

CHAPTER 7852
PUBLIC UTILITIES COMMISSION
ROUTE PERMIT; PIPELINE

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7852.0100 DEFINITIONS.

Subpart 1. **Scope.** The definitions in Minnesota Statutes, section 216G.02, and this part apply to this chapter.

Subp. 2. **Act.** "Act" has the meaning given it in Minnesota Statutes, section 216G.02.

Subp. 3. **Affected landowner.** "Affected landowner" means an owner or lessee of record of real property, any part of which is within the proposed pipeline route.

Subp. 4. **Authorized representative or agent.** "Authorized representative" or "agent" means a person who is authorized to act as a contact person on behalf of the applicant or permittee.

Subp. 5. **Applicant.** "Applicant" means any person or persons who apply to the commission for a conditional exclusion, partial exemption, pipeline route selection, or emergency.

Subp. 6. **Application.** "Application" means a document submitted by a person or persons to the commission for conditional exclusion, partial exemption, pipeline route selection, or emergency, the contents of which are described in this chapter.

Subp. 7. **Associated facilities.** "Associated facilities" means all parts of those physical facilities through which hazardous liquids or gas moves in transportation, including but not limited to pipe, valves, and other appurtenances connected or attached to pipe,

pumping and compressor units, fabricated assemblies associated with pumping and compressor units, metering and delivery stations, regulation stations, holders, breakout tanks, fabricated assemblies, cathodic protection equipment, telemetering equipment, and communication instrumentation located on the right-of-way.

Subp. 8. **Barrel.** "Barrel" has the meaning given in part 7853.0100, subpart 5.

Subp. 9. **Btu.** "Btu" has the meaning given in part 7853.0100, subpart 6.

Subp. 10. **Commission.** "Commission" means the Minnesota Public Utilities Commission.

Subp. 11. **Construction.** "Construction" means any clearing of land, excavation, or other action for the purpose of constructing new pipeline that would adversely affect the natural environment of a pipeline route. Construction does not include changes needed for temporary use of a route for purposes of maintenance, repair, or replacement of an existing pipeline and associated facilities within existing rights-of-way, or for the minor relocation of less than three-quarters of a mile of an existing pipeline or for securing survey or geological data, including necessary borings to ascertain soil conditions.

Subp. 12. **Design day.** "Design day" has the meaning given in part 7851.0010, subpart 6.

Subp. 13. **Environment.** "Environment" means physical conditions existing in the area that may be affected by a proposed pipeline and associated facilities. It includes land, air, water, minerals, flora, fauna, ambient noise, energy resources, natural features, or artifacts of historic, archaeological, geologic, or aesthetic significance.

Subp. 14. **Equivalent Mcf.** "Equivalent Mcf" has the meaning given in part 7851.0010, subpart 8.

Subp. 15. **Filed.** "Filed" means submitted to the commission. A document is considered filed with the commission when it is received by the commission.

Subp. 16. **Gas.** "Gas" means natural gas, flammable gas, or gas which is toxic or corrosive.

Subp. 17. **Gas volume.** "Gas volume" has the meaning given in part 7851.0010, subpart 11.

Subp. 18. **Hazardous liquid.** "Hazardous liquid" means petroleum, petroleum products, or anhydrous ammonia.

Subp. 19. **Liquefied gas.** "Liquefied gas" has the meaning given in part 7851.0010, subpart 16.

Subp. 20. **Liquefied petroleum gas; LPG.** "Liquefied petroleum gas" or "LPG" has the meaning given in part 7853.0100, subpart 15.

Subp. 21. **Mcf.** "Mcf" has the meaning given in part 7855.0010, subpart 21.

Subp. 22. **Permittee.** "Permittee" means any person to whom a pipeline routing permit is issued.

Subp. 23. **Person.** "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, cooperative, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized.

Subp. 24. **Pipe.** "Pipe" means any pipe or tube through which hazardous liquids or gas flows or is conveyed from one point to another.

Subp. 25. **Pipeline.** "Pipeline" means:

A. pipe with a nominal diameter of six inches or more that is designed to transport hazardous liquids, but does not include pipe designed to transport a hazardous liquid by gravity, and pipe designed to transport or store a hazardous liquid within a refining, storage, or manufacturing facility; or

B. pipe designed to be operated at a pressure of more than 275 pounds per square inch and to carry gas.

Subp. 26. **Pipeline company.** "Pipeline company" means an entity that operates a pipeline.

Subp. 27. **Pipeline project or project.** "Pipeline project" or "project" means a pipeline and associated facilities that are planned or under construction.

Subp. 28. **Pipeline routing permit.** "Pipeline routing permit" means the written document issued by the commission to the permittee that designates a route for a pipeline and associated facilities, conditions for right-of-way preparation, construction, clean-up, and restoration. The permit may not set safety standards for pipeline construction.

Subp. 29. **Public adviser.** "Public adviser" means a staff person designated by the commission for the sole purpose of assisting and advising any person on how to effectively participate in the pipeline route selection procedures.

Subp. 30. **Right-of-way.** "Right-of-way" means the interest in real property used or proposed to be used within a route to accommodate a pipeline and associated facilities.

Subp. 31. **Route.** "Route" means the proposed location of a pipeline between two end points. A route may have a variable width from the minimum required for the pipeline right-of-way up to 1.25 miles.

Subp. 32. **Route segment.** "Route segment" means a portion of a route.

Subp. 33. **Shelterbelt.** "Shelterbelt" means the barrier zone of grasses, shrubs, and trees, or any combination of them, planted to protect crops, soil, and other sensitive areas against erosion.

Subp. 34. **Synthetic gas.** "Synthetic gas" has the meaning given in part 7851.0010, subpart 26.

Statutory Authority: *MS s 116I.015; 216G.02*

History: *13 SR 2046; 17 SR 1279; L 2005 c 97 art 3 s 19*

7852.0200 AUTHORITY, SCOPE, PURPOSE, AND OBJECTIVES.

Subpart 1. **Authority.** This chapter is adopted under authority granted in Minnesota Statutes, section 216G.02, to implement review procedures for the routing of pipelines that give effect to the purposes of the act.

