Where applicable, a copy of the contract with the fiscal agent;

8. Postmarked or delivered by the stated deadline (s) in program information.

K. The applicant is responsible for the quality and the nature of the responses in the application form and the supporting materials.

~~J.~~ L. Advisory committees, when reviewing applications under the standards listed in 5 MCAR § 5.010, shall ~~make one of the following recommendations to the Board:~~ submit as recommendations:

1. ~~Recommend approval of~~ Full funding ~~requested amount~~.

~~a. Individual Artist committee recommendations can only be for the full requested amount.~~

~~b. The Regional Arts Development committee recommendations can only be for the full requested amount.~~

2. ~~Recommend approval at less than full requested amount.~~ Partial funding, except for individual artist grants, which can only be for the full requested amount, or,

3. ~~Recommend rejection~~ No funding.

~~4. Recommend that the Board table, pending receipt of additional information, or modification.~~

~~M.~~ K. The board shall give considerable weight to the recommendations of the advisory committees.

~~N.~~ L. The board may request comments and recommendations from the staff on all aspects of applications.

O.M. The board may request a revised budget and/or project description before taking final action on grant applications.

P. N. The board shall make all final decisions as to approval or rejection of grant applications~~, loan applications~~ or requests for other forms of assistance.

Q. O. If the board ~~approves~~ awards a grant which is smaller ~~or greater~~ than the amount requested the applicant will be notified by mail, and will be required to submit a revised budget before a ~~notification letter~~ grant contract will be sent.

R. ~~P.~~ All applicants will receive a notification letter of acceptance or rejection within 45 days ~~of~~ after final review of the application by the board, except when a revised budget is necessary. In that case, applicants will receive a grant contract and notification letter within 45 days ~~of~~ after the receipt of the revised budget by the board.

~~Q. Supplementary materials will not be returned unless requested.~~

S. In the event a grant is awarded to a fiscal agent, the fiscal agent must sign the grant letter. The fiscal agent must have a written contract with the group implementing the project/program which specifies the responsibilities of each. This contract must be submitted with the application form.

T. ~~R.~~ The board will not assume responsibility for any loss or damage to materials submitted with applications.

5 MCAR § 5.009 ~~Proeedures~~ Process for obtaining regional ~~arts council status~~, block grants; regional ~~arts council~~ plan review; ~~proeedures and~~ regional arts council review; re-granting and reporting requirements.

A. ~~The proeedure for review of a block grant application developed by a regional arts council is as follows:~~ To be eligible to receive a regional block grant an organization shall:

SAB-81-002-GB

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA STATE ARTS BOARD

In the Matter of the Proposed Adoption of Rules of the State Arts Board Governing Review of Requests for and Distribution of Grants, Loans and Other Forms of Assistance.

REPORT OF THE HEARING EXAMINER

The above-entitled matter came on for hearing before State Hearing Examiner George A. Beck on June 12, 1981, at 9:00 a.m. in the Hearing Room of the Office of Administrative Hearings, Room 300, 1745 University Avenue, St. Paul, Minnesota.

This Report is a part of a rule hearing procedure pursuant to Minn. Stat. §§ 15.0411 through 15.0417, and 15.052 to determine whether the proposed rule amendments should be adopted by the Minnesota State Arts Board.

Members of the Agency panel appearing at the hearing included: Stephen F. Keating, Chairman, Minnesota State Arts Board; John M. Ondov, Executive Director; Mary Sulerud, Information Officer; and William Marshall, Special Assistant Attorney General representing the Minnesota State Arts Board.

Seventeen people signed the hearing register. Seven public witnesses appeared and spoke at the hearing. The Board submitted 19 written exhibits. Eleven written comments were received from the public.

The Minnesota State Arts Board must wait at least five working days before taking any final action on the rules; during that period, this Report must be made available to all interested persons upon request.

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 4d (1980), this Report has been submitted to the Chief Hearing Examiner for his approval. If the Chief Hearing Examiner approves the findings of this Report, he will advise the Board of actions which will correct the defects and the Board may not adopt the rule until the Chief Hearing Examiner determines that the defects have been corrected. However, in those instances where the Chief Hearing Examiner identifies defects which relate to the issues of need or reasonableness, the Board may either adopt the Hearing Examiner's recommendations to cure the defects or, in the alternative, if the Board does not elect to adopt the recommendations, it may submit the proposed rule to the Legislative Commission to Review Administrative Rules for the Commission's advice and comment. Provisions relating to this submission to the Commission may be found in Minn. Stat. § 15.0412, subd. 4d (1980).

If the Board elects to adopt the recommendations of the Hearing Examiner and makes no other changes and the Chief Hearing Examiner determines that the defects have been corrected, then the Board shall submit the rule to the Attorney General for review of form and legality. If the Board makes changes in the rule other than those recommended by the Hearing Examiner, then it shall submit the rule, with the complete record, to the Chief Hearing Examiner for a review of the changes before adopting it and submitting it to the Attorney General. Procedures relating to this subsequent review by the Chief Hearing

Examiner are set forth in Minn. Stat. § 15.0412, subd. 4e (1980).

When the Board submits the rule to the Attorney General, it shall give notice on the day of submission to all persons who requested that they be informed of the submission to the Attorney General.

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

FINDINGS OF FACT

Procedural Requirements

1. On April 3, 1981, the Board filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rule amendments.
(b) The Order for Hearing.
(c) The Notice of Hearing proposed to be issued.
(d) A certificate of the Board's authorizing resolution.
(e) A Statement of the number of persons expected to attend the hearing and estimated length of the Agency's presentation.
(f) A copy of the Notice of Intent to Solicit Ouitside Opinion.

2. On April 7, 1981, the Board filed a revised Notice of Hearing with the Hearing Examiner State Register.

3. On May 15, 1981, the Board filed the following documents:

(a) Order for Hearing.
(b) The Notice of Hearing as mailed.
(c) A copy of the proposed rules.
(d) The Affidavit of Mailing the Notice to all persons on the Agency's list.
(e) The Affidavit of Press Release Mailing.
(f) The Statement of Need and Reasonableness.
(g) The names of the Agency personnel who will represent the Agency at the hearing together with the names of any other witnesses solicited by the Agency to appear on its behalf.
(h) The rules promulgation timetable.
(i) An evaluation of the Board's individual Artists' Grants Program by the Legislative Auditor.
(j) The Board's annual Report for 1980.
(k) The Agency's certification that its mailing list was accurate and complete.

4. On the day of hearing, June 12, 1981, the Board filed a copy of the State Register in which the proposed rules were published with the Hearing Examiner. The proposed rules were published in the State Register on Monday, May 4, 1981 at 5 State Register 1707. No one was prejudiced by the late filing of the copy of the State Register since no requests were made to review the documents submitted on May 15, 1981. See, City v. Wurtele, 291 N.W. 2d 386, 391 (1980).

5. On April 30, 1981, the Board mailed the Notice of Hearing to all persons and associations who had registered their names with the Board for the purpose of receiving notice of rulemaking activity.

The documents cited above, with the exception of the copy of the State Register, were available for inspection at the Office of Administrative Hearings from the date of filing to the date of the hearing.

6. The record remained open through July 2, 1981 for the receipt of written comments and statements, the period having been extended by order of the Hearing Examiner to 20 calendar days following the hearing.

7. The Board has cited as statutory authority for the proposed rule amendments Minn. Stat. § 139.10, subd. 1 (e) and (f). Those provisions read as follows:

(e) Promulgate by rule procedures to be followed by the board in receiving and reviewing requests for grants, loans or other forms of assistance;
(f) Promulgate by rule standards consistent with this chapter to be followed by the board in distribution of grants, loans and other forms of assistance;

The Board has demonstrated its statutory authority to adopt the proposed rule amendments.

5 MCAR §§ 5.002 through 5.004.

8. Sections 5.002 through 5.004 contain amendments to rules dealing with the purpose of the rules, the scope of the rules and definitions. No public comments were directed to these sections. The Statement of Need and Reasonableness and the Agency's oral presentation have established the need for and reasonableness of these rule amendments.

