

STATE OF MINNESOTA
DEPARTMENT OF TRADE AND ECONOMIC DEVELOPMENT

In the Matter of the Proposed
Rules Governing the Outdoor
Recreation Grant Program,
Minn. Rules Parts 4300

STATEMENT OF NEED AND
REASONABLENESS

I. INTRODUCTION

This proposed rule amendment will modify a portion of existing rules codified in Chapter 4300 of Minnesota Rules. These rules establish standards and procedures to govern the administration of the Outdoor Recreation Grants Program. These rules were initially adopted when the state assumed the responsibility for awarding and administering federal Land and Water Conservation Fund grants. They were later amended when the state developed a complementary state grant program for funding outdoor recreation projects.

The rules have not been amended since 1977. Since that time, a number of changes have occurred in both the federal and state programs, including statutory changes and changes in the agencies responsible for administering the program.

In addition, the proposed rule amendments reflect a new grant application process that is being developed within the Community Development Division of the Department.

Basically, the proposed rule amendments will bring the rules into accordance with existing statutory authority and will reflect changes in the application process designed to simplify and streamline the process.

II. STATEMENT OF COMMISSIONER'S STATUTORY AUTHORITY

The Department's statutory authority to adopt the rules is set forth in MS s 86.71, 116J.035, Subd. 2, 116J.401, (5), 116J.406, Subd. 5 and 116J.980, Subd. 1(1) (1988) which provide:

86.71 FEDERAL LAND AND WATER FUND; ACCEPTANCE OF FUNDS; DISTRIBUTION.

Subdivision 1. The governor is designated as the state agency to apply for, accept, receive and disburse federal funds and private funds which are granted to the state of Minnesota from the Federal Land and Water Fund Act.

Subd. 2. The governor may designate a state agency or agencies to act in applying for, receiving, and accepting federal funds under the provisions of subdivision 1. Such designation of a state department or agency shall be filed in the office of the secretary of state.

Subd. 3. The governor or any state department or agency designated shall comply with any and all requirements of federal law and any rules and regulations promulgated thereunder to enable the application for, the receipt of, and the acceptance of such federal funds. The expenditure of any such funds received shall be governed by the laws of the state except insofar as federal requirements may otherwise provide. All such money received by the governor or any state department or agency designated for such purpose shall be deposited in the state treasury and are hereby appropriated annually in order to enable the governor or the state department or agency designated for such purpose to carry out the purposes for which the funds are received. None of such federal money so deposited in the state treasury shall cancel and they shall be available for expenditure in accordance with the requirements of federal law.

Subd. 4. Fifty percent of all money made available to the state from funds granted under subdivision 1 shall be distributed for projects to be acquired, developed and maintained by local units of government, providing that any project approved is consistent with a statewide or a county or regional recreational plan and compatible with the statewide recreational plan.

Subd. 5. Any guidelines established by the state for distribution of money made available to the state under subdivision 1 shall, after July 1, 1967, be distributed on a statewide and regional priorities basis other than a formula based on population and land areas.

116J.035 DUTIES AND POWERS OF COMMISSIONER; RULES.

Subd. 2. Rules. The Commissioner may adopt rules pursuant to chapter 14 as necessary to carry out the Commissioner's duties and responsibilities pursuant to this chapter.

116J.401 POWERS AND DUTIES

The Commissioner of Trade and Economic Development shall:

(5) receive and administer the land and water conservation grant program authorized by Congress under the Land and Water Conservation Funds Act of 1965, as amended.

116J.406 GRANTS-IN-AID FOR RECREATIONAL BETTERMENT.

Subd. 5. Powers; rules. The Commissioner shall have all powers necessary and convenient in order to establish programs for recreational betterment grants-in-aid for parks, trails, and athletic courts pursuant to this section

including, but not limited to, the authority to adopt rules for the programs, pursuant to sections 14.05 to 14.36.

116J.980. COMMUNITY DEVELOPMENT DIVISION.

Subd. 1. Duties. The Community Development Division is a division with the Department of Trade and Economic Development. It shall:

(1) be responsible for administering all state community development and assistance programs, including the Economic Recovery Fund, the Outdoor Recreation Grant Program, the Rural Development Board programs, the Community Development Corporation Program, the Urban Revitalization Program, the Minnesota Public Facilities Authority Loan and Grant Programs, and the Enterprise Zone Program;

III. STATEMENT OF NEED

The rules for the Outdoor Recreation Grants Program have not been revised since 1978. Since that time, many changes have occurred to both the administrative framework of the program and the statutory authority governing the program.

