

STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES
DIVISIONS OF FISH AND WILDLIFE AND ENFORCEMENT

IN THE MATTER OF PROPOSED ADOPTION OF
GAME AND FISH RULES

STATEMENT OF NEED AND REASONABLENESS

November 16, 1995

GENERAL PROVISIONS

Purpose

The purpose of the proposed rule is to make several necessary changes to the game and fish rules. The primary purpose of the game and fish rules is to preserve, protect, and propagate desirable species of wild animals while ensuring recreational opportunities for people who enjoy wildlife-related activities.

The proposed rule covers a variety of areas pertaining to game and fish. The major parts of the rule deal with: hunting, trapping, and fishing in state game refuges; deer hunting restrictions; bear hunting restrictions; moose hunting restrictions and orientation requirements; trapping regulations and pelting fees; wild turkey hunting zones; goose hunting regulations; private fish hatchery operations; commercial harvest of mussels; commercial fishing on Lake Superior, inland waters, and Minnesota-Wisconsin boundary waters; fishing regulations for catfish and sturgeon on inland waters, Minnesota-South Dakota boundary waters, and Minnesota-North Dakota boundary waters; closing certain waters to the possession of certain species of fish and restricting the use of live bait; and taking minnows on Minnesota-Wisconsin border waters.

A notice of intent to solicit outside opinion was published in the State Register on August 28, 1995. This notice described the specific areas the proposed rule deals with, the statutory authority for each of these areas, the parties that could be affected by the proposed rule, and small business considerations related to the proposed rule. The DNR has received a letter from the president of the Minnesota North Shore Commercial Fisherman's Association supporting the proposed rule changes for commercial fishing on Lake Superior. A similar letter was received from a commercial fishing operator on Lake Superior. A letter was received from an interstate commercial fishing operator supporting the proposed rule changes for commercial fishing on Minnesota-Wisconsin boundary waters. No other comments were received on the notice of intent to solicit outside opinion.

In addition to the notice to solicit outside opinion, effort was made to notify parties affected by the rule. A letter with a copy of the notice to solicit outside opinion was sent directly to the president of the Minnesota Bait Dealer's Association, the president of the Minnesota Aquaculture Association, the president of the Minnesota Inland Commercial Fisherman's Association, and individual commercial fishing operators from Lake Superior and the Minnesota-Wisconsin boundary waters. In addition, numerous phone conversations and meetings occurred with representatives of the commercial fishing and private aquaculture industries. Local news releases were done in areas affected by the rules including southwest Minnesota (for fishing regulation changes on Minnesota-South Dakota boundary waters), northwest Minnesota (for catfish regulation changes on Minnesota-North Dakota boundary waters), and the Hinckley area (for sturgeon regulation changes on tributaries to the St. Croix River). A letter with a summary of the proposed wildlife rules was sent to the executive director of the Minnesota Deer Hunters Association, the executive director of the Minnesota Waterfowl Association, the legislative director of Minnesota Bowhunter's, Inc., the legislative representative of the Minnesota State

Archery Association, the state conservation director of Ducks Unlimited, the president of the Minnesota Trappers Association, and the president of the Minnesota Chapter of the National Wild Turkey Federation. In addition, numerous meetings and phone conversations were held with representatives of these groups and the general hunting and trapping community. Most of these proposals were also discussed at a series of six public meetings held throughout the state in February and March of 1995 and in several statewide news releases that were distributed to print and electronic media throughout Minnesota from January to August 1995.

Statutory Authority

Statutory authority for the various provisions of the proposed rule is as follows:

6210.0100: 86A.06
6230.0400: 97A.091, subd. 2
6230.1400: 97B.311, 97B.605, 97B.711, 97B.731
6232.0100: 97B.035, subd. 4; 97B.311; 97B.411; 97B.505
6232.0300, 6236.0600, 6232.1500, 6232.1700, and 6232.2200: 97B.311
6232.0400: 97A.535, subd. 2
6232.1100: 97A.091, subd. 2; 97B.311
6232.3000, 6232.3100, and 6232.3200: 97B.411
6232.3700: 97B.505 and 97A.431, subd. 2
6232.4100: 97B.505
6234.1900: 97B.925
6234.2000: 97B.921
6234.2200: 97B.605, 97B.611, 97B.615, 97B.621, 97B.625, 97B.631, 97B.635, 97B.911, 97B.915, 97B.921, and 97B.925
6234.2600: 97B.625, 97B.635, 97B.921, 97B.901
6234.2800: 97A.055, subd. 5
6236.0100, 6236.0500, 6236.0600, 6236.0700, 6236.0800, and 6236.0810: 97B.711
6236.0300: 97B.723
6236.1000: 97B.721
6236.1100: 97B.725
6240.1000, 6240.1100, 6240.1150, 6240.1850, and 6240.1900: 97B.731, 97B.803
6250: 97C.211, subd. 2
6252.0500: 97C.345, subd. 5
6258.0300: 97C.701, subd. 1
6258.0400: 97C.701, subd. 1
6258.0500: 97C.701, subd. 1
6258.0700: 97C.701, subd. 1
6260.1800: 97A.045, subd. 4; and 97C.835, subd. 3
6260.2000: 97C.345, subd. 5; and 97C.811, subd. 3
6262.0100: 97C.205
6262.0200: 97A.045, subd. 2; 97C.395; and 97C.401, subd. 1
6262.0500: 97A.045, subd. 2; and 97C.005, subd. 3

6266.0100: 97A.045, subd. 4
6266.0300: 97A.045, subd. 4
6266.0400: 97A.045, subd. 4
6266.0500: 97A.045, subd. 4
6266.0600: 97A.045, subd. 4

Scope

Areas covered by the proposed rule include the following: technical correction on use of wildlife management areas; opening and closing special hunting and fishing provisions in the following state game refuges - Bemidji, Claremont, Lac qui Parle, Paul Bunyan, Pine County, Talcot Lake Waterfowl, Bellwood, and Anoka and Isanti counties; closing an area of the Richard J. Dorer State Forest to firearms hunting; repealing bow and arrow casing and stand requirements that have been superseded by statute; adding the resident youth license established by statute to the firearms deer zone and date options; simplifying and standardizing deer registration requirements; extending archery deer season for most areas of state and changing archery zones; extending the time of day archery hunters are allowed in Camp Ripley; allowing ATV's in Camp Ripley by permit for hunters with disabilities; providing for use of handguns for deer hunting in shotgun zones; repealing the Minnesota Valley alternative deer control program rules; providing for use of handguns for muzzleloader deer hunting in shotgun zones; clarifying the validity of bear quota and no-quota licenses and changing a bear quota area; reducing distance restrictions for bear bait stations; prescribing an alternative color for moose hunters whose religious beliefs do not permit blaze orange; adding orientation session requirement for northwest zone moose hunters; changing northeast moose zone boundaries; extending open season for beaver trapping; extending open otter zone boundary; extending trap-tending interval for conibear-type traps to conform to statute change; changing carcass collection requirements for furbearers; changing pelting fee for accidentally trapped furbearers; changing turkey zone boundaries; prescribing open goose seasons in portions of the state; and opening the following game refuges for the taking of geese - Douglas County Goose, Fox Lake, Sauk Rapids-Rice Goose, St. James and Otter Tail County; private fish hatchery operations; commercial mussel permits; commercial fishing for ciscoes and lake trout on Lake Superior; commercial use of pound and trap nets on Lake Superior; release of commercial fish species in inland waters; commercial use of crib nets in inland waters; importation, transportation, and stocking of live fish; sturgeon regulations on tributaries to the St. Croix River; catfish regulations on tributaries to Minnesota-South Dakota boundary waters and tributaries to the Red River of the North; closing Little Rock Creek in Morrison and Benton counties and Mink and Somers lakes in Wright county to the possession of certain fish species; possession limits on boundary waters; catfish regulations on Minnesota-North Dakota boundary waters; catfish regulations, inclusion of the Mustinka River, liberalized fishing, and prohibition of certain species for use as bait for Minnesota-South Dakota boundary waters; and rough fish definition, territorial restrictions for commercial fishing operators, return of carp during commercial fishing operations, and taking of minnows on Minnesota-Wisconsin boundary waters.

RULE-BY-RULE ANALYSIS

6210.0100 GENERAL PROVISIONS FOR USE OF WILDLIFE MANAGEMENT AREAS.

Subp. 17. Commercial and private business prohibited.

The purpose of the change to this subpart is a technical correction to correct an erroneous cross-reference in the existing permanent rule. The rule currently cross references commercial operations as provided in subpart 5, but the correct reference should be to subpart 6.

6230.0400 SPECIAL PROVISIONS FOR STATE GAME REFUGES.

Subp. 2. Bemidji Game Refuge, Beltrami county.

The purpose of the change to this subpart is to close archery deer hunting in this refuge the first Sunday in December. It is necessary because the archery deer season in the zone surrounding this refuge has been extended to the end of December and without this change that extension would also apply in the refuge. It is reasonable because it maintains the same closing date for deer hunting in this refuge that has been in effect in the past.

Subp. 4. Claremont Game Refuge, Dodge county.

The purpose of the change to this subpart is to change the closure of this refuge from all waterfowl to just ducks and mergansers. It is necessary to allow for the hunting of geese to occur in this refuge. It is reasonable because populations of resident geese have been increasing in Minnesota and there is a harvestable surplus of geese in the refuge that is no longer in need of special protection.

Subp. 21. Lac qui Parle Game Refuge, Chippewa and Lac qui Parle counties.

The purpose of the change to item A. is to clarify that the refuge is closed to waterfowl hunting except at designated stations during the open goose season. It is necessary because this is a major staging area for migratory waterfowl in the fall and they need a protected area free from hunting. It is reasonable because it provides for a protected area where migratory waterfowl can rest and stage and because it is a clarification that does not change how the rule has been applied in the past.

The purpose of the change to item B. is to allow fishing in the posted closed area of the refuge before the open goose season as well as after. It is necessary to allow fishing to take place in an area normally closed to trespass. It is reasonable because it allows for additional recreation that will not be detrimental to the staging and resting geese in the closed area.

Subp. 35. Paul Bunyan Game Refuge, Hubbard county.

The purpose of the change to this subpart is to allow archery deer hunting in this refuge throughout the open archery deer season. It is necessary because the current rule closes archery deer hunting the Thursday prior to the firearms deer season. This was done to prevent

disturbance to deer by archery hunters during the firearms season that could make deer more vulnerable to firearms hunters in adjacent open areas. It is reasonable because deer populations have increased to the point that there is no longer a need to provide additional protection to deer in this refuge during the firearms season.

Subp. 37. Pine County Game Refuge, ~~Units 1, 2, and 3~~ Unit 2, Pine county.

The purpose of the change to this subpart is to delete references to Pine County Game Refuges 1 and 3. It is necessary and reasonable because these refuges have been vacated under the statutory procedures specified in Minnesota Statutes Sec. 97A.085.

Subp. 48. Talcot Lake Waterfowl Refuge, Cottonwood county.

The purpose of the change to this subpart is to open a portion of the refuge to goose hunting by persons with disabilities at designated hunting stations. It is necessary because hunting is otherwise prohibited in this portion of the refuge. It is reasonable because there is a harvestable surplus of geese in the refuge and because it provides opportunities for persons with disabilities in areas where it will not harm the management of the resource and where they can participate in a hunting experience without having to compete with able-bodied hunters.

Subp. 51. Bellwood Game Refuge, Dakota county.

The purpose of the change to this subpart is to open this refuge to trapping and to archery deer and bear hunting. It is necessary because refuges are closed to hunting by statute unless opened by the commissioner. It is reasonable because harvestable surpluses of the species exist and because trapping and archery hunting will not create the concerns about public safety in surrounding populated areas that might be associated with firearms hunting.

Subp. 52. Anoka and Isanti Counties Game Refuge, Anoka and Isanti counties.

The purpose of the change to this subpart is to open this refuge to firearms deer hunting by permit. It is necessary because refuges are closed to hunting by statute unless opened by the commissioner. It is reasonable because a harvestable surplus of deer exists and because there is a need to control hunter densities and harvests through the use of a limited number of permits.

6230.1400 HUNTING RESTRICTIONS FOR RICHARD J. DORER MEMORIAL HARDWOOD STATE FOREST.

The purpose of the change to this part is to close a portion of the state forest to hunting with firearms. It is necessary because state forests are generally open to hunting of all types. It is reasonable because the portion of the forest to be posted closed surrounds a forest resource environmental center that conducts outdoor classroom activities in the forest.

6232.0100 GENERAL RESTRICTIONS FOR TAKING BIG GAME

Subp. 3. Bow and arrow casing and stand requirements.

The purpose of the change to this subpart is to repeal a rule provision that has been

superseded by legislation (Minnesota Statutes Sec. 97B.035, Subd. 4; enacted 1994, effective 7/1/95). It is necessary and reasonable because state rule may not conflict with statute.

6232.0300 GENERAL RESTRICTIONS FOR TAKING DEER

Subp. 1. Zone and Date Options.

The purpose of the change to this subpart is to clarify that the resident youth license that was authorized by the 1995 legislature is restricted to only one zone and date option, just as the regular firearms deer license is. It is necessary because requiring firearms deer hunters to select only one zone and date option controls deer hunter densities and ensures a consistent distribution of hunters between zones and time periods. It is also necessary to prevent hunters from hunting during both the regular firearms season and the special muzzleloader season to reduce hunter densities and limit harvest during the late, 16-day, either-sex muzzleloader season when potential for overharvest could be significant. It is reasonable because controlling deer hunter densities provides for safer hunting conditions and because only firearms hunters who purchase a multi-buck license, which is twice the cost of a regular license, are allowed to hunt in more than one zone and time option. Also, no firearms hunters are allowed to hunt during both the regular firearms season and the special muzzleloader season.

6232.0400 REGISTRATION OF DEER

The purpose of the changes to this part is to create the same registration requirements for firearms, archery, and muzzleloader hunters. These changes are reasonable to simplify, standardize, and streamline deer registration.

Subp. 1. Bow and arrow deer registration.

This subpart is being repealed and standard registration requirements for archery deer hunters have been described in subpart 2. Deer killed by archery hunters would no longer have to be registered within 48 hours of taking. This is necessary to reduce complexity of regulations, standardize, and improve compliance of registration requirements by hunters. It is reasonable because the 48 hour restriction is not necessary for adequate collection of harvest information from deer harvested by archers, and because most deer will continue to be registered within a short time of being harvested because weather conditions dictate that deer must be processed within a relatively short period of time after taking.

Subp. 2. Registration requirements.

The purpose of the change to this subpart is to standardize registration requirements for all deer hunters with several restrictions. First, it requires all deer to be registered before the deer is processed. This is necessary to ensure that all deer are registered and can be identified as to age and sex before being processed so that accurate information can be provided to the registration agent. It is reasonable because there are more than 1,000 registration station agents throughout the state, and most hunters hunt or live in close proximity to a registration agent.

This change also requires all deer to be registered within 24 hours of the close of the season in which the deer was taken. This is necessary to allow for timely collection of harvest information by the department after the close of the season, and because multi-zone buck licenses do not have a single season specified on their license. Because most hunters generally transport deer to a residence or processing facility during the season or within at most a day after the close of a season, this provision is also intended to improve compliance with registration requirements by encouraging registration to occur as the deer is being initially transported from the field. It is reasonable because this has been the requirement in the past for deer taken by firearms and because most deer are processed during or shortly after the close of the season due to weather conditions.