5 MCAR § 5.005

9. Section 5.005 sets out the rules governing the advisory committees which are appointed by the Board to review grant applications. Section 5.005 H. is proposed new language which deals with a conflict of interest on the part of a member of an advisory panel. No public comments were directed towards this subsection, and the Board has established its need and reasonableness. However, the Board may wish to consider deletion of the phrases "which interest is reasonably likely to affect his/her impartiality or judgement in the review" and "be instructed to" from the first paragraph of the rule subsection. The reason for this drafting suggestion is that, as the rule is presently phrased, it might be interpreted to permit the advisory panel member to make the decision as to whether or not his conflict of interest is reasonably likely to affect his impartiality. This judgment should properly be made by the Board. The suggested deletion would simply require the panel member to report a conflict of interest to the Board. The Board could then make its own judgment as to whether or not the conflict was reasonably likely to affect the panel member's impartiality. The subsection could be rewritten to make it clear that the Board will make this determination after receiving the information from the panel member. The second proposed deletion ("will be instructed") would remove an uncertainty as to who would instruct or when a panel member would be instructed to inform the Board and would simply require the panel member to inform the Board. The revision, as suggested, would appear to more directly meet the Board's goal of assuring disclosure of conflicts or potential conflicts.

revised P.5

5 MCAR § 5.006

10. Section 5.006 deals with eligibility requirements for individuals who apply for grant assistance. The revisions were not the subject of any specific critical comments and have been shown to be needed and reasonable.

5 MCAR § 5.007

11. Section 5.007 as a whole governs eligiblity requirements for organizations, governmental units and schools applying for grant assistance. Section 5.007 A.2. deals with sponsor assistance from the State Arts Board. At the hearing, the Board stated that the letter c had inadvertently been omitted from this rule and proposed that the following language be added to this subsection:

c. This assistance is for projects in which more than $3,000 is requested.

added P.7

There was no objection to this addition and it is intended to clarify which budgets are accepted for review by the State Board and which are accepted for review by the regional arts council. This addition would not result in a rule which was substantially different from that published in the State Register.

12. An objection was made to subsection 5.007 A.2. by COMPAS, a statewide community arts agency. COMPAS has, in the past, received funding from the State Board to promote arts-in-education assistance. Individual schools would then request assistance from COMPAS in selecting an artist to serve a residency in the school. COMPAS is concerned that the wording of the proposed rule at § 5.007 A.2.a., which refers only to "schools" will exclude COMPAS from applying for these funds. COMPAS states that the State Arts Board staff has advised them that they will be ineligible for this assistance. (Ex. K.)

13. It is not clear from the Statement of Need or the Board's posthearing comments whether the State Board, in fact, intends to permit only schools to seek this sponsor assistance. The Statement of Need refers to arts organizations applying for assistance. The Board justifies the rule in its Statement of Need as necessary to comply with the federal requirement that the projects be five school days or longer. COMPAS points out that the Board has not established, in its Statement of Need, the need for or reasonableness of a change from not allowing COMPAS to apply for funds to allowing only the schools themselves to apply for funds in this category. COMPAS states that the effect of the rule could be the virtual elimination of a proven state-wide coordinated writer residency program. In 1980-81, COMPAS carried out 110 weeks of residencies at the request of 95 Minnesota schools. If it is the intent of the Board to exclude applications for sponsor assistance under this subsection from entities other than schools, then it must be concluded that the Board has failed to state facts showing the need for and reasonableness of such a change. Since the rule is ambiguous as to whether or not non-school organizations can apply, it must be assumed that the Board did intend to exclude organizations such as COMPAS. It must be concluded that the failure to support such a change in the rule by an affirmative presentation of facts is a failure to comply with the procedural requirements of Minn. Stat. § 15.0412, subd. 4c. In order to correct this defect, the Board should redraft § 5.007 A.2. to indicate that organizations other than schools, such as COMPAS, may apply for this type of sponsor assistance.

see new language p. 7.

14. 5 MCAR § 5.007 A.3. sets out the requirements for a grant of general support from the Arts Board. At the hearing, Jack Rueler, representing the "Group II" arts organizations, namely those having budgets between $100,000 and $700,000, proposed that § 5.007 A.3. be amended to read as follows:

3. General support from the Minnesota State Arts Board if:

a. The organization seeking support is an arts producing or exhibiting organization. Public broadcasting stations, schools, universities, colleges, libraries, governmental units, chambers of commerce and other community service organizations are not eligible for this type of support.

b. The organization has been in existence two full years prior to applying.

d. The organization has paid professional management.

e. The organization has a cash revenue budget of $100,000 for the fiscal year completed prior to applying for Group

II, and $700,000 for Group I. This budget shall be substantiated by certified audit.

see modification p. 7.

The Board saw these proposed modifications as essentially technical and stated at the hearing that it was agreeable to adopting them. The modifications do not result in a rule which is substantially different from that which was published in the State Register.

15. The proposed rule subsection, as drafted, and as proposed to be modified, deletes a requirement which was contained in the existing rule at 5 MCAR § 5.006 E.1.a., namely, that the applicant must demonstrate statewide or multi-region impact. The deletion of this requirement drew a number of comments. The Board suggested that this deletion was due to the fact that the definitions of "statewide" and "multi-regional" were unworkable.

16. The Metropolitan Council commented that it is appropriate to fund the major organizations which have a statewide impact separately from smaller organizations which have a regional or local impact. The Council's concern is that if the largest institutions are reclassified as regional rather than statewide then smaller arts organizations in the metropolitan area may see less funding available to them since a balance must be achieved between funds devoted to the urban areas and the rural areas. (Ex. B) At the Foot of the Mountain Theater (Ex. G), The Loft (Ex. F) and the Instructional Dance Theater expressed a similar concern that regional and state financing be maintained separately in order to ensure adequate financing for smaller Twin Cities' theaters and other arts groups. The Arrowhead Regional Arts Council commented, however, (Ex. C) that the "statewide impact" requirement was not necessary since the intent of the general support category is to give assistance to deserving arts organizations of acknowledged size, substance and quality and that "statewide impact" is, at best, difficult to document.

17. The Board commented, in its posthearing comments, that the term "statewide impact" does not seem to be a term about which there is a concensus of opinion in the arts community. It is deleted in order to make the eligibility requirements less subjective and to clearly define constituencies for the Board and for the Regional Art Councils. The Board believes that the budget size clearly establishes what organizations are eligible for general support. (Ex. 19) In reply, the Metropolitan Council stated that budget size was not an adequate measure of the significance of an arts organization and that the statewide impact, even though it is necessary and subjective, should be retained to ensure that the few organizations in Group I, which receive at least half of the total grant funds administered by the Board, are indeed significant. (Ex. J)

18. As the Metropolitan Council's written submission makes clear (Ex. B), the concern of those who object to the deletion of the statewide impact requirement does not relate to the operation of this proposed rule subsection as much as it relates to the structuring of the regional formula. The objectors are concerned that the deletion of the statewide requirement will permit the Group I applicants with budgets in excess of $700,000 to be classified as metro programs, thereby making fewer funds available to smaller metropolitan organizations because of the use of a ratio to distribute the funds, such as 59% to 41% metro to non-metro. The Board has, however, demonstrated that the deletion of this requirement is necessary and reasonable in regard to this proposed rule

subsection. It has not proved to be a workable concept for selecting general support recipients, and the budget size is not an arbitrary means of restricting applications. The structuring of the regional formula is not the subject of this rule subsection.

