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STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES
500 LAFAYETTE ROAD • ST. PAUL, MINNESOTA • 55155-4045

DNR INFORMATION
(612) 296-6157

November 2, 1994

Ms. Maryanne V. Hruby,
Executive Director
Legislative Commission to
Review Administrative Rules
55 State Office Building
St. Paul, MN 55155

RE: Proposed Permanent Rules Relating to Leasing State-owned Lands for the Exploring for, Mining, and Removal of Selected Industrial Minerals

Dear Ms. Hruby:

The Minnesota Department of Natural Resources intends to adopt permanent rules relating to leasing state-owned lands for the exploring for, mining, and removal of selected industrial minerals. We plan to publish Notice of Intent to Adopt Rules without a Public Hearing in the November 7, 1994 issue of the State Register.

As required by Minnesota Statutes, sections 14.131 and 14.23, the Department has prepared a Statement of Need and Reasonableness, which is now available to the public. Also as required, a copy of this Statement is enclosed.

For your information, we are also enclosing a copy of the Notice of Intent to Adopt Rules and a copy of the proposed rules.

If you have any questions on these rules, please contact Gloria Johnson (6-9559) or me (6-9564).

Sincerely,

Kathy A. Lewis

Kathy A. Lewis, Attorney
Mineral Leasing Manager

cc: G. Johnson

STATEMENT OF NEED AND REASONABLENESS

for

Proposed Permanent

RULES RELATING TO LEASES FOR SELECTED INDUSTRIAL MINERALS

INTRODUCTION

The proposed rules cover state leases for selected industrial minerals. The selected industrial minerals covered by the rules are as follows: apatite, diamonds, dimension stone, feldspar, gemstones, graphite, kaolin, marl, quartz, silica sand, and other similar minerals of a non-metalliferous nature. Iron ore, taconite, metallic minerals, oil, gas and related hydrocarbons, peat, sand and gravel are not covered by the rules.

The rules require all applicants to be qualified to do business in Minnesota and authorize the commissioner to request additional evidence that the applicant is technically and financially capable of performing under the terms of the lease and that the applicant has shown capability to comply with environmental laws and permits.

Leases issued under these rules would be issued primarily through negotiation. The first qualified applicant to a property receives an exclusive 180 days in which to negotiate a lease with the state. The rules specify application requirements and the reasons upon which an application will be rejected. The rules also contain a public lease sale procedure, with the right being reserved to the commissioner to reject any or all applications for negotiated leases.

The property covered by the lease is limited to a contiguous tract not exceeding 640 acres, with exceptions for up to 800 acres consisting of one government section. Due to the variable nature of mining, selling and processing different industrial minerals, several of the lease terms will need to be negotiated on a case-by-case basis. The rules establish a model form for use in negotiations, with following requirements:

a. The primary term of the lease may not exceed 10 years plus the unexpired portion of the current calendar year. The lease may be extended for subsequent 10 year periods so long as the lessee has met certain requirements, up to a maximum term of 50 years.

b. The rental rates may not be less than $1.50 per acre per year for the unexpired portion of the calendar year in which the lease is issued and the next two succeeding calendar years; $5.00 per acre per year for the next three years; and $25.00 per acre per year thereafter.

c. The royalty rates may not be less than 3% of the gross market value for dimension stone and 1 1/2% of the gross market value for any stone produced from waste stone and sold as a by-product; 5% of the gross market value for kaolin, silica sand, and diamonds and other gemstones; and 3% of the gross market value for all other industrial mineral commodities.

If the commissioner offers the lands for leasing through public lease sale, the lease form offered at the sale must be based on the model lease form described in the rules.

The model lease form also contains clauses on such items as weighing, sampling, reporting, termination, compliance with other laws, notice to surface estate owner, review of exploration plans and exploration site closure plans, and payment of taxes and damages.

The rules recognize the regional geological reconnaissance

authorization, which authorizes geophysical and geological exploration activities. Such authorization is non-exclusive and does not grant a right to a lease covering the property.

RULEMAKING AUTHORITY

These rules were developed under the authority of Minnesota Statutes, 1992, section 93.25, which requires the commissioner of natural resources to adopt rules before issuing any leases under this subdivision. The following rules are the rules proposed by the commissioner pursuant to this statutory authority.

A notice of intent to solicit outside opinions was first published on April 22, 1991. No substantive responses to this notice were received. The department prepared draft rules and on September 14, 1992, published a second notice of intent to solicit outside opinions. This second notice advised that a draft of the rules was available for comment. The department reviewed the responses to this notice, and based on the comments, prepared a second draft of the rules. A third notice of intent to solicit outside opinions was published on July 19, 1993. This notice also advised that a revised draft of the rules was available for comments. The comments received from the final notice of intent to solicit outside opinions were reviewed by the department and incorporated into the proposed rules where appropriate.

The rules deal with the leasing procedures for state-owned lands for the removal of selected industrial minerals. The rules also include a model lease form to be used in issuing leases under the proposed rules. It is important to note at the outset that the decision by an individual or company to lease state-owned lands is a voluntary act. The purpose of the proposed rules is to set forth procedures and standards to be followed by the commissioner of natural resources when leasing state-owned lands for the exploring for, mining and removal of select industrial minerals on state-owned and state-administered lands.

The proposed rules, and the leases issued under the rules have an immediate, necessary and substantial impact on achieving this interest by authorizing exploration and development of the industrial minerals covered by the rules and imposing certain requirements on the lessee. The state, as a landowner, has both a duty and right to impose these requirements and to share in the revenue derived by a mine operation. The requirements include: the payment of minimum rentals which increase with the passage of time, the payment of royalty for all ore mined and removed, the submission of data and other reports, and the addressing of certain environmental considerations. In addition, the state lessee must comply with all applicable regulatory laws. These rules are specific to the leasing of state-owned lands and do not impose any requirements for small businesses conducting industrial minerals operations on private land.

DESCRIPTION OF PRESENT LEASING AUTHORITY AND OVERVIEW OF THE NEED FOR THE RULES

A strong interest in development of industrial minerals exists in Minnesota. Non-state owned lands are under exploration and development for industrial minerals. Exploration drilling for kaolin clay is ongoing in the Minnesota River Valley and dimension stone sites have been leased by the Federal government in the Superior National Forest. The following industrial minerals, which are covered under the proposed rules, are currently being extracted from private lands in Minnesota: dimension stone, such as granite, quartzite and dolomite; silica sand; and kaolin clay.

The state presently has authority to lease state lands for sand, gravel, clay, rock, marl, peat, and black dirt under Minnesota Statutes, sec. 92.50. Leases issued under authority of Minnesota Statutes, sec. 92.50 for these industrial minerals are limited to a term of ten years. Although the state has received inquiries to lease lands for dimension stone, no leases are being issued under the authority of Minnesota Statutes, sec. 92.50 due to the term limitation of ten years. Companies have advised the state that they are not willing to spend time and financial resources to develop a site if a lease on that site is limited to a term of ten years. The ten year term does not give a lessee adequate opportunity to fully develop the resource and recover a return on its investment given the time involved to fully develop a mine site. In addition to exploration and mine planning, full development of a mine site includes conducting environmental review and resolving the various permitting issues with the local, state, and federal governments. The companies are concerned that the right to productive lands on which they have expended time and money for development of a mine may be lost upon expiration of a lease issued under Minnesota Statutes, section 92.50.

Rules under Minnesota Statutes, sec. 93.25 will establish a fair and equitable system for leasing state lands for selected industrial minerals, establish a uniform base royalty rate for each class of mineral commodities, and identify the prospective lessee's rights and obligations. The proposed rules for the leasing of industrial minerals under the authority of Minnesota Statutes, sec. 93.25 set forth the procedures and standards by which leases will be issued, provide for an extension of the lease term and establish a model lease as a framework to prescribe the minimum standards for the lease term, rents and royalties.

Impact on Small Business, Fiscal Impact on Local Government, Impact on Agriculture Land

The commissioner is directed by the Minnesota Administrative Procedure Act and other associated statutes to consider a number

of issues during the process of rule development and adoption. These include:

1. Impact of the rules on small businesses, as required by Minnesota Statutes, sec. 14.115;

2. Impact of the rules on expenditure of public monies by local public bodies, as required by Minnesota Statutes, sec. 14.11, subd. 1; and

3. Impact of the rules on agricultural land, as required by Minnesota Statutes, sec. 14.11, subd. 2, and secs. 17.80 to 17.84.

4. Departmental charges imposed by the rules, as required by Minnesota Statutes, sec. 16A.1285, subds. 4 and 5.

Impact on Small Business

Minnesota Statutes, section 14.115, requires that the Department consider and incorporate rule language that reduces the impact of the rules on small businesses to the extent that doing so would not be contrary to statutory objectives that are the basis of the proposed rules. The department is required to consider specified methods by which the impact on small businesses could be reduced. The department is required to specifically consider the following:

1. The establishment of less stringent compliance or reporting requirements for small business.

2. The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses.

3. The consolidation or simplification of compliance or reporting requirements for small businesses.

4. The establishment of performance standards for small businesses to replace design or operational standards required in the rule.

5. The exemption of small businesses from any or all requirements of the rule.

The following describes how the proposed rules impact small businesses. As some of the methods are similar, they have been grouped together for the review.

Methods 1,2 and 3: Simplification of Compliance Schedules and Requirements

The proposed rules require data reporting by all lessees, regardless of the size of the business. The commissioner finds that these reporting requirements are necessary and reasonable

for the efficient and thorough administration of leases on state lands and are not dependent upon the size of the business. The proposed rules do not deal with regulatory functions of the agency, but rather with the state's authority as a land owner to lease state lands. The leasing of state lands is a discretionary matter for business entities. If an entity elects to lease state lands, it is treated in the same manner as other persons or businesses that choose to lease state lands.

In addition, the rules provide for a flexible reporting schedule by requiring annual reports as opposed to defining a fixed reporting schedule. While this benefits business of any size, small businesses may certainly benefit by the flexibility in the reporting requirements. The lease rules also provide for simplification of compliance requirements for all state lessees, which will also benefit small businesses. Any change to the rules to benefit small businesses would be contrary to the statutory objectives of the rules.

Methods 4 and 5: Establishment of Separate Performance Standards and Exemption from Rules

The proposed rules do not establish separate performance standards for small businesses or exempt small business from the rules. The proposed rules establish performance standards that are reasonable and necessary to the management of the state's natural resources. The rules recognize that a lessee must be able to conduct technical work required under the lease and have the financial means to perform such work. For example, if the lessee conducts drilling operations, the lessee must be able to comply with the state's exploratory borings law. This law establishes performance standards for filling the drill hole, protection of groundwater, and financial capability to perform such work. The commissioner finds that if small businesses were exempt from these requirements or allowed to follow different standards, the statutory objective of the rules would be defeated.

