Statement of Need and Reasonableness

Proposed Minnesota Rule
Parts 4890.0100 to 4890.0900

State Postsecondary
Review Program
December 12, 1994

MINNESOTA HIGHER EDUCATION COORDINATING BOARD

CONTENTS

December 13, 1994

STATEMENT OF NEED AND REASONABLENESS

State Postsecondary Review Program

SECTION I. STATUTORY AUTHORITY

The Minnesota Higher Education Coordinating Board (the Board) is authorized to promulgate this rule by Minn. Stat. 136A.04, Subd. 1(8).

SECTION II. CHRONOLOGY

1992 Congress created the State Postsecondary Review Program (SPRP) in 1992 when it acted to reauthorize the Higher Education Act (HEA) of 1965. The language that created the program is located in the HEA, Title IV, Part H (Exhibit 1), and in United States Code, Title 20, sections 1099a to 1099a-3.

The amendments contained in Part H are referred to as the "Program Integrity Triad" and it has three subparts: one addresses the SPRP; the second addresses the role of accrediting agencies; and the third subpart addresses the responsibilities of the Secretary of the United States Department of Education (the Secretary, or the USDE).

This rule addresses the State Postsecondary Review Program only.

The purposes stated in the HEA are: 1) to designate one state postsecondary review entity in each state to be responsible for the conduct or coordination of review of institutions, referred for a review by the Secretary, for purposes of determining eligibility under this title; and 2) to provide federal funds to each SPRP for performing the required functions.

The purpose stated in the Code of Federal Regulations (CFR) is to reduce fraud and abuse in Title IV programs through development of state standards for state oversight and review under those standards, of institutions referred by the Secretary. Title IV financial aid programs mentioned by the Secretary in the CFR are found in the HEA and are described in Section III of this Statement of Need and Reasonableness.

The amended HEA authorized the Secretary to enter into agreements with a State Postsecondary Review Entity (SPRE) in each state to determine whether institutions should continue to be eligible to participate in Title IV federal financial aid programs.

The HEA and subsequent federal regulations define the responsibilities and functions of the Secretary, SPREs, accrediting agencies, and institutions. In general, the responsibilities of each participant include:

1) Secretary:

- approve or disapprove the Agreement and Plan submitted by each SPRE;
- reimburse SPRE activities;
- notify the SPRE which institutions are subject to review;
- provide audit data to the SPRE regarding institutions subject to review;
- terminate an institution from participation in Title IV programs upon notification by a SPRE; and
- notify the SPRE when action has been taken.

2) State Postsecondary Review Entity (SPRE):

- establish state review standards, and a consumer complaint process;
- after the standards are established (through procedures established in Minn. Stat. Chapter 14), conduct or coordinate the review of institutions referred by the Secretary;
- develop plans for correcting violations of the standards, if any;
- determine that reviewed institutions are eligible for continued participation in Title IV programs; and
- notify the Secretary that termination of participation in Title IV programs is appropriate, where necessary.

3) Accrediting agencies:

- adhere to the standards established by the Secretary pursuant to the HEA, Part H, Subpart 2, Section 496;
- notify the Secretary and the appropriate SPRE of actions it takes regarding an institution;
- disclose the standards and procedures for accreditation it establishes; and

- make available to the Secretary and the appropriate SPRE a summary of any review resulting in denial, termination, or suspension of accreditation of an institution.

4) Postsecondary institutions:

- participate in establishing the review standards;
- adhere to the standards;
- provide information related to the standards if referred by the Secretary for a review; and
- as necessary, take corrective action on violations found during a review.

1993 Notice of the new program was published in the July 14, 1993, *Federal Register* (Exhibit 2).

On August 5, 1993, the Secretary notified each state and asked governors to designate an entity to administer the SPRP (Exhibit 3). Governor Arne Carlson designated the Board as Minnesota's State Postsecondary Review Entity on August 19, 1993 (Exhibit 4). Secretary Richard Riley confirmed the designation of the Board in a letter dated September 13, 1993 (Exhibit 5).

Each designated entity was required to enter into an agreement with the Secretary to participate in the program in accordance with the provisions contained in the HEA and applicable regulations. SPREs also were charged with developing plans for implementing the program. The Board's Agreement was submitted for approval August 27, 1993 (Exhibit 6), and approved by the Secretary October 21, 1993 (Exhibit 7). The Board's Plan was submitted August 31, 1993 (Exhibit 8); a revised Plan and Budget were submitted October 14, 1993 (Exhibit 9). The Grant Award Notification was signed November 19, 1993 (Exhibit 10).

1994 The Secretary published a Notice of Proposed Rulemaking on January 24, 1994 (Exhibit 11). At the same time, the Secretary sent a letter to participating institutions inviting comment on the proposed regulation. The Board sent comments to the Secretary in letters dated February 28, 1994, and March 16, 1994, and sent a letter to Senator David Durenberger and other members of the Minnesota congressional delegation on February 28, 1994 (Exhibit 12).

The final regulation was published in the April 29, 1994, *Federal Register* (Exhibit 13).

Additional guidance was received from the USDE in a letter dated September 30, 1994, listing Title IV regulations and HEA citations that SPREs are expected to consider in developing state standards (Exhibit 14).

SECTION III. ROLE OF MINNESOTA SPRE (MINNESOTA HIGHER EDUCATION COORDINATING BOARD, OR THE BOARD)

The HEA charges SPREs with the following responsibilities:

- ✔ Represent all entities in the state that are responsible for authorizing institutions to offer postsecondary education for the purposes of Title IV eligibility.[1]

- ✔ Develop state review standards, subject to disapproval by the Secretary, in consultation with postsecondary institutions in the state.[2]

- ✔ Establish and publicize procedures, in consultation with postsecondary institutions in the state, for receiving and responding to complaints from students, faculty, and others.[3]

- ✔ Conduct or coordinate the review of postsecondary institutions for the purpose of determining Title IV eligibility on a schedule to coincide with the Secretary's certification or recertification of postsecondary institutions.[4]

- ✔ Ensure that postsecondary institutions in the state remain in compliance with the standards.[5]

- ✔ Notify the Secretary of findings and actions following a review, including a notification of termination, as warranted.[6]

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[1] HEA, Title IV, Part H, Subpart 1, Section 494A(b)(1)(A).

[2] HEA, Title IV, Part H, Subpart 1, Section 494C(d).

[3] HEA, Title IV, Part H, Subpart 1, Section 494C(j).

[4] HEA, Title IV, Part H, Subpart 1, Section 494A(b)(2).

[5] HEA, Title IV, Part H, Subpart 1, Section 494A(b)(1)(B).

[6] HEA, Title IV, Part H, Subpart 1, Section 494C(h)(1).

Scope of Title IV During the 1994 federal award year, 167 postsecondary institutions in Minnesota were eligible for the following Title IV programs:

- **Pell Grant**. This need-based federal grant is considered in calculating student eligibility for state grants. The maximum authorized annual Pell Grant in federal Fiscal Year 1993 was $3,700; the maximum funded grant was $2,300. In federal Fiscal Year 1994, the maximum authorized amount was $3,900; the maximum funded grant was $2,300, the same amount as in the previous year.

- **Federal Supplemental Educational Opportunity Grant (SEOG)**. This program provides a 75 percent federal cost share targeted to students with the greatest financial need.

- **State Student Incentive Grant (SSIG)**. Minnesota receives approximately $1.2 million per year from the federal government for this program. These funds are administered by the Board as part of the Minnesota State Grant program.

- **Federal Stafford Loan.** This program provided annual loans of up to $5,500 in 1994 for undergraduate, dependent students and up to $10,000 for graduate, independent students. In 1992, the program was expanded to include unsubsidized loans for up to the same amounts as subsidized loans. In 1994, the Federal Supplemental Loans for Students (SLS) was incorporated into the Stafford Loan program.

- **Federal Perkins Loan.** In 1994, this program has a loan limit of $3,000 per academic year for undergraduates for a total of $15,000. Graduate and professional students may borrow $5,000 per year and $30,000 in total.

- **Federal Work Study**. This program provides placement of students in work settings for pay. It also provides community service opportunities.

- **Federal Plus.** This program provides loans equal to the cost of postsecondary attendance, minus other financial aid.

- **Federal Direct Student Loan (FDSL)**. This pilot program allows some postsecondary institutions to administer directly federal student aid programs.

The following table provides a summary of the approximately $360 million of federal aid received by Minnesota institutions during federal award year 1991, the last year for which there are confirmed data.

Table 1: TITLE IV AID AWARDED TO STUDENTS AT MINNESOTA INSTITUTIONS, 1991

Title IV HEA Program	Amount	Number of Awards[7]
Pell Grants	$109,138,797	79,023
SEOG Awards	$ 12,558,221	19,377
SSIG	$ 1,100,000	59,077
Stafford Loans	$168,234,086	77,394
Perkins Loans	$ 17,601,928	13,161
SLS Loans	$ 19,875,794	7,816
PLUS Loans	$ 13,394,337	4,241
Federal Work-Study	$ 18,060,759	19,558
Total awards [8]	**$359,963,922**	**279,647**

(Source: MHECB Financial Aid Data Base 04/22/94)[9]

[7] Some students receive an award from more than one federal program, so the number of awards cannot be equated to the number of students.

[8] Appendix A summarizes Title IV programs by types of institution in Minnesota, and amount of federal student aid awarded to Minnesota students.

[9] Some Title IV programs are not included in these data because the programs are not administered through the Board, or Minnesota is not currently using them. Examples of programs not included in this table that provide additional Title IV funds to Minnesota students and institutions include the Federal Talent Search, Upward Bound, Student Support Centers, and McNair Post Baccalaureate Program (TRIO Programs), the High School Equivalency Program (HEP), and the College Assistance Migrant Program (CAMP).

Consultation

As required by the HEA,[10] the Board has consulted with representatives of Minnesota's postsecondary education community to plan and implement the SPRP.

During November and December 1993, the Board notified postsecondary institutions, governing boards, and other agencies about the SPRP. Presentations and discussions have involved the Higher Education Advisory Council and the Intersystem Planning Group, two groups of high level administrators that represent the Minnesota postsecondary education community. A list of these groups, with the meeting dates at which the SPRP was on the agenda is attached (Exhibit 15).

The Board also convened a SPRE Advisory Group to assist in the implementation of the program. The SPRE Advisory Group includes representatives of the University of Minnesota, Minnesota State University System, Minnesota Community College System, Minnesota Technical College System, Minnesota Department of Education, Private College Council, Minnesota Association of Private Postsecondary Schools, and other institutions not represented by these agencies and organizations. The membership list of this group, its meeting dates, and records of its meetings are attached (Exhibit 16).

The SPRE Advisory Group was convened to:

- Begin the consultation process required by federal law and regulations.
- Represent the full range of institutional interests during the early stages of developing review standards.
- Assist staff in reviewing drafts of review standards.
- Assist staff in preparing for direct consultations with postsecondary institutions.

In September 1994, the consultation process was widened to include all Title IV eligible institutions. Approximately 450 personnel from Minnesota institutions received extensive documentation (Exhibit 17) from the Board and an invitation to participate in the process. The documents included a brief history of the SPRP, an overview of the review criteria and standards mandated in the HEA amendments of 1992, and a draft of the proposed rule.

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[10] HEA, Title IV, Part H, Subpart 1, Section 494C(d).

These documents were provided in advance of a live teleconference held September 16, 1994. A video tape of the teleconference is available from the Board office, 550 Cedar Street, St. Paul, MN 55101, or by calling Paul Thomas at (612) 296-9674. The teleconference was broadcast to 37 locations throughout the state. The Board also sponsored four meetings between staff and personnel from the private and public postsecondary education sectors for further discussion of the proposed rule. These meetings were attended by 173 individuals from 93 institutions or system offices.

In addition to presentations to outside groups, there was a formal SPRE item on the Board's agenda four times during 1994 (Exhibit 18). Staff also made presentations to the Association for Institutional Research in the Upper Midwest on October 13, 1994, and the Board's Financial Aid Advisory Committee on November 10, 1994.

In conclusion, it is the Board's opinion it has met the federal mandate to consult with postsecondary institutions to develop state review standards and a consumer complaint process.

SECTION IV. FEDERAL REGULATION AND GUIDANCE FROM THE SECRETARY

Notice of Proposed Rulemaking — The Secretary issued a Notice of Proposed Rulemaking in the January 24, 1994, *Federal Register* (Exhibit 11).

The Secretary proposed regulations to implement the SPRP. The Secretary solicited responses from all SPREs, accrediting agencies, institutions, and the public concerned with postsecondary education.

Final Regulation — The final regulation appeared in the April 29, 1994, *Federal Register* (Exhibit 13). It included the Secretary's response to comments on the proposed regulation of January 24, 1994.

The final regulation indicated that the SPRE was to determine the extent to which it is appropriate to base a state review standard on a related or comparable Title IV program standard or requirement.[11] Further, the final regulation stated that the Secretary will disapprove the state review standards if those standards do not meet or exceed all of the requirements and cover all the areas described in CFR Title 34, Sec. 667.21.[12]

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[11] CFR Title 34, Section 667.21 (b)(5).

[12] CFR Title 34, Section 667.22 (b)(4).

Further guidance Additional expectations of the Secretary were contained in a letter and attachment dated September 30, 1994, that listed Title IV regulations and HEA citations that the Secretary expects to be included in states' review standards (Exhibit 14). These additions to the Title IV program requirements went into effect on or after April 29, 1994, and have been published in the *Federal Register.*

Institutional Agreement In order to participate in any Title IV financial aid program (except for the State Student Incentive Grant and the National Early Intervention Scholarship and Partnership programs), an institution must sign a program participation agreement, commonly known as an Institutional Agreement.[13]

The Institutional Agreement specifies the conditions for initial and continued participation of an institution in Title IV programs. The institution agrees it is subject to the statutes and regulations for each Title IV program in which it participates and the general provisions governing Title IV (Exhibit 19). By signing the Institutional Agreement, Minnesota postsecondary institutions have agreed to comply completely with the requirements of three proposed review standards and partially with nine additional proposed review standards.

For all but two standards, there is guidance from the Secretary as to existing federal law or regulation that would at least partially satisfy the proposed review standards. Where the Secretary did not provide guidance, the Board developed the review standard.

The Board's goals throughout the rule development process were to require as little additional burden as possible for institutions, to avoid undue intrusion into the operation and oversight of institutions not referred for review, and to rely on existing federal requirements wherever possible. The Secretary also stated in the summary of CFR Title 34, Part 667 that states should not impose unnecessary burden on institutions where a Title IV requirement already exists.

The Board used the Secretary's guidance in developing the review standards. New language is proposed in cases where the Secretary did not provide guidance, where the Secretary asked that each state further develop portions of standards, or where there are no existing federal or state laws or regulations.

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[13] CFR Title 34, Section 668.14.

SECTION V. NEED FOR THE RULE

Governor Carlson designated the Board to be the SPRE for Minnesota, and assigned it the responsibility of developing the review standards and consumer complaint process for the state, and reviewing or coordinating the review of institutions referred by the Secretary under specific statutory provisions.

The final regulation stated that SPREs receiving funds in federal Fiscal Year 1993 must submit standards to the Secretary under CFR Title 34, Sec. 667.21, by December 31, 1995. Because the Board received SPRP funds in federal Fiscal Year 1993, it is obligated to meet this deadline.

Sanctions States which do not participate in the SPRP are subject to the following sanctions:

1) the states will be ineligible to receive funds appropriated under the State Student Incentive Grant (SSIG) and the National Early Intervention Scholarship Partnership (NEISP) programs;

2) the Secretary will not designate as eligible for participation any institution in the state seeking initial participation in Title IV programs, will not certify as eligible any branch campus for which an institution seeks initial eligibility, will not certify any institution in the state that has undergone a change in ownership that results in a change in control, and will grant provisional certification to institutions and branch campuses due for recertification; and

3) the Secretary may establish review standards and carry out, or arrange to carry out, that state's responsibilities and requirements.[14]

In federal Fiscal Year 1993, Minnesota received approximately $1,400,000 in federal funds under the SSIG program, and approximately $3,000,000 under the NEISP. The Board administers the SSIG program; the Minnesota Department of Education administers the NEISP. The state would risk losing these funds by not participating in the SPRP.

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[14] CFR Title 34, Section 667.3 (e).

In conclusion, the consequences of not participating in the SPRP would be institutions that participate in Title IV programs would be subject to a federal determination of standards and reviews conducted by the Secretary; there would be a loss of financial aid funds going to Minnesota students; and no new private institutions would be allowed to operate.

SECTION VI. REASONABLENESS OF THE RULE

Part 4890.0100 Purpose.

Proposed rule

The Minnesota Higher Education Coordinating Board is the designated State Postsecondary Review Entity (SPRE) to implement the State Postsecondary Review Program (SPRP) pursuant to the Higher Education Act of 1965 (HEA), Title IV, Part H, United States Code, title 20, sections 1099a to 1099a-3. The purpose of the program is to conduct or coordinate reviews of postsecondary institutions either referred by the United States Department of Education or identified by the Minnesota Higher Education Coordinating Board and approved for review by the United States Department of Education.

Rationale GOVERNOR CARLSON DESIGNATED THE BOARD TO BE THE STATE POSTSECONDARY REVIEW ENTITY IN MINNESOTA. NO CHANGES ARE PROPOSED TO THE FEDERALLY MANDATED REVIEW CRITERIA.

The Board develops and recommends policies to the governor, legislature, postsecondary education systems, and institutions. It is a neutral party, providing an independent, statewide perspective on issues affecting the state's four public postsecondary education systems and a variety of private colleges, professional and career schools.

The Board neither governs postsecondary education systems the way the Board of Regents governs the University of Minnesota nor operates institutions such as Moorhead State University. Instead, the Board administers a variety of functions that span all Minnesota postsecondary education.

Among its functions, the Board conducts research and policy analysis, provides consumer protection, regulates and licenses institutions, administers programs to students, parents, and institutions, and provides leadership on issues related to postsecondary education.

Part 4890.0200 Definitions.

Proposed rule

Subpart 1. **Scope.** For the purposes of this chapter, the following terms have the meanings given them unless otherwise indicated.

Subp. 2. **Board.** "Board" means the Minnesota Higher Education Coordinating Board.

Subp. 3. **Clock hour.** "Clock hour" has the meaning given it in Code of Federal Regulations, title 34, section 600.2.

Subp. 4. **Cohort.** "Cohort" means the graduates of a program during the 12-month period from July 1 of one calendar year through June 30 of the next calendar year.

Subp. 5. **Educational program.** "Educational program" has the meaning given it in Code of Federal Regulations, title 34, section 600.2.

Subp. 6. **Enrolled.** "Enrolled" has the meaning given it in Code of Federal Regulations, title 34, section 668.2, paragraph (b).

Subp. 7. **Institution.** "Institution" has the meaning of the types of institutions given in Code of Federal Regulations, title 34, part 600.

Subp. 8. **Licensure or other certification.** "Licensure or other certification" means an explicit credential based on assessed competence or other procedure, possession of which is required for an individual to practice a particular profession or engage in a particular occupation or trade.

Subp. 9. **Professional program.** "Professional program" has the meaning given it in Code of Federal Regulations, title 34, section 667.2, paragraph (c).

Subp. 10. **Referred institution.** "Referred institution" has the meaning given it in Code of Federal Regulations, title 34, section 667.2, paragraph (c).

Subp. 11. **Refund policy.** "Refund policy" means an established policy or policies of an institution governing the specific portion of tuition and fees that are refundable at specific periods of an enrollment period, and the specific manner in which a student may obtain a refund upon withdrawal from the institution.

Subp. 12. **Title IV.** "Title IV" means that portion of the Higher Education Act of 1965, Title IV, United States Code, title 20, subchapter IV, that establishes federal programs of financial assistance to students identified in Code of Federal Regulations, title 34, section 668.1, paragraph (c).

Subp. 13. **Tuition and fees.** "Tuition and fees" means the amount of money charged to students for instructional services. Tuition may be charged per term, per course, or per credit. Fees are those fixed sums charged to students for items not covered by tuition, excluding room and board, but required of such a large portion of all students that students who do not pay the charge are exceptions.

Subp. 14. **Vocational program.** "Vocational program" has the meaning given it in Code of Federal Regulations, title 34, section 667.2, paragraph (c).

Rationale THIS PART ESTABLISHES DEFINITIONS FOR TERMS USED THROUGHOUT THE PROPOSED RULE.

Subpart 1 establishes the scope of this part by assigning definitions in Subparts 2 through 14.

Subpart 2 defines "Board" as the Minnesota Higher Education Coordinating Board. This is a reasonable definition because Board is an abbreviation that facilitates reading the proposed rule.

Subpart 3 defines "clock hour" as the meaning given it in CFR Title 34, Sec. 600.2. This is a reasonable definition because it already exists in federal regulations for Title IV programs and does not require additional language.

Subpart 4 defines "cohort" as the graduates of a program during the 12-month period from July 1 of one calendar year to June 30 of the next calendar. This is a reasonable definition because it establishes a group of graduates whose characteristics can be subject to statistical analysis and it relates the group to a specific academic year, which is a common way of aggregating information for analysis in postsecondary education.

Subpart 5 defines "educational program" as the meaning given it in CFR Title 34, Sec. 600.2. This is a reasonable definition because it already exists in federal regulations for Title IV programs and does not require additional language.

Subpart 6 defines "enrolled" as the meaning given it in CFR Title 34, Sec. 668.2, par. (b). This is a reasonable definition because it already exists in federal regulations for Title IV programs and does not require additional language.

Subpart 7 defines "institution" as the meaning given it in CFR Title 34, part 600. This is a reasonable definition because it already exists in federal regulations for Title IV programs and does not require additional language.

Subpart 8 defines "licensure or other certification" as an explicit credential based on assessed competence or other procedure, possession of which is required for an individual to practice a particular profession or engage in a particular occupation or trade. This is a reasonable definition because it appropriately applies the definitions of license and certification to preparation for employment in regulated occupations.

Subpart 9 defines "professional program" as the meaning given it in CFR Title 34, Sec. 667.2, par. (c). This is a reasonable definition because it already exists in federal regulations for Title IV programs and does not require additional language.

Subpart 10 defines "referred institution" as the meaning given it in CFR Title 34, Sec. 667.2, par. (c). This is a reasonable definition because it already exists in federal regulations for Title IV programs and does not require additional language.

Subpart 11 defines "refund policy" as an established policy or policies of an institution governing the specific portion of tuition and fees that are refundable at specific periods of an enrollment period, and the specific manner in which a student may obtain a refund upon withdrawal from the institution. This is a reasonable definition because it requires an institution to establish a policy or policies, which implies a statement that is clearly articulated; permits the institution to define the policy; implicitly recognizes institutional prerogatives to offer partial refunds as time passes; and requires the policy to include an explanation of how students may obtain refunds.