19. COMPAS also made some individual suggestions in regard to the requirements set out in § 5.007 A.3. It believes that organizations which present, sponsor, or provide services to artists or art organizations should be eligible. It also believes that a four-year history would be more appropriate and that a certified audit should be required only for one year. It also stated that the minimum budget size of $100,000 should be deleted. (Ex. K) The Board notes that § 5.007 A.3.b., c., and d., are virtually identical to the existing rule. (§ 5.006 E.1.b., c. and d.) The Board justifies the $100,000 minimum budget requirement as necessary to define the category in the absence of a statewide impact requirement and as a reasonable means to ensure that a general support recipient is of sufficient administrative and artistic stability to warrant this type of unrestricted support. (Ex. 12, p. 16) The Board may consider the COMPAS comments as a matter of policy; however, the Board has demonstrated the need for and reasonableness of the requirements of the proposed rule subsection.

20. 5 MCAR § 5.007 C. states that organizations which receive grants for general support are ineligible to apply for grants from regional art councils. The Board stated, in its Statement of Need, that the largest grants are funded through the general support category and that the Regional Arts Councils have limited funds. Therefore, the Board seeks to give applicants who are ineligible for general support an opportunity to compete for the limited dollars available without competition from general support recipients. The Board believes that in a time of limited dollars available for the arts, this is a fair way of ensuring that all applicants have an equal chance.

21. This requirement was opposed by the Group II arts organizations, namely, those with budgets between $100,000 and $700,000. They believe that the primary criterion for evaluation of grants should be quality and that therefore, the screening should not take place before applications are prepared which is what this rule in effect accomplishes. The Group II oranizations in the past would have been able to obtain general support as well as funds from the Regional Council. In a time of limited money being available for arts, these organizations are concerned that they may not be able to obtain, through application to the Regional Arts Council, what has been a significant portion of their budget in the past. (Ex. I; Ex. K)

22. The Arrowhead Regional Arts Council supported the rule as proposed and observed that allowing organizations to apply in several categories may provide them in the short term with a feeling of more security but does not take into account the scarcity of funding dollars which has become more evident. (Ex. C) Smaller metropolitan arts organizations, such as The Loft (Ex. F), and At the Foot of the Mountain Theater (Ex. E) also supported the proposed rule and stated that as long as the general support was limited to organizations whose budgets exceeded $100,000, the many small arts groups in the metropolitan area are solely dependent upon the regional funding through the Metropolitan Council. They believe that to allow the Group II organizations to apply for the same funds is inequitable. The Metropolitan Council commented that

if the Group II position was to be adopted, then the $100,000 minimum budget size for general support should be abolished. (Ex. H)

23. In its written comment, the Board stated that the restriction contained in this proposed rule was, in reality, an extension of the existing rule since, under existing rules, general support grant recipients were permitted to apply for project grants only in cases in which special projects were presented for review. Effective administration and monitoring of this rule was made impossible, however, since a special project was subject to a very broad interpretation. The Board believes that allowing the larger arts organizations to apply for regional grants throws off the balance of the support mechanism which has been created through regional arts councils, which provides opportunities for organizations that by budget size, development needs, and length of time of existence cannot apply for any grants except those available from regional arts councils. (Ex. 19) The Board has demonstrated the need for and reasonableness of the restriction contained in this rule subsection. The rule is essentially a policy decision by the Board and cannot be said to be arbitrary.

5 MCAR § 5.008.

24. Section 5.008 sets out the process for obtaining grants except for regional grants. No comments were addressed to this rule. Section 5.008 F. of the rule contains a new provision which states that "Exceptions to these requirements may be made on application to the Board." This provision, as proposed, violates a substantive requirement of law in that it could be applied by the Board in an arbitrary manner which would not provide equal protection of law to all applicants. See Minn. Stat. § 15.0411, subd. 3, and Holmes v. New York City Housing Authority, 398 F.2d 262, 265 (2d Cir. 1968). In order to cure this defect, the Board could list the criteria by which the Board would be guided in granting an exception to this rule subsection. At the rule hearing, the Board announced that numbers 1 and 2 which appear under letter I of § 5.008, as proposed, should, in fact be under letter H. of § 5.008. This change would not make a substantially different rule from that as published. The amendments to § 5.008 are needed and reasonable as proposed.

Exceptions deleted p. 10

5 MCAR § 5.009.

25. Section 5.009 sets out the process for obtaining regional block grants. No public comments were directed to this rule which is amended in several spots. The amendments are needed and reasonable as proposed.

5 MCAR § 5.010.

26. Section 5.010 deals with standards for requests for grants. This rule was not the subject of public comments, however, the amendment to § 5.010 A. provides that applications will be reviewed "primarily according to:" the criteria listed. This wording constitutes a violation of a substantive provision of law in that it permits judgments to be made upon applications based upon unstated criteria. Such a procedure could permit arbitrary judgments by those reviewing the applications and would not promote equal treatment of all applicants. See Minn. Stat. § 15.0411, subd. 3, and Holmes v. New York City Housing Authority, supra. In order to cure this defect, the Board should delete the word "primarily" and list all criteria by which applications are to be judged. It should be noted that the rule as proposed to be amended contains the capital letter A without a capital letter B and a number 1 without a number 2.

deleted p. 15

OK

27. Section 5.010 C. is also amended to contain the language "primarily according to:". This amendment presents the same problem noted in Finding No. 26 and is also a violation of a substantive provision of law. The defect could be corrected in the same manner.

deleted p.16

28. Section 5.010 D. also contains the word "primarily" in regard to the review of individual artists' applications. This again constitutes a violation of a substantive provision of law, and the defect can be cured as stated above.

deleted p.17

5 MCAR § 5.011.

29. This rule sets out the provisions affecting grantees. The amendments to this rule received no public comment and are needed and reasonable as proposed.

5 MCAR § 5.012

30. Section 5.012 deals with miscellaneous provisions. The new sections proposed have been shown to be needed and reasonable. Section 5.012 E. has been amended according to the Board to clarify the intention of the rule as originally written, which is to make it possible for the Board to award all its grant funds after one deadline. It is suggested, however, that the phrase "in addition to the criteria set forth above" is vague and somewhat confusing. The Board may wish to revise and clarify this language.

language deleted p.20

5 MCAR § 5.013.

31. Section 5.013 deals with public participation in Agency matters. It sets out the method for an applicant to appeal a decision of the Board on issues other than artistic quality. The new rule received no public comment. The rule has been shown to be needed and reasonable as proposed; however, it is suggested that the word "resolution" contained in § 5.013 A.3.d. is vague and might be replaced or defined. It is also suggested that the statutory cite contained in § 5.013 A.5. be changed to Minn. Stat. §§ 15.0418-.0422 and 15.052.

replaced p.21

OK

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

CONCLUSIONS

1. That the Minnesota State Arts Board gave proper notice of the hearing in this matter.

2. That the Board has fulfilled the procedural requirements of Minn. Stat. § 15.0412, subd. 4-4f (1980) and all other procedural requirements of law or rule, except as noted at Findings Nos. 4 and 13. The late filing noted at Finding No. 4 prejudiced no one and requires no action to correct the defect.

3. That the Board has demonstrated its statutory authority to adopt the proposed rules and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 15.0412, subd. 4e and 15.052, subd. 3(4)(i) and (ii) (1980), except as noted at Findings 24, 26, 27 and 28.

4. That the Board has documented the need for and reasonableness of its proposed rules with an affirmative presentation of facts in the record within the meaning of Minn. Stat. § 15.0412, subd. 4c (1980)

5. That the modifications and additions to the proposed rules which were suggested or approved by the Board after publication of the proposed rules in the State Register do not result in rules which are substantially different from the proposed rules as published in the State Register within the meaning

of Minn. Stat. § 15.0412, subd. 4d (1980) and 9 MCAR §§ 2.110 A. and 2.111 (1980 Ed.).

6. That the Hearing Examiner has suggested action to correct the defects cited in Conclusions Nos. 2 and 3 as noted at Findings Nos. 13 and 24, 26, 27 and 28.

7. That due to Conclusions Nos. 2 and 3, this Report has been submitted to the Chief Hearing Examiner for his approval pursuant to Minn. Stat. § 15.0412, subd. 4d (1980).

8. That any Findings which might properly be termed Conclusions and any Conclusions which might properly be termed Findings are hereby adopted as such.

