

**CHAPTER 4240**  
**PUBLIC UTILITIES COMMISSION**  
**LARGE OIL AND FUEL STORAGE FACILITIES**

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**4240.0100 DEFINITIONS.**

Subpart 1. **Scope.** For purposes of this chapter, the following definitions shall apply.

Subp. 2. **Agency.** "Agency" means the Public Utilities Commission.

Subp. 3. **Applicant.** "Applicant" means the person or persons submitting a certificate of need application.

Subp. 4. **Application.** "Application" means a document submitted by a person or persons to the director for the purpose of obtaining a certificate of need, the contents of which are described in this chapter.

Subp. 5. **Btu.** "Btu" means British thermal unit, a common unit of energy measurement that is used in this chapter for comparative purposes.

Subp. 6. **Construction.** "Construction" means significant physical alteration of a site to install or enlarge a large energy facility, but not including activities incident to preliminary engineering or environmental studies.

Subp. 7. **Demand.** "Demand" means the quantity of an energy product that the applicant is willing and able to purchase.

Subp. 8. **Director.** "Director" means the director of the agency.

Subp. 9. **Energy product.** "Energy product" means a product that may be used to provide energy.

Subp. 10. **Forecast.** "Forecast" means a prediction of future demand for some specified time period.

Subp. 11. **Forecast years.** "Forecast years" means the 16-year period consisting of the year in which an application is filed plus the next 15 years.

Subp. 12. **Joint application.** "Joint application" means an application submitted to the director by two or more persons.

Subp. 13. **Large oil storage facility.** "Large oil storage facility" means a facility on a single site designed for or capable of storing more than 1,000,000 gallons of crude petroleum or petroleum fuels or oil or derivatives thereof.

Subp. 14. **Peak day.** "Peak day" means that day during a calendar year when the demand is the greatest.

Subp. 15. **Person.** "Person" means an individual, partnership, corporation, joint stock company, unincorporated association or society, municipal corporation, or a government or governmental subdivision, unit, or agency other than a court of law.

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Subp. 16. **Substantially complete application.** "Substantially complete application" means an application that is deemed by the director to be in substantial compliance with the informational requirements of this chapter.

Subp. 17. **Ton.** "Ton" means 2,000 pounds.

**Statutory Authority:** *MS s 116J.10*

**History:** *L 1983 c 289 s 115 subd 1*

### 4240.0200 PURPOSE.

The purpose of this chapter is to specify the contents of applications for certificates of need and to specify criteria for assessment of need for large oil storage facilities for energy users pursuant to Minnesota Statutes, section 216B.243.

**Statutory Authority:** *MS s 116J.10*

### 4240.0300 SCOPE OF RULES.

Subpart 1. **New and expansion facilities.** Each applicant for a certificate of need for a large oil storage facility to be used in conjunction with manufacturing, mining, heating, cooling, processing, or generation of electricity, or for fuel storage for vehicles, locomotives, or aircraft, shall provide all of the information required by this chapter. The following types of oil storage facilities shall be subject to this chapter:

A. a new large oil storage facility; and

B. an expansion of an existing oil storage facility, which expansion is itself of sufficient size to fall within the definition in part 4240.0100, subpart 13.

Subp. 2. **Exception.** The following types of facilities shall not be subject to this chapter:

A. a large oil storage facility on which construction has begun or has been completed; or

B. a large oil storage facility to be constructed in conjunction with a large electric generating facility that itself requires a certificate of need, unless that proposed large oil storage facility is not covered by the certificate of need issued for the large electric generating facility and associated facilities.

**Statutory Authority:** *MS s 116J.10*

### CRITERIA FOR ASSESSMENT OF NEED

#### 4240.1100 PURPOSE OF THE CRITERIA.

The criteria for assessment of need will be used by the director in the determination of the need for a proposed large energy facility pursuant to Minnesota Statutes, sections 116J.05 to 116J.30. The factors listed under each of the criteria in part 4240.1200 will be evaluated to the extent that the director deems them applicable and pertinent to each facility proposed pursuant to this chapter.