Subpart 12 defines "Title IV" as that portion of the Higher Education Act of 1965, Title IV, United States Code, Title 20, Subchapter IV, that establishes federal programs of financial assistance to students identified in CFR Title 34, Sec. 668.1, par. (c). This is a reasonable definition because Title IV is an abbreviation that facilitates reading the proposed rule.

Subpart 13 defines "tuition and fees" as the amount of money charged to students for instructional services. Tuition may be charged per term, per course, or per credit. Fees are those fixed sums charged to students for items not covered by tuition, excluding room and board, but required of such a large portion of all students that students who do not pay the charge are exceptions. This is a reasonable definition because it is commonly accepted.

Subpart 14 defines "vocational program" as the meaning given it in CFR Title 34, Sec. 667.2, par. (c). This is a reasonable definition because it already exists in federal regulations for Title IV programs and does not require additional language.

To summarize this subpart, definitions for the following terms are taken verbatum from existing federal regulations:

Clock hour
Educational program
Enrolled
Institution
Professional program
Referred institution
Vocational program

Definitions of the following terms are not taken verbatum from federal regulations. They constitute new language to better define terms used throughout the proposed rule:

Board
Cohort
Licensure or other certification
Refund policy
Title IV
Tuition and fees

Part 4890.0300 Review Criteria.

Proposed rule

The board shall review institutions pursuant to Code of Federal Regulations, title 34, sections 667.5 and 667.6.

Rationale THE PROPOSED RULE LANGUAGE DOES NOT IMPOSE ANY ADDITIONAL STATE REQUIREMENT TO FEDERAL LAW OR REGULATION.

There are two ways that an institution may be referred for review by a SPRE. These procedures are established in the HEA (20 U.S.C. 1099a-3) and repeated in the Secretary's final regulation; an institution may be referred by the Secretary for review, or a SPRE may request the Secretary to approve the review of an institution. The federal regulation concerning the review of institutions originated by the Secretary is found in CFR Title 34, Sec. 667.5. The federal regulation concerning the review of institutions originated by the SPRE is found in CFR Title 34, Sec. 667.6.

CFR Title 34, Sec. 667.5 Sec. 667.5(a) of the federal regulation establishes the process to be used by the Secretary to select postsecondary institutions to be referred for a possible review. CFR Title 34, Sec. 667.5 par. (b), lists the 11 criteria to be used by the Secretary to select institutions to be referred for review. In CFR Title 34, Sec. 667.5 par. (c), (d), and (e), the Secretary establishes procedures that an institution must follow to challenge the Secretary's intention to refer for review, and documentation requirements for an institution to challenge a referral.

CFR Title 34, Sec. 667.5 par. (a) requires that the Secretary determine prior to referring an institution, using the most recently available data, that the institution meets one or more of the 11 criteria listed in CFR Title 34, Sec. 667.5 par. (b). The Secretary's authority to refer institutions is limited. Before an institution can be referred, the Secretary must determine, using the most recent data, that the institution meets one of the 11 criteria.

Periodically, the Secretary will provide lists of postsecondary institutions that the Secretary has determined met one or more of the 11 review criteria. The Board must conduct or coordinate a review of institutions referred by the Secretary based on the Board's priority system (for the Board's review standards and priority system, see Parts 4890.0500, and 4890.0600 respectively), to the extent that federal funds are available.

CFR Title 34, Sec. 667.6 Sec. 667.6 par. (a) establishes the process to be used by the Board to select postsecondary institutions for possible review. Before the Board can review an institution pursuant to CFR Title 34, Sec. 667.6, it must request approval from the Secretary to conduct a review. In CFR Title 34, Sec. 667.6 par. (b), the Secretary establishes procedures that require the Board to notify the affected

institution of its intention to request approval from the Secretary to conduct a review. Procedures are also established in CFR Title 34, Sec. 667.6 par. (c) and (d), for an institution to follow if it challenges the Board's intention to request the Secretary to approve a review of that institution.

The federal regulation specifies the conditions for SPREs to request the Secretary's approval to review an institution not referred by the Secretary. A request may be made if the SPRE either: 1) determines that an institution meets one or more of the referral criteria listed in CFR Title 34, Sec. 667.5 based on data available to the SPRE that is more recent than data available to the Secretary, or 2) has reason to believe that the institution is engaged in fraudulent practices.

It is reasonable to provide a SPRE the opportunity to request approval to review an institution if the SPRE has more recent data documenting that the institution meets one or more of the 11 referral criteria, or if the SPRE has reason to believe the institution is engaged in fraudulent practices. This provision allows a SPRE to react to more recent information and further reduce the potential that a postsecondary institution will be involved with fraud or abuse in the management of its Title IV programs.

The federal regulation includes the following procedures a SPRE must follow in order to request the Secretary's approval to review institutions:

1. The SPRE, before requesting approval to review a postsecondary institution, must notify the institution of its intention to request the Secretary for review approval, and the reasons for selecting the institution.

2. The SPRE must delay requesting the Secretary's approval if the institution, no later than seven days after it receives the notice, notifies the SPRE of its intent to challenge the accuracy of the SPRE's information on which the selection was based.

3. The institution must prove that the SPRE's information is inaccurate by submitting documentation that supports its challenge no later than 30 days after the institution receives the SPRE's notice.

4. The SPRE will request the Secretary's approval to review unless the institution convinces the SPRE that its request was based upon inaccurate information.

Review criteria The 11 criteria specified in CFR Title 34, Sec. 667.5 are listed in this part. They are not repeated in the proposed rule.

Criterion 1. *A cohort default rate as defined in CFR Title 34, Sec. 668.17, that is equal to or greater than 25 percent.*

The HEA requires the Secretary to determine if an institution participating in Title IV programs meets this criterion and, if it does, to refer that institution to the SPRE for review. A default rate equal to or greater than 25 percent is not grounds for disqualifying an institution from participating in Title IV programs, but this situation might indicate problems in managing or administering Title IV programs. A review would allow an examination of this situation. Several of the review standards established in Part 4890.0500 deal with administrative and procedural practices related to this criterion.

The 1992 Cohort Default rates, as reported by the USDE identified four Minnesota postsecondary institutions with default rates equal to or greater than 25 percent. One of these institutions no longer participates in any federal or state student loan program.

Criterion 2. *A cohort default rate as defined in CFR Title 34, Sec. 668.17 equal to or greater than 20 percent; and during the latest completed award year for which data are available:*

1) more than two-thirds of the institution's undergraduate students who were enrolled as at least half-time students received assistance under any regular Title IV program, except assistance received from the SSIG, NEISP, and Federal Plus programs; or

2) the amount that the institution's students received under Title IV programs, excluding funds from SSIG, NEISP, and Federal Plus programs, is equal to or greater than two-thirds of the institution's education and general expenditures.

The HEA requires the Secretary to determine if an institution participating in Title IV programs meets this criterion and, if it does, to refer that institution to the SPRE for review.

This criterion requires the Secretary to evaluate a postsecondary institution based on a combination of factors. The first combination involves an institution with a cohort default rate equal to or greater than 20 percent and where more than two-thirds of its undergraduate students who were enrolled as at least half-time students received assistance from Title IV programs, excluding assistance from the SSIG, NEISP, and Federal Plus programs.

The second combination involves an institution with a cohort default rate equal to or greater than 20 percent and where the amount that its students received under Title IV programs, excluding funds from the SSIG, NEISP, and Federal Plus programs, is equal to or greater than two-thirds of the institution's education and general expenditures.

The HEA requires the Secretary to determine if a postsecondary institution participating in Title IV programs meets either of these combinations. If it does, the Secretary is to refer that institution to the SPRE for review.

A default rate equal to or greater than 20 percent is not grounds for disqualifying an institution from participating in Title IV programs. It is reasonable that a cohort default rate equal to or greater than 20 percent in combination with either of the two situations just described, could indicate a potential logic for possible problems.

The 1992 Cohort Default rates, as reported by the USDE identified nine Minnesota postsecondary institutions, including the four in Criterion 1, with default rates of 20 percent or more. One of these institutions no longer participates in any federal or state student loan program.

Criterion 3. *The amount that the institution's students received under the Federal Pell Grant Program is equal to or greater than two-thirds of the institution's education and general expenditures.*

The HEA requires the Secretary to determine if an institution participating in Title IV programs meets this criterion and, if it does, to refer that institution to the SPRE for review.

This criterion requires the Secretary to refer institutions to the SPRE when the Secretary determines that the amount of federal Pell Grant program funds that the institution's students received is equal to or greater than two-thirds of the institution's education and general expenditures. Heavy reliance on

Pell Grant program funds does not automatically suggest that fraud or abuse has occurred. However, it is reasonable to use this criterion as an indicator of potential problems. A review of an institution will either remove or substantiate this concern.

Criterion 4. *The Secretary initiated a limitation, suspension, or termination action against the institution under CFR Title 34, Sec. 668, subpart G within the preceding five years.*

The HEA requires the Secretary to determine if an institution participating in Title IV programs meets this criterion and, if it does, to refer that institution for review.

The Secretary can initiate a limitation, suspension, or termination (LST) action as established in CFR Title 34, Sec. 668, Subpart G, against an institution, by complying with the requirements of CFR Title 34, Sec. 668.85 or 668.86. Each postsecondary institution participating in Title IV programs has signed an agreement with the Secretary that states the institution's acceptance of the requirements established in CFR Title 34, Sec. 668, Subpart G.

A limitation proceeding may be initiated by the Secretary, or a designated official, if the institution violates any provision of Title IV, or any regulatory agreement implementing Title IV. A limitation action allows the Secretary to limit the eligibility of an institution to participate in any or all of the Title IV programs. The limitation starts on the date specified by the Secretary, which must be at least 20 days after the Secretary mails the notice of the intent to impose a limitation.

A suspension proceeding may be initiated by the Secretary, or a designated official, if the institution violates any provision of Title IV, or any provision of any regulation or agreement implementing Title IV. A suspension action allows the Secretary to suspend the eligibility of an institution to participate in any or all of the Title IV programs. The suspension starts on the date specified by the Secretary, which must be at least 20 days after the Secretary mails the notice of the intent to impose a suspension.

A termination proceeding may be initiated by the Secretary, or a designated official, if the institution violates any provision of Title IV or any regulatory agreement implementing Title IV. A termination action allows the Secretary to terminate the eligibility of an institution to participate in any or all of the Title IV programs. The termination starts on the date specified by the Secretary, which must be at least 20 days after the Secretary mails the notice of the intent to impose a termination.

An initiation of an LST is the result of the Secretary's suspicion or documentation of administrative, financial, or accounting problems within an institution. If the Secretary initiates LST action against an institution, that institution has the right to request a hearing to contest the Secretary's LST action. If the institution does not request a hearing or if the Secretary's action is upheld, the LST goes into effect.

The initiation of an LST proceeding against an institution indicates that the Secretary is concerned about an institution's potential or actual non-compliance with federal regulations. It is reasonable that the Board be notified of LST actions initiated by the Secretary against an institution. It is also reasonable that if funds are available, the Board consider the institution for review based on its priority system.

Criterion 5. *An audit finding in the institution's two most recent audits under CFR Title 34, Sec. 668.23, that resulted in a required repayment by the institution of an amount greater than five percent of the funds the institution received under Title IV for any one award year covered by the audits.*

The HEA requires the Secretary to determine whether an institution participating in Title IV programs meets this criterion and, if it does, to refer that institution to the SPRE for review.

This criterion requires the institution's independent auditor to audit its compliance with applicable Title IV regulations. A determination by an institution's two most recent audits (required by CFR Title 34, Sec. 668.23) that the institution had to repay an amount greater than five percent of the Title IV funds received for any one award year covered by those audits might be an indicator of potential problems with the institution's administration of Title IV programs. Potential problems include, but are not limited to, unsound administrative practices, negligence, fraud, or abuse. A purpose of the federal regulations is to prevent fraud and abuse in Title IV programs. It is reasonable to review an institution that had repayments greater than five percent of the Title IV funds received for an award year.

Criterion 6. *A citation of an institution by the Secretary for its failure to submit acceptable audit reports by the deadlines established in CFR Title 34, Sec. 668.23.*

The HEA requires the Secretary to determine whether an institution participating in Title IV programs meets this criterion and, if it does, to refer that institution to the SPRE for review.

The audits pursuant to CFR Title 34, Sec. 668.23 require the institution's independent auditor to audit its compliance with applicable Title IV regulations. Non-compliance with the audit deadlines established in this regulation may indicate a problem with the institution's administration of Title IV programs. Potential problems include, but are not limited to, unsound administrative practices, negligence, fraud, or abuse.

Criterion 7. *A year-to-year fluctuation of more than 25 percent in the amounts received by students enrolled at the institution from either Federal Pell Grant, Federal Stafford Loan, or Federal Supplemental Loans to Students programs, which are not accounted for by changes in these programs.*

The HEA requires the Secretary to determine whether an institution participating in these three Title IV programs meets this criterion and, if it does, to refer that institution to the SPRE for review.

This criterion requires the Secretary to evaluate an institution based on three factors:

1. The amount that an institution's students received under the Federal Pell Grant program during any award year. If the amount differs by more than 25 percent from the amount that the institution's students received under that program in the preceding award year it would meet this criterion, unless changes in that program can account for the difference.

2. The amount that an institution's students received under the Federal Stafford Loan program during any award year. If the amount differs by more than 25 percent from the amount that the institution's students received under that program in the preceding award year it would meet this criterion, unless changes in that program can account for the difference.

3. The amount that an institution's students received under the Federal Supplemental Loans to Students (SLS) program during any award year. If the amount differs by more than 25 percent from the amount that the institution's students received under that program in the preceding award year it would meet this criterion, unless changes in that program can account for the difference.

A variance of 25 percent or greater in awards of Federal Pell Grant, Stafford Loan, or SLS program funds by an institution's students may indicate unusual circumstances regarding the use of Title IV programs at the institution. These circumstances could include potential problems such as unsound administrative practices, negligence, fraud, or abuse. A review could determine the reasons for the variation.

Criterion 8. *Failure to meet the factors of financial responsibility in CFR Title 34, Sec. 668, Subpart B.*

The HEA requires the Secretary to determine if an institution participating in Title IV programs meets this criterion and, if it does, to refer that institution to the SPRE for review.

The factors of financial responsibility in CFR Title 34, Sec. 668, Subpart B, establish standards that an institution must meet in order to participate in any Title IV program. Non-compliance with these standards by an institution or with any applicable standards by a third-party servicer that contracts with the institution may subject the institution or servicer, or both, to proceedings under CFR Title 34, Sec. 668, Subpart G. These proceedings may lead to emergency action, imposition of a fine, or limitation, suspension, or termination of participation in Title IV programs.

Listed below are sections of CFR Title 34, Sec. 668, Subpart B, that are part of the proposed Minnesota standards:

CFR Title 34, Sec. 668.14	Program participation agreement (Standards 7, 8, 10 and 12);
CFR Title 34, Sec. 668.15	Factors of financial responsibility (Standards 5 and 10);
CFR Title 34, Sec. 668.16	Standards of administrative capability (Standards 1, 3, 5, 7, 10 and 14);
CFR Title 34, Sec. 668.22	Institutional refunds and repayments (Standard 13);
CFR Title 34, Sec. 668.23	Audits, records, and examination (Standard 3).

It is reasonable to use this criterion to identify institutions for referral because the Secretary is already required by federal law to monitor an institution's financial responsibility.

Criterion 9. *A change of ownership of the institution that results in a change of control as defined in CFR Title 34, Sec. 600.1.*

The HEA requires the Secretary to determine whether an institution participating in Title IV programs meets this criterion and, if it does, to refer that institution to the SPRE for review.

It is reasonable to review an institution when a change in ownership results in a change of control. Certain types of fraud or abuse are more likely at the time of sale (asset liquidation or transfer) or immediately after a sale (asset stripping) than during other periods of ownership. Reviewing an institution when ownership changes might reduce the potential for fraud or abuse.

A review at the time of change in ownership can also aid the new owner to understand what is involved in compliance with all federal laws, regulations, and rules concerning the various Title IV programs in which the institution participates.

Criterion 10. *Except with regard to any public institution that is affiliated with a State system of higher education, the institution has participated for less than five years in the Federal Pell Grant, Federal Family Education Loan, Federal Supplemental Educational Opportunity Grant, Federal Work-Study, or Federal Perkins Loan programs.*

The HEA requires the Secretary to identify institutions that have participated for fewer than five years in the Title IV programs listed, and to refer those institutions to the SPRE for review.

Public institutions affiliated with a state system of higher education are not affected by this criterion. Other institutions that have participated less than five years may be referred by the Secretary to the SPRE for review. Pursuant to CFR Title 34, Sec. 667.23 par. (a)(2) the Secretary may choose not to refer an institution to a SPRE if that institution meets only Criterion 10 and if the institution has previously been reviewed by the SPRE.

It is reasonable to assume that private institutions with more than five years of participation in Title IV programs have the necessary administrative experience to prevent mismanagement of Title IV programs and have the financial capacities to meet the requirements of CFR Title 34, Sec. 668, Subpart B. It is also reasonable to review an institution during the first five years of participation to provide an opportunity to discover and correct any problems resulting from inexperience in administering Title IV programs.

Criterion 11. *The institution has been subject to a pattern of complaints from students related to its management or conduct of Title IV programs, or misleading or inappropriate advertising and promotion of the institution's educational programs that, in the Secretary's judgement, is sufficient to warrant review.*

The HEA requires the Secretary to determine if an institution participating in Title IV programs meets this criterion and, if it does, to refer that institution to the SPRE for review.

The HEA requires the Secretary to determine if a pattern of complaints warrants review by the SPRE. The Secretary may determine this based on information available to the Secretary or information provided by the SPRE. If a review is warranted, the Secretary is required to refer that institution to the SPRE for review.

The types of student complaints used by the Secretary to establish a pattern are limited to those regarding the institution's management or conduct of its Title IV programs, or regarding misleading or inappropriate advertising and promotion of the institution's educational programs.

This criterion allows the Secretary to refer an institution for review based on information available to the Secretary, including information received from the SPRE, that a pattern of complaints has been established and the Secretary believes the pattern warrants review.

Appeal to the Secretary

CFR Title 34, Sec. 667.5 par. (c), (d), and (e), establish an appeal process an institution must follow if it chooses to appeal the Secretary's intended referral. The federal regulations also establish requirements concerning documentation the institution must submit if it appeals the Secretary's intended referral. The appeal process available to an institution, pursuant to CFR Title 34, Sec. 667.5 par. (c) and (d) includes requirements that:

1. the Secretary must notify the institution of the intended referral and the reasons for the referral before referring the institution to the SPRE;

2. the Secretary must delay the referral if the institution, no later than seven days after it receives the Secretary's notice, notifies the Secretary of its intent to challenge the accuracy of the Secretary's information;

3. the institution must prove that the Secretary's information is inaccurate by submitting documentation to support its challenge no later than 30 days after the institution receives the Secretary's notice. If the institution challenges the accuracy of its default rate for a particular year under CFR Title 34, Sec. 668.17 par. (d)(1)(i)(A) and (B), it must file a timely appeal of that rate under those provisions; and

4. if the institution challenges its referral in a timely manner, the Secretary will refer the institution to the SPRE, unless the institution convinces the Secretary that its referral was based upon inaccurate information for all of the referral criteria.

It is reasonable to require the Secretary to inform the institution that it will be referred to the SPRE for review, and to provide reasons for which the institution will be referred. It is also reasonable to afford the institution an opportunity to present the Secretary with additional information.

To summarize this part of the proposed rule, the Board is not placing any additional requirements on institutions. All requirements for referring institutions, or asking the Secretary to approve a review, are established in federal law or regulation.

Part 4890.0400 Board Review.

Proposed rule

The board shall review an institution pursuant to part 4890.0300 according to the standards in part 4890.0500. The review of each standard shall be based on information from the most recently completed academic year for which information regarding that standard exists unless otherwise required under this chapter, or as required by the secretary of the United States Department of Education.

Rationale: ALL STANDARDS ARE SPECIFIED IN FEDERAL LAW AND REGULATION.

For 12 of the 14 review standards, the Secretary stated an expectation that specific existing federal regulations be incorporated. Compliance with these existing federal requirements will satisfy all or part of the proposed review standards. The Secretary did not specify federal regulations for two standards. For these two standards, the Board applied state law or rule, or established all new language.

Part 4890.0500 Review Standards.

This section discusses each of the 14 review standards. For the reader, as per the format used by the Revisor of Statutes, the entire rule is in **chapter** 4890.0000. The chapter contains **subparts** (1., 2., etc.). Subparts may contain **items** (A., B., etc.). Items may contain **subitems** [(1), (2), etc.], which may contain **units** [(a), (b), etc.] and **subunits** [(i), (ii), etc.]. These terms are used throughout this document to refer the reader to the appropriate section of the proposed rule.

Table 2 lists the review standards and the Secretary's guidance for each standard, as provided through the Notice of Proposed Rule Making, the final regulation, and a letter from Ken Waters, USDE. Table 2 includes a column with the proposed Minnesota review standard requirements. Some federal regulations underwent codification changes, e.g., the section number cited in the Notice of Proposed Rule Making may have changed. An analysis of the renumbered regulations is attached to this document (Appendix B).