In 1978 the responsibility for administering the federal Land and Water Conservation Fund (LAWCON), which provides funding for state outdoor recreation grant programs, was transferred from the Bureau of Outdoor Recreation to the newly created Heritage Conservation and Recreation Service (HCRS) of the United States Department of the Interior. HCRS then administered the program until 1981 when the LAWCON program was transferred to the National Park Service (NPS) where it is currently administered.

Meanwhile, several changes were also occurring in the state's framework for administering the program. In 1978 the state Outdoor Recreation Grants Program was administered by the Office of Local and Urban Affairs (OLUA) in the State Planning Agency. In 1981 the State Planning Agency was merged into the newly created Department of Planning, Energy, and Development which, in turn, became the Department of Energy and Economic Development in 1983. Finally, in 1987 the Department of Energy and Economic Development became the Department of Trade and Economic Development. During part of this time the Legislative Commission on Minnesota Resources (LCMR) also had oversight responsibilities for the state funded portion of the Outdoor Recreation Grants Program. The LCMR no longer exercises that oversight authority. Presently the Outdoor Recreation Grants Program, including both the federal LAWCON funded portion and the state funded portion, are administered by the Community Development Division of the Department of Trade and Economic Development.

The current rules must be revised to reflect these changes to both the federal and state administrative frameworks and the related legislative changes that have occurred.

The addition, the proposed rule amendments reflect a change in the grant application process related to the pending implementation by the Community Development Division of a new "Community Development Application."

In January 1988, the Department of Trade and Economic Development underwent a major reorganization whereby the Department's Community Assistance financing programs were transferred to the Community Development Division. In an attempt to make these programs more accessible to constituents, the division began a three-step education and application simplification effort.

The first step in the education process was to develop and distribute the publication "Enhance Minnesota." This manual contains a complete listing of the division's programs and summaries, including examples of each program.

In May of 1988, the division sponsored a series of six seminars in greater Minnesota. The theme of the seminars was the same as the "Enhance" publication. They were held to educate potential applicants as to the loan and grant programs available through the division.

The third step in this effort is the development and implementation of a "Community Development Application." The Community Development Application will help make financing assistance programs more accessible and less complicated to communities and other constituents. The Community Development Application will make it easier for communities to access the 10 financing programs administered by the Community Development Division, including the Outdoor Recreation Grants Program. It will also streamline, consolidate, reduce, and simplify the application process.

The Community Development Application will entail the following activities:

1. The applicant will submit a Community Development application form which will describe the needs of the community and any potential projects the applicant is planning to undertake. This application can access any of the division's 10 financing programs.

2. A review team comprised of Community Development staff will review these applications on a weekly basis.
3. When the review has been completed, the applicant will meet with division staff to discuss funding programs both within the division and outside the division. If there is a potential for financing assistance within the division, relevant program manuals and forms packets for specific programs will be provided.

The current rules must be revised to incorporate the utilization of the new Community Development Application. The Outdoor Recreation Grants program will not be altered.

IV. STATEMENT OF REASONABLENESS

A. Reasonableness of the Rules as a Whole

It is reasonable to amend the rules to reflect changes in both the federal and state administrative framework for the Outdoor Recreation Grants Program that have occurred during the past ten years, as well as related legislative changes.

The overall approach to reflecting these changes in the rules is to amend outdated references to agencies or programs that are no longer in existence, have been replaced, or have been deleted by legislative action. Though a substantial portion of the existing rule language is being changed, the Department has chosen to amend the rule, rather than repeal and replace it, so that specific changes may be more readily identified.

It is also reasonable to amend the rules to incorporate the changes in the grant application process related to the new Community Development Application. The Community Development Application will not alter the objectives, purposes, or methods of selecting projects for funding by the Outdoor Recreation Grants Program. Neither the evaluation of projects nor the grant award process will change as a result of the implementation of the Community Development Application. This streamlined, innovative approach will enable the division to provide more efficient, comprehensive services to its constituents.

B. Reasonableness of Individual Rules

The following discussion addresses the specific provisions of the proposed rules:

Part 4310.8100 DEFINITIONS.