This change also repeals a provision that required deer taken by firearms hunters to be registered within the zone in which they were taken, and related provisions regarding registration at stations on or near zone boundaries. This is necessary and reasonable because archery and muzzleloader hunters are not restricted to zones, and because the zone restriction is not necessary to provide for adequate collection of harvest information from firearms deer hunters.

This change also clarifies that deer taken by muzzleloader and archery hunters must be registered before being processed. This is necessary to ensure that all deer are registered and can be identified so that accurate information can be provided to the registration agent. It is reasonable because there are more than 1,000 registration station agents throughout the state, and most hunters hunt or live in close proximity to a registration agent.

Subp. 3. Muzzleloader deer registration.

This subpart is being repealed and standard registration requirements for all deer hunters have been described in subpart 2. Registration requirements for muzzleloader hunters are essentially unchanged as result of this part.

Subp. 4. General provisions for registering deer.

The purpose of the change to this subpart is to clarify that the skin of deer may be removed prior to registration. This is necessary because some hunters prefer to skin harvested deer as soon as possible to promote rapid cooling and prevent meat spoilage. It is reasonable because deer can still be identified for registration and enforcement purposes without the skin.

6232.0600 SEASONS AND DATES FOR TAKING DEER BY ARCHERY.

The purpose of the change to this part is to reduce the number of archery zones with different closing dates from four zones (Southwest; Northern; Southeast/East Central; and Registration Blocks 115,116, 117, 118, 127, 130, and 194) to two zones (Northeast Border Zone and the remainder of the state). It is necessary to provide additional hunting recreation for archery deer hunters, and to simplify and streamline complex regulations. It is reasonable because the extended season that is being offered in the former Southwest and Northern Zones should not pose a threat to conservation of deer in these areas, and the existing seasons unnecessarily

restricted hunters. It is also reasonable because the department's public input process has indicated strong support from hunters for this change.

6232.1100 SPECIAL RESTRICTIONS FOR CAMP RIPLEY ARCHERY HUNT.

Subp. 1. Access to Camp Ripley.

The subpart is divided into eight items: A,B,C,D,E,F,G,H. There is no change to items A-C, E-F, and H. The purpose of the change in item D is to allow additional time for hunters to reach the department's checkpoint after the close of shooting hours, and was necessitated by the additional one-half hour of hunting after sunset that was provided by the 1995 legislature. It is necessary to ensure that hunters have sufficient time to leave the woods and return to the checkpoint without unnecessarily forcing them to quit hunting before the close of shooting hours. It is reasonable because hunters will continue to have the same amount of time as they currently have to reach the checkpoint after the close of shooting hours.

The purpose of the change to item G is to allow use of all-terrain vehicles in Camp Ripley by disabled hunters by permit. It is necessary to allow participation and access to many areas of the camp that would otherwise be inaccessible to disabled hunters. It is reasonable because hunters with disabilities are granted permits to shoot from motor vehicles because of the difficulty they have in accessing hunting areas, and if they were restricted to cars and trucks, they would be prevented from accessing many areas of the camp.

6232.1500 ARMS USE AREAS AND RESTRICTIONS.

Subpart 1. Shotgun use area.

The purpose of the change to this subpart is to allow use of handguns legal for taking big game in the shotgun use area. This is necessary to reduce complexity of regulations and to eliminate a regulation that is not necessary for public safety or conservation purposes. It is reasonable because hunters are allowed to use handguns in the all legal firearms use area, and public safety and conservation problems have not occurred in this area as a result of use of handguns by firearms deer hunters. Also, there was strong public support for the proposal at public input meetings conducted by the department in February and March, 1995.

6232.1700 MINNESOTA VALLEY ALTERNATIVE DEER CONTROL PROGRAM.

The purpose of the change is to repeal the Minnesota Valley alternative deer control program that was conducted in metropolitan areas of the Minnesota River valley. The program was a three year program that resulted from a study and agreement of several communities, agencies, and groups with an interest in deer management in the area. It is necessary to repeal the program because the three year program has been successfully completed. It is reasonable to repeal the program because the authority to conduct most aspects of the program now exists in other provisions of statute and rule.

6232.2200 ARMS USE AREAS AND RESTRICTIONS FOR MUZZLELOADERS.

The purpose of the change to this part is to allow use of muzzleloading handguns legal for taking big game in the shotgun use area. This is necessary to eliminate a regulation that is not necessary for public safety or conservation purposes. It is reasonable because hunters are allowed to use muzzleloading handguns in the all legal firearms use area, and no public safety or conservation problems have occurred in this area as a result of this use. Also, there was strong public support for the proposal at public input meetings conducted by the department in February and March, 1995.

6232.3000 BEAR QUOTA AREAS.

Subpart 1. Quota area licenses.

The purpose of the change to this part is to clarify that bear hunting licenses are only valid in the bear quota area listed on the license. It is necessary to maintain appropriate hunter and harvest distribution in each of the 11 quota areas. It is reasonable because separate bear population goals and harvest objectives are determined in each bear quota area, and hunter densities and harvest must be limited to achieve bear population objectives and avoid under- or over-harvest of bears in each quota area.

Subp. 1a. Bear Quota Area 12.

The purpose of the change to this subpart is to prescribe a change in the boundary that would shift land to bear quota area 12, where the number of hunters is limited by permit, from the no-quota area where there is no limit on the number of individuals who may purchase a bear hunting license. This is necessary to limit harvest in a portion of the no-quota area where the unlimited number of permits available has created excessive hunting pressure and bear harvests in the area. It is reasonable because this portion of the no-quota area is similar in land use, land ownership, and bear habitat quality to bear quota area 12, and dissimilar from most of the remaining no-quota area.

6232.3100 BEAR NO-QUOTA AREA.

The purpose of the change to this part is to clarify that hunters licensed for the no-quota area, where an unlimited number of licenses are available, may only kill and tag bears in the no-quota area. This is necessary because the number of bear hunting licenses available in areas outside the no-quota area is limited to manage hunter densities and conserve bear populations. Allowing hunters licensed to hunt bears in the no-quota area to take bears in quota areas would result in excessive hunter densities and bear harvests in quota areas, and jeopardize bear populations. It is reasonable because it is a clarification of the past application of the rule and the sole intent of the no-quota area is to provide an unlimited and very flexible opportunity for hunters to harvest bears in an area where the number of hunters and the bear harvest does not have to be limited.

6232.3200 BAIT STATIONS AND GARBAGE DUMPS.

Subp. 6. Bear bait stations near previously baited areas.

The purpose of the change to this subpart is to reduce the distance restriction where hunters may establish bait stations near previously baited areas from 500 yards to 100 yards. This distance restriction is in place to prevent hunters from violating the bait establishment deadline (the Friday nearest August 14) by feeding bears prior to this deadline, then establishing a bait station at the same site on or after the deadline. The change is necessary because the 500 yard restriction was difficult for hunters to comply with in heavily forested situations where previously baited areas are difficult to locate. It is reasonable because 100 yards is enough distance to ensure that hunters will not be establishing bait at specific sites where bear food has been placed prior to the bait establishment deadline, and is a much easier distance for hunters to determine whether bear foods have been placed prior to the deadline.

6232.3700 GENERAL REGULATIONS FOR TAKING MOOSE.

Subp. 3. Blaze orange requirement.

Moose hunters are required to wear blaze orange for safety reasons. This presents problems for certain religions which do not allow their members to wear "loud colors" such as blaze orange. If they hunted moose they were left in the position of having to violate either state law or their religious beliefs. This subpart is also consistent with the provisions of Minnesota Statutes Sec. 97B.071, which allow alternatives to blaze orange to be worn during the deer season. The purpose of the change to this subpart is to prescribe bright red as an exception to the blaze orange requirement for persons whose sincerely held religious beliefs do not allow them to wear blaze orange. This is reasonable because bright red does not conflict with the religious beliefs of these religions, provides increased safety because it is highly visible, and, prior to the 1995 season, was a lawful color for this purpose. This subpart allows the state to comply with the Religious Freedoms Restoration Act of 1993 (Public Law Number 103-141) in a way that protects the safety of such hunters without conflicting with their religious beliefs.

Subp. 6. Orientation required.

The purpose of the change to this subpart is to require hunters licensed to take moose in the northwest moose hunting zones to attend orientation sessions, as hunters licensed to take moose in northeast zones are currently required to do. This is necessary to inform hunters in northwest zones of moose hunting regulations, to increase compliance with regulations, and to educate them on care of moose meat to reduce unnecessary waste of meat. It is reasonable because moose hunting in Minnesota is now a once-in-a-lifetime opportunity. Thus, hunters do not have a history or tradition of moose hunting experience. Also, hunters licensed for northeast zones have been required to attend similar orientation sessions since the inception of moose hunting in 1971. Voluntary orientation sessions have been conducted in northwest zones, but attendance is poor, and officers and wildlife managers report that law violations and observed problems in care of moose meat have become more numerous in the northwest in the absence of mandatory orientation sessions.

6232.4100 MOOSE ZONES.

Subps. 24, 31, 32, 33, 34, 37, 38, and 43. Moose Zone descriptions.

The purpose of the changes to these subparts is to change the boundaries of Moose Zones 25, 61, 62, 63, 70, 73, 74, and 79. The changes are necessary to improve distribution of hunters and harvest of moose within these Moose Zones. It is reasonable because access is restricted in these zones, which results in crowding by hunters and excessive harvest of moose in some areas near access points, and also results in under-utilized hunting and harvests in remote areas. The zone changes will address this by improving the distribution of access points within each zone, leading to an improved distribution of hunters and moose harvest.

6234.1900 TAKING BEAVER.

Subp. 1. Open season and bag limits for beaver in North Zone.

The purpose of the change to this subpart is to extend the open season for taking beaver by trapping in the North Zone. This subpart is necessary to ensure that the harvest of beaver is regulated to both maintain minimal sustainable populations and to control expanding populations. This change to the subpart is reasonable, because it will increase the harvest of beaver, which is currently lower than necessary to control expanding populations in the North Zone..

Subp. 2. Open season and bag limits for beaver in South Zone.

The purpose of the change to this subpart is to extend the open season for taking beaver by trapping in the South Zone. This subpart is necessary to ensure that the harvest of beaver is regulated to both maintain minimal sustainable populations and to control expanding populations. This change to the subpart is reasonable, because it will increase the harvest of beaver, which is currently lower than necessary to control expanding populations in the South Zone..

6234.2000 TAKING OTTER.

Subp. 2. Open season and area for otter in South Zone.

The purpose of the change to this subpart is to expand the area for trapping otter in the South Zone. This subpart is necessary to ensure that the harvest is regulated so that sustainable populations are maintained. The change to this subpart is reasonable because a harvestable surplus of otters is present within the new area opened to otter trapping.

6234.2200 USE OF TRAPS.

Subp. 2. Trap-tending interval; nondrowning sets.

The purpose of the change to this subpart is to reflect M.S. 97B.931, as amended in 1995. This subpart is necessary to allow the live release of non-target species captured. This change to the subpart is reasonable because M.S. 97B.931 supersedes current subpart language, and because it recognizes the differences between killing traps and restraining traps.

6234.2600 PELT TAGGING AND REGISTRATION.

Subp. 3. Registration of pelts.

The purpose of this subpart is to ensure compliance with Federal law and international conventions, to obtain essential harvest data for selected species, and to obtain biological materials needed for harvest evaluation and population management. The change to this subpart is necessary to reflect changes in the specific biological specimens needed for current population management. This change is reasonable, because it will result in a reduction of required specimens for trappers to collect and submit.

6234.2800 PAYMENT OF PELTING FEES.

The purpose of this part is to provide an incentive to citizens to assist the State in recovering value from certain accidentally or lawfully killed fur-bearing animals. This part change is necessary and reasonable because it will encourage greater participation in the program, and increase revenue to the state.

6236.0100 DEFINITIONS.

Subp. 2. Agricultural land or grazing land.

The purpose of the change to this subpart is a technical change to make the title of the subpart consistent with the text of the subpart. It is necessary and reasonable because it makes the construction of the subpart consistent and because it makes no substantive change in the rule.

Subp. 7. Wild Turkey Permit Area.

The purpose of this subpart is to define a wild turkey permit area as an area of the state comprised of partial, single or grouped deer and bear registration blocks where taking wild turkey is authorized by permit. This change is necessary due to a rapidly expanding wild turkey population and the need to expand wild turkey hunting opportunities. It is necessary to limit the number of wild turkey hunters per permit area because wild turkey populations and habitats vary greatly across their range and there is potential for overharvest and/or overcrowding of hunters. The use of deer and bear registration blocks, which are established statewide under M.R. 6232.4700, as wild turkey permit areas is necessary and reasonable to provide for a coordinated and consistent basis for expanding turkey harvest opportunities using existing management units. This change is reasonable because it will improve management of wild turkey populations and wild turkey hunter distribution, it allows for additional permits to be available for spring turkey hunters, and it uses an existing and consistent set of management units that hunters are already familiar with.

6236.0300 TURKEY HUNT DRAWING.

Subp. 2. Participation in Application Drawings.

D. and E. The purpose of this change is a technical change from referencing zone to

referencing wild turkey permit areas as defined in 6236.0100, Subp. 7.

Subp. 3. Landowner-Tenant Drawing.

C. and D. The purpose of this change is a technical change from referencing zone to referencing wild turkey permit areas as defined in 6236.0100, Subp. 7.

Subp. 6. Undersubscribed Wild Turkey Permit Areas.

The purpose of this change is a technical change from referencing zone to referencing wild turkey permit areas as defined in 6236.0100, Subp. 7.

6236.0500 TURKEY HUNT LICENSE RESTRICTIONS.

The purpose of this change is a technical change from referencing zones to referencing wild turkey permit areas as defined in 6236.0100, Subp. 7.

6236.0600 SPRING TURKEY SEASON.

Subp. 4. Open Areas.

The purpose of this change is a technical change from referencing zones to referencing wild turkey permit areas as defined in 6236.0100, Subp. 7.

6236.0700 FALL TURKEY SEASON

Subp. 4. Open Areas.

The purpose of this change is a technical change from referencing zones to referencing wild turkey permit areas as defined in 6236.0100, Subp. 7.

6236.0800 TURKEY ZONE DESCRIPTIONS

The purpose of the repeal of this part is to eliminate the turkey zone descriptions because they are being replaced by wild turkey permit areas as described in proposed M.R. 6236.0810. It is reasonable and necessary because 6236.0810 will take the place of this part.

6236.0810 WILD TURKEY PERMIT AREA DESCRIPTIONS.

The purpose and rationale for this subpart is the same as provided for 6236.0100, Subp. 7.

6236.1000 TURKEY REGISTRATION

The purpose of this change is a technical change from referencing zones to referencing wild turkey permit areas as defined in 6236.0100, Subp. 7.

6236.1100 LICENSE REQUIREMENTS FOR GUIDES.

The purpose of this change is a technical change from referencing zones to referencing wild turkey permit areas as defined in 6236.0100, Subp. 7.

