

State

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STATE OF
MINNESOTA

Register

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List of MSAR Rules Affected*

List of rules within the Manual of State Agency Rules affected by documents published in the State Register during the current quarter beginning October 1, 1976:

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*New rules, both proposed and adopted, and which have never been disseminated or published, are not included in the List of MSAR Rules Affected. Rules which are listed as "uncodified" have been disseminated, but have never been published in the MSAR.

Rules

STATE PLANNING AGENCY

OFFICE OF LOCAL AND URBAN AFFAIRS

RULES GOVERNING THE LAND USE PLANNING GRANT PROGRAM

SPA 101 Authority. The State Planning Agency is authorized to adopt rules necessary to carry out the Land Use Planning Grant pursuant to Minn. Stat. §§ 4.27 to 4.31.

SPA 102 Definitions. The following terms as used in these regulations shall have the following meanings:

A. "Agency" means the State Planning Agency.

B. "Eligible recipient" means a city, county, town or any combination of such units. A city of the first class may apply for a grant to assist neighborhood organizations to do land use and related planning.

C. "Land Use Planning" means the process by which units of local government consider alternative uses of land. The purpose of land use planning is to foster a compatible arrangement of uses on the land; to provide suitable locations of sufficient size for such diversified uses as housing, business, agriculture and recreation; and to maintain a high quality environment. The basic steps in the process are:

1. Examine characteristics of the land and related factors that determine potential future uses.

2. Examine alternative uses of the land which are consistent with state and local policies and the physical environment.

3. Select the most desirable alternative.

4. Develop and use appropriate actions to carry out the selected alternative. Examine the results of the actions to determine whether they are in fact achieving the selected alternative and are not producing undesirable results.

D. "Neighborhood Organizations" means those organizations recognized by the city government for planning and community development purposes, in neighborhoods with boundaries officially determined by the city.

E. "In-kind" means:

1. salary and cost of fringe benefits of the grant recipient staff working on activities funded by the agent,

2. increases in overhead resulting from carrying out activities funded by the grant.

SPA 103 Applicability. These rules (SPA 101 - 125) apply to that portion of the appropriation which is available for grants to local governments outside the metropolitan area as defined in Minn. Stat. § 473.02 and Laws of 1976, ch. 127, § 2, subd. 7. See Laws of 1976, ch. 167, § 6.

SPA 104 Eligible activities. The following are eligible activities:

A. Land use planning for implementation activities that will result in the management of land use problems created by:

1. rapid population or economic growth or decline;

2. potential development in environmentally sensitive areas;

3. the addition or elimination of a major state or federal facility.

B. Analysis and preparation of plans to preserve and protect agricultural land;

C. Modification or preparation of plans or land use control made necessary by:

1. designation of a wild and scenic river;

2. flood plains standards;

3. shoreland management standards;

4. other similar legislative action.

D. Land use and related planning done by neighborhood organizations in cities of the first class.

SPA 105 Ineligible activities. The following are ineligible:

A. Activities which are more detailed than necessary to provide guidance in the management of land use problems, (for example, architectural drawings, site designs, engineering specifications);

B. Activities which are unrelated to the management of the land use problem;

C. Activities which are being carried out by the applicant, however, the costs associated with the expansion

sion or acceleration of existing activities shall be eligible;

D. Activities for which funding is readily available from other sources.

SPA 106 Application procedure. The application for land use planning grant assistance shall be submitted in two stages: Preliminary and final. Assistance in the preparation of the final application will be available from the Agency. The grant shall not pay any cost incurred by the applicant prior to approval of the grant.

SPA 107 Multi-Jurisdictional applications. A land use problem may affect more than one unit of government. For problems of this kind, one application should be made jointly by all affected units of government.