9. That a finding or conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage the Board from further modification of the proposed rules based upon an examination of the public comments, provided that no substantial change is made from the proposed rules as originally published, and provided that the rule finally adopted is based upon facts appearing in this rule hearing record.

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

RECOMMENDATION

It is hereby recommended that the proposed rules be adopted except where specifically otherwise noted above.

Dated: This 15th day of July, 1981.

George A. Beck

GEORGE A. BECK
State Hearing Examiner

Board Ex. No. 9
File No. 8200-702 GM
Date 6/12/81

State Arts Board

Review Of Requests For And
Distribution Of Grants, Loans
And Other Forms Of Assistance

Contents

RECEIVED
MAY 15 1981
ADMINISTRATIVE
HEARINGS

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5 MCAR § 5.007 Eligibility requirements for organizations.

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5 MCAR § 5.010 Standards for review of requests for grants~~, loans and other forms of assistanee~~.

5 MCAR § 5.011 ~~Responsibilities of grantee.~~ Provisions affecting grantees.

5 MCAR § 5.012 ~~Advisory committees.~~ Miscellaneous provisions.

5 MCAR § 5.013 Public participation in agency matters.

5 MCAR § 5.002 Purpose of the rules. The purpose of these rules is to set forth procedures and standards to be followed by the board in receiving, considering and reviewing requests for and distribution of grants.~~,-loans,-and-other-forms-of-assistance.~~ Any actions taken by the board, its staff and advisory committees related to the review and distribution of grants must be clearly based on the standards in rule form. Explanation of actions requested by applicants must be offered in the context of the standards in rule form.

5 MCAR § 5.003 Whom the rules govern. ~~A.~~ These rules govern the board; advisory committees; regional arts councils; and all individuals, organizations, departments, and agencies of the state and political subdivisions who wish to receive grants~~,-loans,~~ or other forms of assistance from the board. ~~and/or-from-regional-arts-councils.~~

~~B.--Regional-arts-councils-receiving-block-grants-from-the-Board-are-required to-follow-Board-rules-pertaining-to-eligibility-requirements-and-general standards-in-distributing-local/regional-arts-development-grants--,-loans-and-other-forms-of-assistance-which-utilize-Board-funds.~~

5 MCAR § 5.004 Definitions. For the purpose of these rules, the following terms shall have the meanings given to them:

A. "Advisory committee" means a group of citizens ~~selected and convened~~ appointed by the board to review and make recommendations on ~~policy and distribution of forms of~~ grants assistance offered by the board~~.~~ or make recommendations on public arts policy matters.

B. "Block grant" means grants to regional arts councils for the purpose of providing ~~program~~ services, re-grants, and direct programming for local/regional arts development.

D. "Certified audit report" means a document prepared and signed by a Certified Public Accountant showing the total fiscal activity of the organization regarding a project or program.

E. "Direct programming" means the implementation ~~by a regional arts council~~ of arts production or arts sponsorship activities~~.~~ by a regional arts council.

~~F. "Local" means program or service distribution and organizational impact within a specific municipality or county.~~

F. "General support" means a program that provides unrestricted operational grants assistance to eligible organizations which meet the standards contained in these rules.

G. "Local/regional arts development" means programs or projects which are for the development or enhancement of local or regional artists, ~~or~~ art resources~~.~~ ,or art audiences.

~~H. "Multi-regional" means program or service distribution and organizational impact over more than one of the State's official development regions.~~

H.~~-I.~~ "Other forms of assistance" means publications, ~~or~~ staff consultation or workshops with individuals or groups who have developed, or are interested in

developing, projects or programs in the arts but need advise on matters such as, but not limited to, budgeting, administration, production and technology.

I.~~J.~~ "Program information" means any document(s) issued ~~annually~~ describing programs and services of the board which includes instructions, deadlines, and other aids for the applicant seeking board grants assistance. Program information may clarify and explain standards contained in rule form, but such clarification shall not be considered standards or criteria itself.

J. "Project" means an activity or series of closely-related activities for which funds are requested from the MSAB or a regional arts council. The activity or series of activities must be completed within 24 months of the notification of the receipt of a grant in support of the activities.

K.~~L.~~ "Regional" means program or service distribution and organizational impact within the geographic area served by a ~~regional arts task force or~~ regional arts council. Formal combinations of two or more development regions under one regional arts council will be regarded as one region for this purpose.

L.~~M.~~ "Regional arts council" means an organization or a group designated by the Board to make final decisions on the utilization of block grant funds granted to them for local/regional arts development.

M.~~N.~~ "Regional arts task force" means an advisory committee of the Board which reviews applications for local arts development projects serving the region(s) the arts task force represents. A regional arts task force may also be an advisory committee to a regional development commission or the Metropolitan Council.

N.~~O.~~ "Re-granting" means the process of allocating block grant funds ~~to arts funding applicants to a regional arts council~~ for the purpose~~(s)~~ of funding arts projects or programs or services described in the applications to regional arts councils.

O.~~K.~~ "~~Program s~~Services" means non-grant activities including, but not limited to, information services, technical and consultative services, planning, reporting, evaluation, and other program development efforts that are provided by the Minnesota State Arts Board and/or regional arts councils.

P. "Sponsor assistance" means a program which provides grants assistance to eligible organizations, which meet the standards contained in these rules, that host arts events by contracting for the services of another organization or individual to provide arts programming to their community.

Q.~~P.~~ "State-wide" means program or service distribution and organizational impact throughout most or all of the ~~development~~ regions of the state.

5 MCAR §§ 5.005 Proposed for repeal.

5 MCAR §§ 5.005 Advisory committees. [The following language was previously numbered 5 MCAR §§ 5.012 A.-G.]

A. The board may appoint advisory committees to review grant applications.

B. The board may discontinue any advisory committee, as it deems necessary.

C. Members of each advisory committee shall have expertise and/or experience in a particular area of the arts, arts support or administration. Committee members will be selected by the board from among practioners, administrators, educators, volunteer directors of arts organizations, trustees of arts organizations and other participants in the arts.

D. Appointments to advisory committees shall be made by majority vote of the board. Members shall serve at the pleasure of the board for appointment-terms of no longer than three years. Appointments to advisory committees shall be made so that the appointment-terms of at least one-third of the membership of each committee shall expire in each year.

E. At least sixty days prior to expiration of the appointment-terms of any advisory committee member, the board will publish distribute and post notice of such openings. Nominations will be actively solicited and accepted by the Board. Nominations must be in writing and should include all pertinent information including nominees' qualifications and experience in the arts.

F. Advisory committees will, insofar as reasonably possible, be geographically balanced.

G. Members of the advisory committees and regional arts task force shall be compensated for expenses incurred to attend advisory committee meetings as provided in Minn. Stat. ch. 15.059, subd. 3, except that they shall not be eligible for the per diem.

H. Any member of an advisory panel with a direct financial or employment interest relating to any grant application before the advisory panel, or with a professional, employment or financial interest relating to any individual artist applicant, which interest is reasonably likely to affect his/her impartiality or judgement in the review will be instructed to inform the board of such an affiliation.

1. Affiliation of an advisory panel member with an applicant includes:

a. receipt of direct financial benefit from the applicant organization or project being reviewed;

b. serving as an employee or governing board member of an applicant organization being reviewed;

c. serving with or without payment as a consultant to an applicant on the application being reviewed;

d. familial relationship with an applicant or a staff or board member of an applicant organization;

e. recent recipient of free tickets or other benefits from an applicant being reviewed.

2. The MSAB will annually screen panel members for affiliations which may constitute conflict-of-interest.

5 MCAR § 5.006 Eligibility requirements for individuals~~,-organizations,-governmental-units and-schools~~ applying for grant assistance.