This portion of the existing rule is being repealed and replaced by a new definitions section, Part 4310.8105 DEFINITIONS, which incorporates several changes based on statutory and administrative changes.

4310.8105 DEFINITIONS.

Subpart 2. Community Development Application. "Community Development Application" means the official consolidated application form as developed by the Department to be used to apply for funding assistance from various community assistance programs administered by the Community Development Division.

It is reasonable to incorporate this definition into the rules because the Outdoor Recreation Grants Program will utilize this consolidated application form as part of the application process.

Subpart 3. Community Development Division. "Community Development Division" means the Community Development Division of the Department of Trade and Economic Development.

It is reasonable to incorporate this definition into the rules because the Outdoor Recreation Grants Program is now administered by the Community Development Division.

Subpart 4. Eligible applicant. "Eligible applicant" means local units of government that are eligible to apply for an outdoor recreation grant. ~~under any of the programs provided for in these parts.~~

It is reasonable to change this definition to clarify that only local units of government are eligible and that the federal and state funds are incorporated into one Outdoor Recreation Grants Program.

Subpart 6. Local units of government. "Local units of government" means counties, cities, ~~and townships, within the state of Minnesota,~~ and Indian tribes and bands recognized by the federal government.

It is reasonable to change this definition because the Outdoor Recreation Grants program can only fund projects within the state and because Indian tribes and bands recognized by the federal government are eligible for funding and considered to be local units of government for the purposes of this program.

Subpart 7. NPS. "NPS" means the National Park Service of the United States Department of the Interior.

It is reasonable to incorporate this definition into the rules because the National Park Service has replaced the Heritage Conservation and Recreation Service as the administering agency for federal LAWCON funds.

Subpart 8. NPS guidelines. "NPS guidelines" means those guidelines established by the National Park Service and contained in the "Land and Water Conservation Fund Grants Manual" prepared by the National Park Service.

It is reasonable to incorporate this definition into the rules because the National Park Service grants-in-aid manual has replaced the Heritage Conservation and Recreation Service grants-in-aid manual.

Subpart 9. Outdoor recreation grant. "Outdoor recreation grant" means a specific sum of money made available by the federal government or the state of Minnesota to an eligible applicant for the execution of outdoor recreation projects.

It is reasonable to change this definition to reflect the adoption of the term "outdoor recreation grant" to help distinguish these grants from other grant programs.

Subpart 11. Project agreement. "Project agreement" means the contract executed between the BOR NPS and the state, or the state and the eligible applicant, that sets forth the mutual obligations with regard to a portion or all of a specific project.

It is reasonable to change this definition to reflect the replacement of the BOR by the NPS as the administering agency for LAWCON funds.

Subpart 13. SCORP. "SCORP" means the "Minnesota State-wide Comprehensive Outdoor Recreation Plan" prepared the by Minnesota Department of Natural Resources as required by the NPS as a prerequisite to distribution of LAWCON funds.

It is reasonable to incorporate this definition into the rules because SCORP is an important document that affects the process for evaluating and ranking proposed outdoor recreation grant projects.

4310.8100 DEFINITIONS, Subpart 5. HCRS, Subpart 6. HCRS guidelines, Subpart 7. LAC, Subpart 9. LCMR, Subpart 10. LCMR grants-in-aid program, Subpart 12. Metropolitan Council, Subpart 13. OLUA, Subpart 16. Public agency, Subpart 17. Regional development commission, and Subpart 18. Regional need have all been repealed and/or replaced because they either no longer exist (HCRS and OLUA) or are no longer directly involved with the outdoor recreation grants program due to legislative changes in the statutes related to the outdoor recreation grants program.

It is reasonable to repeal and/or replace these definitions to bring the rules into conformance with legislative and administrative changes that have occurred since 1978.

4310.8110 AUTHORITY

This portion of the existing rule is repealed.

It is reasonable to repeal this part of the rule because the existing references to statutory authorities are outdated and there is no requirement to include an authority section in rules. Since program authority may change frequently with specific funding legislation, an authority section of the rules would require frequent amendment of the rules to reflect those changes.

Part 4310.8120 PURPOSE

This portion of the existing rule will become Part 4310.8120 PURPOSE of the new rule and will be amended as follows:

Part 4310.8120 PURPOSE

Parts 4310.8105 to 4310.8160 ~~are set forth to~~ provide criteria, priorities, and procedures for evaluating outdoor recreation proposals of local government units under consideration for ~~LAWCON, LCMR grants-in-aid, athletic courts, and trails.~~ outdoor recreation grants.