SPA 108 Preliminary application. A preliminary application shall be submitted to the Agency to determine eligibility and priority. The preliminary application shall be in the form and manner prescribed by the Agency and shall contain the information required by the Agency including at least the following:

A. The name of the unit of local government making the application;

B. A brief statement of the land use problem for which assistance is sought;

C. A brief statement of the results which are hoped to be achieved through use of the assistance;

D. A list of the activities which will be carried out with the assistance;

E. A statement identifying the sources for the local share (the local share may be either cash or in-kind);

F. The total estimated cost and the amount of assistance being sought;

G. A list of existing available data which could be used to help analyze the problem;

H. A copy of a resolution transmitting the preliminary application to the Agency. The resolution must be passed at an official meeting of the governing body.

SPA 109 Preliminary application due date. Preliminary applications shall be submitted semiannually not later than January 1 and July 1, except that during Fiscal Year 1977 there shall be only one due date for preliminary applications and that shall be 60 days after adoption of these rules.

SPA 110 Regional development commission review. The preliminary application shall be submitted to the appropriate Regional Development Commission for review and comment at least 45 days before the date on which applications are due in the Agency. Regional Development Commission may waive this requirement. Within 5 days of the time a preliminary application is submitted to the Regional Development Commission the applicant shall forward a copy of it to the Agency. The Regional Development Commission shall return the preliminary application with comments to the applicant in sufficient time to allow the applicant to submit the preliminary application to the Agency by the due date. Failure of the Regional Development Commission to complete its review of the preliminary application within 45 days shall be considered approval of the application by the Regional Development Commission, unless the applicant and the Regional Development Commission agree to an extension of the 45 day period. The applicant shall submit the preliminary application with the Regional Development Commission's comments to the Agency on or before the due date. The Regional Development Commission may submit to the Agency a list of applications from the region arranged in order of priority established by the Regional Development Commission. The Agency shall consider the Regional Development Commission's comments and priorities when reviewing the preliminary application.

SPA 111 Application review and priority setting.

A. The Agency shall have 30 days to review all preliminary applications. Incomplete and ineligible applications will be returned to the applicant with a statement citing the reasons, and shall not be considered for funding.

B. The remaining applications will be assigned a priority as follows:

1. 1st Priority — Those preliminary applications which identify existing or emerging land use problems resulting from two or more of the following:

a. rapid population or economic growth or decline;

b. potential development in an environmentally sensitive area;

c. the addition or elimination of a major state or federal facility.

2. 2nd Priority — Those preliminary applications which identify existing or emerging land use problems resulting from at least one of a., b. or c. above.

KEY: New rules and both proposed and adopted additions to existing rules are printed in boldface. Proposed and adopted deletions from existing rules are printed in [single brackets]. Underlining indicates additions from proposed to adopted rules, while [[double brackets]] indicate deletions from proposed to adopted rules. Existing rules are printed in standard type face.

3. 3rd Priority — All other eligible applications.

C. Within each priority the application will be ranked according to the magnitude of the problem. Based on the priorities and availability of grant funds, final applications will be requested by the agency through a letter of notification. The appropriate Regional Development Commission will be notified of the action taken on preliminary applications.

SPA 112 Final application. The final application may be submitted by an applicant that has received a letter of notification. Final application shall be submitted to the Agency as soon as possible after receipt of the letter of notification to prepare a final application. All final applications must be received by the Agency in a format conforming to SPA 113 no later than 45 days after the date of the letter of notification. Final applications will be reviewed for completeness. Incomplete applications or applications substantially different than the preliminary application will be returned with a statement indicating the reasons and will not be considered for funding. Remaining applications will be funded based on the priorities and availability of grant funds. Receipt of a letter of notification by an applicant does not guarantee that a grant will be made to fund the final application.

SPA 113 Final application format. The final application shall contain the following elements:

A. Work program / schedule. A work program which contains the following:

1. A statement of the existing or emerging land use problem which is to be investigated with the grant. This statement should identify how the problem is affecting or will affect the recipient, and the means the recipient is willing to use to alleviate the problem.

2. A description of the activities which will be undertaken with the grant. The description of activities should identify expected products and should be in sufficient detail to enable the Agency to measure progress and to identify the person responsible for completion of each activity. The description should include expected completion dates, by activity. Each activity should be assigned to a specific staff member or consultant.

