



500 LAFAYETTE ROAD • ST. PAUL, MINNESOTA • 55155-40⁴⁵

DNR INFORMATION
(612) 296-6157

August 2, 1994

Ms. Maryanne V. Hruby,
Executive Director
Legislative Commission to
Review Administrative Rules
55 State Office Building
St. Paul, MN 55155

RE: Proposed Permanent Rules Relating to Fish and Wildlife Stamp Design Contests

Dear Ms. Hruby:

The Minnesota Department of Natural Resources intends to adopt permanent rules relating to fish and wildlife stamp design contests. We plan to publish Notice of Intent to Adopt Rules without a Public Hearing in the August 22, 1994 issue of the State Register.

As required by Minnesota Statutes, sections 14.131 and 14.23, the Department has prepared a Statement of Need and Reasonableness, which is now available to the public. Also as required, a copy of this Statement is enclosed.

For your information, we are also enclosing a copy of the Notice of Intent to Adopt Rules and a copy of the proposed rules.

If you have any questions on these rules, please contact Richard Hassinger (7-1308) or me (6-9564).

Sincerely,

A handwritten signature in cursive script that reads "Kathy A. Lewis".

Kathy A. Lewis, Attorney
Mineral Leasing Manager

cc: R. Hassinger

**STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF FISH AND WILDLIFE**

**In The Matter Of The Proposed Rules
Of The Department Of Natural Resources
Relating To Fish And Wildlife Stamp Contests**

**STATEMENT OF NEED
AND REASONABLENESS**

General Statement

The Department of Natural Resources (Department) issues 3 different stamps for taking (hunting or fishing) certain protected species. These stamps are: migratory waterfowl, pheasant and trout and salmon. In the past, designs for these stamps have been chosen through an open contest of submitted art, without the benefit of administrative rules (Department-developed criteria were used, however). Pursuant to MS 97A.045, subd. 7, the Commissioner of Natural Resources (Commissioner) is required to establish rules governing these stamp contests; the proposed rule is established herein.

These draft rules were developed by a committee comprised of representatives from the Department and the Attorney General's office. The rules were adapted largely from the criteria that had been in use since the first stamp contest in 1977. The Minnesota criteria were likewise developed largely from rules used by the federal Fish and Wildlife Service for the selection of the federal Migratory Waterfowl Conservation stamp. Public input was sought on these rules through a Notice of Intent to Solicit Outside Opinion published in the State Register on August 9, 1993. One comment was received and was incorporated into the rule. Additionally, the contests have been conducted since 1977, and modifications to the original criteria have been incorporated as public or artist input was received.

Experience with the criteria has shown that this is a fair and accepted process for selecting quality stamp designs. While the winning artist receives no financial remuneration from the state, secondary sales of limited edition prints (a right retained by the artist) can be worth a substantial monetary sum to the artist. Hence, the contest has real value to participants, and the process must retain a high degree of integrity. To date, no challenge has been made to an entry selected through the existing contest procedure. We believe this is a good indication of the need and reasonableness of these rules.

Statutory Authority

Stamps are authorized by the following statutes: waterfowl - MS 97B.801; pheasant - MS 97B.715; trout and salmon - 97C.305. Specific authority for developing rules to govern the contest procedure is provided in MS 97A.045, subd. 7.

Small Business Considerations

Since this rule provides no regulation of small business, there will be no impact on small business.

Departmental Charges Imposed By The Rules

Minnesota Statutes, section 16A.1285, does not apply because the rules do not establish or adjust charges for goods and services, licenses, or regulation.

Fiscal Impact

These rules require no spending by local public bodies, therefore, Minnesota Statutes 14.11 does not apply.

Agricultural Land Impact

Since these rules do not regulate any lands, Minnesota Statutes, section 14.11, subd. 2, does not apply.

Other Specific Statutory Requirements

None.

Other Statutory Requirements

Minnesota Statutes, sections 115.43, subd. 1, and 116.07, subd. 6, regarding pollution control and Minnesota Statutes, section 144A.29, subd. 4, regarding nursing homes are not applicable to these rules.

Witnesses

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

-Thomas Landwehr, Wetland Wildlife Program Leader, DNR Division of Fish and Wildlife, Box 7, 500 Lafayette Rd., St. Paul, MN 55155.

-Richard Hassinger, Assistant Director, DNR Division of Fish and Wildlife, Box 20,

500 Lafayette Rd., St. Paul, MN 55155.
-Other employees of the State of Minnesota.

Rule-By-Rule Analysis

6290.0100 Purpose. This part is needed to state the purpose of the rule and to establish that contest entries not conforming to the rules are not eligible for consideration. This establishes the basic integrity of the stamp contest. It represents a reasonable balance between public interest and Department needs.