It is reasonable to amend this part because the LCMR grants-in-aid program no longer exists and the LAWCON, athletic courts and trails programs are now incorporated into one outdoor recreation grant program.

Part 4310.8130 APPLICATION PROCESS:

This part of the existing rule will become Part 4310.8130 APPLICATION PROCESS. of the new rule and will be amended as follows:

Part 4310.8130 APPLICATION PROCESS.

Subpart 1. Eligibility. Any ~~local applicant that satisfies the guidelines for eligibility established by HCRS~~ eligible local units of government may apply for a ~~LAWCON~~ an outdoor recreation grant. To receive a grant an eligible applicant must satisfy the requirements established in this rule by the Community Development Division and related statutory requirements.

It is reasonable to amend this subpart because HCRS no longer exists. In addition, the amendments clarify that while any eligible local unit of government may apply, only those that satisfy the requirements established in the rule and in related statutory provisions may receive a grant.

It is reasonable to cite related statutory requirements because specific state funding bills may include additional eligibility requirements that go beyond the standard requirements contained in the rule.

Subpart 2. Notice. Annually, ~~OLUA~~ THE Community Development Division shall ~~send~~ provide notice of the period of time that preliminary applications for ~~LAWCON~~ grants shall be accepted by ~~OLUA~~. The notice shall be sent at least 45 days before the period ends. Such notice shall be sent concerning the application process for outdoor recreation grants to the following:

- A. mayors in care of the clerks of all cities in Minnesota;
- B. county board ~~chairmen~~ chairs in care of the auditors of all counties in Minnesota;
- C. ~~chairpersons~~ chairs of county planning commissions and city planning commissions of all cities over 5,000 population according to the last federal decennial census in Minnesota;
- D. chairs of county park and recreation commissions and city park and recreation commissions of all cities over 5,000 population according to the last federal decennial census in Minnesota;
- ~~D.~~ E. ~~chairmen~~ chairs in care of the executive directors of regional development commissions;
- ~~E.~~ F. ~~chairpersons~~ chairs of each county's township association;
- G. chairs of tribal councils of recognized Indian tribal governments;
- ~~F.~~ H. statewide organizations representing Minnesota local governments;
- ~~G.~~ I. persons requesting notice; and
- ~~H.~~ J. upon request, to the Minnesota state legislature.

It is reasonable to amend this subpart to reflect the change of administering agencies from OLUA, which no longer exists, to the Community Development Division. The amendments also reflect the fact that there is no longer a preliminary application procedure and that both the LAWCON and state

funded grants are combined into a single outdoor recreation grant application process.

The addition of providing notice to county park and recreation commissions and city park and recreation commissions of all cities over 5,000 population is reasonable since these commissions may have a direct interest in reviewing and utilizing the grant application information and are most knowledgeable of outdoor recreation plans and potential projects for their area. It is reasonable to limit such notice to cities of over 5,000 population since those cities are more likely to have park and recreation commissions.

It is reasonable to add a provision for notice to chairs of Indian tribal councils of recognized Indian tribal governments since Indian tribal governments are eligible applicants for outdoor recreation grants.

The other amendments reflect the use of the standard gender-neutral term of "chair" rather than the terms "chairmen" or "chairpersons".

Subpart 3. Contents of application. The contents of the preliminary application shall be consistent with the informational requirement of these parts and shall be prescribed by OLUA.

Subpart 4. Submission. Preliminary applications shall be submitted in a completed form to OLUA and the Metropolitan Council or the appropriate regional development commission for a project review before the closing date of applications. The Metropolitan Council or the appropriate regional development commission at their option may recommend on an advisory basis to OLUA, a list of applications from the region arranged in order of priority.

Application content and submission. Applications may be submitted year-round to the Community Development Division and on the Community Development Division's Community Development Application.

A completed Community Development Application shall include:

- a) Needs narrative summarizing the need for the proposed outdoor recreation project;
- b) Project summary outlining the facilities and land acquisition to be completed and the scope of the project;
- c) Activities and budget detailing the specific estimated costs associated with each proposed acquisition or development activity;
- d) Assurances necessary to comply with federal or state requirements as a prerequisite to receiving state or federal funding;
- e) Resolution from the local government applicant approving the submission of the application and authorizing execution of the grant agreement in accordance with the requirements of the Community Development Division, if funds are made available; and
- f) Supporting materials which are designed to verify or support information presented in items a) through e).