6240.1000 TAKING GEESE IN THE SOUTHEAST GOOSE ZONE

The purpose of the change to this subpart is to designate the regular hunting season for geese in the southeast goose zone. It is necessary to establish the specific dates within the federal framework that goose hunting is allowed in this zone in Minnesota. It is reasonable because it provides for the maximum season length and bag limit allowed by federal rule and provides the same seasons as have been previously established in the annual season rulemaking process.

6240.1100 TAKING GEESE IN THE REMAINDER OF THE STATE

The purpose of the change to this subpart is to designate the regular hunting season for geese in the remainder of the state. It is necessary to establish the specific dates within the federal framework that goose hunting is allowed in this zone in Minnesota. It is reasonable because it provides for the maximum season length and bag limit allowed by federal rule and provides the same seasons as have been previously established in the annual season rulemaking process.

6240.1150 TAKING SNOW, BLUE, AND ROSS' GEESE

The purpose of the change to this subpart is to designate the regular hunting season for snow, blue and Ross' geese. It is necessary to establish the specific dates within the federal framework that snow, blue, and Ross' goose hunting is allowed in Minnesota. It is reasonable because it provides for the maximum season length and bag limit allowed by federal rule and

provides the same seasons as have been previously established in the annual season rulemaking process.

6240.1850 GAME REFUGES OPEN TO THE TAKING OF GEESE

The purpose of the change to this subpart is to designate the hunting season for geese in certain refuges. It is necessary because refuges are closed to hunting by statute unless opened by the commissioner. It is reasonable because there are harvestable surpluses of geese in these refuges and because this language is consistent with the opening of these refuges under the annual season rulemaking process for the past several years.

6240.1900 LATE SEASON FOR TAKING GEESE

The purpose of this part is to establish the late hunting seasons for Canada geese. It is necessary to establish the specific dates within the federal framework that late Canada goose

hunting is allowed in Minnesota. It is reasonable because it provides for the maximum late Canada goose season length and bag limit allowed by federal rule and provides the same seasons as have been previously established in the annual season rulemaking process.

CHAPTER 6250 PRIVATE FISH HATCHERIES

Legislative changes made in 1992 resulted in a split in the regulatory framework for aquatic farms and private fish hatcheries. As a result, aquatic farms are regulated by Minnesota Statutes, sections 17.4981 to 17.4999, while private fish hatcheries are regulated by Minnesota Statutes, section 97C.211 and Minnesota Rule, chapter 6250. The regulatory issues regarding operation of aquatic farms and private fish hatcheries are identical; therefore, it is the intent of the Department of Natural Resources to have the same regulations for aquatic farms and private fish hatcheries. As a result, after the 1992 legislation on aquatic farms was passed, Minnesota Rule, part 6250 was rewritten to make the language consistent with Minnesota Statutes, sections 17.4981 to 17.4999.

Since that time, it has become apparent that there are some inherent administrative problems in trying to maintain identical regulatory language in statute and rule for aquatic farms and private fish hatcheries, respectively. When changes are made in statute, aquatic farm and private fish hatchery operations are inconsistent until identical changes can be made in the hatchery rules, which may take up to one year. If changes in statute are made frequently, these inconsistencies are ongoing.

To solve this problem and because the regulatory issues for aquatic farms and private fish hatcheries are identical, the proposed change to Chapter 6250 simply adopts language stating that private fish hatcheries are subject to the provisions for aquatic farms set forth in Minnesota Statutes Chapter 17. Therefore, this portion of the SONAR will detail the need, justification, and reasonableness of the current provisions of the aquatic farm statutes in Minnesota Statutes, sections 17.4981-17.4999, assuming their applicability to private fish hatchery operations. Furthermore, it is also intended by the proposed rule that future amendments to the aquatic farm statutes will likewise be applicable to private fish hatchery operations unless inconsistent with other statutes specifically pertaining to hatcheries. Under the proposed change, Chapter 6250 as it currently exists would be repealed.

Minn. Stat. 17.4981 GENERAL CONDITIONS FOR REGULATION OF AQUATIC FARMS

The major environmental concerns addressed by the aquatic farm statutes are preventing the unintentional release of non-indigenous or exotic species, maintaining the genetic integrity of wild fish stocks, and preventing the release of fish pathogens. Fishing generates over \$900 million dollars annually to Minnesota's economy; therefore, it is necessary and reasonable to ensure that expansion of Minnesota's private aquaculture industry does not take place at the expense of Minnesota's wild fisheries resource.

Non-indigenous or exotic species can disrupt natural aquatic communities and cause significant environmental and economic harm (Courtenay, Jr. 1993; John Hopkins Univ Press 1984; OTA 1993). It is necessary and reasonable to ensure that private aquaculture activities do not result in unintentional release of non-indigenous species to waters of the state.

Maintaining genetic integrity of native fish stocks is necessary because fish populations are typically composed of discrete stocks which vary genetically by major watershed or geographical area (Kapusinski and Phillipp 1988). Since these stocks have evolved under different conditions, they are often uniquely adapted to their environment. Mixing stocks from different locations may result in reduced fitness and survival of a particular stock (Phillip 1991; Phillip and Whitt 1991; Hindar et al. 1991). Therefore, it is reasonable to minimize the risk that aquatic farm activities will result in mixing of naturally reproducing stocks of fish from widely different geographical locations or major watersheds.

Unintentional release of fish pathogens can result in damage to wild fish populations and other aquaculture facilities such as has occurred with whirling disease in other states (Markiw 1992). Therefore, it is necessary to ensure that good fish health management practices are implemented at aquatic farms.

The aquatic farm statutes also seek to clarify ownership of aquatic life. This is necessary to prevent public aquatic life from entering an aquatic farm and becoming private property, and to prevent unauthorized taking or harvest of private aquatic life by the public.

Minn. Stat. 17.4982 DEFINITIONS

Selected definitions are discussed below.

Subd. 2 Approved laboratory methods. The "Fish Health Blue Book" (Thoeson 1994) is referenced because it provides the accepted protocol for detection of fish pathogens. Methods described are reasonable and are the standard methods accepted in the fish pathology profession.

Subd. 5 Aquatic life. It is necessary to clarify that aquatic life cultured by an aquatic farm is private property. This is reasonable because laws pertaining to wild animals are not appropriate for aquatic life cultured within an aquatic farm, except in those cases where private aquatic life is released from an aquatic farm or otherwise affects populations of wild animals.

Subd. 6 Certifiable diseases. Certain diseases are classified as certifiable because they represent a serious threat to wild fish populations and aquaculture facilities. Pathogens which cause certifiable diseases may be bacterial, viral, or parasitic. The viral and parasitic diseases have no known treatments; therefore, prevention is the only effective management tool.

Subd. 8 Containment facility. Containment facilities have a higher risk of harboring fish pathogens because they are allowed to import fish with less disease-free history than standard

facilities. Therefore, it is necessary for containment facilities to take measures identified in Minnesota Statutes, section 17.4991, subd. 2 and 3, to prevent the release of fish pathogens.

Subd. 9. **Emergency fish disease.** Emergency fish diseases are of greater concern than other certifiable diseases because they are not known to be present in Minnesota. Therefore, it is necessary to identify emergency diseases and have importation regulations for fish from areas with emergency diseases (Minnesota Statutes, section 17.4986, subd. 3) that are stricter than for non-emergency disease areas.

Subd. 12. **Fish health inspection.** It is necessary for Fish health inspections to be done according to procedures in the "Fish Health Blue Book" so that they are consistent, statistically valid, and capable of detecting all viral and bacterial diseases of concern.

Subd. 13. **Fish health inspector.** An aquatic farm may choose to use a private fish health inspector, but it is necessary to ensure that the inspector not have a conflict of interest with the outcome of the inspection. This is reasonable because results of a fish health inspection can directly impact an aquatic farm's business; therefore, it is inappropriate to have an inspection done by someone with a vested interest in that business.

Subd. 20. **Quarantine facility.** Quarantine facilities have the highest risk of harboring fish pathogens, because they are allowed to import fish with minimal health histories. Rules for quarantine facilities have been developed previously (parts 6287.0100 - 6287.0900) as authorized by Minnesota Statutes, section 17.496.

Subd. 21 **Standard facilities.** Standard facilities are not required to take any preventive measures against release of fish pathogens. This is reasonable since standard facilities have a low risk of harboring fish pathogens because disease-free history requirements provided by Minnesota Statutes, section 17.4986, subd. 2 and 3 are stricter for standard facilities than for containment or quarantine facilities.

Minn. Stat. 17.4983 AQUATIC FARM OPERATIONS

Subd. 2. **Acquisition from state.** The state can be a beneficial source of aquatic life for aquatic farms; however, it is necessary to ensure that the state does not become a competitor with private business for the sale of fish eggs and fry to aquatic farms. Requiring the state to sell at fair market value is necessary to ensure that state prices are not undercutting prices of aquatic farms selling the same product, and also helps to ensure that state prices are not too high. It is reasonable to determine fair market value using prices from contiguous states and provinces in addition to prices from Minnesota, because the DNR has had trouble collecting sufficient price data when limited to in-state sources.

It is unlawful to sell adult game fish from public waters to aquatic farms, except under limited circumstances. One circumstance where it is allowed, is when game fish would otherwise

go to waste because of impending winterkill or reclamation with piscicides. This is reasonable, because the best public use of game fish may be to sell them to an aquatic farm, particularly if there is limited public angling opportunity on the affected lake.

Providing in-state sources of brood stock is necessary, reasonable, and mutually beneficial for public aquatic resources and aquatic farms. In-state brood stocks are better suited to environmental conditions in Minnesota and will help preserve genetic integrity of wild stocks in situations where progeny are stocked into waters of the state.

Subd. 3 Methods to harvest aquatic life. It is reasonable to allow aquatic farms a wide latitude in use of gear to harvest private aquatic life. It is not necessary to subject aquatic farms to restrictive gear regulations which are intended to address commercial or sport harvest of public fish.

Subd. 4 Discharge may require permit. This section is informational only.

Subd. 5. Ownership of aquatic life. Much of the aquaculture activity in Minnesota takes place in natural wetland basins, with about 2,000 basins licensed in 1995. As a result, there is potential for the distinction between private aquatic life and publicly owned aquatic life to become blurred. The language in this section is necessary to clarify those situations where aquatic life in public waters is privately or publicly owned. This is generally not an issue in licensed facilities that are enclosed in a building or that are artificially dug ponds.

Aquatic life that is cultured in a licensed facility must be considered private property; however, private aquatic life that is released to un-licensed public waters reverts to public ownership. This is reasonable because licensees are given an opportunity to recover their private aquatic life in those public waters where they have discontinued licensing.

Subd.6 Control of licensed waters. This section also applies mainly to licensing of natural wetland basins. Although these basins are generally in public ownership, a licensee with exclusive control over access essentially controls the activities which take place on the water. It is necessary to restrict the licensing of natural basins to one person only, because it is impractical to have two competing private aquaculture operations on one body of water.

A licensee with exclusive control over access to a licensed water, may allow access for fishing. In these instances, licensees have the option of providing an invoice for the number of fish taken or limiting anglers to the number of fish allowed in the game and fish laws. This is necessary to ensure that anglers are either within state possession limits or have documentation that their fish were obtained legally from a private facility.

Minn. Stat. 17.4984 AQUATIC FARM LICENSE

Subd. 1. License required. A license is required before an aquatic farm can be operated.

The application for this license is necessary to help screen proposed aquatic farm sites and facilities to ensure that they meet criteria established in the law.

Subd. 2. Listed waters. The aquatic farm license identifies the specific facilities or waters of the state that have been approved for aquatic farm use, approved species that may be cultured in specific licensed waters, and those licensed waters where winter aeration is allowed. It is necessary to keep track of approved species and facilities to ensure that facilities do not receive species or strains of fish which they are not licensed for, or fish with disease histories that they are not qualified to accept. It is necessary to track winter aeration on aquatic farms because there are human safety concerns as well as environmental concerns relative to the natural functioning of shallow lakes (Hanson and Butler 1994). Regulations governing aeration are found in Minnesota Rule, Chapter 6116, and apply to protected waters, including those licensed for aquatic farm use. Waters less than 10 acres, or less than 2.5 acres in an incorporated area, are not "protected waters" and may be aerated without a permit. Winter aeration of licensed waters greater than 10 acres (or greater than 2.5 acres in an incorporated area) may be permitted under an aquatic farm license if the licensee has exclusive control of all riparian lands by ownership, possessory rights, or lease. If the licensee does not have exclusive control, winter aeration can affect other riparian landowners or the public; therefore, it is necessary to require a separate aeration permit. Posting of thin ice signs and other safety precautions are required whether aeration is permitted separately or under the aquatic farm license. Aeration of licensed waters during open water does not present the same safety and environmental concerns as winter aeration; therefore it is reasonable to waive permit requirements in these cases.

Waters that are connected to other waters cannot be approved for aquatic farm use. This is necessary to prevent unintentional release of private aquatic life and prevent public aquatic life from entering licensed waters. This is reasonable because provisions are made to license waters with intermittent connections to other waters, provided measures such as screening are used to prevent mixing of public and private aquatic life.

It is necessary to allow licensees to add additional waters to an existing aquatic farm license to provide flexibility and opportunities for expansion. Waters proposed to be added to a license may not be used for aquatic farm purposes until they have been approved.

To prevent conflicts with sport anglers, it is necessary to avoid licensing waters that contain game fish of significant public value. However, if a licensee has exclusive control of access to waters with game fish of significant public value, conflicts with anglers are unlikely and it is reasonable to allow licensing in these cases. If a water with a significant game fish population is licensed, the game fish must be sold to the licensee, removed by the DNR, or disposed of. In most cases, the licensee would be required to reimburse the state for the estimated value of the game fish present. This is reasonable because the game fish are a public resource and the public should be reimbursed before those fish become private aquatic life.

Subd. 3. Listed species. Species listed on licensed waters prior to July 1, 1992 were

approved for future licensing provided other conditions for licensing were met. This was necessary to prevent long standing operations from being adversely impacted by new regulations. This was reasonable because there were no species or facilities licensed prior to July 1, 1992 which the DNR felt posed a significant risk to natural aquatic communities.

To prevent unintentional release of non-indigenous species to waters of the state, it is necessary to approve or disapprove species for licensing based on the risk of escapement and the potential harm that could be caused by the species. It is necessary for species to be listed on the license to insure that the proper review has taken place before approval is given.

Waters that are located within a 25-year flood plain and not enclosed within a building represent the highest risk of escapement of private aquatic life. Therefore, it is necessary to license in these waters only indigenous species or species which pose no threat to the aquatic environment. For a fish to be considered indigenous to a particular water, the species must be naturally present in the immediate watershed and the original source of the fish must be from Minnesota or a contiguous state. This is necessary to prevent damage to fish communities from introductions of non-indigenous or exotic species, and to prevent introductions of non-indigenous strains which could threaten genetic integrity of native fish stocks.

Waters located outside of a 25-year flood plain or enclosed within a building have a reduced risk of escapement of private aquatic life. Therefore, it is reasonable to allow licensing of non-indigenous species in these waters, provided the species does not represent a high level of risk if it does escape. It is reasonable to prohibit licensing in any facility for species that raise special concerns because of their potential for negative impact on the environment, because no facility can guarantee that escapement will never occur.