~~A.--Arts-Board-assistance-is-available-to-individuals,-non-profit,-tax-exempt organizations,-schools-and-governmental-units-and-departments-and-agencies-of-the state.~~

~~B.--Local/regional-arts-development-assistance-is-available-to-non-profit, tax-exempt-organizations-or-units-of-government,-including-schools.--This-assistance-is-for-the-creation-and-production-of-arts-programs-or-projects-which-are-for-the~~

~~development or enhancement of local or regional artists or arts resources.~~

~~C.--Arts Board grants assistance is available to the following individual applicants:~~

~~1.--Artists who directly produce new works of art such as, but not limited to, playwrights, composers, librettists, creative prose writers, independent filmmakers, video artists, visual artists, craftspeople, choreographers, poets, fiction writers, conceptual artists and artists working in multi media fields.~~

~~2.--Arts teachers, only if the teacher is pursuing professional development as an artist, not as a teacher.~~

~~3.--Individual artists, who have received a MSAB Fellowship grant, cannot apply for another Fellowship grant until two fiscal year, after the receipt of the Fellowship grant.~~

~~4.--Students, those who are pursuing either full time or part time a performance or academic degree in their creative field, may not apply for Fellowships, but may apply for Project or Works in Progress grants.~~

A. Subject to 5MCAR § 5.012 and the other provisions contained in these rules an individual artist is eligible for grants assistance only if that artist is:

1. A resident of Minnesota according to the voting requirements of the state;

2. Not involved in executing work initiated or completed by another individual or organization as their agent, or not solely involved in the organization or presentation of other artists' works.

B. ~~C.~~ 5. An individual artists, who has ~~have~~ received a ~~Project or Works in Progress~~ Minnesota State Arts Board individual artist grant, ~~cannot~~ may not apply for another ~~Project or Works in Progress~~ individual artist grant until one fiscal year after the receipt of such ~~the Project or Works in Progress~~ grant.

C. An individual artist may not submit more than one application each fiscal year.

~~D.--Production grants assistance and Sponsor grants assistance are not available to schools if the project submitted is limited in access to, or only serves those attending school, including the staff.~~

E.--Grants-assistance-for-general-operations-(Subsidy)-is-only-available-to to-arts-producing,-exhibiting-or-educational-(non-academic-i.e.,-do-not-offer curricular-programs)-organizations.

1.--Organizations-may-apply-for-general-operations-(Subsidy)-grants-only if:

a.-State-wide-or-multi-region-impact-is-demonstrated-by-program-dissemination,-public-participation-or-artistic-leadership.

b.-The-organization-has-been-in-existence-in-its-current-form-two full-years-prior-to-applying.

c.--The-organization-has-a-certified-audit-of-its-accounts-for-the previous-two-years.

d.--The-organization-has-a-commitment-to-professional-management-at-least-one-full-time-paid-management-(not-clerical)-position-for-12-months-per-year,-or equivalent-volunteer-personnel.--Documentation-would-include-job-description, time-allocation-and-budget-commitment,-if-applicable.

2.--Organizations-which-receive-grants-for-general-operations-(subsidy) are-eligible-to-apply-for-project-grants-only-if:

a.--The-application-is-for-a-special-project,-clearly-identified-as something-that-would-not-or-could-not-take-place-without-a-grant.

b.--The-project-clearly-demonstrates-that-it-is-a-one-time-project.--A pilot-for-contemplated-future-operation-is-eligible-if-a-specific-plan-for absorbing-it-into-on-going-operations-is-presented-with-the-application.

c.--No-overhead-or-on-going-organizational-costs-be-included-as-part of-the-project-budget.

~~d.--The grant from the MSAB would be matched at least 50-50 with funds from other sources, clearly identified for the project itself.--No general budget funds of the applicant organization would be eligible as match.~~

~~F.--Regional arts councils are eligible to apply only for block grants for the purpose of local/regional arts development.~~

~~G.--The Board may initiate new assistance categories or pilots in which applicants for assistance may be selected specifically for the way in which the Board can learn from their experience.~~

~~1.--No pilot assistance category will continue for longer than 2 years without the category being established on a permanent basis, or discontinued.~~

~~2.--All pilot assistance categories will be specifically described as such in MSAB program information.~~

5 MCAR § 5.007 Eligibility requirements for organizations, governmental units and schools applying for grant assistance. [The following language was previously numbered §5.006 A,B,D,E,F]

A. Subject to 5 MCAR § 5.012 and the other provisions of these rules non-profit, tax-exempt organizations, schools, governmental units and departments and agencies of the state are eligible to apply for:

1. Local/regional arts development assistance from regional arts councils if:

a. This assistance is for the creation and production of arts programs or projects which are for the development or enhancement of local or regional artists or arts organizations.

b. This assistance is for local arts sponsorship projects in which $3,000 or less is requested.

c. The project submitted is not limited in access to, or only serves those attending schools, including the staff.

2. Sponsor assistance from the Minnesota State Arts Board if:

a. Schools are seeking arts-in-education assistance for the support of artist residency projects of one week (5 school days) or longer.

b. The project submitted is not limited in access to, or only serves those attending schools, including the staff.

3. General support from the Minnesota State Arts Board if:

a. The organization seeking support is an arts producing, or exhibiting organization. Public broadcasting stations, schools, universities and other organizations which primarily present rather than create or produce arts programs are not eligible to apply for this type of assistance.

b. The organization has been in existence in its current form two full years prior to applying.

c. The organization has a certified audit of its accounts for ~~the previous~~ two full years prior to applying.

d. The organization has a commitment to professional management - at least one full-time paid management (not clerical) position for 12 months per year.

e. Have an annual budget of $100,000, less any other MSAB or regional arts council grants, for the fiscal year completed prior to applying for Group II, and $700,000 for Group I. This budget shall be substantiated by certified audit.

B. Organizations may only request up to 10% of their annual budgets from the general support program.

C. Organizations which receive grants for general support are ineligible to apply for special project and sponsor assistance grants from the Minnesota State Arts Board and all grants from regional arts councils.

D. Applicants for grants assistance from the Minnesota State Arts Board and regional arts councils must be able to show evidence of match through cash, revenue or grants in order to be eligible for any type of grants assistance.

~~5.007~~ 5.008 ~~Procedure~~ Process for obtaining grants, ~~loans and other forms of assistance~~ in all categories except regional arts council block grants.

A. Definitions. For the purpose of this rule the following terms shall have the meanings given to them.

1. "Applicant" means (a) any Minnesota resident who submits an application for a grant, ~~loan or other form of assistance,~~ or (b) any organization, department or agency of the state or political subdivision on whose behalf an application for a grant, ~~or loan~~ is submitted.

2. "Authorizing official" means (a) a person, empowered to enter into contracts for and who signs the grant application of an organization, political subdivision, or department or agency of the state, or (b) in the case of individual artist applications, an individual artist who signs the grant application.

3. "Co-sponsor" means a partnership of two or more organizations and/or governmental units to present arts activities within a community or school which submits one grant application.

4.~~3.~~ "Fiscal agent" means any Minnesota non-profit, tax-exempt organization or governmental unit which applies to the Board on behalf of an organization or ~~individual~~ group not meeting the non-profit, tax-exempt requirements. The fiscal agent must sign the application and, if a grant is received, sign the grant letter/contract. The fiscal agent is legally responsible for the completion of the project and for the proper management of the grant funds.

5.~~4.~~ "Grant" means an allocation of funds to an applicant which ~~are~~ is to be used for the purpose(s) described in the application which are not repaid.

6.~~5.~~ "Grant contract" means the ~~notification letter~~ legally binding document signed by an authorizing official of an organization or an individual artist who has received a grant obligating him/her to perform grant activities and to fulfill the requirements stipulated in the contract.

7.~~6.~~ "Grantee" means an applicant whose application is approved for funding by the Board.