TABLE 2. FEDERAL AND STATE REGULATIONS INCORPORATED INTO MINNESOTA REVIEW STANDARDS

Review Standard	Notice of Proposed Rulemaking January 24, 1994	Final Regulations[1] April 29, 1994	Guidance from Secretary: Ken Waters' letter September 30, 1994	Proposed Minnesota Standard
Standard 1: Consumer Information	34 CFR 668.14[2] 34 CFR 668.15[3] 34 CFR 668, subpart D 34 CFR 668, subpart F		34 CFR 668.16(h) 34 CFR 668, subpart D 34 CFR 668, subpart F HEA, 485(a)	34 CFR 668.16 34 CFR 668.41-668.45 34 CFR 668.71-668.75 HEA, 485(a)
Standard 2: Ability to Complete	HEA, 484(d)		34 CFR 668.7(b)	HEA, 484(d) 34 CFR 668.7(b)
Standard 3: Standards of Progress and Student Records (a) Maintenance and Enforcement Related to Academic Progress (b) Maintenance of Student and Other Records	34 CFR 668.14[2] 34 CFR 668.23		34 CFR 668.7(c) 34 CFR 668.16(e) 34 CFR 668.23(h) 34 CFR 668.36	34 CFR 668.7(c) 34 CFR 668.16(e) 34 CFR 668.23 34 CFR 668.36 34 CFR 668.43(c)(2)
Standard 4: Safety and Health				
Standard 5: Fiscal and Administrative Capability	34 CFR 668.13[4] 34 CFR 668.14[2] HEA, part H, subpart 3		34 CFR 668.15 34 CFR 668.16	34 CFR 668.15 34 CFR 668.16
Standard 6: Student Protection for At-Risk Institutions (a) Provisions in the Event the Institution Closes (b) Provisions for the Retention and Accessibility of Financial Aid Records (c) Provisions for the Retention and Accessibility of Academic Records for Students.		34 CFR 668.15	34 CFR 668.15	34 CFR 668.15 34 CFR 668.23 subpart 3, item B of rule

Review Standard	Notice of Proposed Rulemaking January 24, 1994	Final Regulations[1] April 29, 1994	Guidance from Secretary: Ken Waters' letter September 30, 1994	Proposed Minnesota Standard
Standard 7: Vocational Program Tuition and Fees (a) The Relationship of the Tuition and Fees to Remuneration (b) The Relationship of Vocational Programs to Providing the Student with Quality Training and Useful Employment in Recognized Occupations in the State	34 CFR 668.14[2] 34 CFR 600, subpart A		34 CFR 668.14(b)(26) 34 CFR 600.4-600.6	34 CFR 667.2(c) 34 CFR 668.2(b) 34 CFR 668.14(b)(26) 34 CFR 668.16 34 CFR 600.1-600.11
Standard 8: Availability of Relevant Information	HEA, 487(a)(8)[5] HEA, 487(a)(20)[6]		34 CFR 668.14(b)(10) 34 CFR 668.74	34 CFR 668.14(b)(10) 34 CFR 668.14(b)(22) 34 CFR 668.74
Standard 9: Appropriate Program Length	34 CFR 668.8 34 CFR 668.9		34 CFR 668.8 34 CFR 668.8(d)	34 CFR 668.8 34 CFR 668.9
Standard 10: Administrative Integrity	34 CFR 668.13[4] 34 CFR 668.14[2] 34 CFR 600.30		34 CFR 668.14(b)(18) 34 CFR 668.15(c)(1)(i) 34 CFR 668.82(d)	34 CFR 668.14(b)(18) 34 CFR 668.15 34 CFR 668.16 34 CFR 668.82(d) 34 CFR 600.30
Standard 11: Student Complaint Process				
Standard 12: Student Recruitment Process	HEA, 487(a)(8)[5] HEA, 487(a)(20)[6]		34 CFR 668.14(b)(10) 34 CFR 668.14(b)(22) 34 CFR 668, subpart F	34 CFR 668.14(b)(10) 34 CFR 668.14 (b)(22) 34 CFR 668.71-668.75
Standard 13: Refund Policy	HEA, 484B[7]		34 CFR 668.22 34 CFR 668 Appendix A	34 CFR 668.22(b) 34 CFR 668 Appendix A M.S. section 141.271 part 2644.0650

Review Standard	Notice of Proposed Rulemaking January 24, 1994	Final Regulations[1] April 29, 1994	Guidance from Secretary: Ken Waters' letter September 30, 1994	Proposed Minnesota Standard
Standard 14: Performance Outcomes (a) Completion and Graduation, (b) Withdrawal Rates (c) Rates of Placement (d) Graduates Pass Licensure Examinations (e) Variety of Student Completion Goals	HEA, 481(e)(2)[8] 34 CFR 668.15 HEA, 485(a)	NOICC Crosswalk	34 CFR 668.8(e) 34 CFR 668.8(f) 34 CFR 668.8(g) 34 CFR 668.16(l) HEA, 485(a)(1)(L) HEA, 485(a)(3)	34 CFR 668.8(e)(1)(i) 34 CFR 668.8(e)(1)(ii) 34 CFR 668.16(l) 34 CFR 668.46 HEA, 485(a)(1)(l) NOICC Crosswalk

Source: Minnesota Higher Education Coordinating Board, 1994

[1] The Secretary referred to the discussion of the January 24, 1994, NPRM for issues not repeated in the final rule.
[2] became 34 CFR 668.16.
[3] became 34 CFR 668.17; however, in its restructuring the regulation changed; it no longer applies to this standard.
[4] became 34 CFR 668.15.
[5] codified in 34 CFR 668.14(b)(10).
[6] codified in 34 CFR 668.14(b)(22).
[7] codified in 34 CFR 668.22.
[8] codified in 34 CFR 668.8.

All review standards are established in CFR Title 34, Sec. 667.21. The Secretary lists 17 items that are derived from 14 items in the HEA. The Board combined the Secretary's 17 standards into 14, in conformance with the language in the HEA. For example, standard 1 in the CFR addresses information available to students, and standard 2 addresses the accuracy of information. As in the HEA language, the Board combined these two as standard 1.

Standard 1: **Subp. 1. Consumer Information.**

Proposed rule

The board shall review an institution for:

A. the availability of catalogs, admission requirements, course outlines, schedules of tuition and fees, policies regarding course cancellations, and the rules and regulations of the institution relating to students; and

B. the accuracy of catalogs and course outlines in reflecting the courses and programs offered by the institution. To be in compliance with this subpart, the institution must meet the requirements in:

(1) Code of Federal Regulations, title 34, section 668.16, Standards of administrative capability;

(2) Code of Federal Regulations, title 34, sections 668.41 to 668.45, Student consumer information services;

(3) Code of Federal Regulations, title 34, sections 668.71 to 668.75, Misrepresentation; and

(4) Higher Education Act of 1965, Title IV, United States Code, title 20, section 1092, paragraph (a), Information dissemination activities.

Federal Requirements CFR Title 34, Sec. 668.16, Standards of administrative capability.
CFR Title 34, Sec. 668.41 to 668.45, Student consumer information services.
CFR Title 34, Sec. 668.71 to 668.75, Misrepresentation.
HEA Title IV, USC Title 20, Sec. 1092, par. (a), Information dissemination activities.

Rationale THE PROPOSED RULE LANGUAGE DOES NOT IMPOSE ANY ADDITIONAL STATE REQUIREMENT TO THE FEDERAL LAW OR REGULATION.

In the January 24, 1994, Notice of Proposed Rule Making, the Secretary advised states in developing SPRP standards to take into consideration the standards and requirements institutions must satisfy in order to participate in Title IV programs before increasing the burden on those institutions by adopting entirely new standards. At the same time, the Secretary advised states to avoid establishing standards that are weaker than similar Title IV program standards that an institution must otherwise satisfy. The proposed standard follows the Secretary's guidance and does not impose any new requirements on institutions. This standard relates directly to the availability and accuracy of information provided to current and prospective students about the institution, its programs, and its policies. All requirements of this subpart are existing federal regulations that institutions participating in Title IV programs are required to satisfy.

Item A establishes that the Board shall review an institution regarding the availability of catalogs, admission requirements, course outlines, schedules of tuition and fees, policies regarding course cancellations, and the rules and regulations of the institution relating to students. Item B establishes that the Board will review an institution regarding the accuracy of catalogs and course outlines in reflecting the courses and programs offered by the institution. Items A and B establish four criteria for institutional compliance with this subpart.

Subitem (1) requires that institutions comply with the standards of administrative capability as established in CFR Title 34, Sec. 668.16. CFR Title 34, Sec. 668.16 par. (h), establishes provisions for counseling students and providing information regarding standards for satisfactory progress, the institution's refund policy, and financial aid information. It is reasonable to expect an institution to comply with an existing federal regulation. In addition, the Secretary has stated an expectation that this regulation be a basis for this review standard.

Subitem (2) requires that institutions comply with the student consumer information services requirements established in CFR Title 34, Sec. 668.41 to 668.45 This federal regulation describes an institution's responsibilities regarding the preparation, publication, and dissemination of information it provides to current and prospective students related to: financial assistance available to students enrolled at the institution, the cost of attending the institution, institution refund policies, the academic programs of the institution, and institutional accreditation, approval, and licensure. It is reasonable to expect an institution to prepare, publish, and distribute information to students and prospective students that is required for compliance with this federal regulation. In addition, the Secretary has stated an expectation that this regulation be a basis for this review standard.
Subitem (3) requires that institutions comply with the misrepresentation requirements established in

CFR Title 34, Sec. 668.71 to 668.75. This federal regulation addresses substantial misrepresentation made by an institution regarding the nature of its educational programs, its financial charges, or the employability of its graduates; procedures for investigating written allegations or complaints about institutions regarding institutional misrepresentation; and the action that can be taken by the Secretary against institutions in the event allegations are substantiated. This section of the standard is reasonable because an institution should be responsible for providing accurate and truthful information to currently enrolled students and prospective students regarding its educational programs and financial charges, and the employability of its graduates. If institutional representatives engage in substantial misrepresentation of the institution's programs, financial charges, or employability of its graduates, students and prospective students may make decisions about their education based on erroneous information. Student enrollment decisions should be based on accurate and truthful information. It is reasonable to expect an institution to adhere to this federal regulation. In addition, the Secretary has stated an expectation that this regulation be a basis for this review standard.

Subitem (4) requires that institutions comply with the information dissemination activities established in HEA Title IV, USC Title 20, Sec. 1092, par. (a). This federal law establishes criteria regarding: the production, availability, and dissemination of information to currently enrolled and prospective students related to student financial assistance programs available to students enrolled at the institution; method of distributing financial assistance; application procedures to obtain financial assistance; rights and responsibilities of students receiving financial assistance; the cost of attending the institution; refund policies; academic programs at the institution; facilities and services available to handicapped students; institutional accreditation, approval, and licensure; satisfactory progress standards; completion or graduation rate of undergraduate students entering the institution; deferral of repayment or partial cancellation of guaranteed student loans; study abroad; and the names and locations of employees of the institution responsible for assisting students in obtaining financial assistance. This information needs to be available to current and prospective students in order to help students make informed decisions about their education and to understand the financial obligations incurred as a result of their decisions. It is reasonable to expect an institution to adhere to this federal regulation. In addition, the Secretary has stated an expectation that this regulation be a basis for this review standard.

Standard 2: Subp. 2. Ability to Complete.

Proposed rule

The board shall review an institution's method of assessing a prospective student's ability to successfully complete an educational program for which the prospective student has applied. To be in compliance with this subpart, the institution must meet the requirements in:

A. Code of Federal Regulations, title 34, section 668.7, paragraph (b), Ability to benefit; and

B. Higher Education Act of 1965, Title IV, United States Code, title 20, section 1091, paragraph (d).

Federal Requirements	CFR Title 34, Sec.668.7 (b), Ability to benefit. HEA Title IV, USC, Title 20, section 1091 (d).
Rationale	THE PROPOSED RULE LANGUAGE DOES NOT IMPOSE ANY ADDITIONAL STATE REQUIREMENTS TO FEDERAL REGULATION.

Subpart 2 establishes that an institution will provide assurance that it has and uses adequate methods to assess a student's ability to complete the programs it offers, and establishes two criteria for institutional compliance.

Item A requires that an institution establish and administer methods for assessing a student's ability to successfully complete an educational program. This item requires that an institution comply with federal regulations established in CFR Title 34, Sec. 668.7, par.(b), regulations with which it must comply to maintain eligibility for Title IV funding. This item requires no new data collection on the part of an institution or the Board. It is reasonable to expect an institution participating in Title IV programs to assess the ability of students before providing financial aid. To assess a student's ability to complete, an institution must use an assessment method that has been approved by the Secretary. It is reasonable to expect an institution to adhere to this federal regulation. In addition, the Secretary has stated an expectation that this regulation be a basis for this review standard.

Item B requires that an institution's methods for assessing a student's ability to successfully complete an educational program comply with federal regulations established in HEA Title IV, USC, Title 20, section 484(d), regulations with which it must comply to maintain eligibility for Title IV funding.

This item requires no new data collection on the part of an institution or the Board. It is reasonable to expect an institution participating in Title IV programs to comply with either of the two standards specified in the HEA before providing financial aid. It is reasonable to expect an institution to adhere to this federal regulation. In addition, the Secretary has stated an expectation that this regulation be a basis for this review standard.

Requiring institutional assurance that a methodology is in place to assess student's ability does not preclude consideration of special need students. This standard is reasonable because it places no additional requirements on an institution.

Standard 3: Subp. 3. Standards of Progress and Student Records.

Proposed rule

A. The board shall review an institution's method of maintaining and enforcing standards related to student academic progress. To be in compliance with this item, the institution must meet the requirements in:

(1) Code of Federal Regulations, title 34, section 668.7, paragraph (c), Satisfactory progress;

(2) Code of Federal Regulations, title 34, section 668.16, paragraph (e), Standards of administrative capability;

(3) Code of Federal Regulations, title 34, section 668.23, Audits, records, and examinations;

(4) Code of Federal Regulations, title 34, section 668.43, paragraph (c)(2), Financial assistance information; and

(5) Code of Federal Regulations, title 34, section 668.36, Record retention requirements.

B. The board shall evaluate an institution's method of maintaining adequate student records. To be in compliance with this item, an institution shall maintain permanent records for all students enrolled at any time. Permanent records include transcripts, documents, and files containing student data relating to periods of attendance, academic credits earned, courses completed, grades awarded, and degrees and other formal recognitions awarded.

(1) To preserve permanent student records, an institution shall:

(a) hold at least one copy of all records in a depository that is secure from fire damage, water damage, and theft;

(b) designate an appropriate official to provide a student with official copies of records or official transcripts upon request, consistent with the institution's policies;

(c) execute a binding agreement with another organization, acceptable to the board, complying with this item for at least 50 years from the day the institution ceases to exist; and

(d) if the institution has no binding agreement under unit (c) for preserving and providing official copies of student records under this item, the institution must hold a continuous surety bond in an amount not to exceed $20,000 to cover the projected costs of record administration by the board, or an entity designated by the board.

(2) When an institution decides to terminate postsecondary education operations, it must submit the following to the board:

(a) the planned date for termination of postsecondary education operations;

(b) the planned date for the transfer of permanent student records;

(c) the name and address of the entity to receive and hold the permanent student records; and

(d) the official of the entity receiving the permanent student records who is designated to provide official copies of records or transcripts upon request.

Federal Requirements

CFR Title 34, Sec. 668.7(c), Satisfactory progress.
CFR Title 34, Sec. 668.16(e), Standards of administrative capability.
CFR Title 34, section 668.23, Audits, records and examinations.
CFR Title 34, section 668.36, Record retention requirements.
CFR Title 34, section 668.43 par. (c)(2), Financial assistance information.

Rationale

ITEM A - THE PROPOSED RULE LANGUAGE DOES NOT IMPOSE ANY ADDITIONAL STATE REQUIREMENT TO THE FEDERAL LAW OR REGULATION.

ITEM B - THE PROPOSED RULE LANGUAGE IMPOSES AN ADDITIONAL STATE REQUIREMENT TO THE FEDERAL LAW OR REGULATION.

Subpart 3 establishes standards regarding academic progress of students and an institution's method of maintaining student records.

Item A establishes five criteria that the Board will review to determine an institution's method of maintaining and enforcing standards related to student academic progress. The requirements in this item do not impose additional state requirements to existing federal law or regulation. It is reasonable to use these requirements because institutions are required to comply with these regulations in order to maintain participation in Title IV programs. In addition, the Secretary stated an expectation that these five regulations be bases for this review standard.

Subitem (1) requires that an institution comply with federal regulations established in CFR Title 34, Sec. 668.7, par.(c), regulations with which it must comply to maintain eligibility for Title IV funding. This subitem requires no new data collection on the part of an institution or the Board. It is reasonable to expect an institution participating in Title IV programs to establish and enforce its satisfactory progress policy, and to determine that students are making satisfactory progress. In addition, the Secretary stated in federal regulation an expectation that this regulation be a basis for this review standard.

Subitem (2) requires that an institution comply with federal regulations established in CFR Title 34, Sec. 668.16, par.(e), regulations with which it must comply to maintain eligibility for Title IV funding. This subitem requires no new data collection on the part of an institution or the Board. It is reasonable to expect an institution participating in Title IV programs to establish, publish, and apply standards for measuring whether students are maintaining satisfactory progress in their educational programs. This federal regulation specifies eight elements an institution must include in its standards. In addition, the Secretary stated in federal regulation an expectation that this regulation be a basis for this review standard.

Subitem (3) requires that an institution comply with federal regulations established in CFR Title 34, Sec. 668.23, regulations with which it must comply to maintain eligibility for Title IV funding. This subitem requires no new data collection on the part of an institution or the Board. This federal regulation requires institutions to: 1) keep program and fiscal records in accordance with the program's requirements; 2) make those records available for review by the Secretary, representatives of the Secretary, other federal officials, and SPREs; and 3) have a compliance audit of its Title IV programs performed at least annually by an independent auditor. It is reasonable to expect an institution participating in Title IV programs to comply with these regulations. In addition, the Secretary stated in federal regulation an expectation that this regulation be a basis for this review standard.

Subitem (4) requires that an institution comply with federal regulations established in CFR Title 34, Sec. 668.43, par.(c)(2), regulations with which it must comply to maintain eligibility for Title IV funding. This subitem requires no new data collection on the part of an institution or the Board. It is reasonable to expect an institution participating in Title IV programs to provide information regarding the financial assistance available to its students. This information must describe the rights and responsibilities of students who receive financial aid. In addition, the Secretary stated in federal regulation an expectation that this regulation be a basis for this review standard.

Subitem (5) requires that an institution comply with federal regulations established in CFR Title 34, Sec. 668.36, regulations with which it must comply to maintain eligibility for Title IV funding. This subitem requires no new data collection on the part of an institution or the Board. It is reasonable to expect an institution participating in Title IV programs to include in each student's record the documents specified in this federal regulation. In addition, the Secretary has stated an expectation that this regulation be a basis for this review standard.

Item B establishes the Board's method for reviewing whether an institution maintains adequate student records. These records include academic credits earned, courses completed, grades awarded, degrees awarded, and periods of attendance. Each institution has an obligation to maintain academic records of each student, and to ensure that those records will be available to the student, other educational institutions, or employers throughout the student's lifetime.

Subitem (1) establishes four criteria that an institution must satisfy to preserve permanent student records. It is reasonable to assume that transcripts, documents, and files containing student data related to academic credits earned, courses completed, grades awarded, degrees awarded, and periods of attendance have an enduring value and utility for students, for such events as job applications or continuing education. This subitem is reasonable because it allows institutional discretion regarding the general form and substance of the institution's transcripts, documents, and files containing student data. This subitem, for example, enables institutions to establish and maintain either manual or electronic file systems.

Unit (a) establishes the requirement that permanent student records be held in a depository that is secure from fire and water damage, and theft. It is reasonable to expect an institution preserving permanent records to hold these in a secure depository to reduce tampering or destruction.

Unit (b) establishes the requirement that an institution designate an appropriate official to provide students with official records or transcripts upon request, consistent with the institution's policies. It is reasonable for each institution to designate an official to provide copies of transcripts upon request as this ensures accessibility of records. Without accessibility, student records have little or no value.

Unit (c) establishes that an institution must execute a binding agreement with another organization that will comply with this item for 50 years from the day the institution ceases to exist. It is reasonable for the Board to accept the arrangements regarding the binding agreement. The agreement must be reasonable and workable. It would be unreasonable to expect the Board to accept a binding agreement that has no probable chance of working, just as it would be unreasonable to allow institutions to close without arranging for student access to records. The proposed item allows each institution discretion as to how, when, where, and by whom records will be managed. This requirement is reasonable because it provides a guarantee that students and alumni can access their records.

Fifty years is a reasonable length of time because a student's needs for academic records may exist that long, i.e., between completion of a program and retirement from the workforce. Minnesota private proprietary institutions regulated by Minnesota Statutes, Chapter 141, are required to maintain permanent student records indefinitely.

Unit (d) establishes that if an institution has no binding agreement under unit (c) for preserving and providing official copies of student records under this item, the institution must hold a surety bond in an amount not to exceed $20,000 to cover the projected costs of record administration by the Board, or an entity designated by the Board. This alternative arrangement is a reasonable and necessary alternative because an institution might not be in position to negotiate a binding agreement. In this situation, the Board must be able to administer or arrange for alternative record maintenance and accessibility. When an institution ceases to function, its obligation to former and current students and their needs does not cease.

Subitem (2) establishes four criteria an institution must satisfy when it terminates postsecondary education operations. This requirement is reasonable because the Board must be informed in order to take appropriate action.

Unit (a) requires an institution to notify the Board of the planned date for termination of its operations. This is reasonable to allow the Board to assist the institution in whatever way possible, and to notify accrediting agencies and the Secretary of the institution's plans.

Unit (b) requires an institution to notify the Board of the planned date for the transfer of permanent records. This is reasonable because it will allow the Board to assist in a smooth transition of records and to assure the safety of the records.

Unit (c) requires an institution to notify the Board of the name and address of the entity to receive and hold the permanent student records. This is reasonable because it will allow the Board to contact the entity at the time the records are transferred and to enable consequent communication with the entity for various purposes.

Unit (d) requires an institution to notify the Board regarding the official of the entity receiving the permanent student records who is designated to provide official copies of records or transcripts upon request. This is reasonable because it will allow the Board to contact a designated official whenever communication is required regarding permanent student records.

Standard 4: **Subp. 4. Safety and Health**.

Proposed rule

The board shall review an institution's safety and health record. To be in compliance with this subpart, an institution must have no outstanding unresolved citations on the public record regarding any local, county, state, or federal safety or health law or regulation.

Federal Requirement: None given.

Rationale THE PROPOSED RULE LANGUAGE DOES NOT IMPOSE ANY ADDITIONAL STATE REQUIREMENT TO EXISTING FEDERAL, STATE, COUNTY OR LOCAL LAW OR REGULATION.

Subpart 4 establishes that the Board will review an institution to determine its safety and health record. Physical plants and facilities of Minnesota's postsecondary institutions are subject to a wide range of federal, state, county, or local laws and regulations. This subpart does not place additional

burdens on an institution or require new data collection by an institution or the Board. This subpart recognizes that students may be adversely affected by an institution's failure to comply with relevant safety and health standards, such as fire, building, and sanitation codes. This subpart is reasonable because the Board recognizes that local, state, and federal entities are responsible for enforcing code compliance, publishing notifications, and establishing remedial action or sanctions under the laws and regulations they administer.

Standard 5: **Subp. 5. Financial and Administrative Capacity.**

Proposed rule

A. The board shall review the financial capacity of an institution relative to its scale of operation and its method of keeping adequate financial and other information. To be in compliance with this item, an institution must meet the requirements in Code of Federal Regulations, title 34, section 668.15, Factors of financial responsibility.

B. The board shall review the administrative capacity of an institution relative to its specified scale of operations and its method of keeping adequate administrative information. To be in compliance with this item, an institution must meet the requirements in Code of Federal Regulations, title 34, section 668.16, Standards of administrative capability.

Federal Requirements CFR Title 34, Sec. 668.15, Factors of financial responsibility.
CFR Title 34, Sec. 668.16, Standards of administrative capability.

Rationale ITEMS A AND B: THE PROPOSED RULE LANGUAGE DOES NOT IMPOSE ANY ADDITIONAL STATE REQUIREMENT TO THE FEDERAL LAW OR REGULATION.