Subp. 2. **Scope.** This chapter applies to pipelines defined in Minnesota Statutes, section 216G.02, unless excluded by statute or this chapter. This chapter does not set safety standards for the design or construction of pipelines. The issuance of a pipeline routing permit under Minnesota Statutes, section 216G.02, and this chapter for the subsequent purchase and use of a right-of-way with the route is the only site approval required to be obtained by the person owning or constructing the pipeline. The pipeline routing permit supersedes and preempts all zoning, building, or land use rules, regulations, or ordinances adopted by regional, county, local, or special purpose governments, as provided in Minnesota Statutes, section 216G.02, subdivision 4. The pipeline routing permit must not contravene applicable state or federal jurisdiction, rules, or regulations that govern safety standards for pipelines nor shall the permit set safety standards for the design or construction of pipelines.

Subp. 3. **Purpose.** Minnesota Statutes, section 216G.02, recognizes that pipeline location and restoration of the affected area after construction is important to citizens and their welfare and that the presence or location of a pipeline may have a significant impact on humans and the environment.

To properly assess and determine the location of a pipeline, it is necessary to understand the impact that a proposed pipeline project will have on the environment. Pipeline route designation procedures, proper pipeline right-of-way preparation, construction practices, and restoration of the affected area will lessen or mitigate the impacts of the proposed pipeline project on humans and the environment. The purpose of this chapter is to aid in the

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selection of a pipeline route and to aid in the understanding of its impacts and how those impacts may be reduced or mitigated through the preparation and review of information contained in pipeline routing permit applications and environmental review documents.

Subp. 4. **Objectives.** The process created by this chapter is designed to:

A. locate proposed pipelines in an orderly manner that minimizes adverse human and environmental impact;

B. provide information to the project proposer, governmental decision makers, and the public concerning the primary human and environmental effects of a proposed pipeline project;

C. reduce delay, uncertainty, and duplication in the review process; and

D. ensure that pipeline routing permit needs are met and fulfilled in an orderly and timely manner.

Statutory Authority: *MS s 116I.015; 216G.02*

History: *13 SR 2046*

7852.0300 APPLICABILITY OF RULES.

Subpart 1. **Exclusions.** This chapter does not apply to:

A. temporary use of a route for purposes other than installation of a pipeline;

B. securing survey and geological data;

C. repair or replacement of an existing pipeline within an existing right-of-way;

D. minor relocation of less than three-quarters of a mile of an existing pipeline;

E. pipe designed to transport a hazardous liquid by gravity;

F. associated facilities and pipe designed to transport or store a hazardous liquid within a refining, storage, or manufacturing facility;

G. associated facilities when they are being constructed as an addition to an existing pipeline;

H. maintenance activities on existing pipeline rights-of-way;

I. natural gas pipelines occupying streets, highways, or other public property within a municipality under rights granted pursuant to a license, permit, right, or franchise that has been granted by the municipality under authority of Minnesota Statutes, section 216B.36; and

J. any person that proposes to construct or operate an interstate natural gas pipeline under the authority of the federal Natural Gas Act, United States Code, title 15, section 717, et seq.

Subp. 2. **Conditional exclusion.** This chapter does not apply to construction of a new pipeline in a right-of-way in which a pipeline has been constructed before July 1, 1988, or in a right-of-way that has been approved by the commission after July 1, 1988, except when the commission determines that there is a significant chance of an adverse effect on the environment or that there has been a significant change in land use or population density in or near the right-of-way since the first construction of a pipeline within the right-of-way, or since the commission first approved the route within which the right-of-way is located. Part 7852.0500 addresses conditional exclusion procedures.

Subp. 3. **Partial exemption.** The commission may exempt a proposed pipeline from part of the pipeline routing permit procedures in emergencies or if the commission determines that the proposed pipeline will not have a significant impact on humans or the environment. Part 7852.0400 addresses emergency procedures and part 7852.0600 addresses partial exemption procedures.

Subp. 4. **Pipeline route selection.** If the commission does not grant a partial exemption or if the pipeline company chooses not to apply for a partial exemption, the pipeline

company may submit an application for pipeline route selection and a pipeline routing permit. Part 7852.0700 addresses pipeline route selection procedures.

Subp. 5. **Denial of request.** Application costs for a conditional exclusion, partial exemption, pipeline route selection, or emergency are borne by the applicant as determined in part 7852.4000. If the commission denies an applicant's request for a conditional exclusion, partial exemption, or emergency, the applicant remains responsible for the actual costs and any additional time required for any other application procedures and requirements necessary for further action by the commission.

Statutory Authority: *MS s 116I.015; 216G.02*

History: *13 SR 2046; L 2005 c 97 art 3 s 19*

EMERGENCY PROCEDURES

7852.0400 PIPELINE EMERGENCY ACTION AND PROCEDURES.

Subpart 1. **Pipeline emergency action.** In the rare situation where immediate action by a pipeline company whose pipeline system requires the immediate construction of a pipeline is considered essential to avoid or eliminate an imminent threat, prevent injury, loss of life, property damage, or loss of essential public services, a pipeline project may be undertaken without the review that would otherwise be required by this chapter.

Subp. 2. **Pipeline emergency procedures.** The pipeline company shall notify and demonstrate to the commission, either orally or in writing, that immediate action is essential and must receive temporary authorization from the commission to proceed. All oral requests must be followed by a written request within three working days. Temporary authorization to proceed must be determined by the commission as soon as possible after the request is made and must be limited to only those aspects of the project necessary to control the immediate impacts of the emergency.

A. If temporary authorization to proceed is granted by the commission, the pipeline company must appear at the next commission meeting to seek authorization from the commission to continue activities necessary to remedy the emergency. Other aspects of the project remain subject to review under this chapter.

B. If temporary authorization to proceed is denied by the commission, the pipeline company may request and be granted an immediate special meeting of the commission. The commission shall then determine whether a pipeline emergency exists and whether temporary authorization for the pipeline company to proceed with immediate construction is appropriate.

Statutory Authority: *MS s 116I.015; 216G.02*

History: *13 SR 2046; L 2005 c 97 art 3 s 19*

CONDITIONAL EXCLUSION PROCEDURES

7852.0500 CONDITIONAL EXCLUSION PROCEDURES AND DETERMINATION.

Subpart 1. **Procedures.** A pipeline company having a reasonable basis to assert that a pipeline routing permit is not required to construct or operate a proposed pipeline under Minnesota Statutes, section 216G.02, shall so notify the commission and the county board of each county through which the pipeline will be constructed. The commission shall make a determination on whether to grant a conditional exclusion provided for in part 7852.0300, subpart 2, only when the pipeline company:

A. completes the environmental assessment worksheet (EAW) review procedures as provided in parts 4410.1000 to 4410.1700; and

B. provides information that will allow the commission to determine if there has been a significant change in land use or population density in or near the right-of-way since the first construction of pipeline in the right-of-way, or since the commission first approved the right-of-way. This information will be distributed with the EAW for comments.