3. A statement identifying the way in which the governing body and the planning commission will improve their capability in land use decision making. A schedule should be included indicating when and how this will be accomplished.

B. Lead agency. The grant recipient must identify an organization or an individual as the lead agency for the work program.

C. Local share. A detailed statement identifying sources for the local share. The local share may be in cash or in-kind.

D. Signature/Resolution. The signature of the mayor, chairman of the county board or chairman of the town board. The governing body must transmit the final application to the Agency accompanied by resolution passed at an official meeting of the governing body.

SPA 114 Funding period. Final applications approved for funding will be funded for one year. Work not completed within the one year period will be considered for funding in the next funding cycle along with other applications under the provisions of SPA 111.

SPA 115 Grant ratio. The grant shall not exceed 75 percent of the total first year cost. Grants for the second year of a multi-year project shall not exceed 50 percent of the total second year cost. Grants for the third year of a multi-year project shall not exceed 30 percent of the total third year cost.

SPA 116 Content of contract. The planning grant contract shall be based upon the final application. It shall specify the amount of the grant that shall be awarded to the recipient and shall be effective for a period of not more than one year. It shall include the assurance of the eligible recipient that it will provide the required local share and carry out the work program. For an application made jointly by more than one eligible recipient, only one contract shall be executed on behalf of all eligible recipients participating in the program. The Agency may grant one extension of not more than 90 days to enable completion of the work program.

SPA 117 Disbursement schedule. The grant money shall be available to the grant recipient as follows: 50% during the first month of the contract; 40% upon completion of one-half of the work; 10% upon completion of a satisfactory evaluation.

SPA 118 Evaluation. 10% of the grant shall be withheld pending completion of a satisfactory evaluation by the Agency of the work performed. This evaluation shall take place within 30 days of the termination of the contract. The evaluation will include determination of whether:

A. The local share was contributed,

B. The work specified in the work program was completed, and

C. The results have been used by the governing body when making land use decisions. If the grant recipient

does not agree with the findings of the evaluation, it may request a hearing as provided in the administrative procedures act, Minn. Stat. §§ 15.0418 - 15.0426.

SPA 119 Required reports. The grant recipient shall submit quarterly work progress reports to the Agency on forms provided by the Agency.

SPA 120 Use of funds.

A. To carry out activities specified in the work program, grant funds may be used to:

1. Pay existing staff;
2. Hire new staff;
3. Pay staff of another unit of government under a Joint Powers Agreement;
4. Employ a qualified consultant;
5. Pay other costs associated with the work program such as overhead, rental of space and equipment, purchase of supplies, printing and publishing.

B. The purchase of equipment, space, land or buildings is not an eligible cost or in-kind contribution. Services rendered by state or federal departments or agencies shall not be used as in-kind contribution. Federal or state funds obtained from another grant program may not be used as in-kind contribution. The applicant must be able to demonstrate that staff or consultants have education and experience necessary to perform the tasks assigned.

SPA 121 Records. The grant recipient shall maintain, on forms supplied by the Agency, records of time spent by staff on each task identified in the contract.

SPA 122 Deviations. No grant funds may be used to finance deviations from the contract unless such deviations are approved by the Agency. No grant funds may be used to employ a consultant not specified in the contract unless approval is given by the Agency.

SPA 123 Multi-year programs. Multi-year work programs may be submitted. Receipt of a grant for the first year is not a guarantee that a grant will be received for the remaining years. Multi-year work programs will be funded one year at a time. Each subsequent year of the work program will be evaluated along with new applications in the manner prescribed in SPA 111.

SPA 124 Agency assistance. Staff from the Agency will be available to assist the grant recipient with the following:

- A. Preparation of the final application;
- B. Selection of consultants;
- C. Conducting of information, training or capability building meetings;
- D. Technical assistance during the contract period.