There are certain provisions of the proposed rules that are favorable for small business. For example, the rental rates start out at $1.50 an acre for the year of issuance and the two next years. These low rates minimize the burden on a small business to obtain a lease and allow small businesses to spend more money on exploration work. The lease also allows for a rent credit against royalties. The rules also provide a procedure for issuing negotiated leases, which will allow a business to initiate the leasing process rather than waiting for property to be put up for lease sale.

Minnesota Statutes, sec. 14.115, subdivision 4 directs the department to provide an opportunity for small businesses to participate in the rulemaking process. During the drafting of

this document the state has made available upon request drafts of the rules. In addition, the state has mailed notices of intent to solicit outside opinions to persons and businesses on the mailing list compiled by the Division of Minerals for this topic area.

In addition to the individual mailing, all notices of intent to solicit outside opinions were published in the *State Register* and the *EQB Monitor*. Finally, the notice of intent to adopt rules without a public hearing, together with the proposed amendments to the rules, will be published in the State Register, This last notice and final draft will be sent to all state lessees and a letter on the notice and rules will be mailed to all those who request a copy, to those on the above mentioned mailing list, and to all parties on the Department's list of persons requesting notices on all rulemaking activities.

Fiscal Impact on Local Government Minnesota Statutes, sec. 14.11, subd. 1, does not apply because adoption of the rules will not result in the expenditure of public monies by local governmental bodies in excess of $100,000 per year for the first two years following adoption of the rules. Adoption of the rules will not likely result in any expenditure of public monies by local government bodies within the first few years of issuance of a lease. Some expenditures may arise in the future if an environmental assessment worksheet is required for the development of a mine. If the mine is located on tax forfeited land, the local governmental bodies would be receiving revenue from the royalties.

Impact on Agriculture Lands Minnesota Statutes, sec. 14.11, subd. 2 requires that the department shall consider the effect of the rules on agricultural lands. However, Minnesota Statutes, sec. 17.81, subd. 2 specifically excepts leasing of state-owned land for mineral exploration or mining from this review.

Department Charges Imposed by the Rules In accordance with Minnesota Statutes, sec. 16A.1285, pertaining to departmental charges for goods and services, licenses, or regulations, the rules were submitted to the Commissioner of Finance for the commissioner's review and comment on the charges established in these rules. The Commissioner of Finance's comments are attached to this Statement.

REVIEW OF PROPOSED RULES

Purpose of lease, Part 6125.8000

The purpose of the proposed rules is to establish the procedures and standards for leasing state-owned lands by the commissioner of natural resources for the exploration, mining and removal of selected industrial minerals.

The rules require that each lease issued under these parts will identify the industrial minerals covered by that lease. It is necessary to identify the mineral interests granted by the lease so that the rent, royalties and other provisions of the lease can be adapted to the leased mineral. It will also avoid confusion with future mineral lease requests covering the same property. Identification of the leased mineral is necessary for responsible mineral management.

In order to promote efficiency of the leasing process while recognizing that differences exist among industrial minerals, the rules provide a model lease form setting forth the minimum standards for the term of the lease, rental rates and royalty rates. It is reasonable for the rules to establish a minimum rent and a minimum royalty rate so that prospective lessees are informed as to the minimum payment that will be required. Establishing minimum rates, with flexibility for the commissioner to set higher rates, allows the commissioner to respond to circumstances where the value of the resource requires a greater return to the state or where competition will command a higher payment. Conversely, for resources with a lower value, the minimum the commissioner can require will be established by the rules.

It is also reasonable for the rules to allow for modification of several provisions of each lease in order to adapt to the unique characteristics of the particular industrial mineral leased. This is reasonable and necessary due to the fact that the industrial minerals have varying properties that will require certain provisions of the lease form to be different.

DEFINITIONS, PART 6125.8100

The terms defined in this section have specific meaning within the rules or within the industry and are defined in this section for clarification purposes.

- Commissioner, Subpart 2: This section clarifies that the term commissioner shall be construed to mean the commissioner of natural resources, unless designated otherwise, and extends the powers of the commissioner under the proposed rules to a representative designated by the commissioner. Since it will be a representative who will be dealing with the prospective lessees, it is reasonable to extend the powers to a designated representative.
- Industrial Minerals, Subpart 3: This section is necessary to identify minerals which are covered by the lease rules. The specific industrial minerals listed are the ones believed more likely to be found in Minnesota. To insure that similar industrial minerals will be included in the rules, the rules reasonably state that the lease also covers other similar industrial minerals of a nonmetalliferous nature.
- Exclusions from industrial minerals definition, Subpart 3, (paragraphs A-D): This subpart of the proposed rules

excludes iron ores and taconite ores, metallic minerals, coal, oil, gas and other liquid or gaseous hydrocarbons, peat, and construction sand and gravel.

The exclusion for iron ores and taconite ores and metallic minerals is reasonable and necessary since the commissioner has specific leasing authority for iron ores and taconite ores under Minnesota Statutes Chapter 93 and specific authority for leasing metallic minerals are under Minnesota Statutes Chapter 93 and Minnesota Rules, parts 6125.0100 through 6125.0700.

It is also reasonable to exclude oil, gas and liquid hydrocarbons from the proposed rules since the Division of Minerals is currently drafting separate rules for the leasing of oil, gas and liquid or gaseous hydrocarbons under authority of Chapter 93. Separate rules are necessary for oil, gas and liquid hydrocarbons due to the differing nature of the resource.

It is also reasonable to exclude peat and construction sand and gravel, which are leased under Minnesota Statutes 92.50. The state has a system for peat leasing already in place and peat is not subject to the ten year term limitation. Construction sand and gravel are also leased under the authority of Minnesota Statutes 92.50. It is reasonable to exclude peat and construction sand and gravel from the industrial minerals rules since the department has a system in place for issuing peat leases and for issuing construction sand and gravel leases.

It is also reasonable to exclude coal from the proposed rules since the department has had no requests for coal leases; there are no coal mining operations in the state nor are there any known coal resources. Further, should the state receive a request for a coal lease, the characteristics of a coal mining operation would require rules tailored to the coal resource.

- Leased Minerals, Subpart 5: For purposes of clarification in reading the rules, it is reasonable to define leased minerals as those minerals which are defined by and covered by the lease issued pursuant to the proposed rules.
- Metallic Minerals, Subpart 6: To clarify which metallic minerals are excluded from these rules, the rules define metallic minerals as any mineral substance of a metalliferous nature, except iron ores and taconite ores. This definition is reasonable and necessary and corresponds to the definition of metallic minerals found in Minnesota Rules, parts 6125.0100 through 6125.0700.
- Ton, Subp. 7. The proposed rules define ton as *2,000 pounds avoirdupois after removal of all free moisture from the material weighed, by drying at 212 degrees Fahrenheit.* This definition is reasonable and necessary and corresponds with the common standard of the definition of ton in the industrial minerals industry.

LANDS COVERED BY LEASES AND LEASE TERM, PART 6125.8200

The proposed rules authorize the commissioner to issue leases to explore for, mine and remove industrial minerals on lands where an interest in the minerals is owned by the state.

These lands will include interests on the following lands where the commissioner has management responsibilities: trust fund lands, tax forfeited lands, lands where the minerals have been severed from the surface estate and have either forfeited for nonpayment of the severed minerals interest tax or failure to file a severed mineral interest statement, and severed mineral interests where the severed mineral owner has failed to register the mineral interest by not filing the statement of severed mineral interests. Since these are lands and mineral interests on which the commissioner has statutory authority to issue mineral leases, it is reasonable for the rules to explain in detail the land and mineral interests on which the commissioner may issue leases.

It is also reasonable to specify that the term of the lease is limited to fifty years in accordance with the limitation prescribed by Minnesota Statutes, section 93.25.

QUALIFICATIONS TO HOLD LEASE AND AUTHORIZATION TO CONDUCT GEOLOGICAL DATA GATHERING ACTIVITIES, PART 6125.8300

The rules state that the right to apply for a lease or an authorization to conduct geological data gathering activities is subject to the applicant's demonstration of certain qualifications. To insure that the applicant has legal authority to conduct business in Minnesota, the rules require proof of the applicant's qualification to do business in Minnesota. Corporations must provide proof of incorporation in Minnesota or proof of authority to transact business in Minnesota; limited partnerships must provide proof of limited partnership from the Minnesota Secretary of State's office; individuals must provide proof of United States citizenship and proof of legal age; and general partnerships or other business entities must provide proof that the persons controlling the partnership or business entity meet these requirements. As a manager of state lands and in order to have leases that are enforceable against the lessee, it is reasonable for the commissioner to require the lessee to have legal authority to conduct business in Minnesota.

In addition to these requirements, when applicable to the minerals of interest to the applicant, the applicant must also provide proof of registration as an exploratory borer by compliance with Minnesota Statutes, section 103I.601, subd. 3. The exploratory borer law requires that a person or entity conducting exploratory borings within the state must register with the Department of Natural Resources. Responsible land management directs that a potential lessee should demonstrate compliance with other applicable state laws. Valuable state lands should not be leased to an entity that cannot develop the resource due to failure to comply with other legal requirements. It is therefore reasonable for the commissioner to require proof of compliance with the exploratory borer law when applicable.

The commissioner may also request that an applicant provide additional information relating to the applicant's financial and technical capability to perform under the lease or under the terms of an authorization for geological data gathering. As a manager of state lands, the commissioner must have discretion to verify an applicant's financial and technical capability to perform to insure that state lands will be leased to those who can demonstrate an ability to develop the property. To further verify an applicant's capability to perform in accordance with applicable environmental laws and permits, it is reasonable and necessary for the commissioner to have access to information concerning an applicant's compliance with environmental laws and permits of other jurisdictions concerning activities similar to the applicant's proposed activities in Minnesota.

It is reasonable and necessary for the state to require that the applicant provide the proof required by Part 6125.8300 in order to demonstrate that the applicant would be able to perform under any lease or authorization that may be granted under the proposed rules. Responsible land management policy dictates that state lands should only be leased to a party that can demonstrate ability to develop the resource in a sound, responsible manner.

NEGOTIATED LEASES, PART 6125.8400

Scope of authority for commissioner to issue negotiated leases, Subp. 1: By allowing the leases to be issued pursuant to negotiations with a successful applicant, the proposed rules recognize that the nature of industrial minerals operations generally adapt more readily to a negotiated lease system as opposed to a lease sale system. It is therefore reasonable for the rules to allow for leases to be issued primarily by negotiation.

However, circumstances may arise where a lease sale is in the best interests of the state. Examples of such circumstances are where the state has conducted geological research and has data substantiating the quality and value of the resource and more than one party has demonstrated an interest in the resource. In this case, a lease sale may be in the best interests of the state because the known value of the resource and the multiple interests will generate competitive bidding which will increase the bid rate. As a fiduciary for public lands, the commissioner must have the ability to act in the best interests of the state. It is therefore reasonable to allow the commissioner discretion to reject any or all lease applications and offer the property at public sale.