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Subp. 2. **Determination.** Based on the record of the EAW decision, including the information required by part 7852.0500, subpart 1, item B, the commission shall grant a conditional exclusion unless it finds that:

- A. there is a significant chance of an adverse effect on the environment; or
- B. there has been a significant change in land use or population density in or near the right-of-way since the first construction of the pipeline in the right-of-way, or since the commission first approved the right-of-way.

Subp. 3. **Granting of conditional exclusion.** When an exclusion is granted, the applicant must comply with the requirements provided by Minnesota Statutes, sections 117.49 and 216G.03. No further review under Minnesota Statutes, section 216G.02, and this chapter is required.

Subp. 4. **Denial of exclusion.** If the commission does not grant an exclusion, the pipeline company may submit an application for a pipeline routing permit under either the partial exemption procedures in parts 7852.0600 to 7852.0700 or the full pipeline route selection procedures in parts 7852.0800 to 7852.1900.

Statutory Authority: *MS s 116I.015; 216G.02*

History: *13 SR 2046; L 2005 c 97 art 3 s 19*

EXEMPTION FROM ROUTE SELECTION PROCEDURES**7852.0600 PARTIAL EXEMPTION FROM PIPELINE ROUTE SELECTION PROCEDURES.**

Subpart 1. **Partial exemption procedures.** A person may apply to the commission for partial exemption from the pipeline route selection procedures for the issuance of a pipeline routing permit. To apply for a partial exemption, a person must comply with the application procedures of part 7852.2000 and submit an application that contains the information identified in parts 7852.2100 to 7852.3000. The commission shall decide whether to grant or deny the partial exemption within 90 days after commission acceptance of the partial exemption application.

Subp. 2. **Notice of partial exemption application.** Within 15 days of commission acceptance of an application for partial exemption, the applicant shall:

- A. provide published notice, including a description of the proposed project, including size and type, and a map of the proposed pipeline route in each county in which the route is proposed to be located;
- B. comply with application distribution requirements of part 7852.2000, subpart 6; and
- C. send by certified mail a copy of the partial exemption application and a clear description of the procedures that must be followed for commenting on the partial exemption to the chair or chief executive of any regional development commission, county, incorporated municipality, organized town, and to affected landowners.

Subp. 3. **Comments on partial exemption.** A person may file comments with the commission within 30 days after giving notice under subpart 2, item C, stating reasons why the commission should grant or deny the partial exemption.

Subp. 4. **Public information meetings.** The commission shall conduct a public information meeting in each county in which the pipeline and associated facilities are proposed to be located. The purpose of the public information meetings is to assist the commission in determining whether to grant or deny the partial exemption.

Subp. 5. **Determination of partial exemption.** In deciding whether to grant or deny the partial exemption, the commission shall consider any comments that are filed, the record of the public information meetings, and the information contained in the application relevant to the criteria for partial exemption in part 7852.0700. If the commission grants the partial exemption from the pipeline route selection procedures in parts 7852.0800 to

7852.1900, the commission must state in writing its reasons for supporting the partial exemption and must issue a pipeline routing permit in accordance with part 7852.3200.

Subp. 6. **Denial of partial exemption.** When a partial exemption is denied, the applicant must be notified in writing of the reasons for denial. A denial is without prejudice to the applicant's right to an appearance before the commission, filing information after revisions are made to meet objections specified as reasons for the denial, or to request that the commission continue processing its application under full pipeline route selection procedures contained in parts 7852.0800 to 7852.1900 for a pipeline routing permit.

Statutory Authority: *MS s 116I.015; 216G.02*

History: *13 SR 2046; L 2005 c 97 art 3 s 19*

7852.0700 CRITERIA FOR PARTIAL EXEMPTION FROM PIPELINE ROUTE SELECTION PROCEDURES.

Subpart 1. **Scope and purpose of criteria.** The scope and purpose of this part is to specify the criteria used by the commission in determining whether to grant a partial exemption from the pipeline route selection procedures. The commission shall make a specific written finding with respect to each of the criteria. Any new easements or right-of-way agreements obtained from potentially affected landowners before issuance of a pipeline routing permit are at the sole risk of the applicant. The fact that the agreements have been obtained shall not be considered by the commission in selecting the route.

Subp. 2. **Standard.** In granting a partial exemption from the pipeline route selection procedures, the commission must determine that the proposed pipeline and associated facilities will not have a significant impact on humans or the environment. The commission shall evaluate the impacts that may be reasonably expected to occur from the proposed pipeline and associated facilities.

Subp. 3. **Criteria.** In determining whether a proposed pipeline and associated facilities qualify for partial exemption and issuance of a pipeline routing permit, the commission shall consider the impact of the pipeline and associated facilities on the following:

- A. human settlement, existence and density of populated areas, existing and planned future land use, and management plans;
- B. the natural environment, public and designated lands, including but not limited to natural areas, wildlife habitat, water, and recreational lands;
- C. lands of historical, archaeological, and cultural significance;
- D. economies within the route, including agricultural, commercial or industrial, forestry, recreational, and mining operations;
- E. pipeline cost and accessibility;
- F. use of existing rights-of-way and right-of-way sharing or paralleling;
- G. natural resources and features;
- H. the extent to which human or environmental effects are subject to mitigation by regulatory control and by application of the permit conditions contained in part 7852.3400 for pipeline right-of-way preparation, construction, cleanup, and restoration practices;
- I. cumulative potential effect of related or anticipated future pipeline construction; and
- J. relevant policies, rules, and regulations of the state and federal agencies and local government land use laws including ordinances adopted under Minnesota Statutes, section 299J.05, relating to the location, design, construction, or operation of the proposed pipeline and associated facilities.