SPA 125 Funds appropriated for grants for Critical Areas Planning purposes by Laws of 1976, ch. 167, and any future funding for such grants appropriated to the State Planning Agency, shall be distributed to those public bodies authorized by such acts, in accordance with the planning requirements contained in the recommendations of the MEQC made upon findings of fact based upon the evidence submitted at the public hearing and as further adopted by the Governor, and the following guidelines:

A. No grants for preparing critical area plans and regulations shall be made for projects or portions of projects which go beyond the scope of the procedures required by the critical areas planning process.

B. No grants for preparing critical area plans and regulations shall be made to units of government for any plans and regulations or portions of plans and regulations prepared prior to the designation of the critical area by the Governor.

C. No grants for preparing critical area plans and regulations shall be made to units of government which cannot demonstrate a need for such funds occasioned by inadequate financial and personnel resources.

D. All other available funding from other units of government shall be considered when determining the amount of the grants for the critical areas planning process under these regulations.

E. The State Planning Agency reserves the right to award grants on a pro rata basis based upon demonstrated need, in the event that the funds available are not sufficient to cover such demonstrated needs and the estimated funds needed for other critical areas for which a notice of hearing has been issued pursuant to MEQC 53(e) at the time of distribution.

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Official Notices

DEPARTMENT OF AGRICULTURE

Proposed Rules Governing the Labeling of Seeds and the Analysis of Seed Samples

Notice of Intent to Solicit Outside Opinion

Notice is hereby given that the Minnesota Department of Agriculture has begun consideration of proposed rules governing the labeling of seeds and the analysis of seed samples. In order to adequately determine the nature and utility of such rules, the Department of Agriculture hereby requests information and comments from all interested individuals or groups concerning the subject matter of the proposed rules.

All interested or affected persons/or groups are requested to participate. Statements of information and comment may be made orally or in writing. Written statements of information and comment may be addressed to:

Mr. Gleason M. Diser
Minnesota Department of Agriculture
602 State Office Building
St. Paul, Minnesota 55155

Oral statements of information and comment will be received during regular business hours over the telephone at (612) 296-6121, and in person at the above address.

All statements of information and comment must be received by October 29, 1976. Any written material received by the department shall become part of the hearing record.

The proposed rules, if adopted, would (1) delete from present regulations (Agr 165) the requirement for the seed tax permit number to appear as part of the label since this is no longer a statutory requirement and (2) provide for a schedule of laboratory testing fees that is more realistic in comparison with current costs of labor, equipment, and materials (Agr 169):

Gleason M. Diser
Director
Agronomy Services Division

ENERGY AGENCY

Application by Minnesota Power & Light Company and United Power Association for a Certificate of Need for a 800 Megawatt Electric Generating Facility

Contested Case Hearing

It is hereby ordered, and notice is hereby given, that a contested case hearing concerning the above-entitled matter will commence at 9:30 a.m. on December 21, 1976, in the Jury Lounge on the Fourth Floor of the St. Louis County Court House, Duluth, Minnesota.

The hearing will be held before Myron Greenberg, Hearing Examiner, Room 300, 1745 University Avenue, Saint Paul, Minnesota, 55104, telephone (612) 296-8109, an independent hearing examiner appointed by the Chief Hearing Examiner of the State of Minnesota. All parties have the right to be represented by legal counsel or any other representative of their choice throughout the contested case proceeding. The hearing will be conducted pursuant to the contested case procedures set out in Minn. Stat. §§ 15.0411 through 15.052 and procedural rules Minn. Regs. HE 201-222 and EA 500-520. Where the procedural rules conflict, the Hearing Examiner's Rule, HE 201-222, supersedes the Agency's rules, EA 500-520. Questions concerning the issues raised in this Order or concerning informal disposition or discovery may be directed to Special Assistant Attorney General Dwight S. Wagenius, 740 American Center Building, 150 East Kellogg Boulevard, Saint Paul, Minnesota, 55101, telephone (612) 296-8278.