Subpart 5 establishes that the Board will review an institution to determine its financial and administrative capacity.

Item A establishes that the Board will review an institution's financial capacity relative to its scale of operations and its method of keeping adequate financial and other information. This item requires no new data collection on the part of an institution or the Board. This item requires that institutions comply

with the regulations established in CFR Title 34, Sec.668.15, regulations they must comply with to maintain eligibility for Title IV funding. In addition, the Secretary stated in federal regulation an expectation that this regulation be a basis for this review standard.

It is reasonable to expect that institutions maintain appropriate and accurate financial records. These records provide information to ensure that an institution has the financial capacity to provide the services it describes in it publications, that it is meeting its financial obligations, and that it is capable of meeting its future financial obligations. It would be unreasonable to allow an institution to participate in Title IV programs and have access to Title IV funds if it did not have the financial capability to provide the educational programs and support services that it advertises.

Item B establishes that the Board will review an institution's administrative capacity relative to its specific scale of operations and its method of keeping adequate administrative information. This item requires no new data collection on the part of an institution or the Board. This item requires that an institution comply with the federal regulations established in CFR Title 34, Sec. 668.16, regulations it must comply with to maintain eligibility for Title IV funding. In addition, the Secretary stated in federal regulation an expectation that this regulation be a basis for this review standard.

It is reasonable to expect that an institution participating in Title IV programs will possess adequate administrative capacity. If the administrative capability of the institution is not appropriate to its size and scale of operations and cannot maintain essential elements of information, there may be an environment conducive to fraud and abuse.

Standard 6: Subp. 6. Student Protection for At-Risk Institutions.

Proposed rule

A. The board shall review an institution's provisions to provide for instruction of students in the event the institution closes. If, during the review, an institution is determined to be financially at-risk by the board under subpart 5, item A, the board shall review the institution's compliance with the requirements in this subpart. To be in compliance with this item, an institution must have a plan that assures students that in the event the institution closes, further instruction is available. This plan must include:

(1) the name of other institutions that can provide educational programs substantially similar to those offered by the institution ceasing instruction; and

(2) a commitment by the institution ceasing instruction to fulfill the current term of enrollment without requiring students to incur an additional financial liability beyond that incurred by the students and clearly identified in the original student term of enrollment.

B. The board shall review an institution's method of providing for the retention and accessibility of financial aid records for students in the event the institution closes. To be in compliance with this item, the institution must meet the requirements in Code of Federal Regulations, title 34, section 668.23, Audits, records, and examinations.

C. The board shall review an institution's method of providing for the retention and accessibility of student academic records in the event the institution closes. To be in compliance with this item, the institution must meet the requirements in subpart 3, item B.

Federal Requirements CFR Title 34, Sec. 667.23, Audits, records and examinations.

Rationale

ITEM A - THE PROPOSED RULE LANGUAGE IMPOSES AN ADDITIONAL STATE REQUIREMENT TO FEDERAL LAW OR REGULATION.

ITEM B - THE PROPOSED RULE LANGUAGE DOES NOT IMPOSE ANY ADDITIONAL STATE REQUIREMENT TO THE FEDERAL LAW OR REGULATION.

ITEM C - THE PROPOSED RULE LANGUAGE IMPOSES AN ADDITIONAL STATE REQUIREMENT TO FEDERAL LAW OR REGULATION; IT REPEATS THE REQUIREMENT FOR COMPLIANCE WITH SUBPART 3, ITEM B.

Subpart 6 establishes the process that will prevail if an institution is determined to be financially at-risk by the Board under subpart 5, item A of this rule. If an institution is found to be financially at risk because of its financial and/or administrative capacity, the Board shall review the institution's compliance with the requirements of subpart 6. To be in compliance with item A of this subpart, an institution must have a plan that assures students further instruction is available if the institution closes. It is reasonable to require an institution to take specific actions to protect its students' educational and financial interests. It is also reasonable to require an institution to fulfill its contractual obligations to its students. Item A establishes two criteria that the Board will review to determine the institution's plan regarding students' ability to complete their programs.

Subitem (1) requires that an institution provide the name of other institutions that can provide educational programs substantially similar to those it offers. In the event the institution closes, it is reasonable for that institution to provide its students with the names of institutions that could provide similar educational programs.

Subitem (2) requires a commitment by the institution ceasing instruction to fulfill the current term of enrollment without requiring students to incur additional financial liability beyond what they incurred and was clearly identified in the original student term of enrollment. It is reasonable for students to be assured that the institution will provide its educational courses to the completion of the term students have paid tuition and fees.

Item B establishes that the Board will review the institution's method of providing for the retention and accessibility of student financial records in the event the institution closes. The requirements in this item do not impose any state requirements in addition to existing federal law or regulation as established in CFR Title 34, Sec. 668.23. This federal regulation requires institutions to: 1) keep program and fiscal records in accordance with the program's requirements; 2) make those records available for review by the Secretary, representatives of the Secretary, other federal officials, and SPREs ; and 3) have a compliance audit of its Title IV programs performed at least annually by an independent auditor. This item does not impose additional requirements on an institution regarding audits, records, or examinations. The regulations established in CFR Title 34, Sec. 668.23 are regulations an institution must comply with to maintain eligibility for Title IV funds.

Item C establishes that the Board will review the institution's method for retention and accessibility of student academic records in the event the institution closes. To be in compliance with this item the institution must meet the requirements of subpart 3, item B of this rule. It is reasonable to require an institution to meet these requirements because it does not impose additional requirements on an institution, and compliance will help protect students' interests.

Standard 7: <u>Subp. 7. Vocational Program Tuition and Fees.</u>

Proposed rule

A. <u>For the purposes of this subpart, the terms in subitems (1) and (2) have the meanings given them.</u>

(1) "Tuition and fees" means tuition and fees set by the institution and charged to a full-time student for the academic year as defined in Code of Federal Regulations, title 34, section 668.2, paragraph (b). For a program less than one year in length, the actual tuition and fees charged for the entire program applies.

(2) "Remuneration" means average annual salaries or wages for employment in specific trades, occupations, or specialty areas, that are related to a vocational program. Acceptable sources of documentation include:

(a) the most recent average wage according to Minnesota Salary Survey by Area 1990, issued by the Minnesota Department of Economic Security, August 1990, and incorporated by reference. It is available through the Minitex interlibrary loan system. It is subject to frequent change;

(b) the most recent data on wages according to the Dictionary of Occupational Titles, fourth edition, 1991, issued by the Bureau of Labor Statistics of the United States Department of Labor. The data on wages is incorporated by reference. It is available through the Minitex interlibrary loan system. It is subject to frequent change;

(c) projections by organizations or governmental units at the state or national level that specialize in employment and industries, expert opinion from refereed journals, and private for-profit or nonprofit organizations that specialize in providing employment and industry statistical projections; or

(d) actual earnings of an institution's most recent cohort of graduates for a program.

B. The board shall review the relationship between an institution's tuition and fees and the remuneration that can be reasonably expected by students who complete a vocational program and the quality of the educational preparation for useful employment. To be in compliance with this subpart, an institution must meet the requirements in items C and D and in:

(1) Code of Federal Regulations, title 34, section 667.2, paragraph (c), Vocational program;

(2) Code of Federal Regulations, title 34, section 668.16, Standards of administrative capability;

(3) Code of Federal Regulations, title 34, sections 600.1 to 600.11; and

(4) Code of Federal Regulations, title 34, section 668.14, Program participation agreement, paragraph (b)(26).

C. An institution's ratio of expected annual remuneration to tuition and fees must be at least 2 to 1 and the ratio must be disclosed in clear and unambiguous language to all students and prospective students. The ratio must be based upon tuition and fees in each program and expected remuneration for graduates of the program.

D. An institution must disclose to all students and prospective students of vocational programs the following information in clear and unambiguous language:

(1) evidence, including verified occupational placement, that employers accept the program as part of the criteria for entry into a job, position, career, or occupation;

(2) nationally recognized standards of quality training in the occupation or trade;

(3) trade, occupational, or professional organization information concerning preparation standards and occupational outcomes; or

(4) trade, occupational, or professional organizational standards for licensure or other certification.

Federal Requirements CFR Title 34, Sec. 667.2 par. (c), Vocational program.
CFR Title 34, Sec. 668.16, Standards of administrative capability.
CFR Title 34, sections 600.1 to 600.11.
CFR Title 34, Sec. 668.14, Program participation agreement par. (b)(26).

Rationale ITEMS A, C, AND D: THE PROPOSED RULE LANGUAGE IMPOSES AN ADDITIONAL REQUIREMENT TO THE FEDERAL LAW OR REGULATION.

ITEMS B AND E: THE PROPOSED RULE LANGUAGE DOES NOT IMPOSE ANY ADDITIONAL STATE REQUIREMENT TO FEDERAL LAW OR REGULATION.

Subpart 7 establishes the standards for an institution's disclosure of information on vocational programs regarding the relationship of tuition and fees to expected remuneration and the relationship of the programs to quality of training and usefulness of employment.

Item A establishes definitions for tuition and fees and for remuneration. The definitions are reasonable because they permit institutions to obtain data easily and allow comparisons of tuition and fees with remuneration.

Subitem (1) defines tuition and fees as tuition and fees, as defined in part 4890.0200, Subpart 13, for an academic year, as defined in CFR Title 34, Sec. 668.2 par. (b). This definition is reasonable because it expresses a logical relationship between existing definitions.

Subitem (2) defines remuneration as annual salaries or wages for employment in specific trades, occupations, or specialty areas that are related to an occupational program. It also identifies four acceptable sources of information on annual remuneration described in units (a) through (d). The definition is reasonable because it relates remuneration to a period of time in order to provide a measure of income over time and it relates remuneration to specific programs that may be subject to review. Use of the four sources of information is reasonable because Board staff developed them in consultation with the postsecondary community. The four sources include information on average remuneration among all workers, long-term as well entering, in an occupation, which is consistent with the concept of expected remuneration in item C. No other source of information emerged from the review and consultation. Permitting institutions to choose one of the four is reasonable because availability of information might differ by program and occupation and because institutions may determine that one type of information is better than others in measuring remuneration.

Unit (a) identifies as a source of information on remuneration the most recent average wage according to the *Minnesota Salary Survey by Area 1990* or the most recent sequel published by the Minnesota Department of Economic Security. Use of this source is reasonable because the publication has information on salaries in Minnesota where the majority of graduates of vocational programs in the state likely will find employment. This source is readily available to institutions.

Unit (b) identifies as a source of information on remuneration the most recent data on wages according to the *Dictionary of Occupational Titles, Fourth Edition, 1991* or the most recent sequel published by the Bureau of Labor Statistics of the United States Department of Labor. Use of this source is reasonable because the publication has information on wages nationally that may serve as a guide to wages by occupation in Minnesota. This source is readily available to institutions.

Unit (c) identifies as a source of information on remuneration projections by government units at the state or national level that specialize in employment and industries, expert opinion from refereed journals, and private for-profit or nonprofit organizations that specialize in providing employment and industry statistical projections. Use of these sources is reasonable because the sources are credible by virtue of the professional quality and independence from institutions.

Unit (d) identifies as a source of information on remuneration actual earnings of an institution's most recent cohort of graduates for a program. Use of this is reasonable because the information applies specifically to graduates of a program under review and the accuracy of the information provided by the institution is subject to review.

Item B establishes four elements, in addition to items C and D, as part of the standard. These elements are established in federal regulations. Use of these regulations is reasonable because compliance is a requirement for continued eligibility for participation in Title IV programs.

Subitem (1) requires compliance with CFR Title 34, Sec. 667.2, par. (c). Use of this regulation is reasonable because it includes the definition of vocational program, which the Secretary, in the Final Regulations of April 29, 1994, stated was the focus of this subpart. The definition also is incorporated in part 4890.0200, subpart 14.

Subitem (2) requires compliance with CFR Title 34, Sec. 668.16. Use of this regulation is reasonable because it has provisions about an institution's capability to administer Title IV programs. Use of this requirement also is reasonable because the Secretary expressed the expectation in the Final Regulations of April 29, 1994, and in the letter of Ken Waters of September 30, 1994, that it would be incorporated into the state standard.

Subitem (3) requires compliance with CFR Title 34, Sec. 600.1 to 600.11. Use of this regulation is reasonable because it has the definition of institution required for eligibility to participate in Title IV programs. Use of this definition also is reasonable because the Secretary expressed the expectation in the Final Regulations of April 29, 1994, and in the letter of Ken Waters of September 30, 1994, that it would be incorporated into the state standard. The definition also is incorporated in part 4890.0200, subpart 7.

Subitem (4) requires compliance with CFR Title 34, Sec. 668.14, par. (b) (26). Use of this regulation is reasonable because it has provisions about programs preparing students for employment. Use of this regulation also is reasonable because the Secretary expressed the expectation in the Final Regulations of April 29, 1994, and in the letter of Ken Waters of September 30, 1994, that it would be incorporated into the state standard.

Item C establishes the relationship of expected annual remuneration to tuition and fees as the ratio of the two. This item further establishes a threshold of 2:1 for that ratio for each vocational program. The item further requires the disclosure of this information to all students and prospective students. Use of a ratio is reasonable because it shows in simple, quantitative terms the relationship of a student's expected earnings for one year in an occupation to a student's expenditures for one year for a program that provides preparation for the occupation. Using tuition and fees for one year related to remuneration for one year is reasonable because this subpart applies only to vocational programs, many of which have a duration of one year or less. The threshold of 2:1 is reasonable because most

programs likely would equal or exceed it. Minimum annual remuneration for full-time employment would be $8,840, using the current minimum wage of $4.25 per hour and 40 hours of work per week for 52 weeks. It is reasonable to expect graduates of a program to earn at least minimum wage. Therefore, programs with tuition and fees of up to $4,420 would equal or exceed the threshold of 2:1. Higher tuition and fees should be commensurate with higher levels of preparation leading to employment with commensurately higher remuneration. Accordingly, the threshold would require programs with annual tuition and fees of $5,000 to prepare students for occupations with an annual remuneration of at least $10,000, and programs with annual tuition and fees of $7,500 to prepare students for occupations with annual remuneration of at least $15,000. The method for establishing remuneration allows institutions leeway because remuneration may be the average remuneration for all persons working at an occupation, and need not be limited to the remuneration for entering workers. Most graduates presumably would receive entry level wages. Disclosure is reasonable because students may use the information to make judgments about the return on investment in programs in which they spend their personal funds and Title IV funds.

Item D identifies four sources of information, at least one of which an institution must disclose to all students and prospective students, on the relationship of a vocational program to quality of training and useful employment. Use of the four sources of information is reasonable because they emerged from a review by Board staff, in consultation with the postsecondary community, of possible information that could be presented to students and prospective students. No other source of information emerged from the review and consultation. Permitting institutions to choose one of the four is reasonable because availability of information might differ by program and occupation and because institutions may determine that one source of information is better than others in demonstrating the relationship described in this item. Disclosure is reasonable because the information benefits students and prospective students who must make judgments about the value of programs in which they invest their personal funds and Title IV funds. The four sources of information appear in subitems (1) through (4).

Subitem (1) identifies as a source of information evidence, including occupational placement data, that verifies employers accept the program as part of the criteria for entry into a job, position, career, or occupation. Use of this information is reasonable because the evidence demonstrates that graduates of a program have adequate preparation for employment.

Subitem (2) identifies as a source of information nationally recognized standards of quality training in the occupation or trade. Use of this information is reasonable because nationally recognized standards serve as a basis for judging whether or not the content of a program provides adequate preparation for employment. Such standards, when they exist, should be readily available to an institution. Under subpart 1, item B, an institution is subject to review for the accuracy of catalogs and course outlines through which students and prospective students may learn about the content of a program.

Subitem (3) identifies as a source of information trade, occupational, or professional organization information concerning preparation standards and occupational outcomes. Use of this information is reasonable because such information serves as a basis for judging whether or not the content of a program provides adequate preparation for employment. Such information, when it exists, should be readily available to an institution. Under subpart 1, item B, an institution is subject to review for the accuracy of catalogs and course outlines through which students and prospective students may learn about the content of a program.

Subitem (4) identifies as a source of information trade, occupational, or professional organization standards for licensure or other certification. Use of this information is reasonable because nationally recognized standards serve as a basis for judging whether or not the content of a program provides adequate preparation for employment. Such standards, when they exist, should be readily available to an institution. Under subpart 1, item B, an institution is subject to review for the accuracy of catalogs and course outlines through which students and prospective students may learn about the content of a program.

Standard 8: Subp. 8. Availability of Relevant Information.

Proposed rule

The board shall review availability to an institution's students of relevant information regarding market and job availability for students in occupational, professional, and vocational programs, and the relationship of educational programs to specific standards necessary for state licensure or other certification in specific occupations. To be in compliance with this subpart, an institution must meet the requirements in:

A. Code of Federal Regulations, title 34, section 668.14, Program participation agreement, paragraph (b)(10) and (22);

B. Code of Federal Regulations, title 34, section 668.74, Employability of graduates; and

C. existing statute or rule pertaining to licensure or other certification in specific occupations.

Federal Requirements CFR Title 34, Sec. 668.14, Program participation agreement, par. (b)(10) and (22).

CFR Title 34, Sec. 668.74, Employability of graduates.

Rationale ITEM A AND B: THE PROPOSED RULE LANGUAGE DOES NOT IMPOSE ANY ADDITIONAL STATE REQUIREMENT TO FEDERAL LAW OR REGULATION.

ITEM C: THE PROPOSED RULE LANGUAGE IMPOSES AN ADDITIONAL STATE REQUIREMENT TO FEDERAL LAW OR REGULATION BY INCORPORATING EXISTING STATE LAWS AND RULES FOR COMPLIANCE WITH THE STANDARD.

Subpart 8 establishes requirements for occupational, professional, or vocational programs offered by an institution. This subpart does not impose any new requirements on institutions. Requirements for items A and B of this subpart are existing federal regulations that institutions participating in Title IV programs are required to satisfy in order to maintain participation. Item C incorporates existing Minnesota statutes and rules that institutions are required to satisfy if they offer programs leading to licensure or other certification in specific occupations.

Item A establishes that the Board will review an institution's practices regarding its occupational, professional, and vocational programs pursuant to CFR Title 34, Sec. 668.14 par. (b)(10) and (22). Paragraph (10) applies only to institutions advertising job placement rates as a means of attracting students to enroll at the institution. These institutions are required to make available to prospective students information necessary to substantiate the truthfulness of their advertisements. This regulation requires an institution to provide information to prospective students regarding relevant state licensing requirements for any job the institution purports its educational programs prepare students to obtain.

This requirement is reasonable because potential students should be provided truthful information regarding the employability of graduates. Potential students need truthful information to make informed decisions regarding their education and potential employability following graduation. Relevant state licensing standards for jobs for which an institution purports to prepare students should be available to potential students so that they can determine whether a specific program will prepare them to meet state licensing standards.

As established in CFR Title 34, Sec. 668.14 par. (b)(22), institutions may not make incentive payments based on success in securing enrollments or financial aid to individuals engaged in student recruiting or admission activities, or in making decisions regarding student financial aid awards. This is reasonable because individuals who receive incentive payments would be more inclined to attempt to enroll as many students as possible in order to receive financial rewards than would individuals who do not receive such payments. Attempting to secure more students may encourage individuals to make false statements regarding an institution or its programs.

Item B requires an institution to comply with federal regulations established in CFR Title 34, Sec. 668.74. The Board will review whether an institution misrepresents the employability of its graduates. Misrepresentation includes, but is not limited to false, erroneous, or misleading statements regarding: the institution's connection with organizations, employment agencies, or other agencies providing authorized training leading directly to employment; placement services for graduates or otherwise assisting students in obtaining employment; or government job market statistics in relation to the potential placement of its graduates.

This requirement is reasonable because institutions should be responsible for providing accurate and truthful information to prospective students regarding the employability of its graduates. If institutional representatives engage in misrepresentation of the employability of the institution's graduates, potential students may make decisions about their education based on erroneous information. Decisions based on erroneous information may not be the same as those based on accurate and truthful information. Decisions that prospective students make about their education can affect their future employment opportunities and financial situation. Students may not be aware that they have based their decisions on erroneous information regarding the employability of an institution's graduates until they graduate from the institution and attempt to gain employment in a specific occupation, profession, or vocation. It is also reasonable to expect an institution to comply with existing federal regulations with which it must comply to maintain eligibility for Title IV funding.

Item C establishes that an institution will be considered in compliance with this subpart if it meets the requirements established in Minnesota statute or rule pertaining to licensure or other certification in specific occupations. This item does not impose any additional requirements on institutions. This item is reasonable because institutions in Minnesota should not offer programs of instruction that are not in compliance with existing statutes or rules pertaining to licensure or other certification in specific occupations. If an institution's programs do not meet existing state licensure or certification standards,

it would be misrepresentation to claim that students would be prepared for specific occupations, professions, or vocations that require licensure or other certification. This item includes, but is not limited to, Minnesota Rule, Part 2644.0510, Cosmetologist Training; Part 2644.0520, Esthetician Training; and Part 2644.0530, Manicurist Training.

Standard 9: **Subp. 9. Appropriate Program Length.**

Proposed rule

The board shall review the appropriateness of the number of credit or clock hours required to complete an institution's programs. To be in compliance with this subpart, an institution's programs must be approved by the appropriate state regulatory agency, or the program lengths must comply with existing Minnesota statute or rule, and its programs must meet the requirements in:

A. Code of Federal Regulations, title 34, section 668.8, Eligible program; and

B. Code of Federal Regulations, title 34, section 668.9, Relationship between clock hours and semester, trimester, or quarter hours in calculating Title IV, HEA program assistance.

Federal Requirements CFR Title 34, Sec. 668.8, Eligible program.
CFR Title 34, Sec. 668.9, Relationship between clock hours and semester, trimester, or quarter hours in calculating Title IV, HEA program assistance.

Rationale SUBPART: THE PROPOSED RULE LANGUAGE IMPOSES AN ADDITIONAL STATE REQUIREMENT TO THE FEDERAL LAW OR REGULATION BY INCORPORATING EXISTING STATE LAWS AND RULES FOR COMPLIANCE WITH THE STANDARD.

ITEMS A and B: THE PROPOSED RULE LANGUAGE DOES NOT IMPOSE ANY ADDITIONAL STATE REQUIREMENT TO EXISTING FEDERAL LAW OR REGULATION.

Subpart 9 establishes that the Board will review whether an institution's programs have been approved by appropriate state regulatory agencies, or whether program lengths comply with existing Minnesota statute or rule. This is reasonable because institutions need to be in compliance with state statutes or rules governing programs. Regulatory statutes and rules regarding programs are intended to provide reasonable assurances to consumers that programs meet basic criteria.