6290.0200 Definitions. This part is needed to define the scope of the rule and to define certain terms that are used frequently in the rule. This part provides definitions that reasonably interpret terms used in this rule.

6290.0300 Application procedure; subpart 1, Eligibility requirements. The first paragraph of this part establishes that only Minnesota residents are eligible for the contest. Minnesota has a strong tradition of producing exceptional wildlife artists, and the stamp contests are a principal motivation for them. The Department would like to encourage and facilitate the growth and maintenance of a strong wildlife art tradition in the state. This strong tradition fuels public interest in wildlife art and wildlife conservation, and helps promote public support for conservation issues. Because the number of artists has always been adequate to produce sufficient entries to allow selection of very high quality designs, we believe this provision is needed and justifiable. The provision is reasonable because it fairly balances the need for public involvement with the desire to foster the wildlife art community in Minnesota.

The second paragraph limits the eligibility of artists who have previously won a stamp contest. This is needed to ensure that an individual artist does not win the same stamp contest year after year, thereby promoting interest and participation by a large number of artists for the reasons mentioned above. The provision does allow winning artists to continue participating after a waiting period, and allows them to participate in other fish and wildlife stamp contests. For these reasons, we believe the provision is needed and is a reasonable procedure for balancing interests.

Subpart 2, Contest entry period. This part states the method for announcement of contest entry dates and availability of application forms. Advance notice of entry dates are needed to allow artists time to prepare an entry, and the State Register is the best vehicle to ensure equal access to that information. Standard forms are necessary to ensure that all required information about the artist and artwork are obtained at the time of entry. This provision establishes a reasonable period of time for artists to enter, yet provides the Department with a specific window of time in which to accept entries.

Subpart 3, Receipt of entries. Entries can only be accepted during the specified window to

minimize the time they are held by the Department, thereby reducing likelihood of damage or loss when in the Department's possession. An entry deadline is needed to allow the Department adequate time for preparation of materials prior to the judging. This provision establishes a period that reasonably meets the needs of the Department and the artist.

Subpart 4, Restriction on number of entries. Artists are only allowed to submit one entry in order to encourage the highest quality submissions and to reduce biases in selection of the winner that may result from an individual artist submitting numerous entries. This provision is reasonable in that it allows every artist the same opportunity for consideration.

Subpart 5, Submittal of entries. To ensure entries are received intact at the correct address and with all required information, this part specifies requirements for shipping to the Department. Receipt of complete applications reduces the workload on the Department and ensures all artwork will be considered on an equal basis. This part requires a reasonable effort on the part of the artist to ensure that their entry is received in good condition and that follow-up contacts by the Department are minimized.

Subpart 6, Department liability. Damage, loss and theft of an entry are largely beyond the control of the Department. This part negates the responsibility of the Department for such loss, in order to reduce liabilities. Since artists can and should obtain their own insurance, this requirement is reasonable.

Subpart 7, Financial remuneration. This provision is necessary to define the legal and financial relationship between the artist and the Department. In the Reproduction Rights Agreement, the artist licenses the Department to use the artist's original artwork as part of the wildlife stamp and to commercially reproduce the wildlife stamp image on various products. The artist retains ownership and possession of the original artwork, which is returned to the artist after it is photographed to produce the lithographed stamp. In addition, the artist retains all other intellectual property rights not granted to the Department in the Reproduction Rights Agreement. The artist expressly reserves the right to make prints from the original artwork. This generally provides substantial profits for the artist. The Department's sale of the stamp and stamp image products raises revenue for the acquisition and improvement of wildlife habitat for the benefit of wildlife and the public. This provision provides a reasonable balance between interests needed by the artist and those needed by the Department.

The artist is required to submit 4 prints of the original if they are produced. This is for the historical record and for display within the Department to promote the stamp programs. Because the artist generally produces several hundred prints, and the Department only requires 4 (one for each pertinent Division or Bureau), this is a reasonable requirement.

6290.0400 Design standards; subpart 1, Eligible species. Stamp entries should feature the pertinent species to clarify the stamp purpose and to help educate the public on the variety

of species present (waterfowl and trout/salmon). Other species appearing in the stamp may present a complementary, educational or realistic artistic design and should be encouraged as secondary subjects. This part presents a reasonable balance between the need for presentation of the subject species and design merits of including other species.

Subpart 2, Background of contest entry. A principal value of the state stamps is the ability to educate the public on the natural history and habitat requirements of the featured species. This part of the rule is needed to ensure that the image presented represents an actual Minnesota environment in which the featured species is found or prospers. This part requires reasonable accuracy in the rendition but does not exclude certain artistic license in presentation.