**Statutory Authority:** *MS s 116J.10*

#### 4240.1200 CRITERIA.

A certificate of need shall be granted to the applicant if it is determined that:

A. The probable result of denial would adversely affect the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states. In making this determination, the director shall consider:

(1) the accuracy of the applicant's forecast of demand for the type of energy that would be supplied by the proposed facility;

(2) the effects of the applicant's existing or expected conservation programs and state and federal conservation programs;

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(3) the effects of promotional practices of the applicant that may have given rise to the increase in the energy demand, particularly promotional practices which have occurred since 1974;

(4) the ability of current facilities and planned facilities not requiring certificates of need to meet the future demand; and

(5) the effect of the proposed facility in making more efficient use of resources.

B. A more reasonable and prudent alternative to the proposed facility has not been demonstrated. In making this determination, the following factors shall be considered:

(1) the appropriateness of the size, type, and timing of the proposed facility compared to those of reasonable alternatives;

(2) the cost of the proposed facility and the cost of energy to be supplied by the proposed facility compared to the costs of reasonable alternatives and the cost of energy that would be supplied by reasonable alternatives;

(3) the impact of the proposed facility upon the natural and socioeconomic environments compared to the impacts of reasonable alternatives; and

(4) the expected reliability of the proposed facility compared to the expected reliability of reasonable alternatives;

C. The consequences of granting the certificate of need outweigh the consequences of denying the certificate, considering:

(1) the relationship of the proposed facility to overall state energy needs;

(2) the impact of the proposed facility upon the natural and socioeconomic environments compared to the impact of not building the facility;

(3) the effects of the proposed facility in inducing future development; and

(4) socially beneficial uses of the output of the proposed facility, including its uses to protect or enhance environmental quality; and that it has not been demonstrated on the record that the design, construction, or operation of the proposed facility will fail to comply with those relevant policies, rules, and regulations of other state and federal agencies and local governments that have been considered during the hearing process.

**Statutory Authority:** *MS s 116J.10*

### 4240.2100 APPLICATION PROCEDURES AND TIMING.

Subpart 1. **Form.** Each applicant for a certificate of need shall apply in a form prescribed by the director.

Subp. 2. **Copies, title, table of contents.** A minimum of seven bound copies and one unbound copy of the application shall be filed with the director. The director may require additional bound copies. All documents, forms, and schedules filed with the application must be typed on 8-1/2 inch by 11 inch paper except for blueprints, engineering drawings, maps, and similar materials. The date of preparation and the applicant's name shall appear on each page of the application, as well as on each document filed with the application. Each application shall contain a title page and a complete table of contents, which includes the applicable parts by the titles and numbers given in this chapter.

Subp. 3. **Changes or corrections.** Subsequent to the filing of an application, any changes or corrections to the application shall comply with item B, as to the number of copies and size of documents. In addition, each page of a change or correction to a previously filed page shall be marked with the word "REVISED" and with the date the revision was made. The original copy of the changes or corrections shall be filed with the hearing examiner, and the remaining copies shall be submitted to the director.

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Subp. 4. **Cover letter.** Each application for a certificate of need shall be accompanied by a cover letter signed by an authorized officer or agent of the applicant. The cover letter shall specify the type of facility for which a certificate of need is requested, the number of copies filed, and the rules and subparts, items, and subitems thereof to which the applicant has responded.

Subp. 5. **Hearing.** A hearing examiner shall be appointed and a public hearing shall be scheduled to commence no later than 80 days after the receipt of the application, in accordance with rules of procedure governing certificate of need program, Minnesota rules, chapter 4210 and the Office of Administrative Hearings rules of contested case procedures, parts 1400.5100 to 1400.8500.

Subp. 6. **Decision.** A decision on an application for a certificate of need shall be made by the director no later than six months from the receipt of the application, provided that the application as filed is substantially complete.

Subp. 7. **Notice to applicant.** The director shall notify the applicant within 15 days of the receipt of an application if the application is not substantially complete. Upon such notification, the applicant may correct the deficiency and may resubmit the application. A decision shall be made upon the revised application within six months of the date of resubmission, assuming it is substantially complete.