Item A requires that an institution comply with regulations established in CFR Title 34, Sec. 668.8. The Board will review whether an institution's programs satisfy the eligibility requirements established in that federal regulation. This item is reasonable because it does not impose any new requirements on institutions. This item is an existing federal regulation that institutions must satisfy in order to maintain eligibility for Title IV programs.

Item B requires that an institution comply with the regulations established in CFR Title 34, Sec. 668.8 par. (1) when it determines the amount of Title IV funds a student is eligible to receive. This item is reasonable because it does not impose any new requirements on institutions. This item is based on existing federal regulation that institutions must satisfy in order to maintain eligibility for Title IV programs.

Standard 10: **Subp. 10. Administrative Integrity.**

Proposed rule

The board shall review the actions of an institution, owner, shareholder, or person exercising control over an educational institution which may adversely affect its participation in Title IV programs. To be in compliance with this subpart, an institution must meet the requirements in:

A. Code of Federal Regulations, title 34, section 600.30, Institutional changes requiring review by the secretary;

B. Code of Federal Regulations, title 34, section 668.15, Factors of financial responsibility;

C. Code of Federal Regulations, title 34, section 668.16, Standards of administrative capability;

D. Code of Federal Regulations, title 34, section 668.14, Program participation agreement, paragraph (b)(18); and

E. Code of Federal Regulations, title 34, section 668.82, paragraph (d), Standard of conduct.

Federal Requirements CFR Title 34, Sec. 600.30, Institutional changes requiring review by secretary.
CFR Title 34, Sec. 668.15, Factors of financial responsibility.
CFR Title 34, Sec. 668.16, Standards of administrative capability.
CFR Title 34, Sec. 668.14, Program participation agreement, par. (b)(18).
CFR Title 34, Sec. 668.82(d), Standard of conduct.

Rationale

ITEM A, B, C, D, AND E: THE PROPOSED RULE LANGUAGE DOES NOT IMPOSE AN ADDITIONAL STATE REQUIREMENT TO FEDERAL LAW OR REGULATION.

Subpart 10 establishes that the Board will review an institution to assess whether an owner, shareholder, or person exercising control over that institution is engaged in conduct that could jeopardize the institution's participation in Title IV programs. It is reasonable for the Board to adopt these federal regulations because they impose no new requirements on the institution or its owner, stockholder, or person exercising control over the institution; institutions, and the owner, stockholder, or person exercising control over the institution are already required by federal regulations to comply with this subpart. An institution agrees to comply with the federal regulations included in this item when it signs the program participation agreement, required by CFR Title 34, Sec. 668.14. In addition, the Secretary established in the *Federal Register* of January 24, 1994, the expectation that CFR Title 34, Sec. 600.30 and CFR Title 34, Sec. 668.15 and 668.16 be included in this standard. The Board received additional guidance from the Secretary in a letter from Ken Waters, dated September 30, 1994, stating that the Secretary also expected the Board to include CFR Title 34, Sec. 668.14 par. (b)(18) and CFR Title 34, Sec. 668.82 par. (d) in this standard.

Subpart 10 establishes five criteria for institutional compliance. Item A requires that an institution comply with the regulations established in CFR Title 34, Sec. 600.30. This requires an institution to notify the Secretary within 10 days after any of the following occur:

1. the institution changes its name, address, or number of locations at which it offers educational services;
2. the institution changes its ownership, if that ownership change results in a change in control of the institution;
3. the institution changes the way it measures program length;
4. a person has acquired the ability to affect substantially the actions of the institution;
5. the institution has changed its status as a proprietary, nonprofit, or public institution.

It is reasonable that the Board require an institution to inform the Secretary of these changes as required by federal regulation, and agreed to by the institution. These changes in an institution's organizational structure or ownership can have a significant effect on the institution's management of its Title IV programs.

Item B requires that an institution comply with the regulations established in CFR Title 34, Sec. 668.15. This federal regulation requires an institution to maintain appropriate and accurate financial records. These records provide information to ensure that an institution has the financial capacity to provide the services it describes in its publications, that it is meeting its financial obligations, and that it is capable of meeting its future financial obligations. It is reasonable to require an institution to be financially responsible in its management of federal financial aid funds, because it has agreed to abide by the regulations established for the Title IV programs in which it participates.

Item C requires that an institution comply with the regulations established in CFR Title 34, Sec. 668.16. This federal regulation requires an institution to show it has the administrative capability appropriate to its specific scale of operation, and adequate administrative procedures to administer the Title IV programs in which it participates. It is reasonable to require an institution to have the administrative capability to administer the funds it receives, and to comply with the federal regulations to which it has agreed.

Item D requires that an institution comply with the regulations established in CFR Title 34, Sec. 668.14 par. (b)(18). This federal regulation establishes in part the criteria an institution must meet in order to remain eligible for participation in Title IV programs. This section provides detailed regulations, including the requirement that an institution will not knowingly: 1) employ personnel who have been convicted of, or have pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of federal, state, or local government funds, or has been administratively or judicially determined to have committed fraud or any other material violation of law involving federal state, or local government funds; 2) contract with an institution or third-party servicer that has been terminated under section 432 of the HEA for a reason involving the acquisition, use, or expenditure of federal, state, or local government funds, or that has been administratively or judicially determined to have committed fraud or any other material violation of law involving federal, state, or local government funds; or 3) contract with or employ any individual, agency, or organization that has been, or whose officers or employees have been a) convicted of, or pled *nolo contendere* or guilty to, a crime involving the acquisition, use, or expenditure of federal, state, or local government funds, or b) administratively or judicially determined to have committed fraud or any other material violation of law involving Federal, State, or local government funds.

It is reasonable for the Board to determine during a review whether the courts have ruled on a crime involving federal, state or local governmental funds controlled by the institution, its employees, or its owner, stockholder or a person exercising control over an institution. If this situation prevails, the Board should consider whether the institution is to remain eligible to participate in Title IV programs. It would be unreasonable and a breach of public faith to not consider judicial determinations.

It would be unreasonable to review an institution and ignore that the institution employed a person involved with Title IV program administration if that person has a dubious background involving federal, state, or local funds. The review seeks to eliminate fraud and abuse, or at least to determine that no fraud or abuse is taking place. A review should identify an institution administered by persons known to have been involved in previous fraudulent activity involving federal, state or local government funds. It is reasonable to assume there is a higher probability that a person involved in past fraud may become involved in additional fraudulent activities.

Item E requires that an institution comply with the regulations established in CFR Title 34, Sec. 668.82, par. (d). This federal regulation partially establishes the standards of conduct required of an institution and third-party servicers with which it contracts. As established in CFR Title 34, Sec. 668.82, par. (d), the institution or its servicer have violated their fiduciary duty if they have been convicted, or pled *nolo contendere*, or have been found guilty of a crime involving the acquisition, use, or expenditure of federal, state, or local government funds, or have been administratively or judicially determined to have committed fraud or any other material violation of law involving those funds. In addition, the institution or its servicer violates its fiduciary duty if they employ any person who has been convicted, or pled *nolo contendere*, or found guilty of a crime involving the acquisition, use, or expenditure of federal, state, or local government funds, or has been administratively or judicially determined to have committed fraud or any other material violation of law involving those funds. It is reasonable to require an institution that participates in Title IV programs to be financially responsible in its management of federal funds and to establish administrative procedures, as required of and agreed to by the institution. An institution not in compliance with the requirements of these federal regulations indicates a higher risk of fraud or abuse regarding federal funds.

Standard 11: Subp. 11. Student Complaint Process.

Proposed rule

The board shall review an institution's procedures for investigating and resolving student complaints. To be in compliance with this subpart, an institution must publish and follow the procedures in items A and B.

A. An institution shall establish, publish, and document that it administers a complaint process to receive, investigate, and respond to student complaints. The process must include:

(1) the institution's definition of the term "complaint";

(2) how a complaint shall be received (for example, by telephone, in writing, or in person) and the office and personnel designated to receive and file complaints;

(3) a time frame for completing the complaint process, including documenting, investigating, and responding to complaints;

(4) an appeal process in which the final determination is made by an official not directly involved in the alleged complaint;

(5) provisions that the institution shall not take adverse action against the student filing the complaint as a result of a complaint; and

(6) information regarding appropriate entities that may receive complaints in addition to the institution (for example, the Minnesota Department of Human Rights, the Minnesota State Approving Agency for Veteran's Education, or the Minnesota Higher Education Coordinating Board).

B. An institution shall maintain an annual summary from each of the most recent five years as to how it received, investigated, and resolved complaints, and an annual summary as to the number of complaints received, the number of complaints investigated, and the number of complaints that were resolved.

Federal Requirements None given.

Rationale THE PROPOSED LANGUAGE IS NEW; THE SECRETARY DID NOT PROVIDE GUIDANCE.

Subpart 11 establishes that the Board will review an institution's procedures for investigating and resolving student complaints. This subpart establishes two criteria for institutional compliance. This subpart recognizes that some students will have complaints, and that investigating and resolving student complaints is a responsibility of the institution. Complaints involving Title IV programs are a subset of

a larger set of possible complaints students may have. Because students are consumers of education services provided by the institution, the institution has a responsibility to interact with students regarding their complaints. A student complaint process indicates an effort to resolve student concerns.

Item A requires that an institution establish, publish, and document that it administers a complaint process to receive, investigate, and respond to student complaints. The student complaint process must allow interaction between the student and institution personnel. This subpart provides guidance as to what is considered adequate. A student has the right to file a complaint. As a consumer, the student may have a real or perceived grievance. Registering a complaint requires a method for accepting complaints by the institution and a process for students to follow.

Item A requires that an institution establish a thorough and consistent complaint process. The method of ensuring thorough and consistent complaint procedures begins with establishing, publishing, and documenting the process. Follow-up requires procedures to investigate and resolve student complaints. This item assures that students, faculty, administrators, and staff function within specific guidelines that apply equally to all students who file complaints. Lack of an established process would result in ambiguity, misunderstanding, and uncertainty as to who is responsible for each part of the procedure.

It is advisable to maintain documentation that may be needed to respond to questions or possible litigation. It is in the best interest of a student and an institution to document complaints, the institution's investigation, and its resolution of each complaint in order to show that the process was timely and adequate.

Subitem (1) requires that an institution define what the term "complaint" means. An institution's complaint process must establish what constitutes a complaint, and the topics eligible for filing a complaint. Without this information students cannot be expected to know what is permitted. This subitem allows an institution's discretion to define the term.

Subitem (2) requires that an institution specify how it will receive complaints. An institution's complaint process must specify whether complaints will be received over the telephone, in person, or in writing. If the institution requires that a complaint be written, it must specify whether a form provided by the institution is required. The process must specify the office and personnel designated to receive and file complaints. Without this information, students cannot be expected to file complaints with the proper personnel or in the prescribed format. This subitem allows an institution flexibility to design a process suited to the institution and its students.

Subitem (3) requires that an institution establish a maximum timeframe for completing the procedures, and is intended to encourage prompt resolution. A complaint process cannot have an indefinite timeframe if the goal is to resolve the complaint. Because the process involves specific steps, e.g., documenting, investigating, deciding, and responding, the institution has discretion to determine what is reasonable. Some complaints may be quickly resolved. Others may be complicated and time consuming because of factors influencing an investigation and decision. An institution would be required to document its compliance with this subpart. This may require justifying or explaining complaints unresolved beyond the established timeframe. By adhering to the record retention requirement of this subpart, the institution should be able to demonstrate the outcome of all student complaints, including those not yet resolved.

Subitem (4) requires that an institution establish a student appeal process that involves personnel not directly involved in the complaint. Some complaints may not be resolved to the student's satisfaction. The institution maintains its authority to respond to complaints according to institutional policies as long as those policies conform to federal and state law, regulations, and rule. If the student filing the complaint is not satisfied with its resolution, the student should be assured that personnel not directly involved in the complaint will render a fair and impartial judgement regarding the complaint. If institution personnel involved in the complaint made the final decision regarding it, one might question the impartiality of the decision.

Subitem (5) requires that an institution establish provisions to assure that it will not take adverse action against students who file complaints as a result of those complaints. Filing a complaint should not jeopardize a student. Students must be able to file complaints with the assurance that no adverse action will be taken against them as a result. Without assurance that the act of filing a complaint would not cause adverse action, the entire complaint process could be undermined by student apprehension. An institution should deal directly and honestly with complaints. Students with problems should be encouraged to seek resolution, even if that requires filing a complaint. It would be unreasonable to expect students to use a complaint process if the students perceived a possibility of adverse action as a result of their complaint. It is reasonable to assume that institution personnel should address student complaints directly and should investigate and resolve complaints judiciously.

Subitem (6) requires that an institution provide information regarding other appropriate entities that may accept student complaints. It may not be possible for an institution to resolve every complaint that is filed, but it should resolve complaints under its control. An institution also should provide information regarding entities that may be able to address particular complaints not under the institution's control.

Other entities may be the proper forum for resolving complaints. For public institutions, the governing boards may be the appropriate entity for certain complaints. For institutions offering Veteran's Programs, the State Veteran's Approving Agency may have oversight regarding particular complaints. Complaints related to affirmative action or equal opportunity may be best referred to the Minnesota Department of Human Rights. Some complaints may be appropriately referred to law enforcement agencies. The institution should determine what complaints it can resolve, and determine the types of complaints that are more appropriately handled by other entities. It is reasonable to expect and require an institution, upon receiving a student complaint about a matter more appropriately handled by another entity, to provide the student with appropriate information regarding the appropriate entity for adjudicating that complaint. An institution should establish a complaint process that includes recourse for referring complaints elsewhere.

Item B requires an institution to maintain documentation of complaints for five years, and to make complaint documentation available to a reviewer at the institution's offices. Documentation of the complaint process provides evidence of compliance with the requirement for establishing an adequate complaint process. It is in the best interest of an institution to maintain records for at least the statutory period of limitation in case complaints of fraud or abuse are filed. The method of retaining documents is at the discretion of the institution. An institution may establish paperless electronic processes, paper files, or coded database records as long as that process assures that: 1) adequate procedures exist; 2) a complaint process was established; 3) the process was published in accordance with the guidance contained in this subpart; and 4) complaints were received, investigated, and responded to in a timely manner.

Standard 12: **Subp. 12. Student Recruitment Process.**

Proposed rule

A. The board shall review an institution's advertising, promotion, and student recruitment practices. To be in compliance with this item, an institution must meet the requirements in:

(1) Code of Federal Regulations, title 34, section 668.14, Program participation agreement, paragraph (b)(10) and (22); and

(2) Code of Federal Regulations, title 34, sections 668.71 to 668.75, Misrepresentation.

B. The board shall review the truthfulness of an institution's publications and promotions. To be in compliance with this item, an institution must assure the board that it uses for promotion and student recruitment publications and advertisements that are truthful and do not give any false, fraudulent, deceptive, inaccurate, or misleading information about the institution, its personnel, programs, services, or occupational opportunities for its graduates.

Federal Requirements CFR Title 34, Sec. 668.14, Program participation agreement, pars. (b)(10) and (22).

CFR Title 34, Sec. 668.71 to 668.75, Misrepresentation.

Rationale ITEMS A: THE PROPOSED RULE LANGUAGE DOES NOT IMPOSE ANY ADDITIONAL STATE REQUIREMENT TO FEDERAL LAW OR REGULATION.

ITEM B: THE PROPOSED LANGUAGE IS NEW.

Item A establishes that the Board will review an institution's advertising, promotion and recruitment practices. Item A establishes two criteria for institutional compliance. The proposed item does not impose any new requirements on institutions. Subitems 1 and 2 are based on existing federal regulations that institutions must satisfy in order to maintain eligibility for Title IV programs.

Subitem 1 requires that an institution comply with CFR Title 34, Sec. 668.14 par. (b)(10). This federal regulation applies only to institutions that advertise job placement rates as a means of attracting students to enroll in the institution. An institution is required to make available to prospective students information necessary to substantiate the truthfulness of its advertisements. An institution affected by this federal regulation also is required to provide information to prospective students regarding relevant state licensing requirements for which the institution's programs purport to prepare students.

This requirement is reasonable because potential students should be provided truthful information regarding the employability of past graduates of a program they are considering. Potential students need truthful information in order to make informed decisions regarding their education and potential employability upon graduation. Relevant state licensing standards for jobs the institution purports to prepare students to obtain should be available to potential students so they can determine whether a specific program will prepare them to meet state licensing standards.

Subitem 1 also requires that an institution comply with CFR Title 34, Sec. 668.14 par. (b)(22). This federal regulation prohibits an instiution from making incentive payments based on success in securing enrollments or financial aid to individuals engaged in student recruiting or admission activities. This is reasonable because individuals who receive incentive payments may be more inclined to attempt to enroll as many students as possible in order to receive financial rewards than would individuals who do not receive such payments. Attempting to secure more students may encourage individuals to make false statements regarding an institution or its programs and to enroll people who are not qualified.

Subitem 2 requires that an institution comply with CFR Title 34, Sec. 668.71 to 668.75. This federal regulation addresses misrepresentation by an institution regarding the nature of its educational programs, its financial charges, or the employability of its graduates; establishes procedures for investigating written allegations or complaints about institutions regarding institutional misrepresentation; and identifies the action that can be taken by the Secretary against institutions in the event allegations are substantiated. This subitem is reasonable because an institution should be responsible for providing accurate and truthful information to currently enrolled students and prospective students regarding its educational programs, its financial charges, and the employability of its graduates. If institutional representatives engage in substantial misrepresentation of the institution's programs, financial charges, or employability of graduates, students and prospective students may make decisions about their education based on erroneous information. Decisions based on erroneous information may not be the same as those based on accurate and truthful information. Decisions students and prospective students make about their education can affect their future employment opportunities and financial situation.

Item B establishes that the Board will review the truthfulness of an institution's publications and promotions. To be in compliance with this item, an institution must assure the Board that it uses publications and advertisements that are truthful and that do not give false, fraudulent, deceptive, inaccurate, or misleading information about the institution, its personnel, programs, services, or occupational opportunities for its graduates. Although the language is new, Minnesota statutes and rules have similar language. Minnesota Statute section 141.28, subd. 3, False statements, states that schools, agents, or solicitors are prohibited from making any false, fraudulent, deceptive, substantially inaccurate or misleading statement or representation, oral, written or visual, in connection with the offering or publicizing of a course. Minnesota Statute section 141.29, subd. 1(c) states that presenting to prospective students information relating to the school which is false, fraudulent, deceptive, substantially inaccurate or misleading is grounds for revocation of a private vocational school license. Minnesota Statute Chapter 141 applies to private proprietary institutions operating, offering programs,

soliciting students, or advertising in the state of Minnesota. Minnesota Rule Part 4840.0500 subpart 2 and (G) includes as a criterion for approval of names and degrees that the school uses for promotion and student recruitment only publications and advertisements which are truthful and do not give any false, fraudulent, deceptive, inaccurate, or misleading impressions about the school, its personnel, programs, services, or occupational opportunities for its graduates. This rule affects private and non-Minnesota public postsecondary institutions.

It is reasonable that institutions use truthful and accurate information in their promotional materials, advertisements, and student recruitment publications. Potential students should have access to truthful and accurate information when making decisions about their education. Truthful information regarding an institutions' personnel, programs, services, or occupational opportunities for graduates will assist individuals when they choose an institution. If potential students are provided with false, fraudulent, deceptive, inaccurate, or misleading information about the institution, its personnel, programs, services, or occupational opportunities for its graduates, they are likely to make choices based on inaccurate information. Choices made under these circumstances may adversely affect students.

Standard 13: Subp. 13. Refund Policy.

Proposed rule

The board shall review an institution's refund policy for fairness and equity. To be in compliance with this subpart, an institution must meet the requirements in:

A. Code of Federal Regulations, title 34, section 668.22, Fair and equitable refund policy;

B. Code of Federal Regulations, title 34, part 668, Appendix A;

C. Minnesota Statutes, section 141.271, Refunds, private trade schools; and

D. part 2644.0650, Refund policy, cosmetology schools.

Federal Requirements CFR Title 34, Sec. 668.22, Fair and equitable refund policy.
CFR Title 34, Part 668, Appendix A.

Rationale ITEMS A AND B: THE PROPOSED LANGUAGE DOES NOT IMPOSE ANY ADDITIONAL STATE REQUIREMENT TO FEDERAL LAW OR REGULATION.

ITEMS C AND D: THE PROPOSED LANGUAGE IMPOSES AN ADDITIONAL STATE REQUIREMENT TO THE FEDERAL LAW OR REGULATION BY INCORPORATING AN EXISTING STATE LAW AND RULE FOR COMPLIANCE WITH THE STANDARD.

Subpart 13 establishes that the Board shall review an institution's refund policy for fairness and equity, and establishes four criteria for institutional compliance. This subpart establishes that an institution must develop, publish, and administer fair and equitable refund policies. The proposed standard does not impose any new requirements on institutions. Items A and B of this subpart are based on existing federal regulations that institutions must satisfy in order to maintain eligibility for Title IV programs. Items C and D incorporate existing Minnesota statutes and rules that institutions are required to satisfy if they are regulated by the specified statute or rule.

Item A establishes a fair and equitable refund policy and requires that an institution comply with CFR Title 34, Sec. 668.22. This federal regulation establishes that a fair and equitable refund policy is one that provides a refund of at least the larger of the amount provided under the: 1) requirements of applicable state law; 2) specific refund requirements established by the institution's nationally recognized accrediting agency and approved by the Secretary; or 3) pro rata refund calculation as established by CFR Title 34, Sec. 668.22 par. (c). Use of this federal regulation is reasonable because the Secretary requested its inclusion and because compliance is required for continued eligibility for participation in Title IV programs.

Item B establishes standards for acceptable refund policies and requires that an institution comply with CFR Title 34, Part 668, Appendix A. This federal regulation establishes minimum requirements for refund policies to be considered fair and equitable. Use of this federal regulation is reasonable because the Secretary requested its inclusion and because compliance is required for continued eligibility for participation in Title IV programs.

Item C requires that institutions affected by Minnesota Statutes, section 141.271 comply with the refund requirements as established. Item D requires that institutions affected by Minnesota Rule Part 2655.0650 comply with the refund requirements as established. The Minnesota statutes and rules cited in items C and D relate specifically to the requirements established in CFR Title 34, Sec. 668.22 par. (b). As stated in item A the requirements of applicable state law must be considered when determining a student's refund . Institutions operating under Minnesota statutes and rules relating to private trade schools and cosmetology schools are required to comply with these regulations. This item does not impose any additional requirements on institutions.

It is reasonable to review an institution's refund policy for compliance with applicable federal and state requirements because a potential for fraud and abuse exists through the improper calculation of student refunds, or an institution's failure to repay refunds to the appropriate federal or state financial aid program, to the student's lender, or the student.