Subd. 4. Single license for aquatic farming operation. This provision is necessary to simplify requirements by minimizing the number of licenses and permits necessary to operate an aquatic farm.

Subd. 5. State list of waters. This provision is necessary to insure that the state is subject to the same access and documentation requirements that private aquatic farms must adhere to.

Subd. 6. Inspection and enforcement. To ensure that a private aquatic farm is operating in compliance with its aquatic farm license and endorsements, the premises, property, vehicles, private aquatic life, and equipment of an aquatic farm must be subject to reasonable and necessary inspections by agents of the commissioner.

Subd. 7. Non-public records. It is necessary to ensure that records or reports concerning aquatic life production, harvest, or sales at a private aquatic farm are non-public information, because this information could be useful to the licensee's competitors. However, it is reasonable to require the licensee to maintain records for inspection by the commissioner's agents,

to ensure compliance with regulations. Private fish hatchery records are public because no provision of current statute declares them to be otherwise. [See Minnesota Statutes, section 13.03, subd. 1 (1994).]

It is necessary for records concerning fish, viable egg or fish sperm acquisition, sale, transfer, trade, or disposal at an aquatic farm to be kept complete and up-to-date by the licensee, in order to provide an accurate record of private fish traffic occurring within Minnesota. These records, in conjunction with inspections, aquatic farm permits, and stocking permits, provide reasonable oversight of private fish traffic within Minnesota to protect Minnesota's public aquatic resources. Records also provide the DNR a means to monitor growth and trends in private aquaculture, which helps facilitate better management and regulation.

It is necessary for all records to be in English to facilitate interpretation by commissioner's agents during inspection. It is necessary for records to be kept for a minimum of three years in case they are needed to reconstruct previous fish movement. Records concerning fish transactions must contain numbers and pounds of fish, date of transaction, and all names and addresses of those directly involved with the business transaction including any transporters or brokers. Records concerning viable eggs or fish sperm must contain the amount, the date of the transaction, and all names and addresses of those directly involved with the business transaction including any transporters or brokers. An annual report must be submitted each year by March 1 on the form provided by the commissioner. This information is necessary in order to track the origin or final destination of private aquatic life movement within Minnesota.

Minn. Stat. 17.4985 TRANSPORTATION OF AQUATIC LIFE

Subdivision 1. Requirements for importation, transportation within the state, or stocking of fish. It is necessary to screen transportation of aquatic life to prevent importation of undesirable fish or fish with uncertain health histories, transfers of aquatic life to facilities which are not properly licensed, and inappropriate stocking into waters of the state. At the same time, the aquaculture industry needs to be able to engage in legitimate transport of fish with a minimum of "red tape". The transportation laws for private aquatic life provide adequate aquatic resource protection while allowing reasonable flexibility for the aquaculture industry.

All transportation of aquatic life requires a DNR issued transportation permit or bill of lading, unless specifically exempted. The bill of lading is a short form which is used for intrastate transportation of non-indigenous species or strains between licensed facilities and stocking of non-public waters. Aquatic life is considered non-indigenous if that species is not present in the watershed where it is being transported to or if its original source is not from Minnesota or contiguous states.

Subd. 3 Bill of lading. It is necessary to prohibit transport of salmonids and catfish with a bill of lading, because these species are susceptible to certifiable diseases and there is no disease certification provided with a bill of lading. When a bill of lading is used to transport non-

indigenous species between licensed facilities, it is necessary to submit it to the regional fisheries manager at least 72 hours prior to the transportation so that the regional fisheries manager can verify that the receiving facility is properly licensed for non-indigenous species.

When a bill of lading is used to stock non-public waters, it is necessary to submit it to the regional fisheries manager 72 hours in advance so that it can be verified that the waters to be stocked are non-public. To provide flexibility for aquatic farm operators, verification can also be done by telephone or telecopy, and the bill of lading submitted within five days after stocking. This is reasonable because it gives licensees the ability to facilitate a sale on short notice.

The requirements that bills of lading be issued only by St. Paul and that all previously issued bills of lading be returned before new ones are issued are necessary to help the DNR keep accurate records.

Subd. 3 Exemptions for transportation permits and bills of lading. Several types of transportation of aquatic life are exempted from bill of lading and transportation permit requirements. All of the exemptions are reasonable because the type of transportation covered poses little or no threat to aquatic resources. Additionally, exemptions for intrastate transportation of minnows and importation and transportation of goldfish cover activities which are so widespread that it is impractical to administer a permitting process, especially when there is little to be gained from a resource protection standpoint.

Intrastate transportation of aquatic life between licensed facilities is exempted from transportation and bill of lading requirements with certain exceptions. Generally, lawful movement of aquatic life between licensed facilities poses no risk, because both facilities will have already been licensed to handle the species being moved. However, it is necessary to have exceptions to cover transfer of non-indigenous species between facilities and salmonids and catfish that were imported with bacterial kidney disease (BKD) or are without disease certification. Transfer of non-indigenous species poses a greater risk than for indigenous species; therefore, it is necessary to require a bill of lading to ensure that the receiving facility is properly licensed. For salmonids or catfish that were imported with BKD or have no disease certification, it is necessary to require a transportation permit so that a disease certification can be obtained. This is a reasonable precaution to ensure that fish pathogens will not be inadvertently spread by intrastate transfers.

Shipping documents are required for most transportation of aquatic life that is exempted from bill of lading or transportation permit requirements. This is necessary to ensure that licensees transporting aquatic life can verify that they are complying with the law if they are stopped on the road. Disease certifications are a necessary requirement when moving salmonids or catfish without a transportation permit, so that disease history can be verified.

Subd. 4. Transportation permit requirements. Transportation permits may cover multiple shipments over a 30 day period to allow reasonable flexibility in shipping times and

reduce the amount of paperwork required of licensees. It is necessary to require that transportation permits be obtained prior to shipment, to allow the DNR the opportunity to screen the request and to ensure that licensees transporting fish have proper documentation.

Subd. 5. Permit application. It is necessary for transportation permits for salmonids or catfish to be accompanied by certification that the source of the eggs or sperm is free of certifiable disease. This requirement applies only to salmonids or catfish, because they are the only species susceptible to the certifiable diseases of concern. Reasonable exceptions for enteric redmouth, whirling disease, and furunculosis were made because fish eggs can be surface disinfected for these diseases prior to shipment. An exception was also made for BKD, because this disease is fairly widespread and allowing it to be imported to areas where it already exists poses no threat to the aquatic resource.

It is necessary for transportation permits and disease certifications to accompany the fish shipment so that the DNR can verify their legality. The DNR must approve or deny applications for transportation permits within 14 days so that licensees can complete the requested transportation in a reasonable amount of time or look for another source of fish if the application is denied.

Subd. 6. Vehicle identification. Vehicle identification is necessary so the DNR can verify that the transportation is being done by a properly licensed individual. This provision is reasonable because removable plates or placards are allowed to make it easy for a licensee to use more than one truck to transport fish. In addition, applications are allowed to be used as a temporary vehicle license for minnow transport or export and fish vending, to avoid delays before a licensee can start to operate.

Minn. Stat. 17.4986 IMPORTATION OF AQUATIC LIFE

Subdivision 1. Importation and stocking restrictions. Importation or stocking of fish requires a transportation permit (with disease certification for salmonids and catfish) or bill of lading, unless one of the exemptions in 17.4985, subd. 3 applies. It is necessary to closely monitor importation and stocking of fish to prevent undesirable introductions of non-indigenous species and strains, and fish pathogens.

Subd. 2. Licensed facilities. This subdivision provides for different importation requirements for trout, salmon, and catfish from non-emergency disease areas, depending on the disease history of the imported fish. Naturalized and indigenous species, except trout, salmon, and catfish, have the most lenient importation restrictions because these species are not susceptible to the certifiable diseases of concern and pose minimal risk to the aquatic resource. Trout, salmon, and catfish from non-emergency disease areas may go to a standard facility which does not take precautions against the release of fish pathogens, provided that they have a disease-

free history of at least three years. Three years is a necessary restriction, because some pathogens may not be detectable during health inspections for two years or more after they are present. If trout, salmon, or catfish from a non-emergency disease area have less than three years, but at least one year, of disease-free history they may be imported to a containment facility. This is reasonable because containment facilities take precautions against the release of fish pathogens by disinfecting their effluent, limiting sale of fish produced to food consumption only, and requiring a health inspection before transporting fish to another facility (see 17.4982, subd. 8 and 17.4991, subd. 3e). It is necessary for trout, salmon, and catfish from a non-emergency disease area with less than one year of disease-free history to be restricted to quarantine facilities because these fish have a high risk of carrying disease and quarantine facilities require strict precautions to prevent release of fish pathogens. Reasonable exceptions are made for trout and salmon eggs with enteric redmouth, furunculosis, and whirling disease, because eggs with these diseases can be surface disinfected. An additional exception is made for importing trout and salmon with bacterial kidney disease to areas of the state where it has already been introduced, because this disease is fairly widespread and allowing it to be imported to areas where it already exists poses minimal threat to the aquatic resource.

Subd. 3. Enzootic disease area. It is necessary to have stricter importation requirements for trout, salmon, and catfish from emergency disease enzootic areas, because these areas harbor harmful fish pathogens which are not known to be present in Minnesota. Disease-free histories for trout, salmon, and catfish from these areas must be at least five years for a standard facility and at least three years for a containment facility. Trout, salmon, and catfish from emergency disease enzootic areas with disease-free histories less than three years must be imported to a quarantine facility. Five years is the amount of time needed to ensure minimal chance that all fish pathogens of concern are not present (Hnath 1993; Horner and Eshenroder 1993). Trout, salmon, and catfish with less than five years of disease-free history have enough chance of harboring an emergency disease pathogen to justify requiring a containment facility. Fish with less than three years of disease-free history have a high risk of carrying an emergency disease pathogen; therefore, it is necessary to require a quarantine facility in these cases. Exceptions for enteric redmouth, furunculosis, whirling disease, and bacterial kidney disease are still allowed as in subd. 2.

The importation restrictions in subd. 2 and 3 are reasonable for aquatic farms, because trout, salmon and catfish with sufficient disease-free histories are available. Allowing fish with uncertain disease histories to be imported to containment and quarantine facilities provides added flexibility for aquatic farms in cases where they may wish to purchase a unique strain that does not have the required disease-free certification.

Subd. 4. Disease-free history. The language in this subdivision is necessary to clarify the intent that disease-free histories are of consecutive years and current.

Minn. Stat. 17.4987 STOCKING PRIVATE AQUATIC LIFE

Fisheries management of waters of the state is the responsibility of the DNR. Stocking of aquatic life into public waters can have major impacts on the existing aquatic community and should only be done if it's consistent with the management planned by the DNR. It is necessary for the DNR to review all proposed stocking of aquatic life into public waters to ensure that harmful introductions do not occur and that the proposed stocking is consistent with DNR management plans. This is a reasonable precaution to prevent release of undesirable species and to protect public investments in DNR fish management programs. If a transportation permit to stock private aquatic life into public waters is denied, the DNR must provide reasons for denial in writing for the benefit of the applicant.

Minn. Stat. 17.4988 LICENSE AND INSPECTION FEES

Subdivision 1. **Requirements for issuance.** This section is necessary to ensure that licenses cannot be arbitrarily denied.

Subd. 2. **Aquatic farming license.** This section sets the fee for an aquatic farm license. The private fish hatchery license fee is set in Minnesota Statutes, section 97A.475, subd. 29 and is not altered by the proposed rule. The various endorsements allowed on the aquatic farm license simplify the licensing procedure by allowing a licensee to cover a number of commercial activities on a single license. The fees for the various endorsements are the same as the fees for buying the licenses separately and are set by Minnesota Statutes, section 97A.475, subs. 26, 27, 29, 39, and 40.

Subd. 3. **Inspection fees.** Fees for inspection of waters and facilities requested for licensing and fish health inspections and certifications are necessary to help the DNR recover some of its administrative costs. Authority to set private fish hatchery inspection fees by rule is provided by Minnesota Statutes, section 97C.211, subd. 2.

Subd. 4. **Aquarium facility.** It is necessary to license aquarium facilities because they engage in movement of freshwater fish species which can survive in Minnesota waters. Species licensed by aquarium facilities must be screened carefully, because people who purchase fish from aquarium facilities sometimes release the fish into waters of the state. Since it is virtually impossible to control this "unofficial" release of fish, it is necessary and reasonable to screen fish species proposed for licensing by aquarium facilities and deny licensing for those species which could pose a significant risk to the state's aquatic resources. The fee for the aquarium facility license is set by this subdivision.

Minn. Stat. 17.4991 DISEASE TRANSMISSION

Subdivision 1. **Facility designation.** This subdivision lists the different facility designations for aquatic farms (standard, containment, and quarantine). It is necessary for the

DNR to screen and approve designations for aquatic farms because it has an impact on whether or not fish at risk of harboring certifiable diseases can be imported to a facility. This designation process is reasonable because the DNR is required to process applications for designations within 30 days and provide an assessment of the risks to wildlife populations at the proposed site for applications that are denied.

Subd. 2. **Disinfection.** Disinfection of effluent from containment facilities is necessary, to ensure that any fish pathogens are killed before they enter public waters. This is a reasonable requirement, because containment facilities are allowed to receive fish with a higher risk of disease than standard facilities. A specific residual level of chlorine of 1 ppm maintained for one hour of retention time is necessary to ensure a complete disinfection. Dechlorination is necessary to prevent toxic effects to fish and wildlife. A contingency for uninterrupted treatment in the case of power failure is necessary because even a short interruption could result in fish pathogens being delivered to public waters. Inspections by the DNR and reasonable documentation of treatment system performance are necessary to ensure that the containment facility is functioning properly in disinfecting its effluent.

Subd. 3. **Fish health inspection.** Annual health inspections for aquatic farms propagating trout, salmon, or catfish are required if there is an effluent to public waters. This is necessary to ensure that aquatic farms are not introducing fish pathogens through their effluent to public waters. Reasonable fees are charged if the DNR conducts a fish health inspection to help recover costs. Fees for private fish hatcheries are authorized by Minnesota Statutes, section 97C.211, subd. 2. It may also be necessary to inspect trout, salmon, or catfish in transit, or being held at transfer stations, if there is some question about their disease status. Fish health inspections are also required for trout, salmon, or catfish being transferred from a containment facility, because fish in a containment facility have a higher risk of disease and it is necessary to ensure that disease is not spread to other facilities. This provision is reasonable, because the inspection is required only on those lots of fish being transferred. In addition, there are reasonable time limits within which the DNR must perform the inspection to ensure that aquatic farm operators do not lose a sale because of delays in the fish health inspection process.

Subd. 4. **Emergency disease determination.** If emergency diseases are found, it is necessary for the DNR to have the authority to do whatever is necessary to eliminate the disease at that facility and keep it from spreading to waters of the state or other facilities. Therefore, the commissioner must be able to impound, confiscate, or destroy infected fish and order the facility to be disinfected. However, it is reasonable to require the commissioner to make every effort to allow infected fish to be sold if there is no imminent danger to the aquatic resource, so that an aquatic farm can minimize its financial losses.