Statutory Authority: *MS s 116I.015; 216G.02*

History: *13 SR 2046; L 2005 c 97 art 3 s 19*

PIPELINE ROUTE SELECTION PROCEDURES**7852.0800 APPLICATION PROCEDURES AND REQUIREMENTS.**

A person submitting an application for a pipeline routing permit must comply with the application procedures of part 7852.2000 and submit an application that contains the information required in parts 7852.2100 to 7852.3100. Within nine months from commission acceptance of an application for route selection, unless the commission by resolution extends this deadline for cause, the commission shall issue a pipeline routing permit for the proposed pipeline and associated facilities.

Statutory Authority: *MS s 116I.015; 216G.02*

History: *13 SR 2046; L 2005 c 97 art 3 s 19*

7852.0900 APPLICATION ACCEPTANCE NOTICE.

Within 20 days of commission acceptance of an application for a pipeline routing permit under part 7852.2000, subpart 4, the commission shall provide published notice of acceptance of the application in a newspaper in each county in which a route is proposed by the applicant.

The notice must include:

- A. identification of the applicant;
- B. the date of the commission's acceptance of the application;
- C. a brief description of the proposed facility including but not limited to size and type;
- D. a map showing the routes proposed in that county;
- E. the name and function of the public adviser and the address and telephone number where that person can be reached;
- F. locations where the pipeline routing permit application is available to the public;
- G. procedures for proposing alternate routes; and
- H. notice of public information meetings.

Statutory Authority: *MS s 116I.015; 216G.02*

History: *13 SR 2046; L 2005 c 97 art 3 s 19*

7852.1000 CITIZEN ADVISORY COMMITTEES AUTHORIZED.

The commission may establish citizen advisory committees to aid and advise the commission in evaluating routes for pipelines. The commission shall provide guidance to the advisory committee in the form of a charge to the committee and through specific requests to it.

Statutory Authority: *MS s 116I.015; 216G.02*

History: *13 SR 2046; L 2005 c 97 art 3 s 19*

7852.1100 CITIZEN ADVISORY COMMITTEE MEMBERSHIP.

Citizen advisory committees appointed to evaluate routes considered for designation shall be comprised of as many persons as may be designated by the commission, but at least one representative from each of the following: a regional development commission, the county, a municipal corporation, and a town board from each county in which a route is proposed to be located. No officer, agent, or employee of the applicant shall serve on the citizen's advisory committee.

Statutory Authority: *MS s 116I.015; 216G.02*

History: *13 SR 2046; L 2005 c 97 art 3 s 19*

7852.1200 PUBLIC ADVISER.

The public adviser shall be available to any person to advise that person how to effectively participate in route selection procedures. The public adviser is not authorized to give legal advice or advice that may affect the legal rights of the person being advised or to act as an advocate.

Statutory Authority: *MS s 116I.015; 216G.02*

History: *13 SR 2046*

7852.1300 PUBLIC INFORMATION MEETINGS.

Subpart 1. **Requirements.** The commission shall hold public information meetings as provided in this subpart.

A. After acceptance of an application for pipeline route selection, the commission shall hold at least one public information meeting in each county crossed by the applicant's preferred pipeline route to explain the route designation process and to respond to questions raised by the public.

B. Before public hearings held to consider the routes accepted for consideration by the commission, the commission shall hold a public information meeting in each county through which a route is proposed to explain the route designation process, present major issues, and respond to questions raised by the public.

Subp. 2. **Notice of public information meetings.** Published notice of the date, time, and location of public information meetings shall be placed in a newspaper in each county in which a route is proposed at least ten calendar days before the public information meeting.

Statutory Authority: *MS s 116I.015; 216G.02*

History: *13 SR 2046; L 2005 c 97 art 3 s 19*

7852.1400 ROUTE PROPOSAL ACCEPTANCE.

Subpart 1. **Acceptance for consideration.** The commission shall accept for consideration at the public hearing the routes and route segments proposed by the applicant and may accept for public hearing any other route or route segment it considers appropriate for further consideration. No route shall be considered at the public hearing unless accepted by the commission before notice of the hearing. Routes accepted shall be identified by the commission in accordance with part 7852.1600. A proposer of a route or route segment that the commission has accepted for consideration at the hearing shall make an affirmative presentation of facts on the merits of the route proposal at the public hearing.

Subp. 2. **Sources of route proposals.** The Public Utilities Commission staff and the citizen advisory committee may propose routes or route segments directly to the commission. Route proposals made by the citizen advisory committee must be made no later than 70 days after appointment of the citizen advisory committee.

Subp. 3. **Requirements for other route sources.** A person other than one listed in subpart 2 may propose a route or a route segment according to items A to C.

A. The proposed pipeline route or route segment must be set out specifically on appropriate maps or aerial photos specified in part 7852.2600, subpart 1.

B. The pipeline route or route segment proposal must contain the data and analysis required in parts 7852.2600, subpart 3, and 7852.2700, unless the information is substantially the same as provided by the applicant.

C. The route proposal must be presented to the commission within 70 days of acceptance by the commission of the applicant's permit application.

Subp. 4. **Preparation of route proposal.** Within ten days of receipt of a route proposal from a source described in subpart 3, the commission shall determine if the route proposal contains the information required in subpart 3. If the commission determines that the route proposal contains the required information, the commission shall make a determination of acceptance for hearing. If the commission determines that the proposal does

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not contain the required information, the commission shall inform the proposer in writing of what additional information is required. Upon receipt of a request for additional information, the proposer has ten days to provide the additional information in writing to the commission. The commission shall determine within five working days whether the amended proposal contains the required information. If the commission then determines that the route proposal does not contain the required information, the route proposer may appeal to the commission at its next regular meeting for consideration of acceptance. If the proposal contains the required information, the commission must consider acceptance of the route proposal for public hearing.

Statutory Authority: *MS s 116I.015; 216G.02*

History: *13 SR 2046; L 2005 c 97 art 3 s 19*

7852.1500 ALTERNATIVE ROUTE ANALYSIS.

A comparative environmental analysis of all of the pipeline routes accepted for consideration at public hearings shall be prepared by the commission staff or by the applicant and reviewed by the commission staff. This comparative environmental analysis must be submitted as prefiled testimony as required by part 1405.1900.

Statutory Authority: *MS s 116I.015; 216G.02*

History: *13 SR 2046; L 2005 c 97 art 3 s 19*

7852.1600 PUBLISHED NOTICE OF ROUTES ACCEPTED.

Prior to public hearings, the commission shall provide published notice of route location in each county in which a route is accepted for consideration at the public hearings according to the requirements of this chapter.