Standard 14: **Subp. 14. Performance Outcomes.**

Proposed rule

A. (1) The board shall review the completion and graduation rate of an institution subject to Code of Federal Regulations, title 34, section 668.8, paragraph (e)(1)(i). To be in compliance with this subitem, an institution must have a graduation rate equal to or greater than 70 percent.

(2) The board shall review an institution not subject to Code of Federal Regulations, title 34, section 668.8, paragraph (e)(1)(i), on the basis of the institution's completion and graduation rates as calculated in accordance with appropriate federal regulations, and the requirements of this item. To be in compliance with this subitem, an institution must have either:

(a) a graduation and completion rate equal to or greater than 40 percent as calculated according to Code of Federal Regulations, title 34, section 668.46, Completion or graduation rate, or Higher Education Act of 1965, Title IV, United States Code, title 20, section 1092, paragraph (a)(3); or

(b) a graduation, completion, and retention rate equal to or greater than 50 percent computed as the sum of:

i. the graduation and completion rate as calculated according to Code of Federal Regulations, title 34, section 668.46, Completion or graduation rate; Higher Education Act of 1965, Title IV, United States Code, title 20, section 1092, paragraph (a)(3); and

ii. the percent of students included in the cohort in subunit i who continued their enrollment in the institution or transferred to other institutions not included in the computation of the graduation and completion rate.

(3) To be in compliance with this item, an institution must meet the requirements in Higher Education Act of 1965, Title IV, United States Code, title 20, section 1092, paragraph (a)(1)(L).

B. The board shall review the withdrawal rate of an institution's students as established in Code of Federal Regulation, title 34, section 668.16, paragraph (l). To be in compliance with this item, the institution must have a withdrawal rate that does not exceed 33 percent.

C. (1) The board shall review the placement rate of an institution subject to Code of Federal Regulations, title 34, section 668.8, paragraph (e)(1)(ii). To be in compliance with this subitem, the institution must have a placement rate equal to or greater than 70 percent.

(2) The board shall review the rate of placement of an institution's graduates in occupations related to educational programs not subject to Code of Federal Regulations, title 34, section 668.8, paragraph (e)(1)(ii). To be in compliance with this subitem, an institution must verify a placement rate of all graduates in a cohort for each vocational or professional program equal to or greater than 50 percent. For the purposes of this item, the terms in units (a) to (d) have the meanings given them.

(a) "Graduate" means an individual who has received a degree, diploma, or certificate for completion of a program during the most recent 12-month period that ended June 30 for which data are available.

(b) "Placement" means a graduate who within 12 months after graduation has reported:

i. obtaining a paid position; and

ii. the most important paid position is in a related occupation within the 12-month period following the graduate's date of graduation.

(c) "Occupations related to educational program" means employment in a related occupation as reported by the graduate, the graduate's parent or guardian, spouse or domestic partner, adult sibling, employer, or instructional staff at the institution. The placement rate of graduates in occupations related to their educational programs shall be based on the list of occupations in the NOICC (National Occupational Information Coordinating Committee) Master Crosswalk, August 29, 1994, National Crosswalk Service Center, Iowa SOICC, Des Moines, Iowa, which is incorporated by reference. It is available through the Minitex interlibrary loan system. It is subject to frequent change.

(d) "Rate of placement" means the number of graduates in a cohort who obtained employment related to their educational program as a percent of the total number of graduates in the cohort.

D. The board shall review the rate at which graduates of programs of an institution pass required licensure or other certification examinations. To be in compliance with this item, the passing rate of an institution's graduates on licensure or other certification examinations must be equal to or greater than 85 percent of the national or state passing rate. For the purposes of this item, the terms in subitems (1) to (4) have the meanings given them.

(1) "Program" means a vocational or professional program preparing students for an occupation which requires licensure or other certification by examination for entry into the occupation in Minnesota and completion of the program is required for admission to the examination.

(2) "Examination" means an examination administered by a national or state testing body, the state of Minnesota, or the federal government for licensure or other certification in a profession or occupation.

(3) "Graduates passing an examination" means the number of graduates from the institution that the testing agency or agencies report passed the examination during the most recent 12-month period ending June 30 for which data are available.

(4) "Passing rate" means the number of graduates who passed the examination as a percent of the number of graduates that the testing agency or agencies report took the examination.

E. The board shall review additional documentation that an institution provides to explain or expand on information required in this subpart.

Federal Requirements CFR Title 34, Sec. 668.8 par. (e)(1)(i).
CFR Title 34, Sec. 668.8 par. (e)(1)(ii).
CFR Title 34, Sec.668.16 par. (1), Standards of administrative capability.
CFR Title 34, Sec. 668.46, Completion or graduation rate.
HEA Title IV, USC Title 20, Sec. 1092, par. (a)(1)(L).
HEA Title IV, USC Title 20, Sec. 1092, par. (a)(3).

Rationale ITEM A: THE PROPOSED RULE LANGUAGE IMPOSES AN ADDITIONAL REQUIREMENT TO THE FEDERAL LAW OR REGULATION.

ITEMS B AND E: THE PROPOSED LANGUAGE DOES NOT IMPOSE ANY ADDITIONAL STATE REQUIREMENT TO FEDERAL LAW OR REGULATION.

ITEMS C AND D: THE PROPOSED RULE LANGUAGE CREATES STATE REQUIREMENTS BECAUSE THEY ARE NOT ADDRESSED IN THE FEDERAL LAW OR REGULATION.

Subpart 14 establishes standards for performance outcomes according to items A through E.

Item A establishes the standard for graduation and completion rates and thresholds for two categories of institutions in subitems (1) and (2).

Subitem (1) establishes as a category institutions exclusively offering programs not exceeding 600 clock-hours. This subitem requires compliance with CFR Title 34, Sec. 668.8, par. (e)(1)(i), which prescribes the methodology for calculating a completion rate and prescribes 70 percent as the lowest acceptable rate. Use of this regulation is reasonable because the Secretary expressed an expectation in the Final Regulations of April 29, 1994, and in the letter from Ken Waters September 30, 1994, that it would be incorporated in the state standard. It also is reasonable because compliance with the law or regulation is a requirement for continued eligibility for participation in Title IV programs.

Subitem (2) establishes as a category all other institutions not included in subitem (1). The standard for these institutions is one of two alternative sets of graduation rates and thresholds established in units (a) and (b).

Unit (a) establishes a graduation rate with a threshold of 40 percent. The method of calculation is established in HEA Title IV, Sec. 485 par. (a)(3), or CFR Title 34, Sec. 668.46. Use of this federal law or regulation is reasonable because the Secretary expressed the expectation in the Final Regulations of April 29, 1994, and in the letter from Ken Waters September 30, 1994, that it would be incorporated in the state standard. It also is reasonable because compliance with the law or regulation is a requirement for continued eligibility for participation in Title IV programs. Using 40 percent as the lowest acceptable rate is reasonable because graduation rates at most Minnesota institutions using this or similar methods of calculation equals or exceeds 40 percent (Exhibit 20). Further, the SPRE Advisory Group agreed that this percentage is acceptable for Minnesota institutions.

Unit (b) establishes a completion rate with a threshold of 50 percent. This rate is calculated by adding the elements defined in subunits (1) and (2). Using this method of calculation as an alternative to that defined in unit (a) is reasonable because it recognizes that institutions such as community colleges have missions that serve students who require a longer time to complete. Documentation regarding this was prepared by the Minnesota State Board for Community Colleges (Exhibit 21). This documentation provided a compelling reason for diverging from the Secretary's guideline to use the method of calculation established in unit (a). Using 50 percent as the lowest acceptable rate is reasonable because it is a higher rate than established in unit (a) to reflect the larger number of students defined as completing their studies. The SPRE Advisory Group agreed that this method and threshold is acceptable for Minnesota institutions.

Subunit (1) establishes the percent established in unit (a) as an element in calculating the rate established in unit (b).

Subunit (2) establishes, as an element in calculating the rate established in unit (b), the percent of students not included among the graduates as established in unit (a) who remain enrolled at the original institution or another institution.

Item B establishes a standard for an institution's withdrawal rate. Item B requires compliance with CFR Title 34, Sec. 668.16, par. (l), which prescribes a methodology for calculating a withdrawal rate for undergraduate students and a threshold of 33 percent. Using the regulation is reasonable because the Secretary expressed an expectation in the Final Regulations of April 29, 1994, and in the letter from Ken Waters September 30, 1994, that it would be incorporated in the state standard. Using the regulation also is reasonable because compliance is a requirement for continued eligibility for participation in Title IV programs.

Item C establishes the standard for rates of placement in related employment and thresholds for those rates for graduates of vocational and professional programs. This item further establishes separate placement rates and thresholds for two classes of institutions in subitems (1) and (2).

Subitem (1) establishes as a category institutions exclusively offering instructional programs not exceeding 600 clock-hours. Subitem (1) requires compliance with CFR Title 34, Sec. 668.8, par. (e)(1)(ii), which prescribes the methodology for calculating a placement rate and prescribes 70 percent as the lowest acceptable rate. Using the regulation is reasonable because the Secretary expressed an expectation in the Final Regulations of April 29, 1994, and in the letter from Ken Waters September 30, 1994, that it would be incorporated in the state standard. Using the regulation also is reasonable because compliance is a requirement for continued eligibility for participation in Title IV programs.

Subitem (2) establishes as a category of institutions all other institutions not included in subitem (1). The standard for these institutions is a placement rate and a threshold of 50 percent. Definitions used in the placement rate for professional programs and vocational programs at these institutions appear in units (a) through (d). These definitions are consistent with the Minnesota Graduate Follow-up System conducted by the Board and the state's postsecondary institutions pursuant to *Laws of Minnesota for 1991,* Chapter 356, Article 1, Section 2, as explained in *Minnesota Graduate Follow-up System Handbook for the Class of 1995* (Exhibit 22). Use of these definitions in this item diverges from the Secretary's guidelines, which call for use of federal regulations to define employment and use of the

NOICC Master Crosswalk to determine relationship of employment to educational programs. This divergence is justifiable because the state of Minnesota has established a statewide system for reporting placement information. Changing this system to incorporate the Secretary's guidelines or establishing a system incorporating the Secretary's guidelines in addition to the state system would constitute an additional burden on Minnesota postsecondary institutions. Use of 50 percent as the threshold is reasonable because at least half of the graduates of a program designed for an occupation should be able to find employment in that occupation, even taking into account graduates who choose not to seek employment or who cannot be reached to provide information. The SPRE Advisory Group also agreed that 50 percent is reasonable. Concerns over accounting for enough graduates to obtain a 50 percent rate may be addressed by the following: inclusion of part-time as well as full-time employment in the calculation; the 12-month period for placement; and the variety of knowledgeable persons who may provide information on graduates.

Unit (a) defines graduate as an individual who has received a degree, diploma, or certificate for completion of a program during the most recent 12-month period that ended June 30 for which data are available. This is reasonable because graduates have completed all the prescribed requirements in the program and presumably have a commonly acceptable level of preparation for employment. This excludes students who terminate their studies before graduation but obtain employment related to the program. Inclusion of those individuals in a calculation would require inclusion of all nongraduates with comparable levels of preparation. Establishing criteria to compare levels of preparation of nongraduates who obtain related employment with nongraduates who do not obtain related employment is too complex and judgmental for individual programs to be reasonable. Institutions, however, may account for nongraduates in item E.

Unit (b) defines placement as a graduate who within 12 months after graduation has reported a paid position and that the most important paid position is in a related occupation as defined in unit (c). Use of the graduate's most important paid employment, including either full-time or part-time employment is reasonable because it allows for short-term conditions of the labor market in which few full-time positions are available. Use of a 12-month period is reasonable because it is sufficient time for a graduate to take necessary licensure or other examinations for entering an occupation, to obtain related employment, and to report the information to the institution.

Unit (c) defines occupations related to an educational program as employment in a related occupation as reported by the graduate, the graduate's parent or guardian, spouse or domestic partner, adult sibling, employer, or instructional staff at the institution. The definition also incorporates by reference the list of occupational programs in the *NOICC Master Crosswalk.* Use of the reports of graduates or

knowledgeable persons to determine occupations related to an educational program is reasonable because those individuals are in a position to know both the nature of the graduate's preparation and the nature of the graduate's employment. Use of the list of occupational programs in the *NOICC Master Crosswalk* as a reference is reasonable because the crosswalk is a national resource designated by the Secretary in the Final Regulation published April 29, 1994, for use in establishing relationships between employment and instructional programs.

Unit (d) defines rate of placement as the number of graduates in a cohort who obtained employment related to their educational program as a percent of the total number of graduates in the cohort. Use of the entire cohort, as defined in part 4890.0200, subpart 4, in the denominator is reasonable because it accounts for all graduates from the program. Excluding some graduates, such as those who did not enter the labor force or who did not report information, could result in misleading or distorted data. Institutions, however, may account for the variety of experiences of members of a cohort in subitem E.

Item D establishes a passing rate with a threshold of 85 percent for graduates of programs passing licensure or other certification examinations. Definitions of terms incorporated in this statement appear in subitems (1) through (3). The established rate is calculated as the passing rate, defined in subitem (4), of a program expressed as a percent of the passing rate for the state or nation. For example, if the state or national passing rate were 50 percent, then a program passing rate of 42.5 percent would satisfy the threshold because 42.5 percent is 85 percent of 50 percent. Use of this method of calculation is reasonable because it allows assessment of performance of a single program based on a comparison with a state or national level of performance rather than assessment based on an absolute standard. A threshold of 85 percent is reasonable because it permits some divergence from the general pass rate that might result from circumstances beyond the control of an institution. Further, 85 percent was acceptable to the SPRE Advisory Group.

Subitem (1) defines program as a professional or vocational program, defined in part 4890.0200, subparts 9 and 14, that prepares students for an occupation requiring licensure or other certification, defined in part 4890.0200, subpart 8, by examination for entry into the occupation and requiring completion of the program for admission to the examination.

Subitem (2) defines examination as an examination administered by a national or state testing body, the state of Minnesota, or the federal government for licensure or other certification in a profession or occupation.

Subitem (3) defines graduates passing an examination as the number of graduates from the institution whom the testing agency or agencies report passed the examination during the most recent 12-month period ending June 30 for which data are available. Use of data from examining agencies is reasonable because that information is reliable in contrast to information from individuals who might provide inconsistent, incorrect, or misleading information about their performance on examinations.

Subitem (4) defines passing rate as the number of graduates who passed the examination as a percent of the number of graduates that the testing agency or agencies report took the examination. Use of percents based on data reported by examining agencies is reasonable because the data, definitions, and methodologies used in the calculation are consistent among all institutions in the state or nation. This permits valid comparisons of the percent for an individual institution with the overall percent.

Item E allows institutions to provide additional information related to information presented for items A through D. Technically, item E is not a requirement because it does not specify information that an institution must present or thresholds that an institution must meet. It is reasonable to allow that institutions provide additional information to explain items A through D.

Part 4890.0600 Priority system for reviewing referred institutions.

Proposed Rule

Subpart 1. **Review.** The board shall establish an order of review for institutions either referred by the secretary of the United States Department of Education or identified by the board and approved for review by the secretary in accordance with Code of Federal Regulations, title 34, section 667.12.

Subp. 2. **Category A.** Category A includes referred institutions that the secretary has scheduled for recertification under Code of Federal Regulations, title 34, sections 668.11 to 668.25. The board shall review institutions according to items A to C.

A. The board shall review first those institutions referred for review on the basis of limitation, suspension, or termination under Code of Federal Regulations, title 34, section 667.5, paragraph (b)(4). These institutions shall be placed in priority from highest to lowest according to each institution's cohort default rate.

B. The board shall next review those institutions referred for review on the basis of audit findings under Code of Federal Regulations, title 34, section 667.5, paragraph (b)(5). These institutions shall be placed in priority from highest to lowest according to each institution's cohort default rate.

C. The board shall next review all other referred institutions scheduled for recertification. They shall be placed in priority from highest to lowest according to the institution's cohort default rate.

Subp. 3. **Category B.** Category B includes referred institutions that the secretary has not scheduled for recertification under Code of Federal Regulations, title 34, sections 668.11 to 668.25. The board shall review institutions according to items A to C.

A. The board shall review first those institutions referred for review on the basis of limitation, suspension, or termination under Code of Federal Regulations, title 34, section 667.5, paragraph (b)(4). These institutions shall be placed in priority from highest to lowest according to each institution's cohort default rate.

B. The board shall next review those institutions referred for review on the basis of audit findings under Code of Federal Regulations, title 34, section 667.5, paragraph (b)(5). These institutions shall be placed in priority from highest to lowest according to each institution's cohort default rate.

C. The board shall next review all other referred institutions not scheduled for recertification. They shall be placed in priority from highest to lowest according to the institution's cohort default rate.

Subp. 4. **Category C.** The board shall review last the referred institutions that no longer participate in Title IV programs.

Subp. 5. **Priority.** All institutions listed in category A shall be considered for review before the institutions listed in category B. Institutions within category A or B whose initial priority rating is the same shall be ranked according to the total Title IV funds received during the most recent academic year for which data are available. Institutions shall be placed in priority from highest to lowest according to total dollar volume received by the institution. All institutions listed in category B shall be considered for review before institutions listed in category C.

Federal Requirements CFR Title 34, Sec. 667.5 par. (b)(4).
CFR Title 34, Sec. 667.5 par. (b)(5).
CFR Title 34, Sec. 667.12.
CFR Title 34, Sec. 668.11 to 668.25.

Rationale THE PROPOSED RULE LANGUAGE IS NEW. THE SECRETARY PROVIDED PARTIAL GUIDANCE TO ESTABLISH A PRIORITY SYSTEM.

Subpart 1 establishes an order of review for referred institutions. It is stated in the April 29, 1994 *Federal Register* that each SPRE is to establish and publish its order of review for institutions referred by the Secretary. First, the SPRE may not receive adequate funds to allow review of all institutions subject to review in a given twelve month period. Institutions will be scheduled for review to the extent possible with the federal funds allocated to the SPRE. Second, the Secretary requires that institutions concurrently scheduled for certification or recertification by the Secretary during the year be considered for review prior to institutions not scheduled for certification or recertification, as established in CFR Title 34, Sec. 667.3 par. (b)(3)(v).

Subpart 2 establishes the category of institutions that will be placed highest in priority for review. This subpart establishes three criteria that will be considered when assigning priority. All institutions are required to be recertified for eligibility in Title IV programs by the Secretary every five years. Approximately 20 percent of Minnesota's Title IV eligible institutions will be scheduled for certification or recertification each year. The Secretary has instructed the SPRE that any institution referred for review and scheduled for recertification is to be scheduled for review by the SPRE before referred institutions not scheduled for recertification. Institutions placed on both lists by the Secretary are to be reviewed by the SPRE before an institution that appears only on the SPRP referral list.

The rationale for this directive is to review institutions that are more likely to mismanage Title IV funds. Not all institutions will be selected for recertification on a random basis. Some will be selected on bases established by the Secretary designed to examine first institutions for which the Secretary has information that indicates the institution may have financial or administrative difficulties. By identifying the most troublesome institutions, the Secretary will be better able to determine whether they should continue to be eligible to participate in Title IV programs.

Institutions with high cohort default rates are subject to referral by the Secretary for SPRE review on the basis of that factor alone. This subpart will use cohort default rate in combination with two other factors for determining an order of review. Selection using three factors is designed to identify institutions with the greatest potential for mismanagement of federal financial aid.

Item A establishes that the Board will establish a priority to review institutions with the most severe problems as identified by the criteria established in CFR Title 34, Sec. 667.5. This item establishes that an institution referred for review because the Secretary initiated a limitation, suspension, or termination action against it under CFR Title 34, Sec. 668, Subpart G, within the preceding five years

would be assigned the highest order of review by the Board. An institution in this category has been notified that its actions may require the Secretary to limit its participation in Title IV programs, temporarily suspend it from participation, or terminate its participation. This would appear to be the most severe situation of the 11 criteria established by Congress. Therefore, institutions referred because of the criterion established in CFR Title 34, Sec. 667.5 par. (b)(4) and scheduled for recertification by the Secretary would be scheduled first for review. Within this group, institutions would be placed in order of review from highest to lowest according to each institution's cohort default rate.

Item B establishes that the Board will next use the criterion established in CFR Title 34, Sec. 667.5 par. (b)(5) to determine the order of review. Institutions referred for review because of this criterion and that are scheduled for recertification by the Secretary will be placed in order of review just after those cited for a limitation, suspension, or termination action. Within this group, institutions would be placed in order of review from highest to lowest according to each institution's cohort default rate. This is reasonable because an audit finding which results in a required repayment by the institution of an amount greater than five percent of the funds the institution received under the Title IV programs that year might indicate a management problem.

Item C establishes that the Board will use cohort default rate to determine the third highest order of review. Institutions scheduled for recertification by the Secretary not previously described in this subpart would be placed next in order of review. It is reasonable to establish cohort default rate as the third most serious problem when considering potential management problems at an institution because a high cohort default rate may indicate mismanagement. Institutions scheduled for recertification not previously ranked will be placed in priority order from highest to lowest according to each institution's cohort default rate.

Subpart 3 establishes the order for review of institutions referred for review under the SPRP by the Secretary that are not scheduled for recertification. Institutions would be placed in order of review according to the same three factors described in items A, B, and C of subpart 2 because these are considered the three most important factors to identify institutions with potential management problems. The same rationale applies to institutions not scheduled for recertification as to those scheduled for recertification.

Subpart 4 establishes that the Board will place all referred institutions in an order of review as required by federal regulations. Institutions that are no longer participating in Title IV programs, however, are not a high priority for review. They are no longer receiving federal funds and the sanction of termination is not possible. These institutions may have ceased operating but are on the referred list from the Secretary because of past activities that meet one or more of the 11 criteria in the law. This subpart would assure that expending resources to review institutions in this category would have low priority.

Subpart 5 establishes a subsequent method for determining the order of review among institutions within the categories described in subparts 2 and 3 in the event the initial order of review is identical. If this situation occurs, institutions shall be placed in order of review from highest to lowest according to total dollar volume received by the institutions. Recent federal legislation is designed to reduce fraud and abuse and to save taxpayer dollars. This subpart would establish that institutions receiving larger amounts of federal financial aid be reviewed before institutions receiving lesser amounts in the interest of saving more taxpayer dollars. This subpart establishes the exact order of review for all referred institutions.

Part 4890.0700 Board review and notification process.

Proposed rule

Subpart 1. **Notification of referral.** Within 30 calendar days of the date the board is notified by the United States Department of Education that an institution is referred, the board shall notify the institution by certified mail, return receipt requested, that it has been referred for review. The following documents shall be included as part of the initial notification:

A. a copy of this chapter;

B. written materials describing the review procedures that will be followed;

C. materials the institution must have available for inspection during the review;

D. procedures by which the board shall communicate its findings to the institution; and

E. procedures the institution must follow in responding to the board's findings.

An institution shall have 90 calendar days to gather the materials it must have available for inspection during the review unless an institution agrees to an earlier start date for the review.