Subd. 5. **Aquaculture therapeutics registration.** It is necessary to register and label aquaculture therapeutics to ensure that commonly used drugs are safe to work with and that fish treated with drugs are safe for human consumption following appropriate withdrawal times. This provision is reasonable, because registration is not required if an aquaculture therapeutic is

considered a low regulatory priority by the United States Food and Drug Administration.

Minn. Stat. 17.4992 GAME FISH

Subdivision 1. Acquisition and purchase. Game fish, viable game fish eggs, or game fish sperm may not be taken by licensees from public waters for aquaculture purposes. This restriction is necessary because Minnesota's game fish resource is under increasing stress from fishing pressure and habitat degradation. Adding additional stress from private commercial use of game fish spawning runs would be unwise and would be negatively viewed by much of the angling public. This is reasonable because alternatives exist to purchase fish eggs, fry, and brood stock from the state or licensed aquatic farms.

Subd. 2. Restriction on the sale of game fish. To prevent the spread of certifiable fish diseases to waters of the state or to other aquatic farms, it is necessary to require that all trout, salmon, and catfish, except bullheads, be free of certifiable diseases if sold for stocking or transfer to another aquatic farm. Reasonable exceptions for enteric redmouth, whirling disease, and furunculosis are made for trout and salmon eggs because eggs can be surface disinfected to remove pathogens that cause these diseases. In addition, fish with bacterial kidney disease are excepted where the disease has been previously introduced. Bacterial kidney disease is fairly widespread in Minnesota and allowing fish with this pathogen to be imported to areas where the disease already exists does not pose a significant environmental risk.

Subd. 3. Acquisition of fish for brood stock. To help provide a source of fish eggs for aquaculture purposes, game fish brood stock may be sold by the state at fair wholesale market value. Brood fish will only be provided if the DNR can obtain them during normal operations, to prevent large expenditures of public funds being made solely to satisfy these requests. This is necessary to allow aquatic farms a way to purchase fish species which cannot otherwise be legally obtained from public waters. Providing in-state sources of brood stock also has benefits to the state's fisheries resources because it promotes the use of indigenous strains of fish and protects genetic integrity.

Subd. 4. Sale of eggs by the state. The state may sell up to 2% of its annual game fish egg harvest to licensed aquatic farms. The proposed rule would allow the sale of an additional 2% to private fish hatcheries. Additional eggs or fry may be sold if there are surpluses. This provision is necessary to provide a backup source of fish eggs and fry for aquatic farms if they are not available in sufficient quantity from other private aquatic farms. Sale of state eggs and fry is also desirable because indigenous strains are used and health history, if applicable, is well documented.

Subd. 5. Purchase of eggs dependent upon facility. To assure fair allocation of finite egg or fry numbers sold to private aquatic farms, it is necessary to limit each licensee to purchasing the amount of eggs or fry that can be supported based on the capacity of the licensed facility. Egg and fry allocations are based on acreage for extensive culture operations. This

provision is reasonable because it allows different criteria, such as flow rates, to be used for intensive culture operations because acreage is not a relevant indicator under those circumstances.

Subd. 6. Stocking walleyes north of marked state highway No. 210. Minnesota's naturally reproducing walleye stocks in the northern part of the state are a resource of nationwide significance with a high economic and intrinsic value. Two genetics studies (McInerny 1992; Murphy 1986) indicate strong evidence of separate genetic populations of walleyes within the major watersheds of northern Minnesota. This subdivision provides that walleye whose origin is south of Minnesota Highway 210 may not be stocked into waters of the state north of Minnesota Highway 210 without approval by the commissioner. This provision is necessary to protect genetic integrity of walleye in the area north of Highway 210, which generally includes the Lake Superior, Hudson Bay, and northern Mississippi River watersheds and contains about 75% of Minnesota's natural walleye resource. This provision is reasonable because the DNR has made it a policy to fill walleye egg and fry requests from aquatic farms with walleye from north of Highway 210. As a result, aquatic farms can easily obtain fry which are not affected by the restrictions in this subdivision.

Minn. Stat. 17.4993 MINNOWS

Subdivision 1. Taking from public waters. Licensees are allowed to take minnows from public waters for aquatic farm purposes. This is necessary to help aquatic farms obtain necessary forage for rearing ponds.

Subd. 2. Importation of live minnows. Importation of live minnows into the state is not allowed except for processing and feeding aquatic farm fish. This restriction is necessary because minnows are usually harvested from the wild under uncontrolled conditions. Therefore, importation of live minnows into the state for purposes other than those listed above presents a substantial risk of inadvertently introducing non-indigenous species.

Minn. Stat. 17.4994 SUCKER EGGS

Licensees are allowed to take sucker eggs from public waters. This is necessary because suckers are a major component of the private aquaculture and bait industries in the state. Sucker eggs are allocated to licensees based on the capacity of their licensed facilities.

Minn. Stat. 17.4995 RECEIPTS TO THE GAME AND FISH FUND

Funds received from the licensing of aquatic farms are deposited into the game and fish fund. This is necessary to help defray the costs of regulating this industry.

Minn. Stat. 17.4996 WHITE EARTH INDIAN RESERVATION

Minnesota Statutes, section 97A.015, subd. 25 define yellow perch as game fish which

means that, under most circumstances, they cannot be harvested from public waters and sold to licensees (Minnesota Statutes, sections 17.4992, subd. 1 and 97C.391, subd. 1). However, White Earth Indian Reservation tribal laws classify yellow perch as roughfish which band members can legally harvest and sell. This provision is necessary to clarify that yellow perch can be legally purchased by licensees from tribal members of the White Earth Indian Reservation, if the yellow perch were lawfully harvested under band regulations.

Minn. Stat. 17.4997 RULES

This section gives the DNR statutory authority for rulemaking to regulate aquatic farms. The proposed rule 6250.0101 is being promulgated under authority in Minnesota Statutes, section 97C.211, subd. 2.

Minn. Stat. 17.4998 VIOLATIONS; PENALTY.

This section provides that violation of aquatic farm laws is a misdemeanor. This is a reasonable penalty for the types of violations which could occur.

Minn. Stat. 17.4999 STORAGE, HANDLING, AND DISPOSAL OF FISH MANURE.

This section is necessary to ensure that manure wastes from fish farms are regulated in a manner that is consistent with manure wastes from agricultural operations.

This concludes the portion of the SONAR dealing with the aquatic farm statutes. All discussion of the need, reasonableness, and justification for the provisions of Minnesota Statutes, sections 17.4981-17.4999 as they pertain to aquatic farm operations applies equally to private fish hatchery operations.

6252.0500 OPEN SEASONS FOR TAKING WHITEFISH AND CISCOES.

Subd. 3. **Schedule II.** This subpart contains a minor technical change which corrects a mistake in the minimum mesh size allowed for whitefish and cisco gill netting on Hanging Horn Lake in Carlton County. Minimum mesh size is based on whether whitefish are present or not, because whitefish are larger than ciscoes and require larger mesh. The minimum mesh size currently listed for Hanging Horn Lake is for whitefish, but should be for ciscoe.

6258.0300 COMMERCIAL PERMITS FOR MUSSELS.

Subpart 1. **Commercial permit required.** The main change in this subpart is that persons assisting a commercial mussel harvester must have their own commercial permit. This is necessary, because the use of non-permitted helpers on mussel harvesting crews has allowed non-residents or law violators to avoid permit requirements and harvest mussels as a helper on another permit. This provision is reasonable because commercial permits are issued free of charge to all

qualified individuals. It is necessary to prohibit non-residents from getting commercial mussel permits to avoid over-harvest of the mussel resource. Mussels are vulnerable to over-harvest because they are slow growing and take a long time to reach sexual maturity. In addition, mussel are easily harvested and quire valuable. Other mid-western states have closed mussel harvest altogether or restricted harvest to their residents. If Minnesota opened up mussel harvest to non-residents it would attract large numbers of people and put the mussel resource at risk.

The other changes in this subpart, and subparts 3 and 4, clarify that any activities involving possession of more than 24 live mussels or 48 shell halves require a permit. This is not a substantive change, because the current language requires a permit for all commercial possession of mussels. However, the language is somewhat confusing because the permits are referred to as harvest permits and a person buying commercial quantities of mussels is also expected to have a permit.

Subp. 3. Commercial permit duration. This language is not a substantive change, but clarifies that permits are for all commercial mussel activity that would result in possession of more than 24 live mussels or 48 shell halves.

Subp. 4. Harvest permit termination to protect resource. This language is not a substantive change, but clarifies that permits are for all commercial mussel activity that would result in possession of more than 24 live mussels or 48 shell halves.

6258.0400 SPECIES FOR COMMERCIAL HARVEST

This language is not a substantive change, but clarifies that permits are for all commercial mussel activity that would result in possession of more than 24 live mussels or 48 shell halves.

6258.0500 HARVEST SITES FOR PERMIT

Subp. 2. Harvesting restricted outside of permitted site. The change in this subpart eliminates the words "crew member." This language is no longer relevant if non-permitted helpers are not allowed on a mussel harvesting crew.

6258.0700 PERMITTEE HARVEST OPERATIONS.

Subp. 2. Required attendance of permittee. This subpart would be repealed, because the language is no longer relevant if non-permitted helpers are not allowed on a mussel harvesting crew.

Subp. 3. Limitation on size of harvesting crew. This subpart would be repealed, because the language is no longer relevant if non-permitted helpers are not allowed on a mussel harvesting crew.

6260.1800 COMMERCIAL FISHING ON LAKE SUPERIOR.

Subpart 1. Species, seasons, and limits. The change in paragraph A of this subpart would allow commercial fishing for ciscoes in Lake Superior during the month of November under special permit. Current language provides for a closed season for ciscoes in November. This closure has been necessary to protect spawning concentrations of ciscoes from over-harvest. However, ciscoe populations in Lake Superior have been increasing and there may be an opportunity to allow some commercial harvest in November if populations continue to increase. By making this rule change now, the DNR will have a reasonable permitting mechanism to allow commercial harvest of ciscoes in November when data indicate that populations are strong enough to withstand the additional pressure.

The change in paragraph C of this subpart would allow commercial fishing operators to keep lake trout less than 17 inches under permit. Current language requires that lake trout less than 17 inches be released. The current size restriction is not necessary to protect lake trout stocks and forces commercial fishing operators to throw back small lake trout which will not live. Commercial fishing operators would keep small lake trout for their markets. The proposed change is reasonable because it will not hurt lake trout populations, will not result in increased harvest of lake trout, and will prevent wasting lake trout which could otherwise be marketed.

Subp. 3. Use of pound or trap nets. Maximum mesh sizes and minimum twine sizes are necessary for pound and trap nets to ensure that fish and other wildlife are not inadvertently entangled. Restrictions against setting pound or trap nets close to stream mouths, or in harbors from May 25 through March 31, are necessary to prevent excessive capture or fish and conflicts with sport anglers. Notification of the Lake Superior fisheries office is necessary if commercial operators are unable to lift pound or trap nets every 48 hours, because fish left in nets can be subject to stress from high winds resulting in excessive fish mortality. Removal of stakes, lines, and anchors within 10 days is necessary to prevent litter and loss of gear in the lake. Notification of the Lake Superior fisheries office prior to setting pound and trap nets, and at the start of each week when using pound or trap nets, is necessary so that the DNR can respond accurately to public inquiries as to why the nets are there and if the nets are legal. It is necessary for the DNR to retain the right to prohibit the use of pound or trap nets when such use conflicts with management activities. For example, if pound or trap nets were located close to a stocking site, it could result in significant losses of stocked fish at public expense.

Subp. 6. Net locations. This subpart would increase the minimum depth for gill nets set within one mile of the shoreline from 40 fathoms to 50 fathoms. This is necessary to reduce incidental catch of lake herring and juvenile lake trout in gill nets set for chubs. This is reasonable because chubs can be readily taken at depths greater than 50 fathoms with little or no loss in efficiency.

Subp. 7. Required reporting. The additional language proposed for this subpart is necessary to provide adequate records for pound and trap nets. It is necessary for reports to be

separated by gear types, because different gear types select for different species of fish and some gear types may incidentally capture non-target species at higher rates than others. It is also necessary for reports to be separated by month, because the effectiveness of a gear type can vary with the time of year. As a result, it may be necessary for the DNR to restrict certain gear types during certain times of the year to prevent excessive catch and mortality of some species.

6260.2000 COMMERCIAL FISHING ON INLAND WATERS

Subpart 1. Release of commercial fish. The proposed change would repeal this subpart which prohibits commercial fishing operators from releasing commercial fish species that they have captured with their licensed gear. This is old language that was implemented when it was believed that commercial fishing benefited game fish populations by removing non-game species. It has since been recognized that commercial fishing for non-game species does not usually result in increased game fish populations; therefore, there is no reason to prohibit the release of commercial fish taken in commercial operations. This is reasonable because commercial operators may capture unmarketable species or sizes of fish and not being able to release them causes logistical problems. In addition, being able to release commercial species reduces the time required to sort and handle fish and can reduce stress on game fish species which are taken incidentally.

Subp. 5. Use of crib nets. The proposed change would increase the minimum mesh sizes allowed for twine crib nets and wooden cribs used to hold commercial fish once they have been captured. This change is necessary to allow cribs that permit the release of small game fish species that may be missed in the initial sorting of the catch. In addition, increasing the minimum mesh size for cribs is reasonable and beneficial for commercial operators because it allows them to use cribs which automatically release small commercial fish which are not marketable, precluding the need for manual grading of the catch.

6262.0100 GENERAL RESTRICTIONS ON TAKING FISH

Subp. 4. Importation, transportation, or stocking of live fish. The proposed changes to this subpart are technical corrections which add existing exceptions in statute and rule to the general prohibition against the transport of live fish. The additional exceptions are Minnesota Statutes, section 97C.505 which provides for possession of live minnows, Minnesota Statutes, section 97C.821 which provides for possession and transport of live commercial fish, and Minnesota Rule, part 6212.2600 which provides for temporary possession of live fish taken in fishing contests. These changes are necessary to clarify the situations where transport of live fish is permitted.

6262.0200 FISHING REGULATIONS FOR INLAND WATERS.

Subp. 1. General inland fishing regulations. The proposed changes in paragraph L are intended to provide more consistent catfish regulations in systems which are connected to

Minnesota-South Dakota and Minnesota-North Dakota boundary waters. These changes are being done in conjunction with changes in part 6266.0300, subp. 2(I) and 6266.0400, subp. 2(I). The proposed changes would: 1) make the catfish season on tributaries to Minnesota-North Dakota boundary waters the same as what is proposed for Minnesota-North Dakota boundary waters and the same as other game fish seasons already in place on Minnesota-North Dakota boundary waters; and 2) make the catfish size and possession limit on tributaries to Minnesota-South Dakota boundary waters the same as what is proposed for Minnesota-South Dakota boundary waters and the same as what is already in place on this river system on the Minnesota-North Dakota boundary. These changes are necessary to help make fishing regulations consistent across entire river systems. This is reasonable from both a biological and social standpoint because it subjects catfish populations in an entire system to the same harvest regulations and is less confusing for the angling public.