Subp. 8. **Exemptions.** Prior to the submission of an application, a person may be exempted from any data requirement of this chapter upon a written request to the director for exemption from specified rules and a showing by that person in the request that the data requirement is unnecessary to determine the need for the proposed facility, or may be satisfied by submission of another document. A request for exemption must be filed at least 20 days prior to submission of an application. The director shall respond in writing to each such request within 15 days of receipt including reasons for his decision. The director shall file a statement of exemptions granted and reasons therefor prior to commencement of the hearing.

**Statutory Authority:** *MS s 116J.10*

### APPLICATIONS FOR CERTIFICATE OF NEED

## 4240.2200 FILING FEES AND PAYMENT SCHEDULE.

The fee for processing an applicant shall be \$1,500 plus \$50 per one 100,000 gallons of design oil storage capacity. The director may assess additional fees if they are reasonably necessary for completion of the evaluation of need for the proposed facility. In no event shall the total fee required of an applicant exceed the lesser of \$50,000 or 200 percent of the fee set according to the above schedule. Fifty percent of the fee set according to the above schedule shall accompany the application, and the balance shall be paid 90 days after submission of the application. The applicant shall be notified when its application is acted on by the director of any additional fees, and shall pay them within 30 days of notification. The billing for such additional fees shall be accompanied by an itemized statement. No certificate of need shall be issued unless all fees are paid in full.

**Statutory Authority:** *MS s 116J.10*

## 4240.2300 CONTENTS OF APPLICATION.

Subpart 1. **Information required.** Each application for a certificate of need for a large oil storage facility shall include the information required by parts 4240.2400 to 4240.3100 and 4240.4100 to 4240.4500.

Subp. 2. **Additional information.** An application for a certificate of need, if desired by the applicant, may contain information in response to part 4240.3200.

Subp. 3. **Joint application.** If the proposed application for a certificate of need is jointly submitted by two or more persons, then, when specified in this chapter, each such person shall submit the information required by this chapter.

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Subp. 4. **Multiparty ownership and use.** Each application for a certificate of need for a facility that is owned and used by two or more persons shall be considered as a joint application for purposes of this chapter.

**Statutory Authority:** *MS s 116J.10*

### 4240.2400 GENERAL INFORMATION.

Subpart 1. **Content of section.** Each application shall contain a general information section that shall include the following information:

A. the applicant's complete name, address, telephone number, and standard industrial classification codes;

B. the complete name, title, address, and telephone number of the official or agent to be contacted concerning the applicant's filing;

C. a brief description of the nature of the applicant's business and of the products that are manufactured, produced, or processed, or of the services rendered;

D. a brief description of the proposed facility, its complete address (if known) or general location, a brief description of its planned use, its estimated cost, its planned in-service date, and its design capacity in gallons;

E. the total fee for the application as prescribed by part 4240.2200, and the amount of the fee submitted with the application; and

F. the signatures and titles of the applicant's officers or executives authorized to sign the application, and the signature of the preparer of the application if prepared by an outside agent.

Subp. 2. **Schedule of filing authorities.** Each application shall contain a schedule in the general information section that shall list all known federal, state, and local agencies or authorities with which the applicant must file for the proposed facility. The following information shall be included on the schedule:

A. the names of all known federal, state, or local agencies or authorities with which the applicant must file;

B. the title of each required permit or certificate issued by the authorities named in response to item A, and needed by the applicant;

C. for each permit or certificate listed in response to item B, the date an application was filed or the projected date of future application;

D. for each permit or certificate listed in response to item B, the actual date a decision was made on the application, or the anticipated decision date; and

E. for each permit or certificate listed in response to item B, for which an application was filed, the disposition or status of the permit or certificate.

**Statutory Authority:** *MS s 116J.10*

### 4240.2500 NEED SUMMARY.

Each application shall contain a section that summarizes the major factors that justify the need for the proposed facility. This summary shall not exceed, without the approval of the director, 15 pages in length, including text, tables, schedules, graphs, and figures.

**Statutory Authority:** *MS s 116J.10*

### 4240.2600 SUMMARY OF ADDITIONAL CONSIDERATIONS.

Each application shall contain a section that discusses the socioeconomic considerations listed below. The applicant shall explain the relationship of the proposed facility to each of the following:

A. socially beneficial uses of the output of the facility, including its uses to protect or enhance environmental quality;

B. promotional activities that may have given rise to the demand for the facility; and

C. the effects of the facility in inducing future development.

**Statutory Authority:** *MS s 116J.10*

#### 4240.2700 CONSERVATION PROGRAMS.

Each application shall contain a section that relates to conservation of energy. Separate responses are required from each person submitting a joint application.