Statutory Authority: *MS s 116I.015; 216G.02*

History: *13 SR 2046; L 2005 c 97 art 3 s 19*

7852.1700 PUBLIC HEARINGS.

The commission shall hold a public hearing for the purposes of collecting and verifying data, and establishing a complete record upon which to base a decision for designation of a route and issuance of a pipeline routing permit. The commission shall follow the hearing procedure prescribed in chapter 1405. The hearing will be conducted by an administrative law judge from the Office of Administrative Hearings.

Statutory Authority: *MS s 116I.015; 216G.02*

History: *13 SR 2046; L 2005 c 97 art 3 s 19*

7852.1800 ROUTE SELECTION AND COMMISSION DECISION.

The commission's route selection decision shall be based on the public hearing record and made in accordance with part 7852.1900. The commission shall give the reasons for its decision in written findings of fact.

Statutory Authority: *MS s 116I.015; 216G.02*

History: *13 SR 2046; L 2005 c 97 art 3 s 19*

7852.1900 CRITERIA FOR PIPELINE ROUTE SELECTION.

Subpart 1. **Scope and purpose of criteria.** The scope and purpose of this part is to specify the criteria used by the commission in determining the route of a pipeline in parts 7852.0800 to 7852.1900. The commission shall make a specific written finding with respect to each of the criteria. Any new easements or right-of-way agreements obtained from potentially affected landowners before issuance of a pipeline routing permit are obtained at the sole risk of the applicant. The fact that the agreements have been obtained shall not be considered by the commission in selecting the route.

Subp. 2. **Standard.** In determining the route of a proposed pipeline, the commission shall consider the characteristics, the potential impacts, and methods to minimize or mitigate the potential impacts of all proposed routes so that it may select a route that minimizes human and environmental impact.

Subp. 3. **Criteria.** In selecting a route for designation and issuance of a pipeline routing permit, the commission shall consider the impact on the pipeline of the following:

A. human settlement, existence and density of populated areas, existing and planned future land use, and management plans;

B. the natural environment, public and designated lands, including but not limited to natural areas, wildlife habitat, water, and recreational lands;

C. lands of historical, archaeological, and cultural significance;

D. economies within the route, including agricultural, commercial or industrial, forestry, recreational, and mining operations;

E. pipeline cost and accessibility;

F. use of existing rights-of-way and right-of-way sharing or paralleling;

G. natural resources and features;

H. the extent to which human or environmental effects are subject to mitigation by regulatory control and by application of the permit conditions contained in part 7852.3400 for pipeline right-of-way preparation, construction, cleanup, and restoration practices;

I. cumulative potential effects of related or anticipated future pipeline construction; and

J. the relevant applicable policies, rules, and regulations of other state and federal agencies, and local government land use laws including ordinances adopted under Minnesota Statutes, section 299J.05, relating to the location, design, construction, or operation of the proposed pipeline and associated facilities.

Statutory Authority: *MS s 116I.015; 216G.02*

History: *13 SR 2046; L 2005 c 97 art 3 s 19*

APPLICATION PROCEDURES

7852.2000 PROCEDURAL REQUIREMENTS.

Subpart 1. **Application filing.** Each application for a pipeline routing permit must be filed in the format and manner prescribed by this chapter.

Subp. 2. **Format.** Applications must be filed on 8-1/2 by 11-inch paper except for drawings, illustrations, maps, and similar materials. The date of preparation and the applicant's name must appear on each document filed with the application.

Subp. 3. **Subsequent filings.** Any change or correction made to the application after filing must comply with subparts 2 and 6. In addition, each page of a change or correction to a previously filed page must be marked with the word "REVISED" and with the date the revision was made. The applicant shall send copies of changed or corrected pages to all persons required by subpart 6 and part 7852.0600, subpart 2, item C.

Subp. 4. **Application filing and acceptance.** The commission shall accept, conditionally accept, or reject an application at its first regularly scheduled meeting after the application is filed with the commission, provided the application is filed at least 21 days before that meeting. The commission may conditionally accept or reject an application, but in both instances the commission shall inform the applicant which deficiencies, if corrected, will allow the application to be accepted. If an applicant has corrected the deficiencies or provided the commission with the deficient information 14 days in advance of a regularly scheduled commission meeting, the commission must reconsider acceptance of the application at that meeting. If the commission fails to act at the first scheduled meeting after the application is filed, the application is considered accepted. On acceptance or conditional

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acceptance of the application, the commission and the applicant shall initiate the actions required by part 7852.0600, subpart 2, or 7852.0900, as applicable. After acceptance of an application, the applicant shall provide any additional relevant information the commission considers necessary to process the application.

Subp. 5. **Copies.** The unbound original and 40 copies of the application must be filed with the commission.

Subp. 6. **Application distribution.** The applicant shall provide copies of the application accepted by the commission to other state agencies who are not commission members, but have regulatory responsibilities for the proposed pipeline. The applicant shall send a copy of the accepted application to the Minnesota Historical Society, to the office of each regional development commission of a development region, soil and water conservation district, watershed district, watershed management district, auditor of each county, and to the clerk of each township and city, crossed by the proposed pipeline. Each county auditor, city clerk, or township clerk shall retain and file the application in a manner making it accessible to the public. The applicant shall also provide one copy of the application to any person upon written request made on or before the tenth day after the first day of the public hearing held in accordance with part 7852.1700. The applicant shall maintain a list of the persons to whom copies are sent.

Statutory Authority: *MS s 116I.015; 216G.02*

History: *13 SR 2046; L 2005 c 97 art 3 s 19*

APPLICATION CONTENTS

7852.2100 GENERAL INFORMATION.

Subpart 1. **Cover letter.** Each application must be accompanied by a cover letter signed by an authorized representative or agent of the applicant. The cover letter must specify the type, size, and general characteristics of the pipeline for which an application is submitted.

Subp. 2. **Title page and table of contents.** Each application must contain a title page and a complete table of contents.

Subp. 3. **Statement of ownership.** Each application must include a statement of proposed ownership of the pipeline as of the day of filing and an affidavit authorizing the applicant to act on behalf of those planning to participate in the pipeline project.