The proposed change in paragraph O would close the sturgeon season in tributaries to the St. Croix River. Sturgeon populations in Minnesota have been severely affected by loss of habitat in the large river systems that they inhabit. In addition, they are extremely vulnerable to angling pressure because they grow slowly, take a long time to reach sexual maturity, and have relatively low reproductive rates. Lake sturgeon stocks in the St. Croix River system are considered to be in a recovery state where annual harvest should not exceed 0.04 pounds per surface acre (MDNR 1995). Recent data from the Kettle River, which contains one of the most important lake sturgeon populations of the St. Croix River tributaries, indicate that the harvest of one large adult lake sturgeon would be above the recommended maximum harvest in pounds. Therefore, a closed season is necessary to provide adequate protection for sturgeon populations.

6262.0500 WATERS CLOSED TO THE TAKING OF FISH.

Subp. 3. **Waters closed to the possession of fish.** The proposed change in paragraph A would extend the prohibition on the possession of fish on Mink and Somers lakes in Wright County to February 28, 1998. This prohibition was originally implemented by emergency rule 6262.0500, subp. 4; however, the emergency rule expires in September of 1996. Mink and Somers lakes were chemically reclaimed during the fall of 1994, and extending the prohibition on the possession of fish is necessary to allow the newly established fish community to fully develop without being subjected to harvest by angling. The proposed change would differ slightly from the existing emergency rule by allowing a possession limit of five sunfish and prohibiting the use of live minnows. Allowing the possession of five sunfish is a reasonable accommodation for people, especially children, who want to be able to take some fish. The prohibition against live minnows is a necessary precaution to prevent "bait bucket" introductions of undesirable fish species and protect the public investment in the chemical reclamation. This is a reasonable restriction considering that sampling after the reclamation has shown that a complete kill of undesirable fish species was achieved. As such, it would be unwise to jeopardize the developing fish population by risking reintroduction of undesirable species. The proposed change precludes the need to continue the emergency rule 6262.0500; therefore, this rule part would be repealed.

The proposed change in paragraph B would prohibit possession of brown trout in Little Rock Creek in Morrison and Benton counties and the tributary Bunker Hill Creek in Benton County until April 13, 2001. This stream will be stocked with adult brown trout and the restriction against possession of fish is necessary to determine if the stocked adults can successfully reproduce and start a self-sustaining trout population. It is also necessary to restrict anglers to artificial lures only to prevent excessive mortality of released brown trout (Hulbert and Engstrom-Heg 1980; Pauley and Thomas 1993; Shetter and Allison 1955; Taylor and White 1992; Wydoski 1977)

6266.0100 GENERAL RESTRICTIONS FOR TAKING FISH ON BOUNDARY WATERS WITH ADJACENT STATES.

Subp. 2. **Possession limits on boundary waters.** The change in this subpart would prohibit anglers from possessing more than one limit of fish while on boundary waters with other states. The current language states that only one limit of fish can be taken, but does not prohibit possession of more than one limit of fish. The proposed change is necessary to eliminate a loophole which allows anglers to have multiple limits of fish on the water and makes it difficult for conservation officers to enforce possession limits on boundary waters. This change is also necessary to make fishing regulations consistent with adjacent states.

6266.0300 TAKING OF FISH ON MINNESOTA-NORTH DAKOTA BOUNDARY WATERS.

Subp. 2. **Species, seasons, and limits on Minnesota-North Dakota boundary waters.** The proposed change in this subpart would make the catfish season on Minnesota-North Dakota border waters the same as the season for other game fish species. This change is necessary to make fishing regulations more consistent with North Dakota and is reasonable because there is little catfish angling which takes place in April when the season would be closed.

6266.0400 TAKING OF FISH ON MINNESOTA-SOUTH DAKOTA BOUNDARY WATERS.

Subpart 1. **Specified waters.** The proposed change would add the Mustinka River to the list of Minnesota-South Dakota boundary waters. This is necessary to make sure that all border waters are covered under the regulations in this part and to be consistent with South Dakota.

Subp. 2. **Species, seasons, and limits on Minnesota-South Dakota boundary waters.** The proposed change would reduce the possession limit for catfish from eight to five, with only one over 24 inches allowed. This change is necessary to have consistent catfish regulations for the entire Red River system and to have consistent regulations on boundary waters with South Dakota.

Subp. 9. **Liberalized fishing.** The proposed change reduces the possession limits

allowed during liberalized fishing on Minnesota-South Dakota boundary waters from no limit to three times the normal possession limit. This is necessary to have consistent fishing regulations on boundary waters between Minnesota and South Dakota.

Subp. 12. **Species prohibited for use as bait.** The proposed change would prohibit the use of clams for bait, except in the body of water where they were taken, and would prohibit all use of carpsucker and buffalo species for bait. This is necessary to prevent inadvertent introductions of fish and clams and to have more consistent regulations on Minnesota-South Dakota boundary waters.

6266.0500 TAKING OF FISH ON MINNESOTA-WISCONSIN BOUNDARY WATERS.

Subp. 2. **Definitions.** The proposed change in paragraph E is a technical correction that eliminates contradictory language. The current language states that catfish are considered rough fish, but then goes on to say that catfish greater than 15 inches taken under commercial license are considered rough fish. The proposed change reflects the intent which is to consider catfish greater than 15 inches as rough fish when they are taken under commercial license.

6266.0600 MINNESOTA-WISCONSIN BOUNDARY WATERS COMMERCIAL REGULATIONS.

Subp. 2. **Landing of commercial operations.** The proposed change in subpart 2 would limit commercial fishing operators to the territorial waters of the state they are licensed in on Minnesota-Wisconsin boundary waters and would affect primarily the Mississippi and St. Croix rivers. Currently, Minnesota rule allows Wisconsin operators to fish the Minnesota portion of the boundary waters to the railroad track, while Wisconsin rule allows Minnesota operators to fish only to the bank of the main channel. This results in more Minnesota water being available to Wisconsin operators, than Wisconsin water is available to Minnesota operators. More importantly, Wisconsin has about 400 commercial operators which fish on Minnesota-Wisconsin boundary waters, while Minnesota has only 40. This has resulted in a competitive disadvantage for Minnesota's operators, because they are sharing the commercial fisheries resource in Minnesota waters with so many operators from Wisconsin. The proposed change is necessary to eliminate the uneven playing field which has developed for Minnesota's commercial fishing operators on the Minnesota-Wisconsin boundary waters.

Subp. 3. **Commercial fishing restrictions.** The proposed change would eliminate language which prohibits the release of carp. This language was developed when it was believed that commercial fishing benefited game fish populations by removing carp. It has since been recognized that commercial fishing for carp does not usually result in increased game fish populations; therefore, there is no reason to prohibit the release of commercial fish taken in commercial operations. This is reasonable because commercial operators may capture unmarketable sizes of carp, and not being able to release them causes logistical problems.

Subp. 7. **Taking of minnows.** The proposed change would prohibit taking of minnows on Minnesota-Wisconsin boundary waters below the dam at Taylors Falls. The Mississippi River has become infested with zebra mussels and Eurasian water milfoil and the St. Croix River below Taylor Falls has Eurasian water milfoil. In addition, there is a risk that the St. Croix River will or has become infested with zebra mussels because of its direct connection with the Mississippi River. Harvest and transfer of minnows from infested waters for commercial or personal use carries a high risk of accidentally transferring exotics such as zebra mussels and Eurasian water milfoil to other waters. Therefore, it is necessary to avoid this risk by prohibiting the taking of minnows. This is a reasonable restriction, because there is very little commercial bait harvest which occurs on the Minnesota-Wisconsin boundary waters and there are numerous other waters where commercial bait harvest can occur.

OTHER CONSIDERATIONS

Fiscal Note

The proposed rule will not require the expenditure of public money by local public bodies; and therefore Minnesota Statutes, section 14.11, subd. 1 does not apply.

Agricultural Land Impacts

The proposed rule will not affect agricultural land; therefore, Minnesota Statutes, section 14.11, subd. 2 does not apply.

Small Business Considerations

When an agency proposes a new rule which may affect small businesses as defined by Minnesota Statutes, section 14.115, subd. 1, the agency is required to consider several methods for reducing the potential impact. The wildlife portion of the rules is expected to have little or no impact on small businesses except that there is potential for some positive impacts to small businesses for the following reasons: 1) the turkey hunting zone changes will allow an increase in the number of turkey licenses which could result in a corresponding increase in sales of products and services associated with turkey hunting; and 2) allowing use of handguns for deer hunting statewide could increase sales of handguns and ammunition by firearms dealers. Since the impacts of the wildlife portion of the rules on small businesses will be negligible to positive, the remainder of this section will focus on the impacts of the fisheries portion of the rules to small businesses.

Portions of the proposed rule may impact businesses dealing with private fish hatcheries, commercial fishing, commercial mussel harvest, and commercial minnow dealers. The notice of intent to solicit outside opinion, published in the State Register on August 28, 1995 and mailed to all parties on the department list for rulemaking notices, included a description of the probable quantitative and qualitative impacts of proposed rules on affected parties. In addition, industry representatives for commercial fishing, commercial minnow harvesters, and private fish hatchery

operators were sent a copy of the notice with an explanatory letter.

Minnesota Statutes, section 14.115, subd. 2 provides that the commissioner consider the establishment of less stringent compliance or reporting requirements for small businesses, less stringent schedules or deadlines for compliance or reporting requirements for small businesses, the consolidation or simplification of compliance or reporting requirements for small businesses, the establishment of performance standards to replace design or operational standards in the rule, and the exemption of small businesses from any or all requirements of the rule. Virtually all of the businesses in Minnesota which are potentially affected by this rule are small businesses. Therefore, it would defeat the overall resource protection purpose of the rule if small businesses were exempted from any of the provisions. As a result, the remainder of this section will focus on how the other requirements of Minn. Stat. 14.115, subd. 2 regarding reporting and performance versus design standards were considered.

Private Fish Hatcheries

The proposed changes to Chapter 6250 will not substantively affect private fish hatcheries. The reason for this is that the current rule language is virtually identical to language for aquatic farms in Minnesota Statutes, Chapter 17, and the proposed rule change is to eliminate the current rule language and replace it with language that states that private fish hatcheries are subject to the provisions for aquatic farms in Chapter 17. Nevertheless, some discussion of how the existing language in Chapter 17 addresses small business concerns for private fish hatcheries is warranted.

There are minimal reporting requirements for aquatic farms. On an annual basis, aquatic farms must submit reports covering the quantity of all species sold or purchased in the preceding year. In addition, aquatic farms must have records that remain available for three years and list: 1) the number and pounds of fish or eggs acquired with the source of the fish and date of receipt identified; and 2) the number of fish sold or disposed of with the purchasers and date of sale identified. This is the bare minimum needed to ensure that fish have been legally obtained, that the receiving facility is licensed for the fish obtained, and that fish obtained have appropriate disease-free certification. Without this information, there would be potential for a number of problems such as: increased risk of illegal non-indigenous species or strains being raised in facilities which do not have sufficient security to prevent accidental escape; illegal acquisition of game fish; and increased risk of introducing or spreading fish pathogens. Reporting deadlines are lenient, with only one report required annually by March 1. March 1 is a reasonable report deadline, because it corresponds with the renewal date for aquatic farm licenses.

The design standards which affect aquatic farms deal with requiring sufficient effluent treatment for designated containment facilities. Containment facilities are allowed to receive fish with a higher risk of certifiable disease, therefore precautions need to be taken with regard to treatment of effluent to prevent fish pathogens from entering public waters. Effluent disinfection devices must have appropriate disinfection rates to ensure a complete kill of pathogens before the effluent is delivered to waters of the state. Uninterrupted effluent treatment must be guaranteed

by having a backup system in case of power or primary system failure. The nature of these concerns is such that performance standards are not a feasible way to prevent the risk of introducing disease to wild fish populations or other aquaculture facilities.

Commercial Fishing Operators

The proposed rule changes which affect commercial fishing operators were discussed at length with representatives of the commercial fishing industry and most of the changes are a result of suggestions made by the industry. The discussion on impacts to commercial fishing operators will be limited to those changes that were proposed by the DNR.

The proposed rule includes separate monthly reporting requirements for pound and trap nets used on Lake Superior. It is important that data on commercial fish harvest be separated by gear type, because different gear types select for different species of fish and some gear types may incidentally capture non-target species at higher rates than other gear types. In addition, it is necessary that records be separated by month because the effectiveness of a specific gear type can vary with the time of year. It is necessary for the DNR to keep track of information regarding gear types to ensure that excessive harvest of fish does not occur and to be able to answer constituent inquiries regarding the impacts of commercial fishing. The DNR may need to use report information to restrict use of specific gear types during certain times of the year to prevent excessive catch of some species.

There are a number of design standards for commercial fishing gear included in the proposed changes. These include mesh size and twine strength for pound nets, trap nets, and crib nets. Mesh size and twine strength standards for commercial fishing gear are generally used to ensure that the gear is best suited to the target species and capture of non-target species is minimized, and to ensure that gear is sufficiently sturdy to hold up during use. In the proposed rule, twine strength standards were actually suggested by commercial fishing industry representatives to ensure that gear would hold up during rough weather on Lake Superior. Sturdy gear is necessary to ensure that nets can be relocated and for safety reasons. The nature of design standards for commercial fishing gear is such that it would not be feasible to use performance standards as a substitute.

Commercial Mussel Harvest

The proposed changes for commercial harvest of mussels are not related to the requirements of Minnesota Statutes, section 14.115, subd. 2. The major change with regard to commercial mussel harvest is that all people involved in harvesting will have to be permitted. Commercial mussel permits are issued free of charge to qualified applicants. Current language allows up to three non-permitted "helpers" to assist a permittee in mussel harvest. This has created a loophole for people who would not qualify for a commercial mussel permit, by allowing them to harvest mussels with someone who is permitted. In recent years there have been 40 to 75 commercial mussel permits issued annually. The proposed changes would likely result in about

100 harvest permits being issued annually. Approximately 5 to 10 fewer people will be participating in commercial mussel harvest because they previously operated as helpers on another persons permit and do not qualify for their own permit. The most common reasons that a person would not qualify for a commercial mussel permit are that they are non-residents or have been recently convicted of a game and fish law violation. It is necessary to prohibit non-residents from getting commercial mussel permits to avoid over-harvest of the mussel resource. Mussels are vulnerable to over-harvest because they are slow growing and take a long time to reach sexual maturity. In addition, mussel are easily harvested and quire valuable. Other mid-western states have closed mussel harvest altogether or restricted harvest to their residents. If Minnesota opened up mussel harvest to non-residents it would attract large numbers of people and put the mussel resource at risk.

Commercial Minnow Dealers

The proposed changes for commercial minnow dealers are not related to the requirements of Minn. Stat. 14.115, subd. 2. The proposed rule would prohibit taking of minnows in Minnesota-Wisconsin boundary waters downstream of the Taylor's Falls dam. This is not expected to have a significant impact on small businesses dealing with harvesting or selling minnows, because there is very little commercial minnow harvesting that takes place on the affected waters and there are numerous other waters available for commercial minnow harvest..

Review of Documents

Sources cited in this document may be reviewed on work days between 8:00 a.m. and 4:30 p.m. in the Section of Fisheries or Wildlife office in the DNR headquarters, 500 Lafayette Road, St. Paul, Minnesota.