A. Does the applicant have an energy committee or an individual responsible for determination or coordination of its energy needs?

B. Has the applicant defined energy or conservation goals or objectives?

C. What specific energy or conservation programs has the applicant considered?

D. Have any energy or conservation programs been implemented? Explain the programs and the measured results achieved to date.

E. Has the applicant measured or studied the energy efficiency of the facilities that will use the proposed facility as an energy source? What were the results?

F. What major accomplishments in energy efficiency or conservation have been made by the applicant within the past five years?

**Statutory Authority:** *MS s 116J.10*

#### 4240.2800 HISTORICAL ENERGY DATA.

Subpart 1. **General.** Each applicant shall provide the information in subparts 2 to 7 on historical energy usage in a separate section of the application. The energy usage data provided shall be for the specific facility or facilities that will make use of the energy product from the proposed facility. In a joint application separate responses shall be provided by each person. Applicants who have operated for less than five years the facility or facilities that will use energy from the proposed facility should provide data for each year of operation.

Subp. 2. **List of energy products.** List all energy products used for the five most recent calendar years. For each energy product used indicate the annual usage and peak day usage in the appropriate unit of measure, i.e., natural gas in thousands of cubic feet, oil by types and in gallons, coal by types and in tons, electricity in kilowatt-hours, and liquefied gas in gallons.

Subp. 3. **Annual expense.** For each energy product listed in response to subpart 2, provide the annual expense in dollars and the average cost per unit of measure for each of the five most recent calendar years.

Subp. 4. **Annual usage.** For each energy product listed in response to subpart 2, provide the annual usage for the five most recent calendar years in Btu's and express the annual usage for each type of energy as a percentage of total annual use.

Subp. 5. **Breakdown of energy usage.** For each energy product listed in response to subpart 2, and for the five most recent calendar years, provide the percentage of energy usage that is accounted for by each of the following categories:

- A. space heating and cooling;
- B. lighting;
- C. manufacturing or processing;
- D. electricity generation; and
- E. other.

Subp. 6. **Changes affecting usage.** Describe any significant changes in plant or equipment within the past five years that may have had an effect upon the mix or quantities of energy products used as indicated in response to subparts 2 to 5.

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Subp. 7. **Storage capacity.** If the energy products listed include oil, liquefied gas, or coal, describe the type and size of existing storage capacity, including the average number of days supply that would normally be on hand during the winter season and during the summer season.

Subp. 8. **Handling facilities.** For each of the energy products listed in response to subpart 7 describe the applicant's handling facilities, including the method of transportation.

**Statutory Authority:** *MS s 116J.10*

### 4240.2900 FORECAST DATA.

The applicant shall provide in a separate section of the application answers to each of the questions below. In the answer to each question the applicant shall provide the assumptions upon which the answer is based. Separate responses to the questions are required from each person submitting a joint application.

A. What are the applicant's projected total energy requirements in Btus for the first six forecast years, the 11th forecast year (the tenth year after the year of application), and the 16th forecast year (the 15th year after the year of application)?

B. For the first six forecast years, the 11th forecast year, and the 16th forecast year, what percentage of the total energy requirement given in response to item A is projected to be utilized for each of the following: space heating and cooling, lighting, manufacturing or processing, electricity generation and other?

C. What different energy products does the applicant expect to use during the forecast years? With respect to the various energy products, what significant shifts from current usage are expected by the applicant during the forecast years?

D. What energy supply problems, if any, does the applicant anticipate during the forecast years?

E. How much reduction, if any, in energy requirements for future years does the applicant anticipate as a result of conservation programs or improvements in the energy efficiencies of equipment?