Lease application procedure and requirements, Subp. 2: To apply for a state industrial minerals lease, the proposed rules provide that an interested party must submit an application form, available from the commissioner, and shall supply the following information: 1) identification of the applicant; 2) the legal description of the land for leasing; and 3) the industrial minerals the applicant is seeking to lease. This information is

essential in order for the commissioner to conduct a substantive review of the application and make a determination on the application. Because it is the applicant who will benefit from any lease that may be issued as a result of the application, it is reasonable and necessary to require the applicant to provide this information. To insure uniformity of the application process and to protect the legitimacy of the application process, it is also reasonable and necessary that the applicant provide the information on a form obtained from the commissioner. It is also reasonable and necessary that the applicant provide the information required under part 6125.8300[1] so that the commissioner can determine at the outset whether or not the applicant meets the qualifications to hold a state industrial minerals lease.

The application is limited to a contiguous tract of 640 acres, or 800 acres consisting of one government section. A previous draft of the rules limited the lease size to 160 acres. The Minnesota Exploration Association advocated that the lease size be increased to 640 acres, or all state lands in one section. The department considered this recommendation and it was adopted in the proposed rules. The acreage limit also provides for an orderly system for future administration of the leases and lease requests. In addition, it is reasonable to limit the lease size since industrial minerals mine sites generally do not exceed 640 acres or one government section.

A non-refundable application fee, in the form of a certified check, cashier's check, or bank money order, in the amount of $100.00, must accompany each application. The non-refundable fee is reasonable and necessary to compensate the department for the time involved in reviewing the lease application and to discourage frivolous applications. The rules specifically state that the fee is non-refundable in order to avoid any questions later concerning refund of the fee.

In order to put prospective applicants on notice of the procedure for acceptance of applications and to treat all applications in a like manner, the rules establish a procedure for the commissioner to follow. Applications will be accepted between the hours of 8:30 a.m. and 4:00 p.m., on regularly scheduled business days. Acceptance of applications during normal working hours for the department is reasonable as it would be unduly burdensome for the state to establish a system to accept applications during the non-work hours of the department. To clarify when applications received during non-business hours will be accepted, it is reasonable for the rules to state that applications received at other times will be officially accepted during the next business day. To encourage applicants to submit their applications during the hours identified, the rules clarify that the commissioner does not accept responsibility for applications submitted in person at any time other than the time

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[1] Discussion of part 6125.8300 is found at page 10

specified. It is also reasonable for the rules to disallow application by facsimile transmission in order to maintain the integrity of the application process, and to avoid a logistic problem with submission of the application fee.

Review of application by commissioner, Subp. 3: The proposed rules require the commissioner to respond in writing to a lease application within 10 days of receiving the application. Ten days was determined to be a reasonable time to allow the commissioner to review the application in the normal course of business and a fair time for the applicant to wait for a response. The commissioner will review the application to determine that the application is complete, signed, and to verify that the applicant has submitted the application fee and the evidence of qualification to do business in Minnesota, as required by part 6125.8300. If additional evidence of the applicant's qualification to do business in Minnesota is needed, the rules require the commissioner to notify the applicant.

Within 45 days of receipt of the application, the commissioner will also notify the applicant if any of the following information will be required: 1) evidence of the applicant's control of a majority of the mineral interests of the lands at issue if the state's mineral ownership is less than 50% of an undivided fractional interest; and 2) title information demonstrating state ownership of the lands in the event that the state's land records do not indicate state ownership of the lands at issue.

Prior to notifying the applicant if additional information on mineral ownership will be required, the commissioner, or his representatives, may be required to review county records and documents before determining whether or not the applicant will need to provide more information on mineral ownership. Forty-five days was determined to be a reasonable amount of time for the commissioner to complete a more thorough review of the application to determine if more information on mineral ownership will be necessary.

Evidence of the applicant's mineral ownership or control if the state's interest is less than 50% is necessary in order to establish that the applicant will have control of a majority interest. Minnesota Statutes Section 560.01, Subd. 1. states that *the owner or owners of a half interest or more in mineral land that has more than one owner of record may bring an action for permission to mine the land.* Requiring the lessee to have a total of 50% or greater of the mineral interests will help insure that the lessee will be able to invoke this statute should other mineral owners oppose the mining or not be locatable. To insure that the applicant will be able to develop a valuable state resource, it is reasonable to require the applicant to provide information demonstrating the applicant's control of adequate interest to develop a mine.

It is also fair and reasonable to require the applicant to demonstrate state ownership in the event that the state's land

records do not demonstrate state ownership since the applicant would have possession of the information that has caused the applicant to apply for a state lease.

Any information requested of the applicant must be provided within 45 days of the commissioner's request, or the commissioner can reject the application pursuant to Subp. 4. This is a reasonable time for the applicant to obtain and submit the information to the department. It also balances the burden placed upon the applicant with the interest in obtaining the information in order that the state can make a timely response to the lease request. The commissioner must be able to reject an incomplete application after a reasonable amount of time in order to open the property for other applications.

Rejection of application for negotiated leases, Subp. 4:

The commissioner will reject the application if the applicant fails to complete or sign the application, fails to enclose the application fee or fails to submit information requested by the commissioner concerning state title to the land or information concerning the applicant's holdings on the property. This equitably places the burden on the applicant to meet the basic requirements of submitting an application and responding to the commissioner's request for information needed to review the application. It is reasonable to allow the commissioner to reject incomplete applications because the department cannot substantively review an incomplete application, and valuable state lands should not be tied up with incomplete applications.

In the event of simultaneous filing of applications for negotiated leases on the same lands or a portion of the same lands, and more than one applicant meets the requirements of part 6125.8300, all applications will be rejected. When simultaneous filings occur, it is fair to all applicants that the property be put up for lease sale so that all interested parties will have an equal chance to bid on the property. Further, when simultaneous filings occur, the best interests of the state require that the property be put up for bid so that to encourage competitive bidding to ensure a fair economic return. It is therefore reasonable and necessary for the commissioner to reject all applications and put the property up for lease sale when there are demonstrated multiple interests in the property.

Simultaneous applications have been defined in the rules to mean those that arrive in person or through the mail on the same day. Treating all applications received in the same day as simultaneous is reasonable to eliminate the need to note the exact time the application is received in the office, and to avoid potential issues with the timeliness of mail delivery.

If the application is rejected due to simultaneous filings, the commissioner cannot negotiate a lease on the property until the property has been offered at public sale. The is reasonable because it recognizes that the rules require the property to be

put up for public sale if there are simultaneous application filings. Once the commissioner has determined that the property will be put up for lease sale, it is reasonable for the commissioner to refuse applications for negotiated leases on that property, since the commissioner cannot issue a lease on the property until after it has been offered at public sale.

Applications will also be rejected if there is an acceptable application for the same property and same industrial mineral that was submitted on a prior date, or if there is a state mineral lease covering the same property and the same industrial mineral. This addresses situations where the industrial minerals of interest in the rejected application are no longer available due to a prior lease application pending or an existing state lease covering the same property and same industrial mineral. This is reasonable and necessary since the industrial mineral lease grants exclusive rights to the industrial mineral leased.

Applications will be also rejected if state law or rules prohibit the state from leasing the requested lands, such as lands located within the Boundary Waters Canoe Area Wilderness. This provision is reasonable and necessary to recognize that other laws may limit the commissioner's authority to lease.

Applications may also be rejected if leasing of the lands would conflict with identified environmental or land use concerns. Examples of applications that could be rejected are those seeking leases for lands located within the Boundary Waters Canoe Area Wilderness Minerals Management Corridor or for lands located within an active airport. This provision recognizes that other uses of the land may conflict with mining operations and that in some situations, it is in the best interests of the state to protect existing uses of the land.

Lease applications will also be rejected if mining of the industrial minerals requested would unreasonably interfere with the mining actives authorized under an existing state mineral lease covering other minerals. If lease negotiations or a public lease sale offering have been previously commenced for a state mineral lease covering other minerals and mining of the industrial minerals requested would unreasonably interfere with mining activities authorized under the other state mineral lease, the application will be rejected. This provision is reasonable and necessary to protect parties that may have prior claims to the property.

The application will also be rejected if the lands had been previously offered at a public lease sale within two years of the filing of the application and the applicant was the high bidder and the bid was withdrawn prior to the awarding of a lease. This is reasonable and necessary to discourage an applicant from withdrawing a bid in the hopes of negotiating a lower royalty rate than what may have been bid.

Lease applications may be rejected on the above described grounds if information in response to the public notice, required to be published according to subpart 6, indicates that any of the above conditions exist. This is reasonable and necessary to

allow the commissioner to act in the best interests of the state when information is received that was not previously known to the agency.

The rules provide that a prospective lessee may contact the commissioner for information as to whether or not any of the above mentioned circumstances exist as to a specific parcel of property. Since this information is public information under the data practices act, it is appropriate to include language in the rules advising the public that the information is available. This provision, and the provision allowing the commissioner to review a party's qualifications to hold a lease prior to the filing of an application, are reasonable methods to assist prospective lessees to determine whether or not to file an application. Since the prospective applicant has the option of seeking information prior to filing an application, the applicant can protect itself from submitting many applications and fees that would not be refunded due to provisions of this subpart.

The state reserves the right to reject any or all applications for negotiated leases. This provision is reasonable and necessary to uphold the commissioner's responsibilities as a trust manager and as manager of other public lands. There may be circumstances other than those listed where it would not be in the best interests of the state to issue an industrial minerals lease. The issuance of a lease is a discretionary act and should not be mandated. It is therefore reasonable and necessary to allow the commissioner discretion to reject any and all bids so that the commissioner's latitude in responsible land management is not restrained.

Negotiations with the applicant and particulars of model lease form, Subp. 5: If the application is not rejected, the commissioner and the applicant will enter into lease negotiations. As stated earlier, several of the lease terms will be negotiated on a case-by-case basis due to the variable nature of mining, selling and processing different industrial minerals. It is therefore reasonable that the rules allow for flexibility in negotiating lease terms specific to the mineral being leased. The rules establish a model for use in negotiation of the industrial minerals lease, with the following requirements.

The primary term[2] of each lease cannot exceed 10 years plus the unexpired portion of the year the lease was issued. The ten year maximum is reasonable as it was determined to be the maximum amount of time for a reasonably diligent operator to develop a mine for any of the minerals covered by the rules. To encourage diligent development of a lease, it is reasonable to allow the commissioner discretion to negotiate a shorter primary term in the event that a mine on the land being leased will take a shorter time to develop.