Subp. 4. **Background information.** Each application must contain the following information:

- A. the applicant's complete name, address, and telephone number;
- B. the complete name, title, address, and telephone number of the authorized representative or agent to be contacted concerning the applicant's filing;
- C. the signatures and titles of persons authorized to sign the application, and the signature of the preparer of the application if prepared by an outside representative or agent; and
- D. a brief description of the proposed project which includes:
 - (1) general location;
 - (2) planned use and purpose;
 - (3) estimated cost;
 - (4) planned in-service date; and
 - (5) general design and operational specifications for the type of pipeline for which an application is submitted.

Statutory Authority: *MS s 116I.015; 216G.02*

History: *13 SR 2046*

7852.2200 PROPOSED PIPELINE AND ASSOCIATED FACILITIES DESCRIPTION.

Subpart 1. **Pipeline design specifications.** The specifications for pipeline design and construction are assumed to be in compliance with all applicable state and federal rules or regulations unless determined otherwise by the state or federal agency having jurisdiction over the enforcement of such rules or regulations. For public information purposes, the anticipated pipeline design specifications must include but are not limited to:

- A. pipe size (outside diameter) in inches;
- B. pipe type;
- C. nominal wall thickness in inches;
- D. pipe design factor;
- E. longitudinal or seam joint factor;
- F. class location and requirements, where applicable;
- G. specified minimum yield strength in pounds per square inch; and
- H. tensile strength in pounds per square inch.

Subp. 2. **Operating pressure.** Operating pressure must include:

- A. operating pressure (psig); and
- B. maximum allowable operating pressure (psig).

Subp. 3. **Description of associated facilities.** For public information purposes, the applicant shall provide a general description of all pertinent associated facilities on the right-of-way.

Subp. 4. **Product capacity information.** The applicant shall provide information on planned minimum and maximum design capacity or throughput in the appropriate unit of measure for the types of products shipped as defined in part 7852.0100.

Subp. 5. **Product description.** The applicant shall provide a complete listing of products the pipeline is intended to ship and a list of products the pipeline is designed to transport, if different from those intended for shipping.

Subp. 6. **Material safety data sheet.** For each type of product that will be shipped through the pipeline, the applicant shall provide for public information purposes the material identification, ingredients, physical data, fire and explosive data, reactivity data, occupational exposure limits, health information, emergency and first aid procedures, transportation requirements, and other known regulatory controls.

Statutory Authority: *MS s 116I.015; 216G.02*

History: *13 SR 2046*

7852.2300 LAND REQUIREMENTS.

For the proposed pipeline, the applicant shall provide the following information:

- A. permanent right-of-way length, average width, and estimated acreage;
- B. temporary right-of-way (workspace) length, estimated width, and estimated acreage;
- C. estimated range of minimum trench or ditch dimensions including bottom width, top width, depth, and cubic yards of dirt excavated;
- D. minimum depth of cover for state and federal requirements; and
- E. rights-of-way sharing or paralleling: type of facility in the right-of-way, and the estimated length, width, and acreage of the right-of-way.

Statutory Authority: *MS s 116I.015; 216G.02*

History: *13 SR 2046*

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7852.2400 PROJECT EXPANSION.

If the pipeline and associated facilities are designed for expansion in the future, the applicant shall provide a description of how the proposed pipeline and associated facilities may be expanded by looping, by additional compressor and pump stations, or by other available methods.

Statutory Authority: *MS s 116I.015; 216G.02*

History: *13 SR 2046*

7852.2500 RIGHT-OF-WAY PREPARATION PROCEDURES AND CONSTRUCTION ACTIVITY SEQUENCE.

Each applicant shall provide a description of the general right-of-way preparation procedures and construction activity sequence anticipated for the proposed pipeline and associated facilities.

Statutory Authority: *MS s 116I.015; 216G.02*

History: *13 SR 2046*

7852.2600 PREFERRED ROUTE LOCATION; ENVIRONMENT DESCRIPTION.

Subpart 1. **Preferred route location.** The applicant must identify the preferred route for the proposed pipeline and associated facilities, on any of the following documents which must be submitted with the application:

A. United States Geological Survey topographical maps to the scale of 1:24,000, if available;

B. Minnesota Department of Transportation county highway maps; or

C. aerial photos or other appropriate maps of equal or greater detail in items A and B. The maps or photos may be reduced for inclusion in the application. One full-sized set shall be provided to the commission.

Subp. 2. **Other route locations.** All other route alternatives considered by the applicant must be identified on a separate map or aerial photos or set of maps and photos or identified in correspondence or other documents evidencing consideration of the route by the applicant.

Subp. 3. **Description of environment.** The applicant must provide a description of the existing environment along the preferred route.

Statutory Authority: *MS s 116I.015; 216G.02*

History: *13 SR 2046; L 2005 c 97 art 3 s 19*

7852.2700 ENVIRONMENTAL IMPACT OF PREFERRED ROUTE.

The applicant must also submit to the commission along with the application an analysis of the potential human and environmental impacts that may be expected from pipeline right-of-way preparation and construction practices and operation and maintenance procedures. These impacts include but are not limited to the impacts for which criteria are specified in part 7852.0700 or 7852.1900.

Statutory Authority: *MS s 116I.015; 216G.02*

History: *13 SR 2046; L 2005 c 97 art 3 s 19*

7852.2800 RIGHT-OF-WAY PROTECTION AND RESTORATION MEASURES.

Subpart 1. **Protection.** The applicant must describe what measures will be taken to protect the right-of-way or mitigate the adverse impacts of right-of-way preparation, pipeline construction, and operation and maintenance on the human and natural environment.

Subp. 2. **Restoration.** The applicant must describe what measures will be taken to restore the right-of-way and other areas adversely affected by construction of the pipeline.

Statutory Authority: *MS s 116I.015; 216G.02*

History: *13 SR 2046*

7852.2900 OPERATION AND MAINTENANCE.

Pipeline operations and maintenance are assumed to be in compliance with all applicable state and federal rules or regulations, unless determined otherwise by the state or federal agency having jurisdiction over the enforcement of such rules or regulations. For public information purposes, the applicant must provide a general description of the anticipated operation and maintenance practices planned for the proposed pipeline.