**Statutory Authority:** *MS s 116J.10*

### 4240.3000 DESCRIPTION OF PROPOSED FACILITY.

Each applicant shall provide a description of the proposed oil storage facility in a separate section of the application. Separate responses to items G to K are required from each person submitting a joint application. The following information, or as much as is known at the time of application, shall be provided:

A. a description of the proposed oil storage facility, including:

- (1) its design capacity in gallons;
- (2) the types of energy products to be stored;
- (3) its dimensions;
- (4) its estimated cost;
- (5) its expected economic life; and
- (6) an appropriate drawing that shows interconnections with other

facilities at the site;

B. the complete name and address of the engineer, or (if designed by an outside agent) the firm, which designed the storage facility;

C. the complete name and address of the contractor or firm that will construct the storage facility;

D. the approximate planned date for starting construction and the approximate planned in-service date;

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E. a list of the sources or anticipated fuel suppliers and any contractual arrangements that assure the applicant a source of supply, including:

- (1) length of the contracts in years;
- (2) contractual volume per year, month, day, or as appropriate;
- (3) names of suppliers;
- (4) notification, if any, required to terminate a contract;
- (5) method of delivery; and
- (6) anticipated supply cycle (weekly, monthly, seasonally, by spot purchase, etc.);

F. an explanation of the source of supply for the proposed storage facility, if the applicant does not have a firm contract for necessary additional supplies of fuel;

G. the purpose and planned use of the proposed storage facility, including its relationship to the facility that requires it;

H. the percentage of the annual energy requirements of the energy-consuming facility that use the proposed storage facility as an energy source that will be provided by the proposed storage facility;

I. the estimated number of days of fuel requirements that are planned to be stored in the proposed storage facility during the winter season and during the summer season for the first full year of operation;

J. an explanation of the effects of the proposed storage facility upon the applicant's ability to supply its customers; and

K. an explanation of the impact, if any, of the proposed facility upon the energy efficiency of operation of the facility that will use the proposed storage facility as a fuel source.

**Statutory Authority:** *MS s 116J.10*

### 4240.3100 ALTERNATIVES.

Each applicant shall respond to the following questions and submit the required data in a separate section of the application.

A. Was conservation of energy or improving the efficiency of the process requiring the proposed facility considered as an alternative to construction of the proposed facility? To what extent was it considered?

B. Are there any known restrictions or limitations on the types of alternatives available to the applicant's proposed facility?

C. Specifically, what other energy alternatives were examined? For each alternative examined provide the following information:

- (1) a description of the alternative;
- (2) when it was studied;
- (3) who performed the study;
- (4) why it was rejected;
- (5) whether economics was considered and to what extent; and
- (6) whether environmental data were considered and to what extent.

**Statutory Authority:** *MS s 116J.10*

### 4240.3200 OTHER DATA FILED WITH THE APPLICATION.

In addition to the information required by the director, the applicant may desire to file other data. If, in the opinion of the applicant, additional relevant data should be submitted for consideration, such data should be filed in a separate section of the application.

**Statutory Authority:** *MS s 116J.10*



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### ENVIRONMENTAL DATA FOR OIL AND FUEL STORAGE FACILITIES 4240.4100 INFORMATION REQUIRED.

Each applicant shall provide environmental data for the proposed facility and for each alternative large energy facility described in response to part 4240.3100, to the extent that such data is reasonably available. Information relating to construction and operation of these facilities shall be provided as indicated in parts 4240.4200 to 4240.4500.

**Statutory Authority:** *MS s 116J.10*

### 4240.4200 LOCATION.

**Subpart 1. Land description.** If the specific location for the proposed facility is known, provide the county, township, range, and sections of that site. If a specific location has not been chosen, provide the county, township, range, and sections for each parcel of land that, in the opinion of the applicant, could serve as the site for the proposed facility.

