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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 problematic 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 applicants 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 inadvertently 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 responsibility 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 activities. 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 activities 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 grantees 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 before 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 assistance 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 temporarily, any artist or arts organization. It

is a standard which is applied to a particular application in the context of numerous competing applications.