Witnesses

If these rules go to public hearing, the witnesses listed below may testify on behalf of the Department in support of the need and reasonableness of the rules. The witnesses will be available to answer questions about the development and content of the rules. The witnesses for the Department of Natural Resources include:

Steve Hirsch, Fisheries Program Manager
DNR Section of Fisheries
500 Lafayette Road
St. Paul, MN 55155-4012
(612) 296-0791

Ed Boggess, Wildlife Program Manager
DNR Section of Wildlife
500 Lafayette Road
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(612) 296-3344

Mike Grupa, Administrative Enforcement Officer
DNR Division of Enforcement
500 Lafayette Road
St. Paul, MN 55155-4047
(612) 297-2447

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

Dated: November 26, 1995

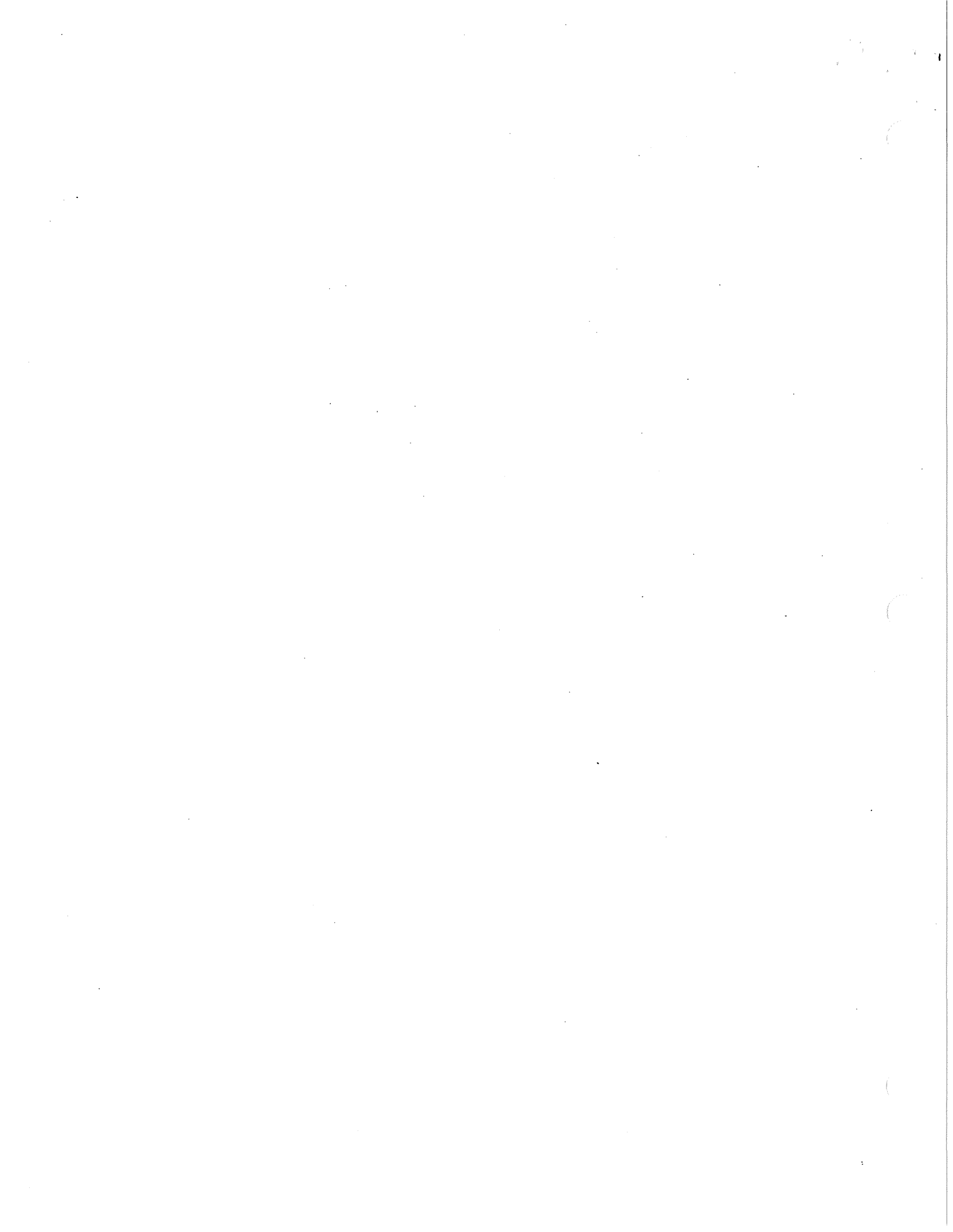
Rodney W. Sando, Commissioner
Department of Natural Resources

By: Gail Lewellan
Gail Lewellan, Assistant Commissioner
for Human Resources and Legal Affairs

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**STATE OF MINNESOTA
POLLUTION CONTROL AGENCY**

**In the Matter of the Proposed Amendments
to Rules Governing Procedures before the
Minnesota Pollution Control Agency, Minn.
Rules ch. 7000**

**STATEMENT OF NEED AND
REASONABLENESS**

I. INTRODUCTION

The Minnesota Pollution Control Agency (Agency) is proposing to amend rules governing its procedures. When an agency proposes to amend rules, it must present facts demonstrating that they are needed and reasonable. Minn. Stat. §§ 14.131 and 14.23 (1992). In this Statement of Need and Reasonableness, the Agency presents facts demonstrating the need for and reasonableness of the proposed amendments. The proposed changes primarily address the Commissioner's membership and responsibilities as chair of the Agency, but also include a few other rule provisions.

The Agency's existing procedural rules are found principally in Minn. Rules. ch. 7000, which describe Agency procedures generally applicable to agency decisions. The Agency has considered the views of interested persons, in proposing these amendments to its procedural rules.

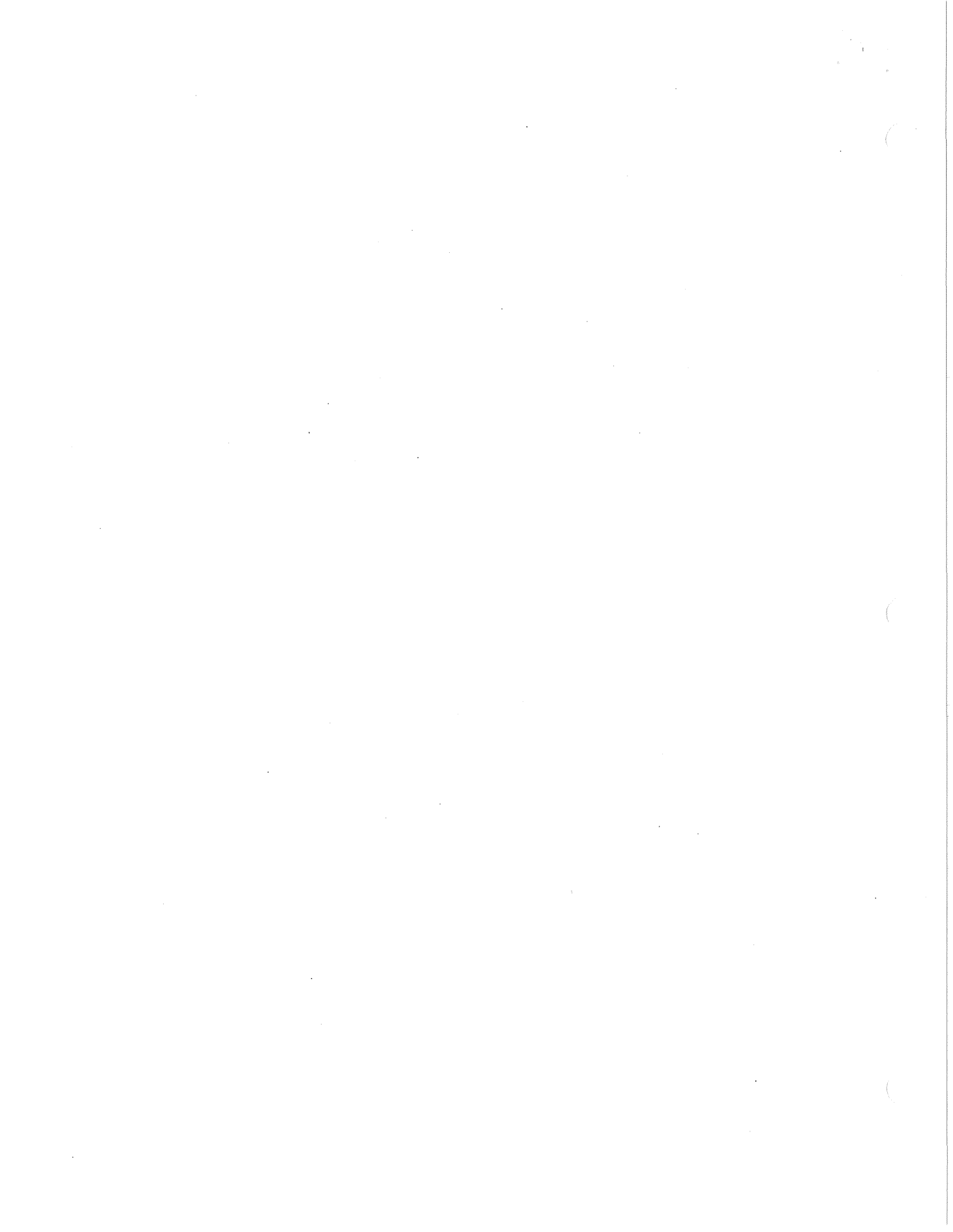
II. STATUTORY AUTHORITY OF THE AGENCY TO AMEND ITS RULES

The authority for the Agency to amend its procedural rules is the same as the authority for the Agency to have adopted the rules in the first place. That authority is found in Minn. Stat. § 116.07 (1994) and in Minn. Stat. § 14.06 (1994).

III. NEED FOR AMENDMENTS TO AGENCY'S PROCEDURAL RULES

Under the rulemaking requirements of Minn. Stat. ch. 14, the Agency must show that its proposed amendments are "needed." Generally, "need" means that there is a problem requiring administrative (agency) attention.

The 1995 legislature amended Minn. Stat. § 116.02, subs. 1, 3, and 4. Minn. Laws 1995, ch. 168, sec. 7. These statutory amendments made changes to the Agency's membership. The Agency now consists of the Commissioner and eight members appointed by the governor. The Commissioner is excepted from the requirement that no member of the Agency shall be an employee of the state. The Commissioner is required to serve as chair of the Agency. This statutory change creates the need to amend the Agency's procedural rules to accommodate the



new role and additional responsibilities of the Commissioner. Since the last time the procedural rules were amended, a few language oversights and one or two procedural problems were identified. The Agency is taking this opportunity to address these additional matters. The Agency's primary intent is to make its decision making procedures and responsibilities clear to the public.

IV. REASONABLENESS OF AMENDMENTS TO MINN. RULES CH. 7000

Under the rulemaking requirements of Minn. Stat. ch. 14, the Agency must show the "reasonableness" of its proposed amendments. "Reasonableness" generally means that there is a rational basis for the Agency's proposed amendments. In the rulemaking context, "reasonableness" means that the proposed amendments appropriately resolve the problem they are intended to address. The reasonableness of the Agency's proposed amendments to Minn. Rules ch. 7000 are discussed below.

Minn. Stat. ch. 7000 is titled "Procedural Rules." It contains sixteen sections. The Agency is proposing to amend several of these sections, most of which are not substantial changes. The Agency's reasons for proposing to amend ch. 7000 are as follows.

A. MINN. RULES PT. 7000.0100 (DEFINITIONS)

The Agency proposes to include the Commissioner in the definition of Agency membership and the Commissioner's responsibility as chair of the Agency as required by the 1995 statutory changes to Minn. Stat. § 116.02.

Subp. 2. Agency or agency members. The definition now includes the Commissioner as one of the nine members.

Subp. 3. Commissioner. The definition now includes the added responsibility of being the chair of the Agency.

B. MINN. RULES PT. 7000.0400 (OFFICERS, COMMITTEES, AND DUTIES)

The changes to this part reflect the legislative change making the Commissioner the chair of the Agency. One subpart is repealed requiring a renumbering of the subparts.

Subp. 1. Officers. The change to this subpart recognizes the Commissioner as holding the office of Agency chair pursuant to statutory authority.

Subp. 2. Electing and term of the chair. This subpart is repealed because of the legislative change making the Commissioner the chair of the Agency. The election of a chair is no longer necessary.



Subp. 4. Duties. The change to this subpart reflects the changed duties of the Commissioner as chair. The vice-chair is now required to discharge the duties of the Commissioner as chair during a temporary absence or disability of the Commissioner in carrying out the duties of the chair. The addition of "also" in the last sentence merely recognizes that the Commissioner has additional duties prescribed by rule and statute.

Subp. 5. Vacancies. The change to this subpart addresses the occurrence of a vacancy in the office of Commissioner. Minnesota Statutes, section 15.06 prescribes how a vacancy of a commissioner is filled. The rule change allows the vice-chair to preside and discharge the duties of chair at Agency meetings until the Agency Commissioner position is filled pursuant to the statute. Because the position of chair is prescribed by statute, the vice-chair cannot become the chair but can temporarily take over the duties of the chair at Agency meetings.

Subp. 6. Removal. This subpart allowed removal of the chair by a two-thirds vote of the Agency. Because the Commissioner is now chair by statute, the chair cannot be removed by the Agency.

Subp. 8. Execution of documents. Execution of documents approved by the Agency was required to be signed by the chair and Commissioner and is now required by the Commissioner and vice-chair. This change continues the original intent to have two persons sign agency approved documents.