Subp. 2. **Priority for review.** Institutions shall be reviewed in the order established under part 4890.0600.

Subp. 3. **Notification of review.** At least seven calendar days before the start date of the review, the board shall notify the institution by certified mail, return receipt requested, of its intent to conduct a review. The board also shall notify accrediting agencies of the referred institution of its intent to conduct a review.

Subp. 4. **Time allowed for review.** The review shall be completed within 90 calendar days of the start date of the review unless the institution or the reviewer requests, and the board grants, an extension of time to complete the review. The review is complete at the conclusion of an exit conference conducted by the reviewer at the referred institution.

Subp. 5. **Initial report issued.** Within 45 calendar days after the board completes its review, the board shall issue an initial report of findings to the institution. If the institution is not in compliance with the review standards in part 4890.0500, the initial report must cite each standard that is violated, describe the nature of the violation, and prescribe a course of action the institution must follow to correct the violation.

Subp. 6. **Institution response to initial report.** Within 30 calendar days after the institution receives by certified mail, return receipt requested, the initial report from the board, the institution must respond to the findings and prescribed corrective actions. If the institution does not respond within the 30-day period, the initial report becomes the final report, pursuant to Code of Federal Regulations, title 34, section 667.23, paragraph (f)(1)(ii).

Subp. 7. **Draft final report issued.** If the institution responds to the initial report, the board shall review the additional information provided by the institution and issue its draft final report to the institution, within 30 calendar days of receiving by certified mail, return receipt requested, the response of the institution to the initial report.

Subp. 8. **Institution response to draft final report.** The institution must respond no later than 30 calendar days after the institution receives by certified mail, return receipt requested, the draft final report from the board. If the institution does not respond within the 30-day period, the draft final report becomes the final report, pursuant to Code of Federal Regulations, title 34, section 667.23, paragraph (f)(1)(ii).

Subp. 9. **Additional response time.** An institution may request an additional 30 days to respond to the board's initial report and draft final report. The board shall approve these requests.

Subp. 10. **Final report issued.** Within 30 calendar days of receiving by certified mail, return receipt requested, the institution's response to the draft final report, the board shall review the institution's response to the draft final report, and shall issue its final report, including its notification to the secretary of the United States Department of Education, to the institution.

Subp. 11. **Initial notification to secretary.** Within 30 calendar days of issuing its final report to the referred institution, the board shall submit a copy of its final report to the secretary of the United States Department of Education and the accrediting agencies of the referred institution.

Subp. 12. **Final notification to secretary.** If the final report prescribes a course of action the institution must follow to correct violations cited during the review, the institution must respond within the time period prescribed in the final report. If the institution complies with the prescribed course of action, the board shall issue a final notification to the secretary of the United States Department of Education that the institution is in compliance with the standards. If the institution does not comply with the prescribed course of action within the prescribed time period, the board shall initiate a proceeding as described in Code of Federal Regulations, title 34, section 667.23, paragraph (g), to terminate the institution's participation in Title IV programs pursuant to Code of Federal Regulations, title 34, section 667.25.

Federal Requirements CFR Title 34, Sec. 667.1 par. (a)(2)
CFR Title 34, Sec. 667.8 par. (a)
CFR Title 34, Sec. 667.8 par. (b)
CFR Title 34, Sec. 667.12 par. (c)(2)(ii)
CFR Title 34, Sec. 667.23
CFR Title 34, Sec. 667.25

Rationale THE PROPOSED RULE LANGUAGE IS NEW. THE SECRETARY PROVIDED PARTIAL GUIDANCE TO ESTABLISH A REVIEW PROCESS.

This part establishes the process the Board shall follow when it reviews an institution. The Secretary has authority to refer institutions for review as established in CFR Title 34, Sec. 667.5 and CFR Title 34, Sec. 667.6; the Board has authority to review institutions that have been referred by the Secretary or identified by the Board and approved for review by the Secretary.

Subpart 1 acknowledges that the Board is required to provide written notice to all institutions of the review standards before it conducts reviews of referred institutions as established in CFR Title 34, Sec. 667.23 par. (b)(1). This subpart establishes five criteria for Board compliance with this part.

Item A requires that the Board provide a copy of the review standards established in 4890.0500. This is reasonable because these standards will be the basis for the review of an institution. If an institution is not in compliance with the standards, it may not remain eligible to participate in Title IV programs.

Item B requires that the Board provide written materials that describe the review procedures that will be followed during a review. This is reasonable because an institution will need to know what to expect during a review. The Board's documents will describe, among other factors, how the review will be conducted, the approximate amount of time required, and who is expected to participate.

Item C requires that the Board provide a list of documents the institution must have available during the review. It is reasonable for the Board to provide a list of documents that will be needed so that the institution will be able to provide them at the time of the review. This is reasonable because an institution may need time to collect and prepare required documentation.

Item D requires that the Board provide a description of the procedures by which the Board will communicate its findings to an institution. This is reasonable because an institution will need to know the timetable that the Board will follow, and how the Board plans to communicate with the institution regarding the findings of the review. Methods of communicating may include staff visits, telephone calls, and written documents.

Item E requires that the Board provide information as to the procedures an institution must follow when responding to the to Board's finding during a review. The procedures the Board will require are established in subparts 6, 8, 9,11, and 12 of this part. It is reasonable to provide this information to an institution because it should be clear what is expected of an institution after the review is complete, and to avoid misunderstanding between an institution and the Board.

This subpart establishes that an institution shall receive notice from the Board that confirms the notice received from the Secretary. The Board will send this notice by certified mail, return receipt requested, within 30 days of receiving notice of referral from the Secretary. During this 30 day period the Board will establish the priority for review of all institutions referred by the Secretary and assemble the documents an institution will need in order to prepare for a review. The Secretary's notification to the institution and the Board will include the reasons the institution has been referred. Information from the Secretary will allow the Board to determine what, if any, specific documentation the institution will be required to provide during its review.

The HEA requires that an institution be given a reasonable amount of time to gather information and documents that will be required regarding the standards, as established in CFR Title 34, Sec. 667.21, par. (b)(2)(ii). This subpart establishes that the Board prescribes a maximum of 90 days for an institution to gather the documents required for review. An institution will be allowed to request that the review begin less than 90 days after receiving notification, but will be expected to be prepared for review no later than 90 days after receiving notification from the Board. This subpart is reasonable because it allows an institution to accelerate the review process if it desires.

The documents provided to an institution will include detailed information as to the documentation required during the review. The Board will suggest documentation an institution should have available that addresses each of the review standards. All documents from the Board will be issued by certified mail, return receipt requested, to assure that the institution receives the notice and accompanying documents in a timely manner.

Subpart 2 establishes that institutions shall be placed in priority order by the Board. Institutions shall be reviewed in the order established under part 4890.0600. The rationale for the priority of review as established in CFR Title 34, Sec. 667.12 par. (c)(2)(ii), is presented in part 4890.0600. The Board will notify each institution of its order in the priority for review as required under CFR Title 34, Sec. 667.23 par. (b)(2). This information will guide the institution as to the order in which it can expect to receive a notification of review from the Board.

Subpart 3 establishes that the Board shall notify an institution of the start date of its review at least seven calendar days in advance. This is reasonable because it will allow an institution time to schedule the personnel, space, and other resources to assure an accurate and complete review. As required in CFR Title 34, Sec. 667.8 par. (a), the Board is required to notify appropriate nationally recognized accrediting agencies when it plans to review an institution accredited or preaccredited by those agencies. Notification of the accrediting agency is intended to inform that agency that a review is planned. This is reasonable because the Board expects to request information from accrediting agencies that may assist in the review of an institution.

Subpart 4 establishes that the Board expects to complete its review within 90 calendar days from the start date to the date of the exit conference. Ninety days should provide adequate opportunity for the reviewer to examine documents provided by the institution, for the institution to gather additional documentation the reviewer may request, for institution personnel and the reviewer to discuss the

findings of the review, and to conduct an exit interview between institution personnel and the reviewer. If 90 days does not allow adequate time in the opinion of the reviewer or institution personnel, either or both parties may request an extension of time from the Board. This subpart requires reviews to proceed with an expectation that a review should take no more than 90 days, but allows for extenuating circumstances that could result in extensions.

Subpart 5 establishes that within 45 calendar days after completing its review, the Board shall issue an initial report of findings to the institution. The 45 days limit for this subpart is established in CFR Title 34, Sec. 667.23 par. (c). This requirement is reasonable because it allows the Board time to evaluate a reviewer's report. The initial report will state whether an institution is in compliance with the review standards in part 4890.0500. If an institution is not in compliance, the initial report will cite each standard that is violated, describe the nature of the violation, and prescribe a course of action the institution must follow to correct the violation.

The initial report is intended to provide information an institution needs to remain eligible for Title IV programs. If an institution is found to be in compliance with the review standards corrective action will not be necessary. If, however, an institution is in violation of one or more of the review standards, it may be subject to termination of its eligibility to participate in Title IV programs. The Board is required to cite each standard violated and the nature of the violation as established in CFR Title 34, Sec. 667.23 par. (c)(1)(i). The initial report provides specific information for each standard an institution has violated. As established in CFR Title 34, Sec. 667.1 par. (a)(2)(i) and in CFR Title 34, Sec. 667.23 par. (c)(1)(i), the Board also is required to prescribe a course of action an institution must follow to correct the violation.

The initial report states the findings from the review. The findings will have been discussed during the exit interview and the institution will be aware of its violations of the review standards. The initial report states the reviewer's findings and prescribes the action needed to correct the violations. The initial report also states the time period allowed for an institution to correct the violations to bring itself into compliance with the review standards.

Subpart 6 establishes a time period for an institution to respond to the Board's initial report. The Board will issue its initial report to an institution by certified mail, return receipt requested, to assure its delivery in a timely fashion. This subpart establishes than an institution will have 30 calendar days to respond to the Board's initial report. An institution must be given an opportunity to respond to the

Board's findings and required actions as established in CFR Title 34, Sec. 667.23 par. (d)(1). If an institution does not respond within the 30 days, the initial report becomes the final report, pursuant to CFR Title 34, Sec. 667.23 par. (f)(1)(ii). The 30 days in which an institution is to respond to the initial report provides an opportunity for an institution to submit additional information to the Board, to correct errors in the report, or to respond to the Board's prescribed action by correcting violations and bringing the institution into compliance with the review standards. This is reasonable because all of the findings cited in the initial report will have been discussed during the exit conference and 30 days provides adequate time for an institution to respond.

Subpart 7 establishes when the Board shall issue a draft final report. If an institution responds to the Board's initial report within the 30 days permitted under subpart 6, the Board must evaluate the institution's response and issue a final report as established in CFR Title 34, Sec. 667.23 par. (e). The Board is required to issue its final report within 30 days of receiving an institution's response to the initial report. An institution is required to send its response to the initial report by certified mail, return receipt requested, to assure its delivery in a timely fashion.

The 30 days allowed for review of the institution's response will allow the Board an opportunity to determine whether the initial report contained errors, and to review the institution's response to the Board's prescribed corrective actions, or additional information provided by the institution. Based on an institution's response, the Board may determine that an institution's failure to satisfy a review standard does not warrant further action by the Board, as established in CFR Title 34, Sec. 667.23, par. (d)(2).

The draft final report will cite each standard violated by an institution, describe the nature of each violation, and prescribe a course of action an institution must follow to correct each violation. It is intended to be the final report for an institution, and the document that an institution must satisfy if it wishes to maintain eligibility for Title IV programs.

Subpart 8 establishes a time period for an institution to respond to the Board's draft final report. An institution will have 30 days to respond to the draft final report issued by the Board. This document will be delivered by certified mail, return receipt requested, to assure timely delivery. This subpart is reasonable because 30 days will allow an institution adequate time to respond to the Board's draft final report and to provide further documentation related to the findings in the report. Pursuant to CFR Title 34, Sec. 667.23 par. (f)(1)(ii), if an institution does not respond to the draft final report within the 30 days allowed by the Board, the draft final report becomes the final report. As stated in subpart 9, an institution may request an additional 30 days to respond to the Board's draft final report.

Subpart 9 establishes the opportunity for an institution to request additional time to respond to the Board's draft final report. An institution may request an additional 30 calendar days to respond to the Board's draft final report. If an institution makes this request, it will be granted. This is reasonable because it will allow an institution additional time to provide documentation or form a response to the Board's prescribed course of action for correcting violations to the review standards.

Subpart 10 establishes when the Board shall issue its final report. This subpart establishes that within 30 calendar days of receiving an institution's response to its draft final report, the Board shall issue its final report. The final report shall include the Board's notification to the Secretary. As established in CFR Title 34, Sec. 667.23 par. (e) the Board is required to evaluate an institution's response and issue a final report that includes the Board's findings and required action. This is reasonable because 30 days will allow the Board time to review an institution's response to the draft final report before issuing its final document. An institution will be required to send its response to the draft final report by certified mail, return receipt requested, to assure delivery in a timely manner.

Subpart 11 establishes that the Board shall issue an initial notification to the Secretary. This subpart establishes that within 30 calendar days of issuing its final report to an institution, the Board shall submit a copy of its final report to the Secretary and the accrediting agencies of the referred institution. The requirement to issue a copy of the final report to the Secretary is established in CFR Title 34, Sec. 667.23 par. (f)(1)(i); the requirement to issue a copy of the final report to nationally recognized accrediting agencies is established in CFR Title 34, Sec. 667.8 par. (b).

Upon notice by the Board that an institution should no longer participate in Title IV programs, the Secretary is required by federal regulation as established in CFR Title 34, Sec. 667.25 par. (b)(1) to immediately terminate an institution's participation, and to notify the institution, the Board, and the appropriate accrediting agency of the effective date of that termination. This subpart is reasonable because 30 days allows the Board adequate time to prepare the documentation required by the Secretary, and to deliver the final report.

Accrediting agencies are to be notified in order to provide information they may need when considering an institution for accreditation or preaccreditation. This subpart is reasonable because the 30 days allows the Board time to deliver its final report to appropriate accrediting agencies.

Subpart 12 establishes that the Board shall issue a final notification to the Secretary. This subpart establishes that if the final report to an institution prescribes a course of action that must be followed to correct violations cited during a review, an institution is required to respond within the time period prescribed. The final report issued to an institution, the Secretary, and nationally recognized accrediting agencies will report one of four conditions: 1) the institution was found to be in compliance with the review standards and no further action is required by the institution or the Secretary; 2) the institution was found to be in violation of one or more standards, but the Board did not prescribe a course of action the institution must follow to correct the violation; 3) the institution was found to be in violation of one or more review standards and the Board prescribed a course of action the institution must follow to correct the violations in order to maintain eligibility for Title IV programs; or 4) the Board concluded that the institution should no longer continue to participate in Title IV programs and has notified the Secretary of its findings and that determination.

Under conditions 1, 2, and 4 no further action is required by the Board. In the first two of these three conditions, an institution would continue to be eligible to participate in Title IV programs. Under the fourth condition, an institution's eligibility for Title IV programs would be terminated by the Secretary.

An institution found to be in violation of review standards and given a prescribed course of action to be completed within a prescribed time period by the Board would require additional interaction with the Board. Federal regulations provide only one type of notification from the Board to the Secretary, i.e., an institution should no longer participate in Title IV programs. There are no intermediate notifications for an institution found in violation of review standards. This subpart establishes that, to maintain its eligibility for Title IV programs, an institution must comply with the review standards. This subpart would only affect an institution whose final report prescribed a course of action required to correct violations.

At the conclusion of the prescribed time allowed by the Board for an institution to correct its violations, the Board would review the actions taken by the institution. If an institution complies with the prescribed course of action within the prescribed time period, the Board shall issue a final notification to the Secretary that the institution is in compliance. This will complete the Board's review of an institution.

If an institution does not comply with the prescribed course of action within the prescribed time period, the Board shall initiate the proceedings established in CFR Title 34, Sec. 667.23 par. (g), to terminate the institution's participation in Title IV programs. This subpart establishes a method to ensure that

institutions cited for violations of the review standards will correct the violations within the prescribed time period. This is reasonable because it will allow the Board to notify the Secretary that an instiution should no longer participate in Title IV programs, and complete the Board's review of an institution.

Part 4890.0800 Consumer complaint process.

Proposed rule

Subpart 1. **Consumer complaints; complaint records.**

Pursuant to the Higher Education Act of 1965, Title IV, part H, United States Code, title 20, section 1099a-3, paragraph (j), the board shall establish and publish the availability of procedures for receiving and responding to complaints regarding the review standards in part 4890.0500 and keep records of the complaints to determine their frequency and nature for specific institutions. Records regarding the number and nature of complaints shall be maintained by the board for each institution.

Subp. 2. **Requirements for consumers filing a complaint.**

A. For the purposes of this subpart and subpart 3, the terms in subitems (1) and (2) have the meanings given them.

(1) "Complaint" means a written statement of wrong, grievance, or injury pertaining to the standards in part 4890.0500 and filed with the board by an individual.

(2) "Written documentation" means information provided by an individual on a complaint form provided by the board.

B. An individual may receive information regarding how to file a complaint in person, via telephone, or by written request. Except when an individual alleges fraud, all complaints shall require written documentation.

C. If an individual alleges fraud, written documentation is not required and the individual need not follow the institution's complaint process. The board shall refer the individual to the United States Inspector General for the Department of Education.

D. A complaint form, designed by the board, shall include a data privacy waiver. The form shall provide space for information about the individual, including name and signature, the institution against which the complaint is filed, the nature of the complaint, a narrative section, and an invitation to provide supporting documentation.

E. A current student of an institution shall be required to affirm that all published internal complaint processes provided by the institution the student attends have been exhausted before the board shall act on the student's written complaint.

F. A complaint shall not be rejected because an individual chooses to remain anonymous. However, this item is notice to anonymous complainants that a request to remain anonymous potentially limits the board's ability to review a complaint fully.

Subp. 3. **Requirements for the board.**

A. Within ten working days of receiving a written complaint, the board shall notify the individual that the complaint was received. If necessary, the board may request further information. The board shall enter into a database maintained by the board complaint information from:

(1) current students who have affirmed that all published internal complaint processes provided by the institution the student attends have been exhausted; and

(2) other individuals.

B. The board shall refer the written complaint to the institution named in the complaint, an appropriate entity (for example, Minnesota Department of Commerce, Minnesota State Approving Agency for Veterans' Education, public governing boards, Minnesota Attorney General, Minnesota Department of Human Rights, United States Department of Education), or both.

C. The board shall forward allegations regarding fraud to the United States Inspector General for the Department of Education.

D. With the exception of allegations of fraud, the institution named in a complaint shall have the opportunity to respond to the complaint.

E. Referrals made by the board to institutions and other entities may require periodic follow-up by the board to determine the status of the complaint.

F. Within 90 days of receiving a written complaint that has not been addressed by the institution, the board shall issue a written notice to the individual and the institution named in the complaint, describing the status of the complaint.

G. The board shall maintain records of all complaints for at least five years from the end of the state fiscal year in which the complaint was received.

H. Complaints received by the board under Minnesota Statutes, chapter 141, and sections 136A.61 to 136A.71, shall be included in a database maintained by the board to determine whether a pattern of complaints has been established.

I. The board shall request that other entities which license institutions in Minnesota report complaints they have received in order to help determine a pattern of complaints.

Subp. 4. **Pattern of complaints.**

A. For the purposes of this subpart, the terms in subitems (1) to (3) have the meanings given them.

(1) "Fall term head count" means the number of students enrolled in courses at an institution creditable toward a diploma, certificate, degree, or other formal award, as reported on the most recent Integrated Postsecondary Education Data System, Fall Enrollment Survey, IPEDS-EF-2, June 1, 1994, Bureau of the Census, United States Department of Commerce, which is incorporated by reference. It is available through the Minitex interlibrary loan system. It is subject to frequent change.

(2) "Student" means an individual who is enrolled or was enrolled in an institution. For institutions subject to Minnesota Statutes, chapter 141, student also means any individual who is party to the contract on behalf of the student.

(3) "Pattern of complaints" means the following number of complaints by students received within any 12-month period:

(a) for an institution with a fall term head count of 1,500 students or less, 15 complaints; or

(b) for an institution with a fall term head count greater than 1,500, the head count multiplied by .01, rounded to the nearest whole number.

B. When a pattern of complaints against an institution is established, the board shall forward the complaints to the Secretary of the United States Department of Education, and notify the affected institution. Subsequent complaints received during the same 12-month period also shall be forwarded to the secretary.

Federal Requirement None given.

Rationale THE PROPOSED LANGUAGE IS NEW; THERE ARE NO FEDERAL OR STATE LAWS OR REGULATIONS CONCERNING A CONSUMER COMPLAINT SYSTEM.

Subpart 1 establishes that the Board shall establish and publish the availability of procedures for receiving and responding to complaints regarding the review standards in part 4890.0500 and keep records of the complaints to determine their frequency and nature for specific institutions. Establishing

procedures, publishing them, and maintaining records of consumer complaints are reasonable because they are required pursuant to the Higher Education Act of 1965, Title IV, part H, United States Code, title 20, section 1099a-3, paragraph (j). Further, these procedures were prepared in consultation with the postsecondary education community in the state.

Subpart 2 establishes requirements for consumers filing a complaint.

Item A establishes two definitions for Subparts 2 and 3.

Subitem (1) defines complaint as a written statement of wrong, grievance, or injury pertaining to the standards in part 4890.0500 and filed with the Board by an individual. Requiring a written statement is reasonable because written statements enable the Board to maintain records for action and reference, facilitate responses by the institutions, and constitute legal documents that may be used in judicial or administrative proceedings. Requiring that the wrong, objectionable action, or injury in the complaint pertain to the standards is reasonable because the complaint process is linked to the SPRP; including complaints not pertaining to the standards would expand the process beyond the scope of activities covered by the SPRP. Requiring the complaint to be filed by an individual is reasonable because the individual is likely to be the object of the wrong, objectionable action, or injury. This requirement does not deny complaints by groups but instead requires that each member of a group file a complaint. This increases the likelihood that the complaint has enough substance for the individual to file a complaint with the Board. Further, separate complaints by individuals in a group would more quickly establish a pattern of complaints, as provided in subpart 4, that would call attention to inappropriate actions by an institution. Conversely, a single complaint from a group might be more difficult to document, i.e., assemble supporting documentation from each member of the group, and might delay recording enough complaints to establish a pattern. At the same time, group complaints might be susceptible to participation by individuals whose interest in the complaint is not substantive.

Subitem (2) defines written documentation as information provided by an individual on a complaint form provided by the Board. Using a form provided by the Board is reasonable because a form affords a standardized method for recording essential information and maintaining documentation of complaints that individuals have filed.