~~7.--"Loans" mean monies given to an applicant which are to be repaid to the Board according to the conditions specified in the loan contract.~~

8. "Matching funds" means share of the financial support for a project or program raised by ~~grantee~~ applicant from sources other than MSAB. Match for a project or program cannot be made up solely of in kind contributions. The sources for matching funds may be one or more of the following:

a. Cash. means cash as shown by ~~Applicant must be able to prove~~ availability of ~~cash matching funds by~~ bank statements, or other indication of cash on hand and budgeted for the project or program.

b. In Kind. means ~~I~~items such as materials, labor and space which can be given a dollar value. Applicant must be able to prove that in kind match is committed to the project or program.

c. Revenue. means ~~A~~anticipated or actual receipts from sale of tickets or products.

d. Other Grants. means ~~G~~grants received ~~by~~ from other grant-making agencies, public or private.

10. "Project director" means person designated by an organization, political subdivision or department or agency of the state as the individual responsible for overseeing the implementation of the project or program for which the application is made.

B. All applications for grants ~~and loans~~ must be made on official application forms for the appropriate program available at the offices of the Board. Applicants must use grant application forms for the appropriate fiscal year. Requests for other forms of assistance may be made directly to the Board at its offices.

C. A copy of these rules and appropriate program information will be provided upon request to all applicants and ~~to others~~ the public ~~upon request~~.

D. All applications must be ~~made~~ postmarked by the deadlines set forth by the Board in the current program information.

E. The application form will request the specific data needed to determine the eligibility of the individual or organization and to review the application according to the review standards.

F. ~~E.~~ All applications submitted by individual artists to the board for grants must include examples of works of art of the ~~artist~~ applicant submitting. The type of examples required and the maximum number of examples to be submitted will be specified in current program information of the Board. Exceptions to these requirements may be made on application to the Board.

G. ~~F.~~ All applications of an organization, political subdivision or agency or department of the state must name a project director.

H. ~~G.~~ The staff will review all applications submitted by the deadline for ~~accuracy and~~ completeness. ~~The Board may convene advisory committee meetings for purposes of reviewing grant applications.~~

I. A late application will not be considered for review by the advisory committee or the board.

1. The applicant is responsible for the completeness of the application.

2. An incomplete application is not eligible for review by the advisory committee or the board.

~~I. In all cases, the advisory committee will submit its recommendations to the Board along with a statement explaining its reasons for recommending acceptance or rejection of the application.~~

J ~~H.~~ ~~Applicants will be notified by mail of the receipts of their applications and the need, if any, for changes or supplementary material. Failure by an applicant to provide this information may result in a rejection or deferral of the application.~~ A complete application includes the following:

1. The appropriate application form with all spaces completed;

2. Authorizing signature(s) on the application form;

3. A complete data summary form;

4. All required resumes attached;

5. Applications from organizations have named a project director;

6. Applications from individual artists must have included required supporting materials;

7. Where applicable, a copy of the contract with the fiscal agent;

8. Postmarked or delivered by the stated deadline (s) in program information.

K. The applicant is responsible for the quality and the nature of the responses in the application form and the supporting materials.

L. ~~J.~~ Advisory committees, when reviewing applications under the standards listed in 5 MCAR § 5.010, shall ~~make one of the following recommendations to the Board:~~ submit as recommendations:

1. ~~Recommend approval of~~ Full funding ~~requested amount~~.

~~a. Individual Artist committee recommendations can only be for the full requested amount.~~

~~b. The Regional Arts Development committee recommendations can only~~ , ~~be for the full requested amount~~.

2. ~~Recommend approval at less than full requested amount.~~ Partial funding, except for individual artist grants, which can only be for the full requested amount, or,

3. ~~Recommend rejection~~ No funding.

~~4. Recommend that the Board table, pending receipt of additional information, or modification.~~

M. ~~K.~~ The board shall give considerable weight to the recommendations of the advisory committees.

N. ~~L.~~ The board may request comments and recommendations from the staff on all aspects of applications.

O. M. The board may request a revised budget and/or project description before taking final action on grant applications.

P. N. The board shall make all final decisions as to approval or rejection of grant applications, ~~loan applications~~ or requests for other forms of assistance.

Q. O. If the board ~~approves~~ awards a grant which is smaller ~~or greater~~ than the amount requested the applicant will be notified by mail, and will be required to submit a revised budget before a ~~notification letter~~ grant contract will be sent.

R. ~~P.~~ All applicants will receive a notification letter of acceptance or rejection within 45 days ~~of~~ after final review of the application by the board, except when a revised budget is necessary. In that case, applicants will receive a grant contract and notification letter within 45 days ~~of~~ after the receipt of the revised budget by the board.

~~Q. Supplementary materials will not be returned unless requested.~~

S. In the event a grant is awarded to a fiscal agent, the fiscal agent must sign the grant letter. The fiscal agent must have a written contract with the group implementing the project/program which specifies the responsibilities of each. This contract must be submitted with the application form.

T. ~~R.~~ The board will not assume responsibility for any loss or damage to materials submitted with applications.

5 MCAR § 5.009 ~~Procedures~~ Process for obtaining regional ~~arts council status,~~ block grants; regional ~~arts council~~ plan review; ~~procedures and~~ regional arts council review; re-granting and reporting requirements.

A. ~~The procedure for review of a block grant application developed by a regional arts council is as follows:~~ To be eligible to receive a regional block grant an organization shall:

1. ~~Each regional arts council shall d~~Develop ~~an annual~~ biennial plan to be submitted by an ~~annually~~ announced date, determined by the Board. ~~Regional arts task forces wishing to become regional arts councils must also submit an annual plan.~~

2. The ~~annual~~ plan will include:

a. A mission ~~S~~statement of goals established by the ~~regional arts council.~~ organization. ~~This shall be periodically reviewed and updated by the regional arts council.~~ The mission statement shall describe the overall philosophy and aims of the organization concerning local/regional arts development.

b. A ~~N~~needs assessment which will be carried out in a manner which ensures input from the arts community and the ~~general~~ arts-involved public. This needs assessment will be updated at intervals determined and announced by the Board and the results included in the plan. The needs assessment will be conducted to determine the need to develop new or continued program ~~services~~ activities, services and grants assistance offered by the regional arts council.

c. Description of the planning process including a list of the steps in the development of the plan and the participants in the planning process. Before the plan is submitted to the board for final approval at least one public meeting must be held for the purpose of soliciting public reaction to the plan.

d. Work plan ~~includes~~ including a description of ~~program~~ services, ~~if any.~~ programs and grants assistance available from the organization and the goals and objectives of these activities as related to the needs assessment.

e. Program information which ~~will~~ describes grants and other forms of assistance available, the methods for such assistance, eligibility requirements, review standards, the review process, the terms of the grant contract with grant recipients, the time needed and process followed in paying grant recipients, and the responsibilities of the grantees.

f. The ~~O~~organizational structure ~~and membership~~ which must include bylaws, an identification of the arts experience and background requirements for the members and job description of the staff of the ~~regional arts council~~, organization, a description of the rotation system which will ensure replacement of members on a regular basis, and an outline of the open nominations process used to appoint the members.

g. ~~When~~ Where applicable, a memorandum of agreement with the regional development commission(s) or the Metropolitan Council, a letter of agreement between the ~~regional arts council~~ organization and a fiscal agent or the tax-exempt letter for non-profit organizations will be included. A memorandum of agreement shall include that application decisions on artistic merit, applicant ability, and need for project or program must be reserved for consideration only by citizen advisory committees appointed for their expertise and experience in the arts. The memorandum need only be submitted to the MSAB once, at the start of the operation of an organization as a regional arts council.

h. ~~General description of all programs and services provided with, or independent of, Arts Board funds;~~ A budget which will be a total projected budget identifying all local, regional, state and federal sources of support, public and private.

i. A grant monitoring and evaluation process description and an evaluation process description of the council itself.

B. The review of a block grant application is as follows:

1. ~~3.~~ All regional ~~arts council annual~~ plans /block grant applications shall be reviewed by a regional arts development advisory committee of the Board.

2. The committee will review plans/block grant applications using the review standards of merit of the proposed activities, ability of the applicant and

need for the proposed activities by the organization or audience it serves as contained in 5 MCAR § 5.010 A.