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[2] See also discussion at page 23 under **Lease Term and Extension of Lease Term**

The base rentals are to be not less than $1.50 per acre per year for the unexpired portion of the calendar year in which the lease is issued and the next succeeding two calendar years; $5.00 per acre per year for the next succeeding three years; and $25.00 per acre per year thereafter during the term of the lease. A portion of the rents are creditable against royalties. A further discussion of the rental rates and structure is found at page 26 under **Rental and rental structure.**

The base level for royalty rates is also established in the proposed rules. The rules establish 3% of the gross market value for dimension stone and 1-1/2% of the gross market value for any non-dimension stone produced from waste stone and sold as a by-product; and 5% of the gross market value for kaolin clay, and silica sand, diamonds and other gemstones; and 3% of the gross market value for all other industrial minerals commodities. A further discussion of royalty rates is found at page 28 under **Royalty.**

If an agreement between the applicant and the commissioner is not reached within 180 days of the commissioner's notification to the lessee that the lessee has met all the requirements, the rules allow the commissioner to reject the application. This time period is deemed a reasonable time for the parties to have reached agreement on the lease terms. Rejection of the bid in the event the parties fail to reach agreement within a reasonable period of time is necessary to avoid the situation where valuable land may be indefinitely unavailable due to inconclusive lease negotiations.

Public notice of plans to issue a negotiated lease, Subp.6:

The proposed rules require that the commissioner shall give public notice of the agency's intent to issue a negotiated lease. The agency must publish the notice in the *State Register, The EQB Monitor*, and a qualified newspaper that has its known office of issue in the county seat wherein the proposed leased lands lie. The known office of issue is the office where the news is gathered and the advertisements sold. This allows for the situation where a small paper contracts to an out-of-town printer to do the actual printing. If there is no such qualified newspaper, publication shall be made in the newspaper designated to publish the official proceedings of the county board. This language is included to cover the situation where a county does not have a qualified newspaper issued from the county seat. The county seat remains the first choice however, due to the fact the largest newspaper in terms of circulation is usually located in the county seat and the newspaper selected by the county board may or may not be in the county seat and may or may not have as large a circulation as a newspaper located in the county seat.

This notice must be published once at least 30 days and no more than 180 days before the issuance of the lease. The legal description of the lands to be leased, and other information as directed by the commissioner shall be contained in the notices.

The time period for publication and the contents of the publication serve to provide timely and detailed notice to the public. It is reasonable to require the party applying for the lease to reimburse the commissioner for the costs of publication, since it is deriving the benefit from the lease process.

Approval by the state executive council, Subp. 7: In accordance with Minnesota Statutes Section 93.25, as amended by 1993 Laws of Minnesota, Ch. 113, Art. 1, approval by the state executive council of all leases of 160 acres or more in size is required. Conversely, executive council approval of those leases under 160 acres will not be required.

PUBLIC SALE OF LEASES, PART 6125.8500

Notice of sale, time and place, publication, Subp. 1: In the event that the commissioner determines that a lease sale is in the best interests of the state, the sale process is set forth in the rules. The sales will be held at such time and place as designated by the commissioner. Public notice of the sales is required in the *EQB Monitor, State Register* and a qualified newspaper that has its known office of issue in the county seat where the lands to be leased are located. In the event that there is no qualified newspaper with its office of issue in the county seat, publication shall be made in the qualified publication designated by the county board as the official publisher of the county board proceedings. It is reasonable to select a qualified newspaper located in the county seat, or the official publisher of the county board proceedings because generally these publications have a wider audience and the public has already been put on notice that legal notices are published in these newspapers. Publication of the sale notice is a reasonable and necessary means to insure that interested parties are informed of the lease sale plans and advise the public of the department's plans.

This notice, which shall be published at least once, shall be published at least 30 days prior to the sale but not more than 60 days prior to the sale. It is reasonable to require publication at least 30 days prior to the sale to allow interested parties a chance to review the lands offered at sale and time to prepare and submit the bid forms. It is also reasonable to limit publication to not more than 60 days before the sale to provide timely notice of the sale.

The rules also allow the commissioner to publish the notice in additional newspapers and trade magazines. It is reasonable to allow the commissioner discretion to publish the notice in additional journals in order to reach a wider audience.

The rules require that the notices indicate the time and place of the sale; the places or places where the list of lands offered and where a copy of the lease form will be available for

purchase or inspection; where application and bid forms may be obtained; and other information as the commissioner may direct. The obligations placed on the commissioner by this part are necessary to inform the public of the details of the sale and necessary to advise the public how to participate in the sale.

List of lands offered and lease form, availability, Subp. 2: The proposed rules provide that upon request to the commissioner, persons who are interested may obtain a list of the leasing units and the proposed lease form. The rules provide that each request must be accompanied by a check or money order for the copying costs. This fee, which shall be specified by the commissioner, will be based on the copying and mailing costs of the list and the lease form. The rules also specify that the list of lands shall be available for inspection at either the St. Paul or Hibbing offices of the Division of Minerals, Department of Natural Resources. These rules are necessary to inform the public of the availability of the list of leasing units and the lease form, and to allow the commissioner to recover the reproduction costs of printing the list of lands and lease form.

Lease form, particulars, Subp. 3: The commissioner is required to provide a lease form, which shall be based on the model lease form contained in the proposed rules, with insertions, changes or additions that are necessary to incorporate the proposed lease form to the industrial mineral being offered. The following provisions shall be a part of each lease form offered at sale:

a. primary term:[3] The primary term of each lease cannot exceed 10 years plus the unexpired portion of the year the lease was issued. This is to allow the lessee time to secure development of the property. If certain conditions are met the lease may be renewed for ten year periods up to a total lease term of fifty years. The fifty year term limit is mandatory pursuant to state statute.

b. rental rates: The rental rates may not be less than $1.50 per acre per year for the unexpired portion of the calendar year in which the lease is issued and the next two succeeding calendar years; $5.00 per acre per year for the next succeeding four years; and $25.00 per acre per year thereafter during the term of the lease. It is reasonable for the rules to set a base rate from which the rentals can be increased. This gives the commissioner discretion to establish a higher rate if the resource warrants that a higher rate be charged. A further discussion of the rental rates is found at page 26 under **Rental and rental structure.**

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[3] See further discussion of primary term at page 23 under **Lease Term and Extension of Lease Term**

c. royalty rates: A base level for royalty rates is also established in the proposed rules. The rules establish 3% of the gross market value for dimension stone and 1-1/2% of the gross market value for any non-dimension stone produced from waste stone and sold as a by-product; and 5% of the gross market value for kaolin clay, and silica sand and diamonds and other gemstones; and 3% of the gross market value for all other industrial minerals commodities. It is reasonable for the rules to set a base rate from which the royalties can be increased. This gives the commissioner discretion to establish a higher rate if the resource warrants that a higher rate be charged. A further discussion of the royalty rates is found at page 28 under **Royalty.**

Bids, subpart 4.

The amount being bid is submitted on a bid form obtained from the commissioner. It is necessary to require that the amount being bid be submitted on a form obtained from the commissioner to insure uniformity of the bidding process and to prevent ambiguities.

The rules specify that the bid rate is to be an additional percentage of the gross market value above the base royalty rate.[4] Because the bidding process is confidential, the bid amounts should reflect competition among the bidders and the value of the commodity at the time of the sale. This is a reasonable method to insure that the state obtains a fair rate of return on the resource.

A check in the amount of $100.00 as the application fee plus the amount of $1.50 times the gross acreage of the lease, as advance rentals for one full calendar year, shall accompany each application and bid. It is not possible to calculate the total rentals due at the time of application, since the rentals for partial years and the year of issuance are pro-rated based on the effective date of the lease. The effective date will vary due to when the leases are awarded by the commissioner, and if necessary, affirmed by the state executive council. The remaining rentals due under any lease issued pursuant to the lease are due upon the effective date of the lease. The application fee and advance rentals are reasonable and necessary to insure that the bidder is serious about the bid, and to recover part of the state's costs in offering the lands for lease.

Each bid is to be submitted in a sealed envelope marked CONFIDENTIAL - BIDS FOR STATE MINERAL LEASES and delivered to the commissioner in person or by mail, at the DNR St. Paul office by 4:00 p.m. of the last business day before the scheduled bid opening. It is reasonable and necessary that the envelopes containing the bids be identified so that the bids are not inadvertently opened. In order to verify that the bids are

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[4] See discussion of the base royalty rates at page 28

received before the deadline, the bids are endorsed as to date and time by the commissioner upon receipt.

The bids remain unopened at a secure place designated by the commissioner until the time designated for the bid opening. The number of bids received and the parties submitting the bids remain confidential until the bid opening. This is reasonable and necessary to preserve the integrity of the bids prior to opening and to preserve the integrity of the bidding process.

At the time specified for the bid opening, the commissioner shall open each bid and publicly announce the amount of the bid. (Bids submitted pursuant to the metallic minerals lease sales are also opened publicly.) It is important that the bids be opened and announced publicly so that interested parties have an opportunity to attend the bid opening if they choose to do so, and to avoid any questions of impropriety in the bid opening process.

The sealed bid method of sale is a reasonable and necessary way for the department to conduct an industrial mineral lease sale. Currently, metallic mineral lease sales are also held through a sealed bid system. Review of the various options available, such as an oral auction, have been considered by the department and rejected due to the complications that can arise from such a process. Further, there is no evidence that an oral auction will generate a higher bid rate for industrial minerals. It should also be noted that leases for industrial minerals issued under these rules will be issued primarily through negotiation.

After the bids have been opened and reviewed, the rules provide that the commissioner will request information from the high bidders on their qualifications to hold leases as provided in part 6125.8300. This is reasonable and necessary to insure that the high bidder will be able to perform under the lease. The rules provide that this information must be provided within 45 days of the date of the request or the bid will be rejected. This is reasonable and necessary to insure timely compliance with the request so that the Department can proceed with the awarding of the leases.

When the leases are awarded, the application fee shall be deposited with the state treasurer as a fee for the lease. It is reasonable for the state to require that the $100.00 application fee from the successful bidder be retained to help offset the state's costs in holding the lease sale. It is reasonable to require the party that will be deriving the benefit to pay a fee for the lease. For the bids not accepted, the application fee and rental payment shall be returned to the bidder. Since the unsuccessful bidders will not be obtaining a lease, it is reasonable to return the fee and the prepaid rent to the unsuccessful bidders.

If the successful bidder withdraws its bid prior to awarding of the lease, neither of the checks shall be returned to the bidder. It is reasonable to require a forfeiture, in the nature of liquidated damages, where the high bidder withdraws its bid,

because the Department will have expended time reviewing the qualifications of the high bidder and the bid.

Lease Issuance, subpart 5

The leases are awarded to the high bidder, provided that bidder has met the qualifications to hold the lease. If the lease covers more than 160 acres, the lease must be approved by the State Executive Council. This requirement as is in accordance with Minnesota Statutes, section 93.25.

If there are tie bids, the rules provide that the commissioner will resolve these by a random drawing from a pool of the names of all the tied bidders, giving all those with the same bid an equal chance at obtaining the lease. It is necessary to have a procedure to resolve tie bids; and if the tied bidders qualify to hold a lease, it is in the best interests of the state to issue a lease rather than postpone issuance.