The Community Development Division may request additional information from the applicant if it is necessary to clarify and evaluate the application.

It is reasonable to amend subpart 3 and subpart 4 of the existing rule because OLU no longer exists, the Metropolitan Council and regional development commissions no longer are required to review preliminary applications, and there is no longer a preliminary application component to the application process.

The new language reflects the use of the new Community Development Application and provides more specific information about the required contents of the application.

~~Subpart 5. Evaluation of preliminary applications.~~

~~Preliminary project applications which satisfy the HCRS project eligibility guidelines and priorities for LAWCON grants shall be evaluated and ranked as follows: general criteria, specified in subpart 6; acquisition priorities, specified in subpart 7; and development priorities, specified in subpart 8.~~

Subpart 3a. Evaluation criteria. Funding of outdoor recreation projects, included on completed Community Development Applications, shall be officially determined during an annual Competitive Review and Ranking Period. The Community Development Division may request applicants who have submitted completed applications with outdoor recreation projects, prior to the annual Competitive Review and Ranking Period, to submit additional materials and support documentation necessary to complete the evaluation and ranking.

Outdoor recreation projects, included on completed Community Development Applications, shall be officially evaluated, scored and ranked in accordance with the general criteria specified in subpart 5, acquisition priorities specified in subpart 6, and development priorities specified in subpart 7.

It is reasonable to amend subpart 5 of the existing rule because there is no longer a preliminary application component of the application process. It is

reasonable to add the language in the new subpart 4 which outlines how outdoor recreation projects will be evaluated, scored and ranked and how the Outdoor Recreation Grants Program will utilize the Community Development Application.

Subpart ~~6-~~ 4a. General criteria. ~~Preliminary applications~~ Applications that meet one or more of the following criteria shall receive priority over similar projects that do not:

A. projects ~~with~~ involving outstanding irreplaceable resources or features of statewide or regional significance that are in danger of commercial (non-recreational) development, subdivision or other use that may be incompatible with outdoor recreation uses;

B. projects that have received a prior ~~LAWCON~~ outdoor recreation grant ~~or LCMR grant in aid~~ for a preceding phase of the proposed project;

C. projects that meet ~~generally recognized national design standards~~ for recreational facilities;

projects that are designed with a sensitivity toward the physical limitations and natural characteristics of the site;

recognize and complement existing land forms; and recreation facilities; provide for ease of maintenance and operation of the site; ~~and~~ do not have major environmental intrusions which are detrimental to the intended use of the property; make good use of available space without crowding; and include facilities that are designed in accordance with generally-accepted engineering and architectural standards.

D. projects that reflect quality site planning;

D. projects for which the applicant has submitted a statement documenting a financial commitment to continued operations and maintenance of the proposed facilities;

E. ~~Projects that comply with the recreational facility priority needs as designated in the applicant's recreation plan.~~

projects which are consistent with the outdoor recreation needs and priorities related to local governments as identified in SCORP; and

F. projects for which the applicant can demonstrate a need for priority consideration for state financial assistance.

It is reasonable to delete references to preliminary applications and LCMR grant-in-aid since they no longer exist. It is reasonable to make the proposed changes to items A, B, C, and D in order to clarify the evaluation criteria that will be used to rank the projects. In particular, the new language in item D relating to a financial commitment to continued operations and maintenance is reasonable in order to ensure that the investment of state or federal funds will be a wise and prudent investment.

Item E has been changed because it is reasonable to assume that a proposed recreation project submitted by an applicant complies with the applicant's recreation plan and because federal LAWCON grants and, in practice, state grants require that the projects be consistent with the needs and priorities identified in the State Comprehensive Outdoor Recreation Plan (SCORP).

Item F is reasonable because the limited available funding should be allocated to those eligible projects and applicants that can demonstrate the

greatest need for state financial assistance, if all other evaluation factors are essentially equal.

Subpart 7. 5a. Acquisition priorities. The following criteria shall be used to ~~in descending order~~ to evaluate applications for acquisition projects and to determine priorities for projects:

A. acquisition of project sites having outstanding examples of existing or potential natural, scientific, cultural, historical, educational, or recreational values that would be made available for public enjoyment;

B. acquisition of project sites that would protect or enhance aesthetics, ~~or~~ land and water quality; or the recreational use of existing park outdoor recreation facilities; and

C. project sites that provide to the general public a broad range of outdoor recreational opportunities that are particularly well suited for one or more heavily used and concentrated recreational activities (e.g. swimming beach);

acquisition of project sites which address the outdoor recreation land acquisition needs and priorities related to local governments as identified in SCORP.