3. The regional advisory committee shall submit as recommendations to the board one of the following:

a. Full funding based on the Minnesota State Arts Board allocation formula;

b. Partial funding or;

c. No funding.

4. A representative of the ~~regional arts council~~ applicant organization shall have the opportunity to present the plan and respond to questions raised by either the regional arts development advisory committee, the board staff, or the board.

5. The Regional Arts Development advisory committee shall submit its recommendations to the board for final review.

6. The board shall approve, defer or reject ~~annual~~ plans submitted by the regional ~~arts councils.~~ block grant applicants.

C. ~~A.7.~~ After the board review, ~~but prior to final action,~~ the ~~regional arts council~~ applicant organization shall have at least 30 days to make any revisions in the plan required by the board.

D. ~~A.8.~~ The board will award only one regional block grant in each region during a fiscal year.

E. Each applicant organization receiving a regional block grant shall be designated a regional arts council.

F. Allocated funds for regions not served by a regional arts council will be administered by the MSAB with the advice of a regional arts task force.

G. ~~A.9.~~ Copies of the board approved regional arts council ~~annual~~ plan will be available for distribution to the public by the regional arts council.

H. Regional arts councils are eligible to apply only for block grants for the purposes of local/regional arts development.

I. Regional arts councils receiving block grants from the board are required to follow board rules pertaining to eligibility requirements and review standards in distributing local/regional arts development grants, process for obtaining grants, provisions affecting grantees and miscellaneous provisions. These rules are 5 MCAR § 5.007, 5.008, 5.010, 5.011 and 5.012.

J. Regional arts councils must base decisions on local/regional arts development grant applications received through re-granting programs on the review standards listed in 5 MCAR § 5.010 A.1. These decisions must be made by citizen committees appointed for their expertise and experience in the arts according to 5MCAR § 5.005 C.

K. Organizations which receive a grant from a regional arts council are subject to the provisions of 5 MCAR § 5.011, Provisions affecting grantees.

L. ~~A. 10.~~ Each regional arts council shall submit an annual ~~fiscal~~ report ~~and evaluation by~~ within ~~60~~ 90 days, after the end of the ~~Board's~~ regional arts council's fiscal year which shall include:

1. ~~a.~~ Total fiscal statement, not an audit, for the years in which the ~~annual~~ plan was in effect.

2. ~~b.~~ ~~Review~~ Description of the relationship between the ~~proposed annual~~ approved plan and the actual grants, and other forms of assistance provided during the year with Arts Board block grant funds.

3. Report of the grants awarded, services provided and programs disseminated.

~~5 MCAR § 5.009 Appeals process.~~ Proposed for repeal.

5 MCAR § 5.010 Standards for requests for grants~~,-loans~~ and other forms of assistance.

A. ~~The-Board-and-advisory-committees-and-regional-arts-councils-in-reviewing applications-on-a-competitive-basis-will-consider-the-following-factors-in-order of-priority:~~ Applications for special projects, sponsor assistance, local arts development and regional block grants will be reviewed primarily according to:

~~1.--For-organizations:-~~

1.~~a.~~ The merit and artistic quality of project or program. ~~in-the-case-of project-applications.~~ In the case of service programs and projects the merit and quality of ~~that~~ the service being provided to the arts will be reviewed.

2. If the application is determined to be of sufficient merit and artistic quality as to indicate further review the following standards will be applied:

a.~~b.~~ The ability of the organization to accomplish the project or program they describe or the organizational goals as presented. This is demonstrated by providing evidence of a planning process, qualifications of artistic and/or administrative personnel, ~~marketing-and~~ publicity efforts and previous successful efforts.

b.~~c.~~ Applicants must demonstrate demand or need for the project or program by the organization applying or the group it serves.

~~d.--In-the-sponsor-assistance-category-the-matching-funds-statement required-of-an-applicant,-must-show-evidence-of-match-from-the-participants-or beneficiaries-of-the-project-or-program,-or-the-reason-why-such-match-cannot-be obtained.-~~

~~2.--For-individual-artists:-~~

~~a.--The-quality-of-the-creative-work-submitted-by-the-artist.~~

~~b.--The-ability-of-the-artist-to-accomplish-the-project-or-plan-described in-the-application.-~~

~~e.--The relationship of the application to the artist's career goals.~~

B. In the event that more applications are recommended for funding than funds are available, the advisory committee may rate the recommended applications individually to determine funding priorities. This procedure will be outlined by the MSAB and the regional arts council for each fiscal year.

C.~~B.~~ Applications for general support ~~(subsidy grants),~~ will be reviewed ~~on the following standards listed as top priority, and the remaining five of lower priority, but not differentiated among each other. These standards shall be demonstrated using the indicators specified in program information and through the application form.~~ primarily according to:

1. Artistic ~~E~~excellence and ~~l~~leadership.

a. Service to the organization's principal art form(s), i.e., preservation of artistic heritage(s), presentation of new works, new artists.

b. Serving as an example of excellence for others-setting standards.

Recognition and impact in community, region, state and nation.

c. Uniqueness of service, in nature or method.

d. Sharing of expertise.

e. Variety of program offering.

f. Qualifications and achievements of artistic leadership.

g. Qualifications, achievements and methods of selection of other principal artistic personnel and administrative personnel.

2. The application is then reviewed according to the following standards:

[5 MCAR § 5.010 C. 2.-5. Renumber as 5 MCAR § 5.010 C. 3.-6.]

7.~~6.~~ Size and distribution of audience/public

a. Numbers served, by program type, if possible.

b. Numbers of subscribers and/or regular members; enumeration of individuals served.

c. Numbers [redacted] persons served ~~divided-by-the-[redacted]served~~ in headquarters facilities and those served away from home facility. ~~(tour).~~

d. Indications of audience/public demographics, if available.

e. Special Efforts ~~for-economically-disadvantaged.~~ to serve special constituencies.

~~C.--Other-forms-of-assistance-will-be-available-on-a-case-by-case-basis dependent-upon-the-nature-of-the-request,-and-the-availability-of-Board-resources in-response-to-the-request.~~

~~D.--Regional-arts-council-annual-plans-submitted-to-the-Board-will-be reviewed-on-the-following-standards:~~

~~1.--Consistency-with-Board-legislation-and-rules.~~

~~2.--Community-participation-in-the-planning-process.~~

~~3.--Equitability,-fiscal-accountability-and-accessibility-to-the-grants process-and-other-forms-of-assistance.~~

~~4.--Consistency-in-the-relationship-among-the-regional-arts-council's goals,-needs-assessment-and-work-plans.~~

~~5.--Demonstrated-ability-of-the-region-to-carry-out-its-plan.~~

~~6.--Evidence-that-decisions-on-artistic-merit,-applicant-ability-and-need for-the-project-or-program,-are-made-only-by-citizen-committees-appointed-for their-expertise-and-experience-in-the-arts-according-to-~~

D. Individual artists' applications will be reviewed primarily for the quality of the artistic activity as demonstrated in the examples of the work submitted. If the artistic activity is determined to be of sufficient quality as to indicate further review the following standards will be applied:

1. The merit of the proposed activity as this relates to the artist's ability to execute the proposed activity and an examination of the artist's proposal, submitted work and career brief.

2. Explanation of the amount requested.

E. Because it is anticipated that there will be more qualified applicants than funds available; funding decisions may be made by the board on the basis of the board's and advisory committees determination of the artistic quality as evidenced in the work submitted relative to the artistic work submitted in other applications.