Finally, the state reasonably reserves the right to reject any and all bids. This is necessary to insure that in the event of an unforseen occurrence affecting the integrity of the sale or information is obtained directing that a lease sale is not in the best interest's of the state, the commissioner has the discretion to reject any and all bids.

AUTHORIZATION TO CONDUCT GEOLOGICAL DATA GATHERING ACTIVITIES, PART 6125.8600

This part of the proposed rules allows for a party to apply for a non-exclusive authorization for the purposes of conducting geological data gathering activities. The authorization gives the applicant an alternative to the leasing procedure. This authorization may be used by all parties in their area of interest for future leasing activities. It can be utilized by small businesses and individuals to lessen the lease acquisition costs.

The authorization covers gathering geological data through geophysical, geochemical and geological activities and sampling the glacial overburden. In order to insure that the explorer's activities will have minimal impact on the state land while at the same time allowing for samples to be taken, the rules allow drilling and sampling of the bedrock to a maximum penetration of 20 feet into the bedrock.

To encourage the reasonable application of the authorization under this subpart, the rules limit each authorization to one township or portion thereof. Compliance with part 6125.8300 will also be required of each applicant. The rules require a reasonable application fee of $100.00 to offset agency expenses in reviewing the application and issuing the authorization. This fee, along with the proof required under part 6125.8300 of the proposed rules, is reasonable and necessary to discourage frivolous applications and applications from persons who are not able to perform under the terms of the authorization.

The authorizations are non-exclusive and the rules specifically state that the person receiving authorization under this subpart will not have any rights to a mineral lease. This is reasonable and necessary to allow maximum exploration and also to encourage the bidding process should the property be put up for lease sale.

MODEL FORM OF LEASE, PART 6125.8700

The proposed rules outline the lease form for the negotiated leases or the leases issued pursuant to a lease sale. Due to the differing nature of the commodities covered by the lease form, the rules allow for additions, changes or insertions as may be necessary to reflect and incorporate the differing aspects into the lease. The introductory paragraph necessarily defines the parties to the lease agreement, and the date the lease agreement is entered into. These provisions are necessary as basic legal parameters to the lease agreement.

Lease Term and Extension of Lease Term

The first paragraph is necessary to acknowledge the amount paid as consideration for the lease and prepaid rentals, to identify the primary term of the lease and the commencement date of the lease and to accurately describe the leased premises by legal description.

Paragraphs 1 and 2 of the model lease govern the length of the primary term of the lease and any extensions of the lease. These paragraphs have been written to protect the state's interest in having the premises brought into production in a timely manner while recognizing that the lessee may need time to explore and develop the property.

The primary term of 10 years grants more than sufficient time to an average diligent operator. Ten years was determined to be the maximum time required for an average diligent operator to bring a lease issued under these parts into production. In order for the lessee to hold the lease beyond the primary term, a specified acreage must be prepared for mining operations or the lessee must have made a good faith effort to apply for environmental permits and financing needed to conduct operations. The parties will negotiate both the number of acres to be prepared for mining operations and the number of contiguous acres on which commercial production will occur. It is reasonable to negotiate these terms as each property will differ as to the extent of the resource and the complexity of bringing that particular parcel into production. The term of the lease may also be extended if the lessee has been diligent in obtaining financing and applying for environmental permits. This recognizes that even when a lessee has been diligent in exploring the property, delays may occur in obtaining needed permits to operate. If the lessee has a mineral deposit it is prepared to mine but is waiting for permits, an extension of the lease term would be reasonable.

The lessee is allowed to apply to the state for ten year extensions of the lease beyond the first extension provided that there has been commercial production on the leased premises within any of the last three years of the current ten year term. If the applicant meets the requirements, the state will extend the lease for successive 10 year periods by the state up to a total term of 50 years, which is mandated by statute. This is reasonable and necessary to insure that lands will not be tied up under a non-productive lease and to encourage continuous development of the resource.

At any time the lessee may request a determination from the commissioner as to whether or not an extension will be granted beyond the primary term. If the commissioner determines that the lease will be extended, the commissioner may require the lessee to meet additional conditions other than the conditions specified in this part. This additional provision was requested in one of the comments submitted during the earlier comment periods. Industry expressed concern that a company may have difficulty obtaining financing without assurance that the lease term will be extended. It is reasonable and necessary to allow an earlier determination than the end of the primary term if needed by a lessee in order to develop a mine. It is necessary that the commissioner be authorized to require additional conditions to be met since the property will not be at the stage of development where an extension would normally be granted.

Definitions

The third paragraph is the definition section for the lease. The terms defined in this section have specific meaning within the lease or within the industry and are defined in this section for clarification purposes.

Please see discussion starting at page 8 for the definitions of a."Commercial Production"; b."Commissioner"; c."Leased Minerals"; and d. "Ton".

Purpose of lease and use of surface of lands

Paragraph 4 identifies the lessee's right to perform necessary activities on the leased parcel for the purpose of exploration for, mining and removing leased minerals. The lease specifies the lessee's right to construct or make buildings, excavations, openings, ditches, drains, railroads, roads, and other improvements that are deemed necessary to perform such activities. To minimize potential land use conflicts and environmental concerns, railroads, roads and other improvements are subject to review by the commissioner. To insure that the lessee will comply with all local building ordinances, the lease requires that all buildings and ditches must be constructed in compliance with local ordinances.

In order to accomplish any of the activities authorized or required under this lease, the lessee has the right to contract out the services of other parties to conduct these activities. To protect the interests of the state, it is reasonable and

necessary for the lease to clarify that a contract with other parties does not relieve the lessee from any duty, obligation, or liability under the lease. To insure that the department will be advised of any agreements affecting shipping, handling or removal of minerals, the lease requires that any such contracts or agreements be filed with the commissioner.

These provisions are reasonable and necessary to provide the commissioner knowledge of the lessee's activities and review of those activities to assure compliance with the lease.

Right of the state to lease other minerals

Paragraph 5 is necessary to preserve the commissioner's right to lease the premises for minerals other than those covered by the industrial minerals lease. This section also recognizes that the lessee is entitled to use the leased premises for the purposes of reasonably carrying out exploration and mining activities as allowed under the industrial minerals lease.

In order to advise lessee of the commissioner's intent to lease other minerals, the lease requires the commissioner to provide written notice to the industrial mineral lessee of the commissioner's intent to lease the other minerals to another party. The lease also requires the commissioner to meet with the industrial mineral lessee in order to obtain information concerning multiple mineral development.

If a lease for other minerals is issued, the other lease shall contain language that the second permittee or lessee shall exercise the rights under the other permit or lease so as not to cause any unnecessary or unreasonable injury or hindrance to the operations of the industrial mineral lessee. The lessee also agrees under this paragraph not to cause any unnecessary injury or hindrance to the operations of any permittee or lessee of the state in the exploration for, the development of, mining, or removal of any minerals other than the leased minerals. In so doing, it is also reasonable to agree that any permit or lease issued by the state covering the leased premises, but different minerals, shall recognize and require that operations be conducted in such manner that will not unnecessarily injure or hinder the lessee's operations. Likewise, it is reasonable to require the industrial mineral lessee to conduct its operations in the same manner.

Whenever practical, it is the intent of the commissioner to avoid leasing the same land to two mineral lessees; however, it is feasible for two different types of mining operations to be conducted on the same property at the same time. One example is a dimension stone quarry and an underground gold mine. The commissioner would consider the priority of the first state mineral lease as recognized by this part and by part 6120.8400, subpart 4 (11).

Paragraph 5 is reasonable and necessary for the state to preserve the right to lease other minerals to ensure that the

state's resources can be managed to the best interests of the state.

Right of state to lease the surface and sell timber

Paragraph 6 reserves to the state the right to sell timber on the leased premises and allows the state to sell and dispose of the timber on the leased premises in accordance with state policy recognizing the value of timber located on mining lands. The state also maintains the right to dispose of timber, or otherwise utilize the surface of the lands so long as it does not unreasonably interfere with the exploration or mining operations of the lessee. The lease also reserves the right to the state, or the purchasers from the state or their agents, to at all times remove the timber so long as the lessee's operations are not unduly interfered with under the terms of the purchaser's contract with the state. The state also has reserved the right to issue licenses, permits or leases to any portion of the surface of the leased premises under Minnesota Statutes Section 92.50. The surface lessees, licensees, or permittees will also be required to not interfere with the exploration or mining operations of the lessee.

These provisions are reasonable and necessary to protect the interests of the state that have not been leased to the mineral lessee, and also provide protection for the activities of the state mineral lessee.

Rental and rental structure

Paragraph 7 further addresses the rentals payable beyond the initial payment made as consideration for the lease.

Rentals due after the advance payment shall be payable on the first day of January, with payment due by January 20 of that year, for the entire calendar year. It is reasonable that the state receive the yearly rental at the beginning of the year to protect the state as lessor in the event that the lessee may default on the lease later in the year. This also recognizes that in the due course of business, the lessee may not be able to make payment on exactly the first of the year, hence the lessee is allowed until the 20th of January to make payment without penalty. If rents are not received by the due date, the lessee will be liable for interest payments at the rate of six percent per year, commencing with January 20 of the year that rental is due. It is reasonable, in the due course of business, that the state charge interest as an incentive to the lessee to pay the rentals on time. Given the market interest rates, the six percent figure is reasonable and is in accordance with the usury rate provided in Minnesota Statutes, sec. 334.01.

The lease form also provides that rentals in excess of five dollars per acre per year are credited against royalties to the extent that the rentals were paid into the same fund as the royalties. Both the state metallic minerals and peat leases provide for credit of rents against royalties. The credit is limited to the extent of rentals paid into the particular fund

that the royalties are paid into, so that rentals paid on property that has commercial production with more than one land classification will be distributed in proportion among or between the funds to which the royalty is due. Since the state is the fiduciary for trust fund lands, tax-forfeited lands and certain acquired lands, this limitation is reasonable so that one fund will not suffer a loss from rentals due to commercial production on lands of another fund type.

The rentals may not be less than $1.50 per acre per year for the unexpired portion of the calendar year in which the lease is issued and the next two succeeding calendar years; $5.00 per acre per year for the next three years; and $25.00 per acre per year thereafter. The rental rates were higher in the prior lease draft circulated for comments. The rates were reduced to the present rate based on some of the comments received.

The rentals increase during the primary term of the lease, and the purpose of the increase is to encourage the lessee to explore the property during the first few years of the lease. The increase provides a deterrent to holding a lease for the purposes of controlling a block of land or a deposit in order to influence the minerals market. The amount of the rental rates were set based on the industrial minerals industry within the state and the leasing systems of other states.

Another reason for low rental rates at the beginning of a lease is to serve as an incentive for lessee to use available financial resources to explore the property. It is only when a mineral deposit is discovered and mined that the state will receive significant economic return.