Statutory Authority: *MS s 116I.015; 216G.02*

History: *13 SR 2046*

7852.3000 LIST OF GOVERNMENT AGENCIES AND PERMITS.

Each application must contain a list of all the known federal, state, and local agencies or authorities and titles of the permits they issue that are required for the proposed pipeline and associated facilities.

Statutory Authority: *MS s 116I.015; 216G.02*

History: *13 SR 2046*

7852.3100 EVIDENCE OF CONSIDERATION OF ALTERNATIVE ROUTES.

If the applicant is applying for a pipeline routing permit under parts 7852.0800 to 7852.1900, the applicant shall provide a summary discussion of the environmental impact of pipeline construction along the alternative routes consistent with the requirements of parts 7852.2600 to 7852.2700 and the rationale for rejection of the routing alternatives.

Statutory Authority: *MS s 116I.015; 216G.02*

History: *13 SR 2046*

PIPELINE ROUTING PERMIT

7852.3200 PERMIT ISSUANCE, DISTRIBUTION, AND EMINENT DOMAIN.

Subpart 1. **Permit issuance.** When the commission issues a pipeline routing permit for the construction of a pipeline and associated facilities, the commission shall designate a route for the pipeline type and maximum size specified in the application, conditions for right-of-way preparation, construction, cleanup, and restoration contained in part 7852.3600, and any other appropriate conditions relevant to minimizing environmental and human impact. The commission's decision shall be made in accordance with part 7852.0700 or 7852.1900.

Subp. 2. **Permit distribution.** The permittee shall, within ten days of receipt of the pipeline routing permit from the commission, send a copy of the permit to the office of each regional development commission of a development region, soil and water conservation district, watershed district, watershed management district, office of the auditor of each county, and to the clerk of each city and township, crossed by the designated route. The permittee shall provide a copy of the pipeline routing permit to affected landowners before construction on the affected landowners' property.

Subp. 3. **Eminent domain.** After an applicant is issued a pipeline routing permit as provided in Minnesota Statutes, section 216G.02, and parts 7852.0100 to 7852.4100, the permittee may exercise the power of eminent domain as provided by Minnesota Statutes, section 117.48. In addition, when a pipeline routing permit has been issued, the requirements of Minnesota Statutes, sections 117.49 and 216G.03, do not apply.

Statutory Authority: *MS s 116I.015; 216G.02*

History: *13 SR 2046; L 2005 c 97 art 3 s 19; L 2006 c 214 s 20*

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7852.3300 DELAY IN ROUTE CONSTRUCTION.

When the commission issues a pipeline routing permit, the permittee may begin construction or improvement of the route in accordance with the conditions of the permit and this chapter. However, if construction and improvement have not begun within four years after the pipeline routing permit has been issued by the commission, the commission shall suspend the permit. If at that time, or at a later time after suspension, the permittee decides to construct the proposed pipeline, it shall certify to the commission that there have been no significant changes in any material aspects of the conditions or circumstances existing when the permit was issued. If the commission determines that there are no significant changes, it shall reinstate the permit. If the commission determines that there is a significant change, it may order public information meetings or a new hearing and consider the matter further, or it may require the permittee to submit a new application.

Statutory Authority: *MS s 116I.015; 216G.02*

History: *13 SR 2046; L 2005 c 97 art 3 s 19*

7852.3400 PERMIT AMENDMENTS.

Following issuance of a pipeline routing permit, the permittee may apply to the commission for amendments on route location and conditions specified in the permit. The permittee shall submit an application for amendment that contains sufficient information for the commission to determine the following:

- A. whether, in light of the criteria in parts 7852.0700 and 7852.1900, the requested changes are significant enough to warrant commission study and approval;
- B. whether to order public information meetings near the affected area; and
- C. whether additional fees shall be assessed.

The commission shall make the determinations in items A to C within 45 days of receipt of the application.

If the commission cannot make the determinations in items A to C in 45 days and decides to study the application further, the commission shall make the determinations in items A to C within 70 days. The commission shall grant or deny the permittee's application for permit amendment, as appropriate.

Statutory Authority: *MS s 116I.015; 216G.02*

History: *13 SR 2046; L 2005 c 97 art 3 s 19*

7852.3500 RIGHT-OF-WAY PLAN AND PROFILE CONSTRUCTION SPECIFICATIONS REVIEW.

Following issuance of a pipeline routing permit, a permittee shall provide the commission with a plan and profile of the right-of-way and the specifications and drawings for right-of-way preparation, construction, and restoration at least 14 days before right-of-way preparation of that segment of the pipeline. The commission may shorten this time limit if it can be shown that earlier construction will not preclude proper review. If the permittee makes any significant change in its plan and profile and the specifications and drawings for right-of-way preparation, construction, and restoration, it shall notify the commission in writing of the changes.

Statutory Authority: *MS s 116I.015; 216G.02*

History: *13 SR 2046; L 2005 c 97 art 3 s 19*

7852.3600 PERMIT CONDITIONS FOR RIGHT-OF-WAY PREPARATION, CONSTRUCTION, CLEANUP, AND RESTORATION.

The following conditions apply to pipeline right-of-way preparation, construction, cleanup, and restoration.

- A. The permittee shall comply with applicable state rules and regulations.

B. The permittee shall clear the right-of-way only to the extent necessary to assure suitable access for construction, safe operation, and maintenance of the pipeline.

C. Stream banks disturbed by pipeline construction must be stabilized with vegetation by the permittee using native plant species indigenous to the area or by other methods required by applicable state or federal permits or laws.

D. Precautions shall be taken by the permittee to protect and segregate topsoil in cultivated lands unless otherwise negotiated with the affected landowner.

E. Compaction of cultivated lands by the permittee must be kept to a minimum and confined to as small an area as practicable.

F. Precautions to protect livestock and crops must be taken by the permittee unless otherwise negotiated with the affected landowner.

G. All appropriate precautions to protect against pollution of the environment must be taken by the permittee.

H. All waste and scrap that is the product of the pipeline construction process must be removed or properly disposed of before construction ends.

I. Cleanup of personal litter, bottles, and paper deposited by right-of-way preparation and construction crews must be done on a daily basis.

J. The permittee shall repair or replace all drainage tiles broken or damaged during right-of-way preparation, construction, and maintenance activities, unless otherwise negotiated with the affected landowner.

K. The permittee shall repair private roads and lanes damaged when moving equipment or when obtaining access to the right-of-way, unless otherwise negotiated with the affected landowner.