~~F.--Applications for grants assistance will not be accepted for review when one of the following conditions exists:~~

~~1.--Artists are required to pay entry or exhibition fees in order to exhibit and/or perform in the project or program.~~

~~2.--Funds are requested for capital improvement or construction, purchase of real property or endowment funds.~~

~~3.--Funds are requested to account for fund deficiencies in project completed prior to the application deadline.~~

~~4.--Funds are requested to pay fees for touring costs, performances or exhibitions carried out exclusively by student organizations or schools.~~

~~F.--The Board in addition to the criteria set forth above may allocate grant funds on a first come, first served basis to applicants who meet the procedures and standards contained herein during each fiscal year.~~

~~G.--The Board may give priority to one form of assistance over others during a fiscal year.~~

5 MCAR § 5.011 ~~Responsibilities of grantee.~~ Provisions affecting grantees.

A. The ~~G~~grantee or authorizing official must sign and return to the board, within ~~30~~ 45 days from date of mailing, one copy of the ~~notification letter~~ grant contract and necessary attachments if notification is of grant approval. No action required on notification of ~~rejection.~~ applications not recommended for funding.

B. The ~~G~~grantee must acknowledge assistance by the Board on all written materials relating to the project or program such as programs, news releases and posters.

Grantee must use the acknowledgement statement as found in the ~~notification-letter.~~ grant contract. Grantees of regional arts councils must also use the board acknowledgement statement on all materials relating to the project or program.

C. The ~~G~~grantee must notify the board in writing at any point of the program or project is changed from the way in which it was described in the grant application. This notification letter will be reviewed by the staff to ensure that the change does not make a project or program ineligible for support as eligibility is specified in these rules. Grantee will be notified in writing of the approval or non-approval of the program or project change(s).

E. The ~~G~~grantee may be required to submit a certified audit report of the organization or ~~of~~ a project funded by the board.

F. For purposes of evaluation, grantees must permit the Board reasonable access to all activities supported by Arts Board funds.

[5 MCAR § 5.011 F.-H. Reletter as 5 MCAR § 5.011 G.-I.]

J.~~I.~~ A grant commitment to a grantee may be rescinded by the board if one of the following conditions exists:

1. The grantee does not return the signed ~~notification-letter~~ grant contract and/or attachments with ~~30~~ 45 days of the date ~~of~~ specified by the Board letter~~.~~ or in program information.

2. The grantee does not return a revised budget and/or project description within ~~45~~ 30 days of the date of the notification of Board action by letter.

3. The grantee does not request the grant amount within ~~30~~ 45 days of the date of the grant ~~notification-letter~~ contract.

K.~~J.~~ Grantee must submit a final report, within ~~30~~ 60 days of the ~~completed project or program,~~ date stated in the application as the end of the project or program. This report is to be completed by grantee ~~on forms~~ in the requested format provided by the board. Failure to submit any final reports will adversely affect

the grantee's receipt of Minnesota State Arts Board grant funds.

L. Grantee must start grant activities in the same fiscal year in which the grant is received.

M.~~K.~~ The board ~~may require that regional arts councils, which have not committed all of their grant funds by April 15 of a given fiscal year, return the uncommitted grant funds to the Board by May 1 of the same fiscal year.~~ will annually review the regional block grant allocation formula.

N. The board may recall uncommitted regional block grant funds at the end of their fiscal year. A written request must be made by the regional arts council and submitted to the MSAB for approval to carry-forward unexpended funds from one fiscal year to the next. This request from a regional arts council must be made by May 1 of the same fiscal year and must outline the proposed allocation for any unexpended funds in narrative form and contain a budget for such use.

O. The board may institute systems of grant payments in which such payments are contingent upon the receipt of final reports and/or board evaluation of the grantee.

5 MCAR S 5.012 ~~Advisory committees.~~ Miscellaneous provisions.

~~A. The Board may appoint advisory committees to review grant applications and provide recommendations on policy issues. The Board may appoint advisory committees in the areas of general operating support (subsidy), individual artist assistance, production assistance, sponsor assistance, regional arts development and also regional arts task forces.~~

~~B. The Board may discontinue the advisory committees as it deems necessary.~~

~~C. Members of each advisory committee shall have expertise and/or experience in a particular area of the arts, arts support or administration. Committee members will be selected by the Board from among practitioners, administrators, educators, volunteer directors of arts organizations, trustees of arts organizations and~~

~~consumers of arts forms.--At least one member of the regional arts development panel from each region will be appointed from nominees of the designated regional arts task force or arts council.--The remaining members will be selected from among--the previously listed groups through the open nominations process.~~

~~D.--Appointments to advisory committees shall be made by majority vote of the Board.--Members shall serve at the pleasure of the Board for three year terms. One third of the terms of the members of each committee shall expire each year.~~

~~E.--At least sixty days prior to expiration of terms of advisory committee members, the Board will publish and post notice of such openings.--Nominations will be actively solicited and accepted by the Board.--Nominations must be in writing and should include all pertinent information including nominees' qualifications and experience in the arts.~~

~~F.--Advisory committees will, insofar as reasonably possible, be geographically balanced.--However, the regional arts development panel shall have two members from each of the regions represented by a regional arts council or regional arts task force.~~

~~G.--Members of the advisory committees and regional arts task forces shall be compensated for expenses incurred to attend advisory committee meetings as provided in Minn. Stat. ch. 15.059, subd. 3, except that they shall not be eligible for the per diem.~~

A. The board may initiate new assistance categories or pilots in which applicants for assistance may be selected specifically for the way in which the board can learn from their experience.

1. No pilot assistance category will continue for longer than 2 years without the category being established on a permanent basis, or discontinued.

2. All pilot assistance categories will be specifically described as such in MSAB program information.

B. Applications for organizational and individual grants assistance will not be accepted for review when one of the following conditions exists:

1. Artists are required to pay entry or exhibition fees in order to exhibit and/or perform in the project or program for which funding is sought.

2. Funds are requested for capital improvement or construction, purchase of real property or endowment funds.

3. Funds are requested to account for fund deficiencies in projects begun prior to the project start date specified by the Minnesota State Arts Board and regional arts councils in program information.

4. Funds are requested to pay fees for touring costs, performances or exhibitions carried out exclusively by student organizations or schools.

5. Funds are requested to support activities which are essentially for the religious socialization of the participants.

C. Applications for individual artist grants assistance will not be accepted for review when one of the following conditions exists:

1. Funds are requested by individuals for tuition or other fees related to the pursuit of an academic degree.

2. Funds are requested by individuals to develop curriculum plans, teaching materials or to teach classes.

3. Funds are requested by individual artists to engage in activities such as establishing an arts organization or a commercial venture.

D. Organizations which receive grants for general support may apply for grants in pilot programs offered by the State Arts Board if the organizations meet the stated eligibility requirements of such pilot programs.

E. The board, in addition to the criteria set forth above, may ~~allocate~~ award all or most of the available grant funds ~~on a first come, first served basis to applicants who meet the procedures and standards contained herein during each fiscal year.~~ at the first deadline of each fiscal year.

F. The board may give priority to one form of assistance over others during a fiscal year.

5 MCAR §§ 5.013 Public participation in agency matters

A. Any applicant who disputes the decision of the board regarding his or grant application on any issue other than artistic quality or merit may appeal the decision of the board. This appeal to the board will be conducted in the following way:

1. The applicant will submit a written request for consideration of his or her appeal within 45 days of notification of the board's decision on the application.

2. This request must state the reason(s) for the appeal.

3. The board will review the written request appealing its decision at its first meeting following the receipt of the request.

4. The board may take one of the following actions in response to the request for an appeal:

a. determine that the applicant does not show sufficient cause for an appeal.

b. direct the staff to investigate the applicant's appeal and bring a resolution of the claim to a subsequent meeting of the board.

c. request that the applicant appear before the board at a subsequent meeting and address his or her appeal at that time.

d. determine that the applicant does show sufficient cause for appeal and offer resolution to the applicant at the meeting.

e. refer the appeal to a hearing examiner as a contested case.

5. If the applicant for a grant does not receive satisfactory resolution of his or her appeal from the board, or if the board refers the appeal to a hearing examiner, this appeal will be conducted as a contested case pursuant to the Administrative Procedures Act, Minn. Stat., ch. 15.0418-.0422.

B. There is no right of appeal for disputes of decisions of the board and/or its advisory committees with respect to artistic quality or merit, artistic excellence and leadership, and the quality of the artistic activity of the work of an individual artist.