~~D.~~ project sites providing for needed low intensity use recreation activities, such as trail systems, wildlife observation, and other activities providing open space enjoyment,

~~E.~~ projects that are equivalent to commercial camping accommodations for recreational users.

The words "in descending order" are deleted to indicate that the acquisition priorities listed are of equal value. This is reasonable since there is no basis for ranking one priority higher than another.

Amendments to Items A and B are made to clarify the criteria and make the statements more precise.

Item C is amended because the priority stated in the existing rule is incorporated within the needs and priorities identified in SCORP and projects must be consistent with those SCORP needs and priorities in order to receive funding.

Item D is also amended because the priority stated in the existing rule is already incorporated within the SCORP needs and priorities.

Item E is deleted because it is not a need or priority identified in SCORP and it is reasonable that the state not provide for outdoor recreation facilities that are better provided by private commercial operators.

Subpart ~~8~~ 6a. Development priorities. The following criteria shall be used ~~in descending order~~ to evaluate applications for outdoor recreation development projects and to determine priorities for projects:

A. projects designed to protect and enhance land and water quality of the site consistent with the estimated number of its potential users, ~~make it accessible or designed to ensure safety and health,~~ and the proposed outdoor recreation activities;

B. projects that provide to the general public a broad range of ~~outdoor recreation opportunities or that are particularly well suited for one or~~

more heavily used and concentrated recreational activities (e.g. swimming beach),

projects designed to be readily accessible to a wide range of potential users, including handicapped users;

C. projects providing needed facilities associated with low intensity use recreational areas,

projects designed to minimize any potential risk to the health and safety of users; and

D. ~~projects that are equivalent to commercial camping accommodations for recreational users.~~

projects designed to provide to the general public a wide range of outdoor recreation opportunities that are related to the needs and priorities established in SCORP.

The words "in descending order" are deleted for the same reason as in Subpart 5a.

Item A is amended to indicate the necessary relationship of project design to the proposed outdoor recreation activities. The reference to safety and health considerations is moved to Item C.

Item B of the existing rule is deleted and replaced by the new Item D, which incorporates the criteria contained in the original language in the reference to SCORP.

The new Item B specifically responds to federal and state requirements for accommodating handicapped users.

The existing language for Item C is deleted and replaced by the new language related to health and safety concerns. The priority expressed in the existing language of Item C is incorporated within the overall SCORP priorities.

The existing Item D is deleted because it is reasonable that the state not provide for outdoor recreation facilities that are better provided by private commercial operations. It is replaced by language related to the requirement that projects meet the needs and priorities established in SCORP.

Subpart 9- 7a. Notice of disposition of preliminary applications. All applicants shall be notified by OLUA of the disposition of their preliminary application within 120 days of the closing date for the submission of preliminary applications. Grants shall be distributed in order of ranking until LAWCON and LCMR funds are depleted. For those applicants who are recommended for a grant, this notice shall include the submission deadline and a scheduled meeting to explain the content requirements for a final application. For those applicants who are not recommended for a grant, this notice shall indicate the reasons.

Competitive Review and Ranking Period. As part of the Competitive Review and Ranking Period, Community Development Division staff shall conduct an on-site inspection of each project. After completion of the on-site inspections, each project shall be reviewed in accordance with the evaluation criteria contained in subparts 5 through 7, and a priority ranking shall be established for each applicant based on the evaluation criteria. All applicants shall be notified by the Community Development Division as to the disposition of their project after the Competitive Review and Ranking Period has been completed and a funding determination has been made.

Grants shall be allocated to applicants in descending order of priority, as determined by the ranking, until all available grant funds are depleted.

The highest ranked projects will be eligible for and shall be awarded Federal LAWCON funds. The remaining projects will be eligible for and shall be awarded state funds. The Community Development Division shall determine which projects will be eligible for state funds.

Subpart 9 of the existing rule is deleted and replaced by Subpart 7a of the proposed rule. It is reasonable to delete Subpart 9 of the existing rule because there is no longer a preliminary application process, OLUAs no longer exist, and the LCMR no longer exercises oversight authority over outdoor recreation grants.