It should be noted that the rates set forth in the rules are the base rental rates; the commissioner may negotiate a higher rate, or set a higher rate in the lease form to be used in conjunction with an industrial mineral lease sale. The base rates were established to set the minimum amount of rent for any lease issued. It is reasonable and necessary for the commissioner to have discretion to negotiate or set a higher rental rate for a lease sale if the resource and circumstances warrant that a higher rate is fair and reasonable and in the best interests of the state.

If it is determined in a proper proceeding that the state does not own the minerals in a part of the area included in the leased premises, the commissioner shall delete from the description of the leased premise the part not owned by the state. If the determination is made prior to the fifth anniversary date of the lease, the lessee is entitled to receive credit in future payments due the same fund, for payments made to the state on that part prior to the determination. For many types of land, especially tax forfeited lands, the state does not warrant title. Before a mine is opened, it will be important that ownership issues are resolved. Since only a small portion of the lands that are leased will be mined, expensive title work is often not justified at the time a lease is issued. If subsequent proceedings determine that the state's title is not

valid, the lessee should have rights to be relieved of future payments on the lands not owned by the state and a reasonable period in which to recover payments.

Royalty

Paragraph 8 addresses one of the department's goals under the proposed rules, which is to establish a fair and understandable method for the calculation of royalties that could be applied to all the various industrial minerals covered under the lease. Because there is no particular industry standard for the calculation of industrial mineral royalty rates, royalty rates can be calculated in a variety of ways based on volume or weight, gross value, or net income as defined by the Income Tax Act.

A comparison study of industrial mineral leasing policies from other states, the federal government, Canadian Provinces of Manitoba and Ontario, and private industry was conducted to aid in determining royalty rate structures. The department also solicited for and received outside opinions concerning the leasing of state-owned lands for the mining of industrial minerals.

Due to the variety of industrial minerals commodities covered by this lease (apatite, diamonds, dimension stone, kaolin, silica sand, graphite, etc.), various minimum royalty rates were established for specific commodities. The royalty rates may not be less than 3% of the gross market value for dimension stone and 1-1/2% of the gross market value for any non-dimension stone produced from waste stone and sold as a by-product; 5% of the gross market value for kaolin clay, silica sand, and diamonds and other gemstones; and 3% of the gross market value for all other industrial mineral commodities.

After studying the various leasing options, it was determined that royalty rates based on a percentage of gross market value after extraction and at the mine would be the best and most reasonable method for determining royalties for the variety of industrial minerals covered by this lease. (Also see the discussion on gross market value at page 29.)

As with the rental rates, it should be noted that the royalty rates set forth in the lease are the base rates. In the event of a lease sale, the lease form prepared for the lease sale will specify the minimum bid amount. In the case of a negotiated lease, the commissioner can negotiate a higher royalty rate than what is specified in the rule. It is important that the commissioner have discretion to negotiate a higher royalty rate, or set a higher minimum royalty rate for a lease sale if the circumstances warrant that a higher rate is fair and reasonable and in the best interests of the state.

The proposed rules reasonably establish a royalty system which will treat all lessees in a fair and equitable manner, will at the same time provide a fair return on resources of the state, and encourage lessees to actively explore the state to find developable industrial mineral deposits. The royalty rate also

balances the interests of the lessee and the state for full utilization of the resource. As mentioned in a comment submitted by the industry, a very high rate raises the "cut-off" grade for a commodity. This could lead to some deposits not being mined and only the higher grade portion of other deposits being mined.

Gross Market Value at the Mine

Gross market value after extraction and at the mine is defined in paragraph 9 of the proposed rules. All bonuses and allowances that the lessee receives are included within the definition of gross market value as these increase the monetary return and hence the value to the lessee. The state as the owner of the mineral interests is reasonably entitled to receive a royalty that represents the total value of the resource. The gross market value will be assessed at the point of shipment of the resource from the leased premises and will also be based on the first marketable product or products produced from the leased minerals and sold under a bonafide contract for sale, even if the product or products are produced by chemical or mechanical treatment of the leased minerals.

It is reasonable to assess the gross market value at the point of shipment from the leased premises to avoid the situation where transportation costs are calculated in the gross market value. This will relieve the parties from determining the reasonable transportation costs for each lease shipment. Assessment of the gross market value based upon the first marketable product or products produced, whether or not produced by chemical or mechanical means, will reflect the value that the product will return to the lessee. It is reasonable and fair that the basis of the royalty calculation for the state should reflect the value that will be returned to the lessee.

To clarify that certain costs will not be deducted from the valuation of gross market value, none of the lessee's mining or production costs shall be deducted from the market price in determining the royalty payable. Specific examples of what cannot be deducted are therefore included in the rules. Subjecting all receipts from the sales to verification and validation is reasonable, as such is normal for parties in the ordinary course of business.

In order to insure that the state receives a fair royalty on those minerals that are sold to an affiliate, it is reasonable to require that the lessee and the commissioner enter into a prior agreement as to the method for determining the gross market value for those leased minerals that are sold to an affiliate or stockpiled for future sale. It is also reasonable to require ranking, or grading and inventorying of the minerals prior to removal from the leased premises in order to establish the resource prior to entering into the agreement. The definition of affiliate as set forth in the proposed rules is derived from the state's metallic minerals lease rules. It is reasonable and necessary to define this type of business relationship in order to protect the interests of the state.

Because certain industrial minerals have limited or no established market prices, or the industrial minerals are sold or transferred to an affiliate, it is reasonable to provide that in these instances, the commissioner and lessee must first determine a method to calculate gross market value. It is therefore reasonable and necessary to require that a lease covering such minerals identify established market prices for a comparative quality resource as a method to determine gross market value and recognize that ranking and inventorying of minerals may be required. Umpire assays or evaluations may also be required to assist in determining gross market value.

Quarterly payment of royalty

Paragraph 10 requires the lessee to make quarterly royalty payments to the state for all minerals removed from the leased premises for the previous calendar quarter. The commissioner must allocate all royalties received to the appropriate fund as determined by the mineral ownership. The proposed rules hold the lessee liable for royalties from the actual time of removal. If the royalty due is not determined and accounted for by the next royalty payment date, the commissioner may determine the royalty by any method the commissioner deems appropriate and consistent with the royalty rates set forth in the lease. Royalties that are not received by the due date are subject to interest at the rate of six percent per year, calculated from the due date.[5] In order to clarify the rounding procedure and to insure that an exact sum will be arrived at, paragraph 11 further specifies that in the computation of royalty rates, any fraction of a cent less than five-thousandths shall be disregarded and any fraction amounting to five-thousandths or more shall be counted as one-hundredth of a cent.

This part of the proposed rules reasonably identifies that the lessee must make quarterly royalty payments to the state on all minerals removed from the leased premises. The proposed rules give the lessee twenty days after the last day of the quarter to submit the royalty payment. This represents a reasonable amount of time for the lessee to submit the payment and also insures that the state will receive the royalty due in a fair amount of time. The proposed rules specifically require that the commissioner allocate the royalty due into the proper land fund as determined by the mineral ownership.

Weighing of the minerals

Paragraph 12 provides that the royalty shall be based on the dry weight of the materials removed. In order to determine the royalties in a commercially feasible manner, the lease provides that the dry weight shall be taken from natural weights and moisture percentages from samples taken at the time that the

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[5] See discussion of interest rate on late rental payments at page 38

minerals were sampled. The methods of obtaining the weights used in the calculation of royalty, or the determination of other weights as required by the state are subject to the approval of the commissioner.

It is the practice in the industry to base royalties on the dry weight whenever possible. Otherwise, the lessee may pay for water content rather than mineral content. Since the royalty rates and royalty payments are computed using the dry weight of the material, it is reasonable to require samples to determine the dry weight of the material.

Statement of weight and royalty value of minerals mined and removed

Paragraph 13 of the proposed lease requires the lessee to submit along with the royalty payment a truthful and accurate statement of the weight and royalty value of the minerals extracted from the leased premises for the period for which the royalty payment is due. It is reasonable and necessary to require a report that can be reviewed and verified by the commissioner.

Right of lessee to commingle minerals

Paragraph 14 requires separation of the leased minerals from other minerals until a determination of mineral content and quantity is made. Although the lease gives the lessee the option to commingle the minerals, the leased minerals must be kept separate until the quantity and content have been separately measured and royalties determined. It is reasonable to require the materials to be kept separate until the royalty is calculated so that the state's revenue returns may be accurately accounted for, and it is reasonable to then allow the lessee to operate in the most efficient manner as possible.

Sampling and analysis for royalty purposes

Paragraph 15 requires that sampling and analysis for royalty purposes be analyzed by the lessee at lessee's expense by analytical and testing laboratories approved by the commissioner. The commissioner and the lessee shall concur on the elements in the royalty sample and the physical properties for which the analytical determinations will be made. It is reasonable to include language in the lease clarifying sampling analysis as it is necessary to verify reported mineral values and to assure compliance with royalty rate terms of the lease.

Reports

Paragraph 16 requires the lessee to provide monthly statements of the weights and analyses of all minerals mined from the leased premises, all minerals including commingled minerals that are stockpiled from the leased premises and all minerals from any source commingled with the leased minerals. It is reasonable for the state, as lessor, to require monthly reporting

as this provides a timely check for compliance with lease terms and a timely check against the state's inspection reports. It further provides a check for materials mined from the leased premises that may be moved from the leased property.

Additional Reports

Paragraph 17 of the proposed lease form requires the lessee to submit exploration and mining information to the state. This is necessary to assure the lessor that the lessee is following good mining practice and is in compliance with the lease terms and also provides information that may be verified by the state's inspection activities.

Requiring portions of the exploration samples and other exploration data from the leased premises allows the state to preserve valuable geologic data about the mineralogy of the property. In the event the lessee does not develop the property and terminates the lease, this data will be available for review and analysis by potential future lessees. The data can also be used to make land use decisions where there are competing uses being considered.

Method of transmitting statement and reports

Paragraph 18 requires that all remittances must be made payable to the Department of Natural Resources. In order to insure timely receipt and acknowledgement of all remittances and reports, the rules require that all remittances and reports be sent to the director of the division of minerals.

State's right to inspect

Paragraph 19 recognizes the state's right to enter the leased premises at reasonable times to inspect the operations under the lease and to perform any engineering or sampling procedures or other investigations so long as the lessee's operations are not unreasonably hindered. To protect the interests of the state and to insure proper accounting procedures, the state can require appointment of special inspectors if the state determines that one is necessary if there is more than one land type involved, if the minerals from the leased premises are concentrated at the same plant as non-leased minerals, or if the lessee is commingling the minerals. The lessee can be held responsible for the cost if the state should decide that a special inspector is necessary.

These provisions are necessary to protect the state's need to verify what is being mined from the state property and ensure proper accounting of the activities that are occurring on state-owned land.