**Subp. 2. Descriptions.** For each site identified in response to item A, list:

- A. the nature of the terrain at the site;
- B. the general soil type at the site;
- C. the depth to groundwater at the site;
- D. the types of vegetation (including forest, brush, marsh, pasture, and cropland) on the site;
- E. the predominate types of land use (such as residential, forest, agricultural, commercial, and industrial) within one mile of the site;
- F. lakes, streams, wetlands, or drainage ditches within one mile of the facility, and any other lakes, streams, wetlands, drainage ditches, wells, or storm drains into which liquid contaminants could flow;
- G. national natural landmarks, national wilderness areas, national wildlife refuges, national wild and scenic rivers, national parks, national forests, national trails, and national waterfowl production areas within one mile of the site, as mapped on the inventory of significant resources by the State Planning Agency;
- H. state critical areas, state wildlife management areas, state scientific and natural areas, state wild, scenic, and recreational rivers, state parks, state scenic wayside parks, state recreational areas, state forests, state trails, state canoe and boating rivers, state zoo, designated trout streams, and designated trout lakes within one mile of the site, as mapped on the inventory of significant resources by the State Planning Agency; and
- I. national historic sites and landmarks, national monuments, national register historic districts, registered state historic or archaeological sites, state historical districts, sites listed on the national register of historic places, and any other cultural resources within one mile of the facility site, as indicated by the Minnesota Historical Society.

**Statutory Authority:** *MS s 116J.10*

**History:** *L 1983 c 289 s 115 subd 1*

### 4240.4300 WASTEWATER, PROJECTED AIR EMISSIONS, AND NOISE SOURCES.

**Subpart 1. Point discharges to water.** Indicate the location, route, and final receiving waters for any discharge points. For each discharge point indicate the source, the amount, and the nature of the discharge (provide quantitative data if possible).

**Subp. 2. Area runoff.** Indicate the area from which runoff may occur, potential sources of contamination in the area, and receiving waters for any runoff.

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Subp. 3. **Airborne emissions; point sources.** Estimate the quantity of gaseous and particulate emissions that would occur during full operation from each emission source and indicate the location and nature of the release point.

Subp. 4. **Airborne emissions; area sources.** Indicate locations that may be sources of fugitive dust, and indicate the nature of the source (including type of material, amount, and turnover rate).

Subp. 5. **Noise.** Indicate the maximum noise levels (in decibels, A scale) expected at the property boundary. Also, indicate the expected maximum increase over ambient noise levels.

**Statutory Authority:** *MS s 116J.10*

## 4240.4400 POLLUTION CONTROL AND SAFEGUARDS EQUIPMENT.

Subpart 1. **Air pollution controls.** Indicate types of emission control devices and measures that would be used.

Subp. 2. **Water pollution controls.** Indicate types of pollution control equipment and runoff control measures that would be used to comply with applicable state and federal rules, regulations, and statutes.

Subp. 3. **Oil spill safeguards.** Describe measures that would be taken to prevent oil spills or to minimize the environmental impact of a spill on surface waters and groundwaters of the state.

Subp. 4. **Other safeguards and controls.** Indicate any other equipment or measures, including erosion control, that would be used to reduce impact of the facility. Indicate the types of environmental monitoring, if any, that are planned for the facility and describe relevant environmental monitoring data already collected.

**Statutory Authority:** *MS s 116J.10*

## 4240.4500 INDUCED DEVELOPMENT.

Subpart 1. **Vehicular traffic.** Estimate the amounts and types of vehicular traffic that would be generated by the facility.

Subp. 2. **Utility use.** Indicate the extent to which the facility would create or add to the need for expanded utilities or public services.

Subp. 3. **Water use.** Indicate the amount of water that would be appropriated and the amount that would be consumed by the facility, the expected source of the water, and how the water would be used.

**Statutory Authority:** *MS s 116J.10*

## 4240.5100 CERTIFICATE OF NEED MODIFICATIONS.

Subpart 1. **Changes required by director.** Issuance of a certificate may be made contingent upon modifications required by the director. When the director denies an application, he shall state the reasons for the refusal and the changes, if any, which would make the facility certifiable.

Subp. 2. **Changes not requiring recertification.** The following changes in a facility previously certified by the director shall not require recertification: oil storage capacity additions or subtractions of less than ten percent of the capacity approved by the director; and changes of less than two years in the in-service date.

Subp. 3. **Procedure in case of other changes.** If an applicant determines that a change greater than those specified in subpart 2 is necessary or desirable, it shall inform the director of the desired change, accompanied by a written statement detailing the reasons for the proposed change. The director shall evaluate these reasons and within 45 days of receipt of said statement notify the applicant whether the proposed change is acceptable without recertification.

**Statutory Authority:** *MS s 116J.10*