It is reasonable to outline the new competitive review, evaluation and ranking process and provide a better idea of the different steps in that process. The new language is consistent with the requirements of the federal LAWCON grant program. It is reasonable that the ranking process relate to the criteria established in the rule, and that grants shall be allocated based on the respective ranking of the projects. The federal LAWCON program requires that the highest ranked projects receive federal LAWCON funds. State funds are, therefore, available to fund the remaining projects until such funds are also exhausted.

Subpart 8a. NPS approval and notice of LAWCON grant award. For any eligible project for which the Community Development Division has determined that federal LAWCON funds will be awarded, the Community Development Division shall request NPS approval of a LAWCON grant for the recommended project. The

Community Development Division shall notify the applicant that the project has been recommended for a grant and will be submitted to the NPS for final approval. The Community Development Division shall also notify the applicant of the action taken by the NPS.

Subpart 8a reflects the procedure used to comply with NPS requirements for review and approval of LAWCON funded grants. It is reasonable and necessary to outline this procedure in the rules and to differentiate the approval and notice procedures for LAWCON grants from those of state funded grants.

~~Subpart 10. 9a. Final application eligibility. When a preliminary application has been given a high priority ranking by general criteria and project priorities (subparts 5 to 8) the eligible applicant who is recommended for a grant may submit a final application. OLUA will request a LAWCON grant if the eligible applicant submits a final application in adequate detail before the established deadline.~~

Notification of state grant award. For any eligible project for which the Community Development Division has determined that state funds will be awarded, the Community Development Division shall notify the applicant that the project has received a grant award. If an eligible project is not recommended to receive a grant award, the Community Development Division shall notify the applicant that the project did not rank highly enough for funding.

Subpart 10 is amended and replaced by Subpart 9a because there is no longer a final application process or a preliminary application process. The existing language is replaced by language explaining the notification procedure for state grant awards. It is reasonable to differentiate between the procedures used to notify applicants for federal LAWCON grants and state funded grants.

4310.8140 PROJECT AGREEMENT.

This portion of the existing rule will become Part 4310.8140 PROJECT AGREEMENT. and will be amended as follows:

Upon approval by HCRS, ~~OLUA~~ the NPS for LAWCON-funded projects and approval by the Community Development Division for state-funded projects, the Community Development Division shall execute a project agreement with the applicant and the applicant shall comply with the terms of the project agreement.

It is necessary and reasonable to amend this part because HCRS and OLUA no longer exist and because only LAWCON projects require approval by the NPS.

4310.8150 DISBURSEMENT OF GRANT.

This portion of the existing rule will become Part 4310.8150 DISBURSEMENT OF GRANT. and will be amended as follows:

The applicant shall initially pay for the project costs as specified in the project agreement. The applicant shall submit to ~~OLUA~~ a billing request for work completed on the project, but not more than six billings per project. the Community Development Division a payment request for reimbursement of costs incurred in the completion of the project. In all cases, not more than four payment requests shall be submitted for the life of the project.

Upon receipt of a ~~billing~~ payment request containing the documentation required in the project agreement, ~~OLUA~~ the Community Development Division shall audit the payment request documentation to determine the eligibility and propriety of the costs incurred by the applicant.

Part 4310.8180 LCMR GRANTS-IN-AID PROGRAM FOR HARBORS OF REFUGE.

This part is being repealed for the same reasons as Part 4310.8170 above.

Part 4310.8190 ATHLETIC COURT GRANTS PROGRAM.

This part is being repealed because the program no longer exists.

Part 4310.8300 TRAIL GRANTS PROGRAM.

This part is being repealed because the program no longer exists.

Elements of the above repealed programs have been incorporated into the remaining grants program.

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

The proposed rules will not directly affect small businesses as defined in Minn. Stat. §14.115, subd. 1 (1988). The rules are primarily addressed to counties, cities, townships and Indian tribal governments.

VI. AGRICULTURAL IMPACT

Minn. Stat. §14.11, subd. 2 and 17.83 (1988) require the Department to address any direct and substantial adverse effect on agricultural land as a consequence of the proposed rule and to state what alternatives it has considered in order to avoid or reduce that effect. The Department has found that a direct adverse impact on agricultural land will not result from adoption of the proposed rule.

SAM II/3-(1,10)