C. MINN. RULES PT. 7000.0500 (AGENCY MEETINGS)

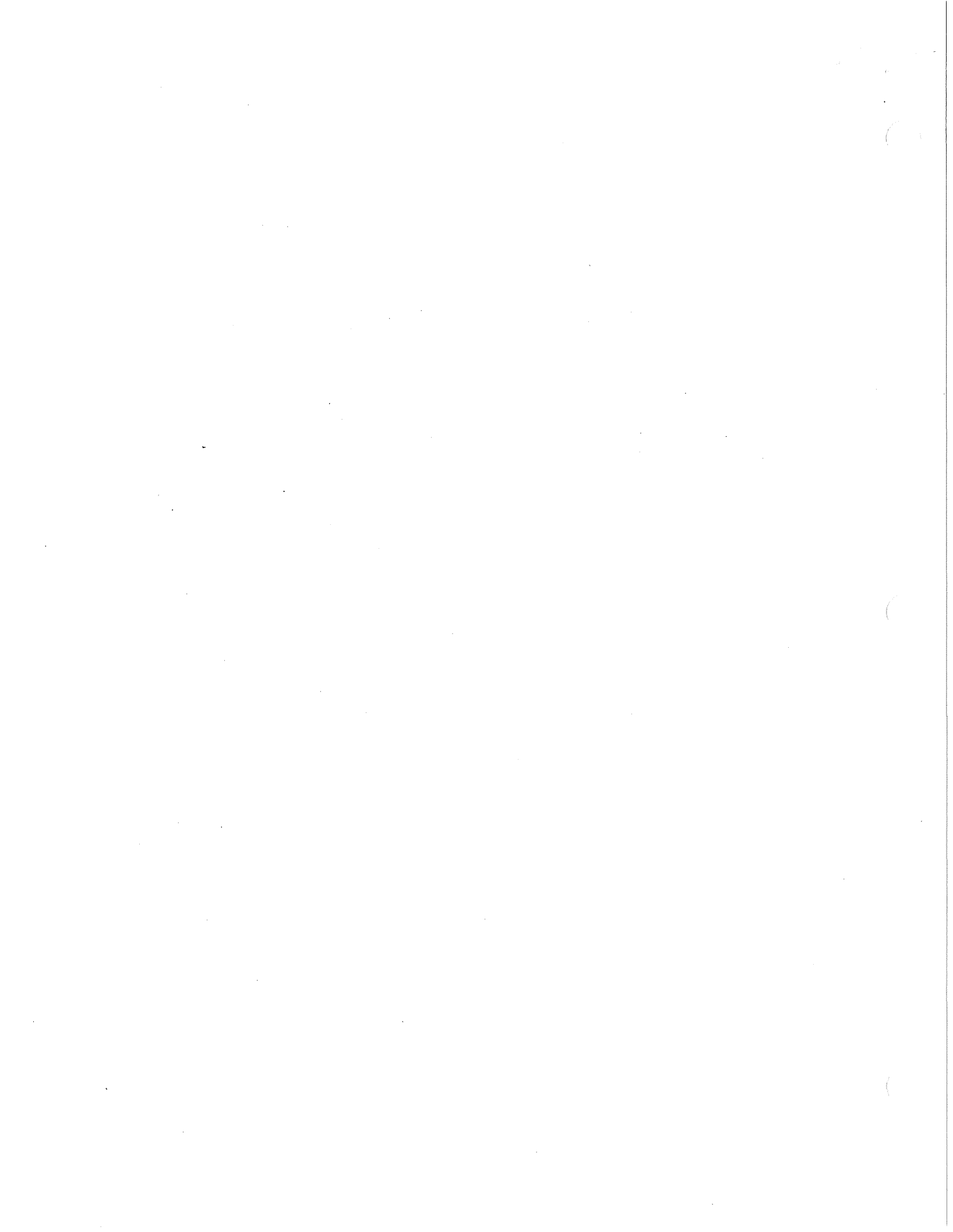
The changes to this part reflect the dual role of the Commissioner as chair and executive head of the Agency.

Subp. 1. Regular and annual meetings. The proposed change allows the Commissioner set the regular Agency meeting date, time and place. It is appropriate that the dual role of the Commissioner should allow the exercise this discretion regarding Agency meetings.

Subp. 2. Special meetings. Since the Commissioner is now the Agency chair, the Commissioner does not need to consult with anyone to set the time and place a special Agency meeting. Due to an oversight the word "date" is added to make it clear when the meeting is to be held.

Subp. 3a. Committee meetings. This proposed changed clarifies that either the Commissioner or committee chair may call a committee meeting.

Subp. 3b. Informational meetings. Due to the statutory change, the Commissioner no longer needs to consult with the Agency chair for setting the date, time and place of an informational meeting. The word "date" is added to clarify the setting of when the informational meeting is to be held.



Subp. 9. Presiding officer. This proposed change recognizes the Commissioner, in the role of chair, is the presiding officer at all regular and special meetings of the Agency.

Subp. 18. Continuation or recess of agency meetings. The proposed change merely replaces the word "chair" with the word "Commissioner."

D. MINN. RULES PT. 7000.0650 (PUBLIC PARTICIPATION IN AGENCY MEETINGS)

Subp. 5. Oral presentations at agency meetings. The proposed change merely replaces the word "chair" with the word "Commissioner."

Subp. 6. Written materials. One proposed change merely replaces the word "chair" with the word "Commissioner." The other change to subp. 6. C. is made to correct a potential problem. The Agency wants to encourage the public to provide written comments on noticed Agency permits during the designated comment period for the permit. Without this proposed change, interested persons could wait and not file their written comments until five days before a regular Agency meeting, and thus, avoiding the comment period for the permit and limiting the ability of the Agency to address the concerns of the public. The permit comment period is intended to surface issues and concerns so that they can be addressed during the permitting process. The Agency proposed change provides that if further written comments are made they must be limited to procedural or legal errors or facts discovered after the permit comment period ended.

E. MINN. RULES PT. 7000.0750 (AGENCY RECORDS AND FINAL DECISION MAKING)

Subp. 4. Record upon which the agency makes other decisions. The Agency's proposed change to subp. 4. D. strikes the word "compiled" because it is not clear what it might require to be included in the record. The remaining words sufficiently identify what is to be included in the Agency's record of its decision. The Commissioner is removed from this provision due to the role change of being a decisionmaker. It is the Agency staff who gather and rely upon the facts for making recommendations to the Agency for proposed actions or final decisions.

Subp. 9. Stay of decision. The Agency's proposed change makes it clear what portions of part 7000.2100 are required to be part of a petition for a stay. The change also makes it clear what grounds the Agency will base its decision to grant or deny a petition for a stay. Further it makes the Agency's consideration of a petition the same requirements as part 7000.2100.

F. MINN. RULES PT. 7000.0850 (DELEGATION PROCEDURE)

Part D. The proposed change merely substitutes the word "Commissioner" for the word "chair."

G. MINN. RULES PT. 7000.1300 (CONFIDENTIAL INFORMATION)

Subp. 3. Agency use. The proposed change allows the agency staff in addition to the Agency to appropriately use confidential information. This change is an oversight that needed to be addressed. It is important that agency staff have access and use of confidential information to enable them to assist the Agency.

H. MINN. RULES PT. 7000.1750 (CONTESTED CASE HEARINGS)

Subp. 4. Parties. The proposed change makes the Deputy Commissioner (rather than the Commissioner) a party to any hearing ordered by the Agency. It would present a conflict for the Commissioner to be a party to an Agency contested case hearing and also be a decisionmaker.

I. MINN. RULES PT. 7000.1800 (PETITION FOR CONTESTED CASE HEARING)

Subp. 1. Petition for contested case hearing. The proposed changes recognize the merged roles of the Commissioner.

Subp. 3. Written responses to petitions for contested case hearings. The proposed changes recognize the merged roles of the Commissioner.

J. MINN. RULES PT. 7000.2000 (FINAL DECISIONS AND ORDERS IN CONTESTED CASES)

Subp. 2. Service of comments and exceptions. The proposed change recognizes the Commissioner as an Agency member who must be served with written comments or exceptions.

Subp. 3. Appearance at agency meeting. The proposed change substitutes the word "Commissioner" for the word "chair."

Subp. 8. Notice. The proposed change corrects an oversight. The original rule did not specify who would serve copies of final Agency decisions. The Commissioner now has this responsibility with this change. Adding the word "interested" before persons makes it clear what persons are to be served. Interested persons are defined in the rule.

K. MINN. RULES PT. 7000.2100 (PETITION FOR STAY AND REOPENING OF AGENCY'S FINAL DECISION FOLLOWING CONTESTED CASE HEARING)

Subp. 1. Petition for a stay and reopening. The proposed change makes it clear that the Commissioner is to be served with a petition for a stay.

Subp. 3. Grounds for granting or denying the petition. The proposed change clarifies that any material issues of fact used to support a grant for a stay and reopening of an Agency final decision must be based on newly discovered facts. The Agency should not be required to review facts that it has already considered in support of its final decision. The Agency's decisions need finality and should not be stayed and reopened on facts already fully considered.

L. MINN. RULES PT. 7000.5000 (DECLARATION OF EMERGENCY)

Subp. 2. Notification to agency. This change requires the Commissioner to inform and notify Agency members of a declared emergency. The Commissioner, by this change, would no longer be required to poll members regarding an emergency declaration; and if a majority of members disapproved the declaration it would no longer be in effect. Instead the Commissioner is required to schedule a special meeting as soon as practicable after the declaration of the emergency. The Agency would then determine at the special meeting whether to continue the declaration. The change recognizes the expanded role of the Commissioner and eliminates issues regarding whether the polling process is inconsistent with the open meeting law. Holding a special meeting to consider the declaration provides assurance that the public will be made aware of the situation and will have the opportunity to express their concerns at an open public meeting.

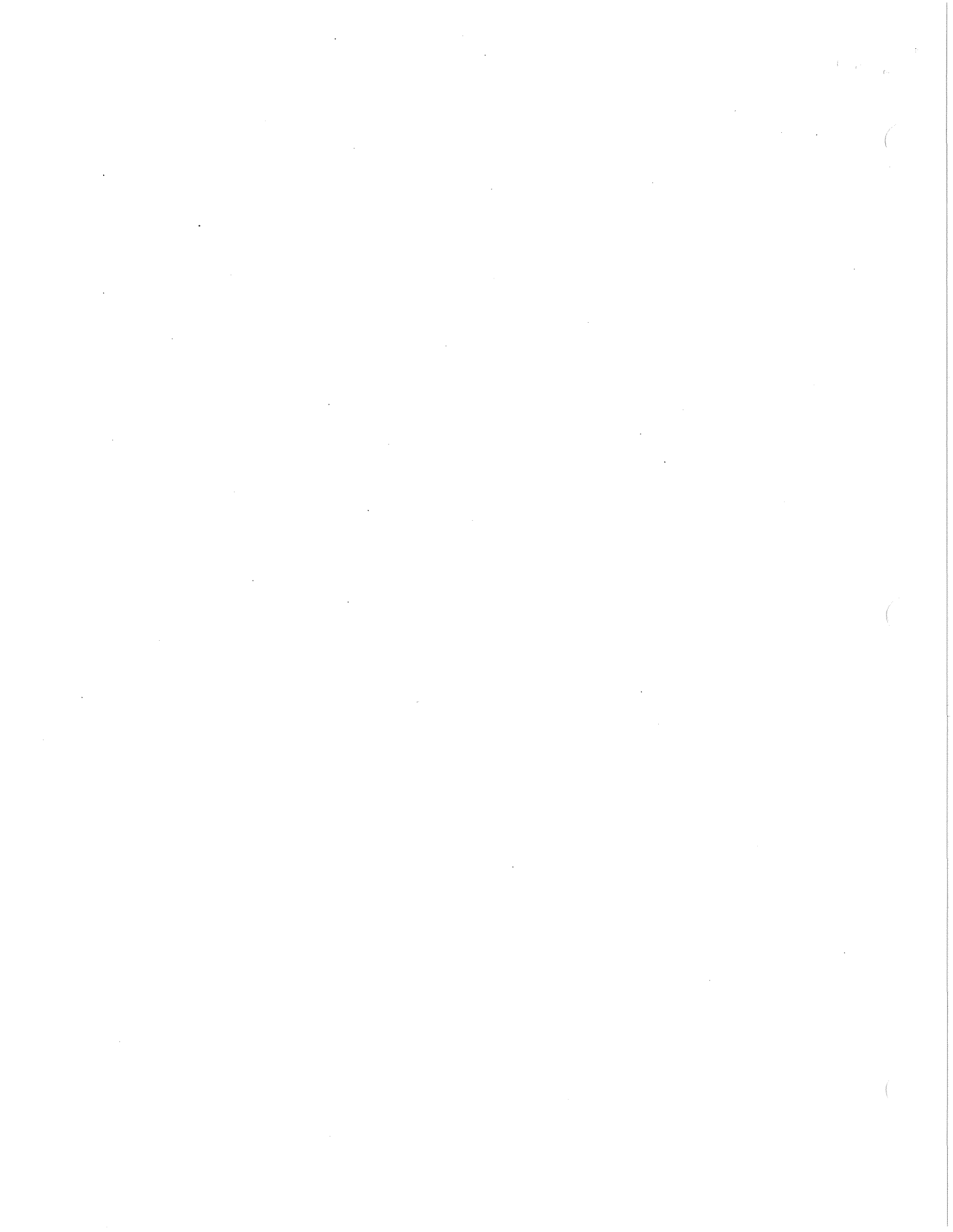
Subp. 3. Duration. The proposed changes reflect the new procedure of subp. 2. The duration of an emergency declaration is extended to the holding of a special meeting and thereafter (if continued by the Agency) until the date determined by the Agency.

M. MINN. RULES PT. 7000.7000 (VARIANCES)

Subp. 9. Notification. The proposed change makes it clear that it is the Commissioner's responsibility to serve variance decisions on applicants and interested persons.

N. MINN. RULES PT. 7000.9100 (PROHIBITED EX PARTE COMMUNICATIONS)

Subp. 3. Disclosure of ex parte communication. The proposed change provides for the prompt disclosure of ex parte communications by Agency members to the Commissioner or to the vice-chair.



V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Minn. Stat. § 14.155, subd. 2 (1992) requires the Agency, when proposing rules that may affect small businesses, to consider methods for reducing the impact on small businesses. The proposed amendments will not significantly affect small businesses. To the extent the existing procedural rules already create some burden on interested persons, including small businesses, to participate in Agency matters, the proposed amendments will not change this burden. Moreover, the burden flows from the authority of the Agency rather than from the procedural rules of the Agency. For these reasons, the Agency concludes that the proposed amendments to its procedural rules will not affect small businesses adversely.

VI. CONSIDERATION OF ECONOMIC FACTORS

In exercising its powers, the Agency is required by Minn. Stat. § 116.07, subd. 6 (1992) to give due consideration to economic factors. Specifically, the statute provides:

In exercising all its powers, the Agency shall give due consideration to the establishment, maintenance, operation, and expansion of business, commerce, trade, industry, traffic, and other economic factors and other material matters affecting the feasibility and practicability of any proposed actions, including, but not limited to, the burden on a municipality of any tax which may result therefrom, and shall take or provide for such action as may be reasonable, feasible, and practical under the circumstances.

In proposing these amendments, the Agency has given due consideration based on available information to the economic impacts the amendments may have. The Agency has concluded that the proposed amendments will have no adverse economic impact.

VII. IMPACT ON AGRICULTURAL LANDS

Minn. Stat. § 14.11, subd. 2 (1992) requires the Agency to consider whether its proposed amendments will have an impact on agricultural land. The statute provides:

If the agency proposing the adoption of the rule determines that the rule may have a direct and substantial adverse impact on agricultural land in the state, the agency shall comply with the requirements of sections 17.80 to 17.84.

The Agency has determined that adoption of the proposed amendments will not have an impact on agricultural land in any way different than required by existing rules, if at all.

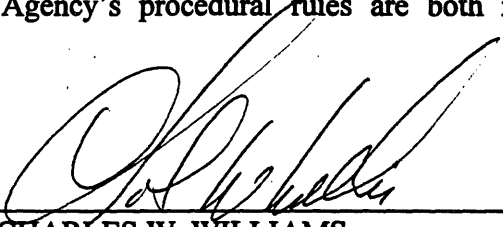
VIII. IMPACT ON LOCAL PUBLIC BODIES

Minn. Stat. § 14.11, subd. 1 (1992) requires that, if the adoption of a proposed rule will require the expenditure of public money by local public bodies, the agency must include a special note of cost when it proposes to adopt the rule. The Agency has determined that adoption of the proposed amendments will not require the expenditure of public money by local public bodies in any way different than that required by existing rules, if at all.

X. CONCLUSION

The proposed amendments to the Agency's procedural rules are both needed and reasonable.

Dated: October 24, 1995



CHARLES W. WILLIAMS
Commissioner
Minnesota Pollution Control Agency

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