Mineral removal for experimental purposes

Paragraph 20 allows minerals to be removed from the leased premises upon approval by the commissioner for experimental purposes without payment of royalty. This paragraph also recognizes that minerals removed as samples are not subject to

royalty payments. It is necessary for a lessee to analyze samples to determine if there is an economic deposit. These samples are usually consumed in the analysis and the lessee does not derive an economic benefit from the sale of these samples.

Stockpiled materials, Subp. 21 and 22

Paragraphs 21 and 22 deal with the stockpiling of material off and on the leased premises. Since royalties are not due until the minerals have been shipped from the leased premises, this portion of the lease recognizes that minerals that have been mined but not shipped from the leased premise remain the property of the state. In order to insure that any minerals will be stockpiled in a manner and in a location that will have the least adverse effects, any stockpiling of minerals must be done in a manner and at sites that the commissioner has authorized in writing.

The state may allow the lessee to deed property to the state for use in stockpiling minerals that have been removed from the leased premises. Reversionary deeds have been used by the state for stockpiling of material removed under state taconite leases as a reasonable method of assuring accountability to the state of the mined resource. The commissioner may accept deeds that provide that the land will revert to the lessee when it is no longer needed or used to stockpile minerals mined from the leased premises. Unless authorized by law, there shall be no consideration paid for such conveyance.

Paragraphs 21 and 22 are necessary to protect the state's interest in the leased mineral after it has been mined and before royalties are payable.

Cross mining rights

Paragraph 23 recognizes that the lessee is allowed to mine and remove any minerals from the leased premises from shafts, openings or pits that may be on adjoining or nearby land that is also controlled by the lessee. The lessee is also allowed to use the leased premises to mine and remove minerals of the same nature from adjacent properties through shafts or pits on the leased premises so long as this use does not interfere with the mining or removal of minerals from the leased premises. Any minerals from other properties must be kept separate and distinct from minerals mined from the leased premises in order to protect and preserve the rights of the state. Language recognizing adjacent mineral owner's rights to minerals transported through the leased premises is also included in this paragraph of the lease. These provisions recognize common mining practices that are necessary for efficient mining operations while including protection for the state's interests.

Lease subject to all applicable state and federal statutes, rules, orders and operations

Paragraph 24 recognizes that the lease is subject to all state and federal statutes orders, rules and regulations that are

applicable to the lease and further requires that lessee's operations are to be conducted in compliance with all applicable laws. Any interference, diversion, use or appropriation of any waters under the commissioner's or any other state agency must be authorized in writing by the commissioner or the state agency that has jurisdiction.

Operations to be conducted in accordance with good mining engineering

Paragraph 25 of the lease requires that the lessee conduct operations in accordance with the requirements, methods and practices of good environmental and mining engineering. Operations are to be conducted so as not to cause any unnecessary loss of the minerals or so as to cause unusual permanent injury to the leased premises. Any use of the surface of the leased premises must be done so as to prevent or reduce scarring or erosion of the land and to prevent or reduce pollution of the land or water. The lessee is further required to inform the commissioner when any mining activities are about to begin. Any clearing of the surface for roads, construction or stockpiling cannot be done until the plans for such have been approved by the commissioner. It is reasonable to require standards of conduct that are accepted and recognized by the industry and it is reasonable that the lessee know such conduct is required by the state.

The lessee is required to notify the commissioner of proposed exploration activity at least 20 days prior to the onset of exploration activity and provide specific information as detailed in the rules as to the location and type of activity, the start and end dates, mitigation methods, access points and construction of new roads or trails and any proposed reclamation. This information is necessary so that the commissioner can monitor the activity and provide information that the lessee may need in order to protect natural resources.

Notice to owner of surface estate

The leased premises often are state owned mineral rights only and do not include the surface estate. Paragraph 26 of the proposed rules require that the lessee give notice, in writing, to the owner or administrator of the surface estate at least 20 days in advance of any activities which will require use of the surface estate on the leased premises. The administrator or owner of the surface estate may be an individual, a business organization, or another unit of government. Whichever the case may be, it is reasonable to assume that the owner or administrator will be better able to evaluate the extent of use of the surface estate by the state mineral lessee if the owner or administrator has advance notice of that surface use. It is therefore necessary and reasonable that the state require that advance notice be given.

It is necessary and reasonable that the notice be given at least 20 days in advance of any activities which will require use

of the surface estate. The commissioner's past experience in regulating exploration leads supports the conclusion that many or most of the exploration activities which will require use of the surface estate have minimal or no impact on other surface uses. The commissioner has determined that for the types of activities which will conflict with surface uses, 20 days is sufficient time to evaluate the extent of the use of the surface estate by the explorer. The surface owner or administrator will have time in that period to determine the extent of the conflict with current uses and to decide what action or actions it will take in response to or in concert with the proposed exploration activities.

Review of exploration and exploration site closure and stabilization

The commissioner has always exerted a measure of control of exploration activities. This control has included review of location and methods of exploration. It is reasonable that the commissioner exert this control and it is necessary that this review authority be formalized by promulgation into rule.

The terms "explore", "explorer", "exploration", and other forms of the word are used throughout the lease form. It is necessary that a definition of "exploration" be included in the rules. The proposed definition is intentionally broad and includes any and all activities involved in the searching for or investigating of a mineral deposit. It includes procedures which do not disturb the land surface, such as aerial magnetic surveys, as well as similar activities carried out by a person walking on the ground. It also includes activities which involve disturbance of the land surface, including all of the activities listed in the rules. This is a reasonable definition of "exploration" in that the commissioner wishes to be informed of and exercise some measure of control over all of these types of activities.

The proposed rules specify the steps to be followed and the information required to be submitted for exploration plan review. It is reasonable that the commissioner be notified at least 20 days in advance of any exploration on the leased premises. This period of time is sufficient to allow the commissioner to evaluate the plan of exploration to determine that the plan is consistent with other natural resource management concerns for the leased premises.

The information required to be submitted includes a proposed plan for site closure and stabilization, if needed. The commissioner recognizes that very many exploration plans will involve minimal or no disturbance of the surface of the land and that for those activities a site closure and stabilization plan may not be necessary. It is reasonable to require the lessee to submit this information so that the commissioner can make an evaluation of the exploration plans to assure minimum possible impact on other identified natural resources.

Submission of the plan does not constitute an unreasonable burden on the explorer because the information required is of the sort which the explorer can reasonably be expected to generate in the course of preparing for exploration. Submission of the plan merely requires that all of this information be shared with and reviewed by the commissioner.

The lease further requires the commissioner to notify the lessee of any special features or uses on the leased premises. The commissioner may require the lessee to alter the exploration plans or construction plans based on special use or special features of the leased premises. Since the commissioner is in possession of this information and the lessee may be required to change exploration or construction plans based on special use or features, it is reasonable to require the commissioner to provide the lessee with this information.

Paragraph 26 further describes the obligations of the lessee upon completion of exploration. It is reasonable to require that the explorer remove its supplies and equipment from the leased premises when it is no longer exploring the premises and to require that the premises and roads be restored to a condition satisfactory to the commissioner. Restoration of the leased premises and roads to a condition satisfactory to the commissioner and removal of all supplies and equipment upon completion of activity by the lessee is a necessary requirement to maintain the premises in a safe, and stable condition and to protect natural resources.

Where there has been sufficient disturbance of the surface or other activities which require site closure and stabilization, it is reasonable that site closure and stabilization be carried out to the satisfaction of the commissioner. Because the commissioner has determined that site closure and stabilization, when needed, is a matter of great importance to proper natural resource management, it is necessary that the lessee notify the commissioner in writing that the obligations imposed by the exploration site closure and stabilization plan have been completed. It is necessary and reasonable and in support of best natural resource management practices that the lessee shall not be relieved of those obligations until release has been granted by the commissioner.

Indemnification by lessee

Paragraph 28 of the lease recognizes that the lease does not authorize any invasion of or trespass upon interests in the lands and minerals owned by anyone other than the state. This provision is applicable whether or not it is included in the lease. However, this provision has been included in other state mineral leases, and is a reasonable reminder to the state lessee that the state may only grant rights as to interests owned by the state. Paragraph 28 further requires the lessee to hold the state harmless and indemnify the state against losses caused by operations under the lease. It is reasonable and necessary that

the lessee be held responsible for its activities and that the state does not incur losses due to the lessee's activities.

Lessee responsible for all taxes

Paragraph 29 of the lease requires the lessee to pay all taxes, general and specific, personal and real assessed against the leased premises and any improvements made on the leased premises. This includes any taxes assessed against the minerals in or mined from the leased premises and any of lessee's personal property used, owned or controlled by the lessee on the leased premises. It is reasonable that the lessee be held responsible for taxes that arise due to the activities conducted by the lessee.

State lien on all minerals

Paragraph 30 of the lease recognizes that the state has a lien on all minerals mined from the leased premises and all improvements made under the lease for sums not paid when due. It is reasonable for the state to have such a lien until it is paid for the minerals removed by the lessee.

Termination of Lease, Paragraphs 31, 32, 33

Paragraph 31 specifies the lessee's right to terminate the lease by giving 60 days written notice to the commissioner of the lessee's intention to terminate the lease. The rules allow the lessee to cancel the termination prior to expiration of the 60 days by delivering written notice of lessee's withdrawal of termination. It is reasonable to allow the lessee the option to terminate the lease when it is no longer interested in the property. It is in the state's interest to have the lease terminated if the lessee will no longer explore and develop the property. The state may be able to interest other parties in the property.

The lessee is also allowed to partially terminate the lease by surrendering the rights to a governmental description or the bed of any public waters that may be included in the leased premises. Since rentals are paid in the beginning of the year, it is reasonable to allow partial terminations only on December 31 of each year; and since the first three years are paid in advance, it is also reasonable to only allow partial surrender of the lease following the third anniversary of the lease. To partially surrender, the lessee must submit written notice to the commissioner at least 60 days prior to the date of surrender. It is reasonable to allow the lessee the option to surrender rights to some of the property covered by the lease when the lessee is no longer interested in the property. It is in the state's interest to have the properties the lessee is no longer interested in released from the leasehold if the lessee will no longer explore and develop the property. The state may be able to interest other parties in the property.

The lease clarifies that the lessee is responsible for all sums due under the lease up to the date of termination. The

lease reasonably gives the lessee twenty days after the termination date to pay all sums due under the lease without payment of interest. In order to insure timely payment of all sums due within twenty days, and to protect the state's pecuniary interest, the lease imposes an interest rate of six percent per year from the effective date of transportation. This is consistent with paragraph ten which imposes a six percent interest rate on delinquent royalty payments.