L. The permittee shall replace or repair all fences and gates removed or damaged as a result of right-of-way preparation, construction, and restoration activities, unless otherwise negotiated with the affected landowner.

M. Shelterbelts and trees must be protected by the permittee to the extent possible in a manner compatible with the safe operation, maintenance, and inspection of the pipeline.

N. The permittee shall, to the extent possible, restore the area affected by the pipeline to the natural conditions that existed immediately before construction of the pipeline. Restoration must be compatible with the safe operation, maintenance, and inspection of the pipeline.

Statutory Authority: *MS s 116I.015; 216G.02*

History: *13 SR 2046*

7852.3700 REPORTING COMPLAINTS.

The permittee must report to the commission any substantial complaint received concerning part 7852.3600 that is not resolved within 30 days of the complaint.

Statutory Authority: *MS s 116I.015; 216G.02*

History: *13 SR 2046; L 2005 c 97 art 3 s 19*

7852.3800 PERMIT MODIFICATION OR SUSPENSION.

Subpart 1. **Initiation of action.** The commission shall, upon a prima facie showing by affidavit or other documentation that a violation of the terms and conditions of a pipeline routing permit or parts 7852.0100 to 7852.4100 may have occurred or is likely to occur, notify the permittee in writing of the allegations. The commission shall then place the matter on the agenda of the next regular or special meeting of the commission, in accordance with part 4405.0600, for consideration of an action to modify or suspend the pipeline routing permit. The permittee must be given at least ten but no more than 30 days from receipt of the notice to prepare a response to the alleged violation for presentation at the commission meeting. However, the commission may determine that circumstances exist requiring

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immediate commission action or the permittee may request or agree that the commission meeting be held less than ten days after notification.

Subp. 2. **Commission action.** The commission may decline to act upon any complaint that is a dispute between a landowner or other injured party and the permittee, and for which the party has initiated or may initiate arbitration or court action for redress of the claim. Nothing in parts 7852.0100 to 7852.4100 is intended to expand the right of any party claiming damage or injury as a result of pipeline construction nor do parts 7852.0100 to 7852.4100 expand the liabilities at law of any permittee, contractor, or other person for injury or damage resulting from pipeline construction. The commission shall make a determination as to whether action to suspend or modify a permit is appropriate based on parts 7852.3200, subpart 1, and 7852.3600.

If the commission determines that substantial evidence supports a finding that a violation of the terms or conditions of a pipeline routing permit has occurred or is likely to occur, it may take action to modify or suspend the permit. The commission may, at any time, consider suspension of that action to modify or suspend the permit if the permittee has undertaken effective corrective or ameliorative measures to correct the violations.

Subp. 3. **Scope of suspension.** If the commission decides to suspend a pipeline routing permit, the suspension must be limited to the following:

- A. the route segment that includes the right-of-way preparation, pipeline construction, or restoration activities giving rise to the violation of the permit;
- B. requiring corrective or ameliorative measures necessary for the pipeline to comply with the pipeline routing permit; and
- C. the time period necessary for the permittee to complete the required corrective or ameliorative measures.

Subp. 4. **Scope of modification.** If the commission decides to modify the pipeline routing permit, the permit modifications must be in accordance with part 7852.3600 and be limited to:

- A. the imposition of permit conditions that provide reasonable necessary additional mitigation or minimization of significant impacts on humans or the environment; or
- B. the amendment of permit conditions regarding right-of-way preparations and pipeline construction activities.

Statutory Authority: *MS s 116I.015; 216G.02*

History: *13 SR 2046; L 2005 c 97 art 3 s 19*

7852.3900 PIPELINE CONSTRUCTION COMPLETION CERTIFICATION.

Permittees shall file with the commission a written certification that the permitted pipeline construction has been completed in compliance with all permit conditions. The certification shall be considered by the commission within 60 days of its filing. The commission shall accept or reject the certification of completion and make a final determination regarding cost or reimbursements due. If the commission rejects the certification, it shall inform the permittee in writing which deficiencies, if corrected, will allow the certification to be accepted. When corrections to the deficiencies are completed, the permittee shall notify the commission, and the commission shall reconsider the certification at its next regularly scheduled meeting, provided the notification is received at least 20 days before the meeting. After acceptance of the certification by the commission, the commission's jurisdiction over the permittee's pipeline routing permit shall be terminated.

Statutory Authority: *MS s 116I.015; 216G.02*

History: *13 SR 2046; L 2005 c 97 art 3 s 19*

OTHER REQUIREMENTS**7852.4000 APPLICATION FEES.**

Subpart 1. **Requirement.** Every applicant under Minnesota Statutes, section 216G.02, shall pay to the commission an application fee.

Subp. 2. **Purpose of application fee.** The purpose of an application fee is to cover actual costs necessarily and reasonably incurred in processing an application for a conditional exclusion, partial exemption, pipeline route selection, or emergency, permit compliance activities, administrative overhead, and legal expenses. Actual costs associated with an emergency shall be determined and paid after the commission has taken action and the emergency has passed.

Subp. 3. **Method of fee approval and payment.** For applications filed under Minnesota Statutes, section 216G.02, the estimated commission project budget must be discussed with the applicant and be approved by the commission when an application is accepted. The applicant must remit 25 percent of the approved commission project budget within 14 days of acceptance of the application. The unpaid balance shall be billed in periodic installments, due upon receipt of an invoice from the commission. Expenses in excess of the approved budget must be certified by the commission and upon certification constitute prima facie evidence that the expenses are reasonable and necessary and shall be charged to the applicant. The applicant may review all actual costs associated with processing an application and present objections to the commission. The application fees paid by the applicant under this part shall not exceed the sum of the costs incurred to process the application, construction permit compliance activities, administrative overhead, and legal expenses. All application fees received by the commission must be paid to a special revenue fund.

Statutory Authority: *MS s 116I.015; 216G.02*

History: *13 SR 2046; L 2005 c 97 art 3 s 19*

7852.4100 GENERAL RESPONSIBILITIES.

The commission shall monitor the effectiveness of this chapter and shall take appropriate measures to modify and improve the effectiveness of this chapter. The commission shall assist governmental units and interested persons in understanding the rules.

Statutory Authority: *MS s 116I.015; 216G.02*

History: *13 SR 2046; L 2005 c 97 art 3 s 19*