The purpose of the hearing is to determine whether Minnesota Power & Light Company and United Power Association (hereinafter the "applicants") have justified their need for the proposed facility in their application filed pursuant to Minn. Stat. § 116H.13 (1974) and Minn. Regs. EA 601-638. The hearing will address, among other things, the accuracy of the applicants' forecasts of future demand for electricity in their systems, the effects of conservation programs on future demand, alternative ways of meeting the projected demand, and the appropriateness of the size, type and timing of the proposed facility. It must be determined whether denial of the application would result in an unacceptable level of reliability of electric service to applicants' ultimate consumers, or whether the socially beneficial uses of the output of the proposed facility, such as protecting or enhancing environmental quality, justify the asserted need for the facility.

Any person wishing to become a party to the proceeding must file a Notice of Intervention or a Petition for Leave to Intervene with the Hearing Examiner pursuant to Minn. Regs. EA 506 and HE 210(a). The Notice or Petition must be received by the Hearing Examiner on or before November 17, 1976, and a copy must be served on the Energy Agency and on the applicants.

Any person who wishes to give testimony, present other evidence or exhibits, or note his appearance at the hearing may do so, pursuant to Minn. Reg. HE 210(e), without having attained party status by intervention. Registration forms for such appearances will be available at the hearing.

All persons are advised that no factual information or evidence, except tax returns and tax reports, which is not part of the hearing record shall be considered by the Hearing Examiner or by the Director in the determination of the above-entitled matter. Persons attending the hearing should bring all evidence bearing on the case including any records or other documents.

The procedural rules cited above are available for review at the Office of Hearing Examiners (Minn. Regs. EA 201-222) and at the offices of the Energy Agency (Minn. Regs. EA 500-520). The applicants' application for a certificate of need and the substantive rules applicable to this matter, Minn. Regs. EA 601-638, are also available for review at the offices of the Energy Agency. All rules may be purchased from the Documents Section, Department of Administration, 140 Centennial Building, St. Paul, Minnesota, 55155, telephone (612) 296-2874. The cited procedural rules provide generally for the procedural rights and obligations of the parties including the right to advance notice of witnesses and evidence, the right to present evidence and cross-examine witnesses, the right to purchase a record or transcript, the right to object to petitions for intervention, the obligation to meet certain time limits, the obligation to file proposed findings and conclusions, and the right to file comments on and exceptions to the findings and recommendation of the Hearing Examiner.

Parties are entitled to issuance of subpoenas to compel witnesses to attend and produce documents and other evidence. Requests for subpoenas must be made of the Hearing Examiner in writing.

If persons have good reason for requesting a delay in the hearing, the request must be made in writing to the Hearing Examiner at least 5 days prior to the hearing. A copy of the request must be served on the Agency and any other parties.

John P. Millhone
Director

DEPARTMENT OF NATURAL RESOURCES

Proposed Rules Governing Mineland Reclamation

Notice of Intent to Solicit Outside Opinion

NOTICE IS HEREBY GIVEN that the Department of Natural Resources, pursuant to Minn. Stat. §§ 93.44 to 93.51, has begun consideration of proposed rules governing Mineland Reclamation.

In order to adequately determine the nature and utility of such rules, the Department of Natural Resources hereby requests information and comments from all interested individuals or groups concerning the subject matter of the proposed rules. The purpose of these rules is to provide for the reclamation of lands hereafter subjected to the mining of metallic minerals.

All interested or affected persons/or groups are requested to participate. Statements of information and comment may be made orally or in writing. Written statements of information and comment may be addressed to:

Department of Natural Resources
Division of Minerals
345 Centennial Office Building
St. Paul, MN 55155

Oral statements of information and comment will be received during regular business hours over the phone at 612-296-4810, and in person at the above address.

C. B. Buckman
Deputy Commissioner

ERRATA

1. S.R. 539: change "Wing" to "River" at "Region 6E".
2. 1 S.R. 540: space between "by the Responsible Agency for preparation of the EIS." and "Delete Existing MEQC 41 Effective date." at MEQC 27 (a)(6).
3. 1 S.R. 541: change "than" to "that" at MEQC 43 (a)(1), line 10.
4. 1 S.R. 561: change "Foxrun 11" to "Foxrun II" at paragraph "6".

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