Paragraph 32 of the lease form recognizes the state's right to cancel the lease in the event that the lessee has defaulted under the lease. It is reasonable to allow the state to cancel the lease if the lessee has not paid monies due the state under the lease, has violated a term or condition of the lease, or has knowingly or willfully made any false statements in any reports, accounts or tabulations submitted to the state pursuant to the lease. Paragraph 32 further allows the lessee a reasonable time to cure the default. In the event of non-payment of rent and royalty, if the lessee makes the payment within 15 days of the mailing of or delivery of the cancellation notice the lease will remain in effect. If the lessee makes the payment after 15 days, the commissioner has discretion to allow the lease to continue. If the lessee is in default for an act or omission other than non-payment of rentals or royalty, the lease will continue in effect if the lessee performs or cures the default within the 60 day time period. The commissioner may grant an extension of the 60 day period upon written request of the lease. It is reasonable to provide an effective means by which the state can enforce the requirements of the lease. If the lessee doesn't cure the problems it is reasonable for the state to end the lessee's right to the property.

Paragraph 33 defines the rights of the lessor and lessee for a 180 day period following termination of the lease or surrender of any governmental descriptions thereof. After termination or surrender, the lessee will have 180 days in which to remove lessee's property and structures from the premises. The 180 days was selected as a reasonable time for the lessee to comply with this section of the lease. If the lessee fails to comply with this section, the property can be removed at the lessee's expense or can become property of the state. This should encourage the lessee to comply with this provision of the lease and thus relieve the state of the burden of clearing the premises of the lessee's property.

The lessee cannot remove any structures or supports for any mine shafts or any timber or framework or approaches necessary to the use or maintenance of the mine. After cessation of mine operations, all of these items within the leased premises shall become the property of the state. If it is still possible to mine the property, it is reasonable for the state to require that the lessee leave the property in such a condition so that it may be mined by another party without replacement of these items.

The lessee is also obligated to comply with the fencing requirements, and perform other work as necessary to leave the

premises in a safe condition. Restoration and reclamation work shall be performed by the lessee as directed by the commissioner. This shall be performed within the 180 days, unless a longer time is necessary for reclamation. It is in the public interest, as well as the state's interest as a landowner, that the property be left in a safe and reclaimed condition. It is reasonable to expect the lessee to meet these requirements as one phase of the mining activities.

Recovery of expenses by the state

Paragraph 34 of the lease form recognizes the state's right to reimbursement of certain expenses under the lease if the state should prevail in a court action or other action taken against the lessee. These expenses are costs for court actions or other actions taken to eject the lessee from the leased premises, removal of the lessee's property from the leased premises, and recovery of rentals or royalties. Attorney's fees are specifically included in the recoverable costs. It is reasonable to require the lessee to pay these expenses that arise due to the lessee's failure to comply with the lease terms.

Approval by the commissioner of agreements, assignments or contracts affecting the lease

Paragraph 35 of the lease requires that all agreements, assignments or contracts that will affect the lease must be approved by the commissioner in writing and approved by the attorney general as to form and execution. The lessee must submit any agreements to the commissioner in triplicate. In order to comply with standards for approval of the agreements and for recording in the state's record books (Minnesota Statutes, secs. 93.28 to 93.28), the lease specifies that any agreements must be witnessed by two witnesses and properly acknowledged. It is reasonable for the state to maintain control over who holds the state lease and to know who is authorized by the lessee to have an interest in the property in exchange for financial participation or work. The commissioner needs the right to review and approve these agreements; otherwise, a party who is not eligible to hold a state mineral lease could acquire one through assignment.

The lease language also recognizes that no agreement shall relieve the lessee of any liability imposed by the lease and that all assignees, sublessees and subcontractors are liable for obligations and liabilities imposed by the lease. Paragraph 36 further clarifies this by specifically stating that the conditions and covenants of the lease run with the land and that the lease will extend to and bind all assignees and other successors in interest of the lessee. It is reasonable to hold each party who holds a state lease responsible for their activities under the lease and compliance with the lease terms.

Paragraph 37 of the lease is necessary to identify the addresses of both parties at the time of execution of the lease for the purpose of notice under the lease. Paragraph 38

identifies the authority under which the lease is issued on behalf of the state by and through the commissioner of natural resources.

The final paragraph of the proposed rules repeals Minnesota Rules, parts 6125.4500 through 6125.5700. These are the rules governing the leasing of marl on state owned lands or under the waters of public lakes or streams. The rules were adopted in 1956, and one permit was issued under the authority of the rules in 1961. Many of the provisions of the rules are obsolete or do not meet the best interests of the state, such as the rental and royalty rates. Since marl is covered by the proposed rules, the repeal of Minnesota Rules, parts 6125.4500 -.5700 is reasonable and necessary so that there is only one set of rules covering the leasing of marl on state-owned lands.

WITNESSES

If these rules go to a Public Hearing, the witnesses listed below may testify on behalf of the Department in support of the need for and reasonableness of the rules. The witnesses will be available to answer questions about the development and content of the rules.

William C. Brice, Director, Division of Minerals, 500 Lafayette Road, St. Paul, MN 55155-4045;
Marty K. Vadis, Assistant Director, Division of Minerals, 1525 Third Ave. E., Hibbing, MN 55746;
Any other employee of the Minnesota Department of Natural Resources.

CONCLUSION

Based on the foregoing, the Department's proposed rules are both necessary and reasonable.

Rodney W. Sando
Commissioner of Natural Resources

By William Brice
William C. Brice, Director
Division of Minerals

Dated: 11/2/94

FI-00399-01

Department of Finance
Departmental Earnings: Reporting/Approval

Part A: Explanation

Earnings Title: Industrial MineralsLeasing Rules	***Statutory Authority:*** Minn. Stat. 93.25	***Date:*** 10/19/94

Brief Description of Item: Rules to lease state lands for exploration and mining of industrial minerals. The rules require application fees, reimbursement for inspection costs, reimbursement for publication of notice to issue a negotiated lease, fees based on copying costs for lists of lands to be offered at lease sale as a fee for such, and for the payment of rentals and royalties.

Earnings Type (check one):

1. ___ Service/User 2. ___ Business/Industry Regulating 3. ___ Occupational Licensure
4. ___ Special Tax/Assessment 5. _x_ Other (specify): Rental and royalty; application fees

Submission Purpose (check one):

1. _X_ Chap. 14 Review and Comment 2. ___ Approval of Allowable Inflationary Adjustment
3. ___ Reporting of Agency Initiated Change in Departmental Earnings Rate
4. ___ Other (specify):

If reporting an agency initiated action (option 3 above), does agency have explicit authority to retain and spend receipts? ___ Yes ___ No
If yes, cite pertinent statutes:

Impact of Proposed Change (change in unit rate, number of payees impacted, etc.):

See attached narrative

FI-00399-01

Department of Finance

Departmental Earnings: Reporting/Approval (Cont.)

($1,000,000 = 1,000)

Part B: Fiscal Detail

APID: 31000:75-10 38116:00-20 36005:00-86	AID: 325175	Rev. Code(s): New; 904	___ Dedicated X ___ Non-Dedicated ___ Both			
Item	F.Y. 1991	F.Y. 1992	F.Y. 1993	F.Y. 1994 As Shown in Biennial Budget	F.Y. 1995 As Shown in Biennial Budget	F.Y. 1994 As Currently Proposed	F.Y. 1995 As Currently Proposed
Revenues:							
Rents and Advance Rents							1.5
Application fees							.3
Total Revenues							1.8
Expenditures:							
Direct Publication Costs							1.0
Indirect Salaries							20.0
Total							21.0
Current Deficit/Excess							(19.2)
Accumulated Excess/Deficit*							

As necessary, attach detailed schedule/listing of proposed changes in departmental earnings rates.

Agency Signature: John P. Mitchell Dept of Finance 12/14/94

* F.Y. 1991 beginning accumulated balance to include amount of accumulated excess/deficit (if any) carried forward from F.Y. 1990.

1. Earnings

a. rents and royalties

One impact of the proposed rules is to increase revenues to various funds based on land types through payment of rentals and royalties. It is estimated that $1,497.78 will be generated through rentals and advance rentals for fiscal year 1995. It is not expected that any royalties will be payable in fiscal year 1995. All state mineral leases require payment of rentals and royalties.

b. application fees

Another impact of the proposed rules is to reimburse the general fund by requiring payment of an application fee for a state industrial minerals lease or an authorization to conduct geological data gathering activities. This reimbursement covers expenses related to review of applications, preparation for state lease sales, and the issuance of a state mineral lease or an authorization to conduct geological data activities. It is anticipated that during fiscal year 1995, $300.00 should be generated to the general fund from application fees received pursuant to mineral lease sale held in early 1995. Application fees in the amount of $100.00 per lease are currently required for state metallic mineral leases.

c. copying and mailing costs

Another impact of the proposed rules is to reimburse the general fund for the copying and mailing costs of copies of the list of lands to be offered at sale and the lease form to be used with the sale. Since this fee will be based on the actual copying and mailing costs, no figure has been projected. Any fees derived are expected to be negligible; it is not expected that the total of all fees received for copying and mailing costs from the sale proposed to be held in fiscal year 1995 will exceed $50.00. This fee reflects the policy of allowing for reimbursement by providing for recovery of copying and mailing costs of the list of lands and lease form to be used in conjunction with an industrial minerals lease sale. Currently, the division charges a flat fee of $25.00 each for copies of the mining unit books used in conjunction with the metallic minerals lease sales.

d. publication costs

The rules also require the lessee to reimburse the general fund for publication of plans to issue a negotiated lease. The state has required permittees to

cover the costs of publication of notice of the issuance of a mining permit; it is reasonable to require the successful applicant for a negotiated lease to reimburse the state for publication costs. It is not expected that monies under this subdivision of the rules will be received in fiscal year 1995.

e. inspection costs

The rules also reflect present state policy requiring the lessee to reimburse the state for certain inspection services. Due to the complexities of opening an industrial minerals mine, it is not expected that the state will be receiving reimbursement for inspection fees during fiscal year 1995. These funds will offset the salary of state personal during the inspections. Like fees for other state mineral leases are found at paragraph 18 of the State Metallic Mineral Lease (Minnesota Rules, part 6125.0700); and Minnesota Statutes, section 93.20, subd. 25, which provides that the lessee of a taconite lease shall reimburse the state for inspection services.

2. Expenditures

The figure of $20,000 has been determined for the indirect expenditures relating to implementation of the proposed rules for the lease sale to be held during fiscal year 1995. It is estimated that agency staff time involved to implement the lease sale will amount to $10,000 in expenditures. These expenditures include staff time and expenses related to preparation for the lease sale, including mineral title work and securing state title through forfeiture action, review of applications for negotiated leases, issuance of leases, and the management of mineral leases. This estimate reflects the initial start up costs of the industrial mineral leasing program. Indirect costs in the amount of $10,000 will also be incurred to cover the costs of the attorney general's office for services related to the severed mineral interest forfeitures for properties to be put up for industrial mineral lease sale. The costs for the severed mineral interest forfeitures will benefit the state for so long as title to the forfeited interests is held by the state.

The responsibilities of the agency staff responsible for these duties also include broader management responsibilities related to the management of all the state's mineral resources, including the management of all state-owned and state-administered mineral rights in the state (about 24% of the state total).