Subpart 3, Contest entry media and originality. As stated previously, Minnesota has a strong tradition of producing quality wildlife artists. This part is needed to ensure that traditional artistic media (i.e., excluding photography) continue to be the focus of the stamp. This rule allows reasonable use of all other two-dimensional art media.

Subpart 4, Contest entry design size. This part requires standard size submittals to ensure uniformity in judging. It is a reasonable requirement to balance artistic needs with the need for judging equitability.

Subpart 5, Matting requirements. This part requires standard matting to ensure uniformity in judging. It is a reasonable requirement to balance artistic needs with the need for judging equitability.

Subpart 6, Contest entry thickness. This part requires standard entry thickness to ensure uniformity in judging. It is a reasonable requirement to balance artistic needs with the need for judging equitability.

Subpart 7, Covering of contest entry. This part requires standards in covering to ensure uniformity in judging. It is a reasonable requirement to balance artistic needs with the need for judging equitability.

Subpart 8, Ineligible contest entry. Entries must be anonymous to retain impartiality in judging, so markings on the entry that could identify the artist are not allowed. To ensure non-infringement of copyright and protect the integrity of the stamp contest, entries are also not allowed if they have won another stamp contest. Further, if an entry has placed in the final round of the Minnesota contest it cannot be re-entered to ensure anonymity and to stimulate the creation of new artwork. The identity of artists of third round entries is generally revealed after final judging; allowing them to be re-entered at another contest would compromise impartiality. Finally, any entry not meeting the criteria set forth in this rule is ineligible because it would compromise the integrity, quality or impartiality of the contest. These are reasonable requirements intended to maintain the integrity of the contest

while imposing minimal restriction on artists.

6290.0500 Contest Judging; Subpart 1, Date and location of judging. As a reminder to artists, and to provide them with a map to the contest location, information on the date, time and location of the stamp contest will be provided in the contest application package. This information is needed to ensure that all artists are aware of the contest location and time so they can attend if they desire. It is a reasonable method to distribute this information equitably without undue burden on the Department.

Subpart 2, Selection of judging panel. Because quality art is a largely subjective judgement, a broad diversity of judges is desired to reflect a broad constituency. Further, different areas of expertise are desired to ensure integrity of a chosen design from technical and compositional perspectives for use as a stamp image. Selection of the panel, and length of service are at the prerogative of the Commissioner to allow flexibility in appointment and a degree of continuity among members. This provision presents a reasonable process for selecting a panel that will be fair in judging and represent the constituency interested in the stamp.

Subpart 3, Assignment of identifying number. Anonymity is essential to impartiality in judging, and is maintained by identifying entries only by number. This is a reasonable process to ensure anonymity, yet allow an efficient contest.

Subpart 4, Judging procedure. Contest judging takes place in three rounds, with each round reducing the number of overall contenders, to finally select one winner. In the first round, judges select all those entries they would like to progress to the second round. This round is intended to separate out those entries that are clearly not of stamp quality and reduce the number of entries to be considered further to a more manageable number. Any judge can select any entry to advance, so this part is reasonable in considering all entries of merit.

In the second round, judges evaluate those entries that have advanced from the first round. To select those that should advance to the third and final round, judges cast votes for those they would like to see advance. In this round, 3 judges must vote for an entry in order for it to advance to the third round. If no entry has received 3 votes, all entries with 2 votes advance to the next round, to provide a selection of entries in the final round. This process provides a reasonable method for selecting the better entries, as determined by a majority of judges.

In the third and final round, judges are asked to assign a numerical value to the remaining entries. The entry with the highest score is declared the winner. This process gives each judge equal position in selecting a winner and best represents consensus. Also, a judge can assign the same value to any number of entries; this is reasonable because the judge may feel that several designs are of equal value. Experience has shown that this procedure works very well, and has been tested and proven over the years.

In the case of a tie for first or second place, judges must select between the multiple winners by using the third round procedure on the tied entries. Other ties remain unresolved unless and until a winning entry is declared ineligible, at which time judges will re-evaluate tied entries, if needed. This process provides a hierarchy of possible designs in the event that winning or second place entries are for some reason disqualified or otherwise ineligible.

Because this system has been used for over 15 years, has produced high quality designs that have earned the state high praise for its contests, and has resulted in no challenges or controversies in design selection, we believe these rules are very reasonable and practical.

6290.0600 Return of contest entries. The Department takes reasonable care in handling and returning of contest entries, but would be unduly burdened with trying to locate artists who have moved or provided erroneous addresses. Any entry returned to the Department because of an erroneous address or any other reason will be held for one year to allow the artist to reclaim it. The winning entry must be held long enough for the Department to obtain a flawless photograph for reproduction on the stamp. This part is needed to specify the Department's obligation, and presents a reasonable effort at returning contest entries.