Item B establishes means by which an individual may receive information regarding how to file a complaint. Individuals may obtain such information in person, via telephone, or by written request. Except when an individual alleges fraud, all complaints shall require written documentation. Obtaining information on the complaint process in person, via telephone, or by written request is reasonable

because it provides broad access to the information. Requiring written documentation is reasonable because written documents enable the Board to maintain records for action and reference, facilitate responses by the institutions, and constitute legal documents that may be used in judicial or administrative proceedings. Reasons for not including complaints of fraud appear in the material regarding item C of this subpart.

Item C establishes that if an individual alleges fraud, written documentation is not required and the individual need not follow the institution's complaint process. In those instances, the Board shall refer the individual to the United States Inspector General for the Department of Education. Referring allegations of fraud to the Inspector General rather than including them in the complaint process is reasonable because fraudulent use of Title IV funds is a criminal offense requiring attention by the federal government, and is an explicit focus of the SPRP. The Board will forward to the Inspector General only allegations of fraud involving Title IV funds. All other allegations of fraud will be subject to the same procedures as other complaints.

Item D establishes the elements appearing on the complaint form. These elements include a data privacy waiver, name and signature, the institution against which the complaint is filed, the nature of the complaint, a narrative section, and an invitation to provide supporting documentation. Including a data privacy waiver is reasonable to permit the Board, which is a public agency whose proceedings are in the public domain, to pursue the complaint fully. Absence of a waiver could limit the ability of the Board to pursue a complaint if pursuit of the complaint would require revealing the identity of the individual filing the complaint and the details of the complaint. Including a name and signature is reasonable to establish the identity of the person filing the complaint. Including the name of the institution is reasonable to establish the identity of institution against which the individual is filing the complaint. Including the nature of the complaint is reasonable to establish the nature of the complaint and to allow the institution to understand and respond to the complaint. Including a narrative section is reasonable to provide space for the individual to present additional information describing the nature of the complaint and to allow the institution to understand and respond to the complaint. Including an invitation to provide supporting documentation is reasonable to permit the individual the opportunity to submit evidence that a wrong, objectionable action, or injury has occurred.

Item E establishes a requirement that a current student of an institution affirm that all published internal complaint processes provided by the institution the student attends have been exhausted before the Board acts on the student's written complaint. Requiring that a current student exhaust an institution's published complaint process is reasonable because it affords the institution an opportunity to respond to

and resolve a complaint before intervention by the Board. Requiring an affirmation is reasonable because it implies that an invalid affirmation could result in the Board not entering the complaint into the database established in subpart 3, item A. Not requiring the same of other individuals submitting complaints is reasonable because individuals other than students may have neither knowledge of nor access to an institution's complaint process.

Item F establishes a notice to individuals considering filing anonymous complaints that a complaint shall not be rejected because an individual chooses to remain anonymous, but that a request to remain anonymous potentially limits the Board's ability to review a complaint fully. Not rejecting anonymous complaints is reasonable because an individual might have just cause to maintain anonymity and because an anonymous complaint might be evidence of unacceptable behavior by an institution. Notice of potential limitations is reasonable because an individual needs to be aware that the Board, as a government agency, might not be able to process a complaint without revealing the identity of the individual filing the complaint. Further, an anonymous complaint might limit the ability of the institution to respond.

Subpart 3 establishes procedures for the Board to follow in handling complaints.

Item A establishes that the Board shall notify the individual that a written complaint was received within ten working days of receiving it; may request further information, if necessary; and shall enter into a database maintained by the Board complaint information from two groups of individuals described in subitems (1) and (2). Notifying the individual who files a complaint is reasonable because the individual should be aware that the Board has received the complaint. A notification period of ten working days is reasonable because this amount of time is enough to permit the Board to process incoming complaints yet short enough to be expeditious for the individual filing the complaint. Discretion to request further information is reasonable because processing a complaint might require more information or supporting documentation than an individual initially furnished when filing the complaint. Establishing a database with information on complaints is reasonable because it permits efficient storage and retrieval of information to help the Board determine when a pattern of complaints exists as provided in subpart 4.

Subitem (1) establishes as a group current students who have affirmed that all published internal complaint processes provided by the institution the student attends have been exhausted. Establishing this group is reasonable because it conforms to the provisions established in subpart 2, item E.

Subitem (2) establishes as a group individuals other than current students. Establishing this group is reasonable because it conforms to the provisions established in subpart 2, item E.

Item B establishes referrals by the Board of written complaints. The Board shall refer written complaints to the institution named in the complaint, an appropriate entity, or both. Appropriate entities include but are not limited to the Minnesota Department of Commerce, Minnesota State Approving Agency for Veterans' Education, public governing boards, Minnesota Attorney General, Minnesota Department of Human Rights, and United States Department of Education. Referral of a complaint to the named institution is reasonable because the institution has the opportunity to respond to the complaint as provided in item D of this subpart. Referral of complaints to appropriate entities is reasonable because those entities have the authority to address complaints related to matters within the scope of their legal mandates. Examples of complaints that the Board might refer to appropriate entities include but are not limited to: complaints about racial or sexual harassment to the Minnesota Department of Human Rights; complaints about safety conditions at a cosmetology school to the Minnesota Department of Commerce; and complaints about satisfactory progress at a public institution to the institution's governing board.

Item C establishes the forwarding by the Board of allegations regarding fraud to the United States Inspector General for the Department of Education. Referring allegations of fraud to the Inspector General rather than including them in the complaint process is reasonable because fraudulent use of Title IV funds is a criminal offense requiring attention by the federal government, and is an explicit focus of the SPRP. The Board will forward to the Inspector General only allegations of fraud involving Title IV funds. All other allegations fraud will be subject to the same procedures as other complaints.

Item D establishes the opportunity for the institution named in a complaint to respond to the complaint, except in cases when the complaint alleges fraud. Establishing the opportunity for an institution to respond to a complaint is reasonable because this enables the institution to remedy the wrong, grievance, or injury claimed in the complaint, to demonstrate why the complaint is unjustified, or otherwise to pursue due process regarding the complaint. Exempting allegations of fraud related to Title IV programs is reasonable because allegations involving criminal matters can best be handled directly by the Inspector General as provided in item C of this subpart.

Item E establishes periodic follow-up by the Board of complaints referred to other entities, as necessary, to determine the status of complaints. Following-up on complaints is reasonable because it provides the Board with information on the status of complaints as provided in item F of this subpart. The Board would include information on the status of complaints with the information forwarded to the Secretary who may use it to determine whether or not to initiate review of an institution.

Item F establishes a 90-day period for the Board to issue a written notice to the individual and the institution named in the complaint describing the status of a complaint that has not been addressed by the institution. A 90-day period is reasonable because it is sufficient time for the Board to process the complaint.

Issuing a written notice is reasonable because it will allow the Board to notify the individual and the institution that the other party has been notified. Ninety days is a reasonable amount of time to allow an institution to address a complaint. It is reasonable to notify the student if a complaint has not been addressed by an institution within that time period.

Item G establishes a five-year period from the end of the state fiscal year in which the complaint was received for the Board to maintain records of complaints. Establishing a five-year period for maintaining records is reasonable because it is consistent with Title IV regulations that require institutions to retain records for Title IV programs for at least five years from the date that the institution submits its Fiscal Operations Report and Application to Participate.

Item H establishes the inclusion in the database of complaints received by the Board under Minnesota Statutes Chapter 141 and Minnesota Statutes Chapter 136A.61 to 136A.71 to determine whether a pattern of complaints is established. Including complaints received under Minnesota Statutes Chapter 141 is reasonable because Minnesota Statutes Chapter 141 governs the licensure of certain private vocational schools and assigns authority to issue licenses to the Board. Complaints received by the Board in the conduct of its responsibilities under Minnesota Statutes Chapter 141 might be related to the standards established in part 4890.0500. Requiring separate filing of complaints under SPRP when a related complaint is received under Minnesota Statutes Chapter 141 would be redundant and cumbersome to the individual filing the complaint. Only those complaints related to the standards established in part 4890.0500 would be entered into the database established in subpart 3, item A. Only complaints from students or former students under provision of subpart 4 would be used in determining a pattern of complaints and forwarded to the Secretary. Including complaints received under Minnesota

Statutes Chapter 136A.61 to 136A.71 is reasonable because Minnesota Statutes Chapter 136A.61 to 136A.71 governs the registration of certain private institutions and assigns authority to register those institutions to the Board. Complaints received by the Board in conducting its responsibilities under Minnesota Statutes Chapter 136A.61 to 136A.71 might be related to the standards established in part 4890.0500. Requiring separate filing of complaints under SPRP when a related complaint is received under Minnesota Statutes Chapter 136A.61 to 136A.71 would be redundant and cumbersome to the individual filing the complaint. Only those complaints related to the standards established in part 4890.0500 would be entered into the database established in subpart 3, item A. Only complaints from students or former students under provisions of subpart 4 would be used in determining a pattern of complaints and forwarded to the Secretary.

Item I establishes the obligation of the Board to request that other entities that license institutions in Minnesota report complaints they have received in order to help determine a pattern of complaints. Requesting information on complaints received from other licensing entities is reasonable because these entities are likely to receive complaints from students or former students on matters related to the standards in part 4890.0500. Inclusion of information received by other entities is reasonable because the Board and the licensing entities have similar interests in the sound operation of institutions. Reporting of complaints by these other entities to the Board is voluntary and would conform with applicable laws, rules, and policies regarding the release of information involving individuals and institutions. Entities that license institutions include the Minnesota Department of Commerce, which licenses schools of cosmetology; the Barber's Examiner Board, which licenses barber schools; and the Minnesota Department of Transportation, which licenses truck driver training schools.

Subpart 4 establishes procedures for establishing a pattern of complaints and forwarding the information to the Secretary.

Item A establishes three definitions for use in this subpart.

Subitem (1) defines fall term head count as the number of students enrolled in courses at an institution creditable toward a diploma, certificate, degree, or other formal award, as reported on the most recent Integrated Postsecondary Education Data System, Fall Enrollment Survey, IPEDS-EF-2, June 1, 1994, Bureau of the Census, United States Department of Commerce, which is incorporated by reference. The survey form is available through the Minitex interlibrary loan system; it is subject to frequent change. Use of this definition is reasonable because all institutions eligible to participate in Title IV

programs must submit fall enrollment data and other information on IPEDS surveys to the USDE. Consequently, all institutions that might be subject to review should have enrollment data conforming to the data required by this definition.

Subitem (2) defines student as an individual who is enrolled or was enrolled in an institution. For institutions subject to Minnesota Statute, Chapter 141, student also means any individual who is party to the contract on behalf of the student. Including an individual who is enrolled at an institution is reasonable because it conforms with the definition of enrolled as established in CFR Title 34, Sec. 600.2. Including an individual who was enrolled is reasonable because the object of the complaint might become evident only after a student departs or might contribute to the student's departure. Individuals who are enrolled or who had been enrolled at an institution may have been adversely affected by the management or administration of the institution. Examples of complaints include but are not limited to the following: circumstances leading to the complaint contributed to the student leaving the institution, such as termination of enrollment due to inappropriate enforcement of student progress policies; inappropriate conduct by an institution that became evident to an individual after the individual ceased being a student, such as inadequacy of training and consequent inability of the individual to obtain employment. Including parties to the contract for institutions subject to Minnesota Statutes Chapter 141 is reasonable because part 4880.1100, subpart 1, defines student as "the student if the student is the party to the contract, or the student's parent or guardian or another person if the parent or guardian or other person is the party to the contract on behalf of the student." Parents, guardians, or persons other than students would be party to a contract in limited circumstances such as when the student is a minor or is otherwise unable to be a party to a contract. Parents, guardians, or persons other than currently enrolled students would be considered as other individuals under subpart 3, item A, subitem (2).

Subitem (3) defines pattern of complaints as complaints by students received within any 12-month period in numbers according to the categories of institutions established in units (a) and (b). Limiting a pattern of complaints to complaints by students is reasonable because the Higher Education Act of 1965, Title IV, part H, United States Code, title 20, section 1099a-3, par. (b)(11) explicitly refers to student complaints when establishing a pattern of complaints that the Secretary may use as a criterion for initiating review of an institution. A 12-month period is reasonable because it spans a length of time that would include an academic year, which is long enough to accumulate evidence of a pattern of inappropriate behavior by an institution. It also is closed ended to avoid an accumulation of complaints that might not be indicative of serious problems at an institution or an institution's willingness to

implement remedies. Any 12-month period rather than a specified 12-month period is reasonable because it reduces the potential for discounting or ignoring a series of complaints reported close together in time but in two different 12-month periods with fixed starting and ending dates. Establishing different thresholds by size of institution for numbers of complaints that constitute a pattern by size is reasonable because a single, absolute threshold for every institution seemed unfair to small institutions. The Secretary has provided no guidance on this matter.

Unit (a) establishes 15 as the number of student complaints needed to establish a pattern of complaints, for institutions with a fall term head count of 1,500 or fewer students. This is reasonable because it protects smaller institutions from the possibility that a small group of students could establish a pattern of complaints for reasons of personal revenge, for example, low grades, or a friend being expelled from the institution, rather than actual concerns about the institution's control of Title IV funds and/or administration of Title IV programs. Using .01 (one percent) of the student body would be unreasonable for institutions with a fall term head count of 1,500 or fewer students because for institutions with less than 100 students 1 student, seeking personal revenge, could establish a pattern of student complaints which could result in an institutional review. The Secretary's interest in eliminating potential fraud is protected, because students who file a complaint with the Board that alleges fraud in the use of Title IV funds will have their complaints referred to the Inspector General for the USDE, and a pattern of complaints would not have to be established.

Unit (b) establishes a pattern of complaints for institutions with a full term headcount greater than 1,500. For institutions with more than 1,500 students using .01 (one percent) is reasonable because it allows a small percentage of the institution's students to establish a pattern of complaints while protecting the institution from a small number of students who try to establish a pattern of complaints for personal reasons, for example, low grades, or a friend being expelled from the institution rather than actual concerns about the institution's control of Title IV funds and/or administration of Title IV programs. As an example of this, the University of Minnesota's reported fall headcount for 1994 was 36,699; this would require 367 student complaints to establish a pattern of complaints. The Secretary's interest in eliminating potential fraud is protected, because students who file a complaint with the Board that alleges fraud in the use of Title IV funds will have their complaints referred to the Inspector General for the USDE, and a pattern of complaints would not have to be established.

Item B establishes the forwarding of the pattern of complaints to the Secretary and notifying the affected institution. This item further establishes the forwarding of subsequent complaints received during the same 12-month period. Forwarding a pattern of complaints to the Secretary is reasonable because it is implied pursuant to the HEA, Title IV, Part H, and United States Code, Title 20, Section 1099a-3, par.

(b)(11) and (j). The federal law cited provides the Secretary authority to select an institution for review based on a pattern of student complaints. The Board will forward the information on patterns of student complaints to the Secretary. Forwarding subsequent complaints received during the same 12-month period is reasonable because it provides the Secretary with additional information on which to base a decision regarding review of an institution.

Part 4890.0900 Board peer review selection process.

Proposed rule

To conduct or coordinate a review of a referred institution, the board shall follow contracting procedures under Minnesota Statutes, chapter 16B. In determining whether a contractor is competent to assess educational programs, the board shall use the criteria and procedures in Code of Federal Regulations, title 34, section 667.24. The board shall also require a contractor to demonstrate an ability to review an institution's compliance with the standards in part 4890.0500.

Federal Requirements CFR Title 34, Sec. 667.24.

Rationale THE PROPOSED RULE LANGUAGE IMPOSES AN ADDITIONAL STATE REQUIREMENT TO FEDERAL LAW OR REGULATION.

This part establishes the method the Board will use to select reviewers. As established in CFR Title 34, Sec. 667.24, the Secretary requires SPREs to contract with a nationally recognized accrediting agency or other peer review system the SPRE determines demonstrates competence in assessing educational programs to carry out a review of a referred institution. CFR Title 34, Sec. 667.24 further specifies that a SPRE must determine that a peer review system meets three criteria: 1) an established basis for evaluating educational quality; 2) review procedures that include the selection of peer reviewers who have experience in evaluating the types of programs offered by the institution being reviewed; and 3) established policies and procedures that guard against bias in conducting reviews.

The requirements specified by the Secretary are designed to assure that the capabilities of a peer review system are equivalent to that of a nationally recognized accrediting agency. The Secretary's first choice to conduct reviews of referred institutions is nationally recognized accrediting agencies. This is reasonable because the USDE has statutory authority to recognize accrediting agencies, and all

institutions that wish to be eligible to participate in Title IV programs must be accredited or preaccredited by an accrediting agency recognized by the USDE. The three criteria established in federal regulation are commonly used by accrediting agencies.

This part also establishes a fourth criterion, i.e., a contractor must demonstrate an ability to review an institution's compliance with the review standards established in 4890.0500. This criterion is designed to assure that a reviewer is familiar with the review standards established for Minnesota institutions, and has the capability to determine whether an institution is in compliance with them.

The Board's plan to follow the contracting procedures provided for in Minnesota Statute is reasonable because it assures that a standard procedure will be followed. Potential contractors will know what is involved in the process, and know what is expected of them. The statute establishes a fair and equitable method for selecting contractors interested in accepting responsibility for completing activities delegated by state agencies.

SECTION VII. IMPACT STATEMENTS

Small Business Minn. Stat. sec. 14.115, subd. 2, requires agencies when proposing rules which may affect small businesses, to consider the following methods for reducing the impact on small businesses:

a) the establishment of less stringent compliance or reporting requirements for small businesses;

b) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

c) the consolidation or simplification of compliance or reporting requirements for small businesses;

d) the establishment of performance standards for small businesses to replace design or operational standards required in the rule; and

e) the exemption of small businesses from any or all requirements of the rule.

The proposed rule may affect small businesses, because there are a number of proprietary postsecondary institutions that fit the category of small business: they are independently owned and operated; they are not dominant in their field; they employ less than 50 full-time employees; and they have gross annual sales of less than $4 million.

There are also a number of small proprietary postsecondary institutions that are part of larger corporations. For purposes of rulemaking, these are not affected.

There are 16 private, proprietary postsecondary institutions that are regulated by the Board's mandate to regulate private business, trade, and correspondence schools, for which the Board maintains financial records, and fit the definition of a small business. There are a number of cosmetology institutions regulated by the Department of Commerce that are likely also to fit the definition of a small business.

The Board considered the impact on small businesses and determined that it will be minimal, because most of the requirements imposed by the proposed rule are requirements all institutions must already comply with, by virtue of participation in Title IV programs. In addition, private proprietary institutions must comply with requirements of Minn. Stat.141 (Minnesota Rules, Chapter 4880), that already include several of the same requirements proposed in this rule.

The Board determines that the largest impact on small businesses will be the development of a complaint process, if the institution does not already have one. Concerning the other requirements, it is important to note again that institutions will be reviewed only if they meet one of the review criteria, in which case they would have to provide the data required by the proposed rule. This rule does not require submission of reports to the Board on a regular basis.

The Secretary does not allow institutions to be treated differently, unless it is noted in the proposed rule. For example, the Secretary allows distinction between institutions offering 600 clock hour programs and institutions offering longer programs, or between institutions offering vocational or professional programs.

To summarize, the federal law and regulation do not allow "small business" postsecondary institutions to be treated differently in meeting the requirements of the rule.

Agricultural Lands Minn. Stat. Sec. 14.11, subd. 2, requires that if the agency proposing adoption of a rule determines that the rule may have a direct and substantial adverse impact on agricultural land in the state, the agency shall comply with specified additional requirements.

The Board considered the impact of this rule, and determined the rule will not have a direct and substantial adverse impact on agricultural lands.

Local Public Bodies Minn. Stat. Sec. 14.11, subd. 1, requires agencies to include a statement of the rule's estimated costs to local public bodies in the notice of intent to adopt rules if the rule would have a total cost of over $100,000 to all local bodies in the state in either of the two years immediately following adoption of the rule.

The Board considered the impact of this rule, and determined that the impact on local public bodies will be minimal, if any. There are two publicly owned hospitals in the state that participate in Title IV programs. Both institutions are already required to comply with most of the requirements of the proposed rule by virtue of participating in Title IV programs.

SECTION VIII. LIST OF WITNESSES, EXHIBITS AND APPENDICES

Witnesses In support of the need and reasonableness of the proposed rule, the following witnesses will testify at the rulemaking hearing:

1. Mr. Joseph P. Graba, Interim Executive Director, HECB

2. Dr. Paul F. Thomas, Assistant Director of Policy and Program Planning Division, HECB

3. Dr. Leslie K. Mercer, Director of Policy and Program Planning Division, HECB

4. Mr. Verne Long, President, HECB

Exhibits

1. Higher Education Act, Title IV, Section 494, Part H, July 23, 1992

2. State Postsecondary Review Program; Notice, *Federal Register*, July 14, 1993

3. Letter from Secretary Riley to Governor Carlson, August 5, 1993

4. Letter from Governor Carlson to Secretary Riley, August 19, 1993

5. Letter from Secretary Riley to Governor Carlson, September 13, 1993

6. Letter and SPRP Agreement from David Powers to David Longanecker, August 27, 1993

7. Letter and SPRP Agreement from Karen Kershenstein to Paul Thomas, October 26, 1993

8. Letter and Minnesota Plan from David Powers to David Longanecker, August 31, 1993

9. Memo and Revised Minnesota Plan and Budget from P. Thomas to S. Porcelli, October 14, 1993

10. Grant award notification from Karen Kershenstein; Notification signed November 19, 1993

11. State Postsecondary Review Program, Proposed Rule, *Federal Register*, January 24, 1994

12. Letter from D. Powers to Secretary Riley and MN Congressional Delegation, February 28, 1994

13. State Postsecondary Review Program; Final Rule, *Federal Register*, April 29, 1994

14. Letter and enclosure from Ken Waters, September 30, 1994

15. Higher Education Advisory Council and Intersystem Planning Group member list

16. SPRE Advisory Group: member list, cover memos, agendas and record of meetings

17. Documents from D. Powers to Chief Executive Officers and Institution Contacts, Aug. 25, 1994

18. HECB meeting agendas and minutes which include discussion by Board members

19. Program Participation Agreement for Student Financial Assistance

20. Graduation Rates of Minnesota Institutions, as Reported in Recent National Publications

21. Minnesota Community College Student Status 1991-92

22. Minnesota Graduate Follow-Up System Handbook for the Class of 1995, MHECB, July 1994

Appendices

Appendix 1. Title IV Aid Awarded to Students at Minnesota Institutions, Fiscal Year 1991

Appendix 2. Memorandum to Paul Thomas from Timothy Medd, July 28, 1994

SECTION IX. CONCLUSION

Based on the foregoing, the proposed Minnesota Rule Parts 4890.0010 to 4890.0900 are both needed and reasonable.

Dated: Dec. 12, 1994

Joseph P. Graba
Interim Executive Director