6290.0700 Display and promotion of contest entries. To promote the stamp contests and the habitat programs supported by the stamp revenues, the Department reserves the right to use selected entries for public displays. These have been very popular, and help publicize to the general public the needs of fish and wildlife and funding for habitat programs. Entries to be used for display are held for less than a year, which artists have maintained is reasonable, to reduce hardship to the artists.

6290.0800 Reservation of rights. Because unforeseeable problems or circumstances may arise that would prevent holding a contest or using a selected entry, the Department must retain the right to not hold a contest or use the selected entry. This is needed to allow flexibility if otherwise insurmountable obstacles arise. This provision represents a reasonable approach to balance artist rights with Department needs.

Conclusion

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

Department of Natural Resources
Division of Fish and Wildlife

Proposed Permanent Rules Relating to Fish and Wildlife Stamp Contests

Notice of Intent to Adopt Rules Without a Public Hearing

Introduction. The Minnesota Department of Natural Resources intends to adopt permanent rules without a public hearing following the procedures set forth in the Administrative Procedure Act, Minnesota Statutes, sections 14.22 to 14.28. You have 30 days to submit written comments on the proposed rules and may also submit a written request that a hearing be held on the rules.

Agency Contact Person. Comments or questions on the rules and written requests for a public hearing on the rules must be submitted to:

Richard Hassinger
Department of Natural Resources
500 Lafayette Road
St. Paul, Minnesota 55155-4020
Telephone: (612) 297-1308.

Subject of Rules and Statutory Authority. The proposed rules are about establishing the contest procedures by which the Department of Natural Resources selects and utilizes designs for the fish and wildlife stamp images. The statutory authority to adopt these rules is Minnesota Statutes, section 97A.045, subdivision 7. A copy of the proposed rules is published in the State Register and attached to this Notice as mailed.

Comments. You have until 4:30 p.m., September 21, 1994 to submit written comment in support of or in opposition to the proposed rules or any part or subpart of the rules. Your comment must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comment should identify the portion of the proposed rules

addressed, the reason for the comment, and any change proposed.

Request for a Hearing. In addition to submitting comments, you may also request that a hearing be held on the rules. Your request for a public hearing must be in writing and must be received by the agency contact person by 4:30 p.m. on September 21, 1994. Your written request for a public hearing must include your name and address. You are encouraged to identify the portion of the proposed rules which caused your request, the reason for the request, and any changes you want made to the proposed rules. If 25 or more persons submit a written request for a hearing, a public hearing will be held unless a sufficient number withdraw their requests in writing. If a public hearing is required, the Department of Natural Resources will follow the procedures in Minnesota Statutes, sections 14.131 to 14.20.

Modifications. The proposed rules may be modified as a result of public comment. The modifications must be supported by data and views submitted to the Department and may not result in a substantial change in the proposed rules as attached and printed in the State Register. If the proposed rules affects you in any way, you are encouraged to participate in the rulemaking process.

Statement of Need and Reasonableness. A Statement of Need and Reasonableness is now available. This Statement describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules. A free copy of the Statement may be obtained from Richard Hassinger at the address and telephone number listed above.

Small Business Considerations. In preparing these rules, the Department has considered the requirements of Minnesota Statutes, section 14.115, in regard to the impact of the proposed rules on small businesses. The adoption of the rules will not directly affect small businesses.

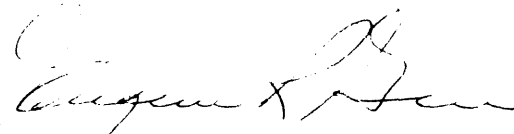
Expenditures of Public Money by Local Public Bodies. Minnesota Statutes, section 14.11, subdivision 1, does not apply because adoption of these rules will not result in any additional spending by local public bodies.

Impact on Agricultural Lands. Minnesota Statutes, section 14.11, subdivision 2, does not apply because adoption of these rules will not have an impact on agricultural land.

Departmental Charges. Minnesota Statutes, section 16A.1285, subdivisions 4 and 5, do not apply because the rules do not establish or adjust departmental charges.

Adoption and Review of Rules. If no hearing is required, after the end of the comment period the Department may adopt the rules. The rules and supporting documents will then be submitted to the Attorney General for review as to legality and form to the extent form relates to legality. You may request to be notified of the date the rules are submitted to the Attorney General or be notified of the Attorney General's decision on the rules. If you wish to be so notified, or you wish to receive a copy of the adopted rules, submit your request to the agency contact person listed above.

Dated: August 2, 1994


for Rodney W. Sando, Commissioner

Department of Natural Resources