STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES
500 LAFAYETTE ROAD • ST. PAUL, MINNESOTA • 55155-4045

DNR INFORMATION
(612) 296-6157

January 27, 1995

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

RE: Proposed Permanent Rules Relating to the Leasing of State Lands for Metallic Minerals

Dear Ms. Hruby:

The Minnesota Department of Natural Resources intends to adopt amendments to the permanent rules relating to the leasing of State lands for metallic minerals. We plan to publish Notice of Intent to Adopt Rules without a Public Hearing in the January 30, 1995, 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.

Minnesota Statutes, section 16A.1285, subdivision 5 states that the Commissioner of Finance shall review and comment on all charges and that the Commissioner's comments and recommendations must be included in the Statement of Need and Reasonableness. The charges established by these rule amendments have been submitted to the Commissioner of Finance. We have received a preliminary review but have not yet received the final version of Commissioner of Finance review. We expect to receive the final version within the next few days and will submit that version as soon as it is received.

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 Gene Miller (7-4948) or me (6-9564).

Sincerely,

Kathy A. Lewis

Kathy A. Lewis, Attorney
Mineral Leasing Manager

Department of Natural Resources
Division of Minerals

Proposed Permanent Rules Relating to the Leasing of State Lands for Metallic Minerals

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:

Kathy Lewis
Department of Natural Resources
500 Lafayette Road
Saint Paul, Minnesota 55155-4020
Telephone: (612) 296-4807.

Subject of Rules and Statutory Authority. The proposed rules are amendments to rules establishing procedures by which the Department of Natural Resources issues leases for state owned lands for the mining of metallic minerals. The amendments address: administrative procedures relating to the process of issuing leases through a public lease sale, criteria and procedures for negotiation of leases, a new system for obtaining leases through application, negotiation for after identified or acquired property adjacent to leased lands, a process requiring submission and review of exploration plans, an increase in rental rates, a modification of royalty rates, modification of performance requirements applicable to lessees, and a procedure which requires that notice be given to the surface owner. The statutory authority to adopt these rules

is Minnesota Statutes, section 93.08 to 93.12 inclusive, and section 93.25. A copy of the proposed rules is published in the State Register. A free copy of the proposed rules may be obtained from the agency contact person listed above.

Comments. You have until 4:30 p.m., March 1, 1995, 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 March 1, 1995. 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 the agency contact person 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 leasing of state lands is a discretionary matter for business entities. As detailed in the Statement of Need and Reasonableness, certain provisions of the rules are favorable for small businesses. The Department has determined that any change to the rules as proposed for adoption to specifically benefit small businesses would be contrary to the objectives of the Statutes under the authority of which these rules are adopted.

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 Minnesota Statutes, section 17.81, subdivision 2, specifically excepts leasing of state owned land for mineral exploration or mining from this review.

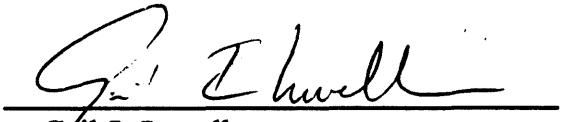
Departmental Charges. The review and recommendation of the commissioner of the Department of Finance concerning any departmental charges contained in the rules is attached to the Statement of Need and Reasonableness pursuant to Minnesota Statutes, section 16A.1285, subdivisions 4 and 5.

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: January 12, 1995

Rodney W. Sando, Commissioner
Department of Natural Resources

By 

Gail I. Lewellan
Assistant Commissioner of Human Resources and Legal Affairs

STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINERALS

STATEMENT OF NEED AND REASONABLENESS

PROPOSED AMENDMENTS TO THE RULES CONCERNING THE LEASING OF STATE OWNED LAND FOR THE MINING OF METALLIC MINERALS

January 10, 1995

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I. INTRODUCTION

Rules for leasing copper, nickel and associated minerals were first adopted on November 8, 1966. Amendments to those rules were adopted in 1982 and again in 1988. As part of the 1988 amendments, the title of the rules was changed from rules for the leasing of Copper, Nickel, and Associated Minerals to rules for the leasing of Metallic Minerals, except Iron Ores and Taconite. Authority to adopt these rules is derived from Minnesota Statutes, sections 93.08 to 93.12 inclusive, and section 93.25.

In August of 1993, the Department published a notice of intent to solicit outside opinions regarding amendments to these metallic minerals rules. A six page description of proposed amendments was sent out for public comment.

Following public comment, the language of proposed amendments was drafted and another notice of intent to solicit outside opinions was published in May 1994. Public comments were accepted on the proposed draft amendments through July 31, 1994. The following are some highlights of the proposed amendments:

Qualified to do business in Minnesota. The amendments require all applicants to be qualified to do business in Minnesota. The commissioner is authorized to request additional evidence that the applicant is technically and financially capable of performing under the terms of the lease and that the applicant

has shown capability to comply with environmental laws and permits.

Negotiated leases. The amendments clarify the circumstances under which negotiated leases may be issued.

A new method for issuing leases. The amendments create another method by which leases may be issued. The preference rights leasing system allows parties to submit applications for mining units listed on the preference rights lease availability list. Lands with state owned mineral rights could only be placed on the list by the commissioner under specified circumstances, including:

a) The property does not contain an identified mineral resource.

b) The area is not being explored by multiple parties.

c) The property has been offered at a metallic minerals lease sale held after 1993, and

d) The property has been offered at a metallic minerals lease sale within four years of being added to the list.

The rules provide for public notice before listing properties on the preference rights availability list. The rules specify time limits for the commissioner's review of applications and the reasons upon which an application will be rejected. The right to reject any application is reserved to the commissioner.

Rental rates. The rental rates are increased from $1.00 per acre to $1.50 per acre for the first two years of the lease plus the year of issuance; from $3.00 per acre to $5.00 per acre for the third, fourth, and fifth years; from $8.00 per acre to $15.00 per acre for the sixth through the tenth years; and from $25.00 per acre to $30.00 per acre thereafter.

Royalty rate. The current royalty rate is based on the value of the metallic minerals and associated mineral products recovered in the mill concentrate, less deductions for smelter charges. The royalty rate as amended would be based on a net return value of the metallic minerals and associated mineral products. In calculating net return value, some additional processing costs which were not allowed as deductions from the gross value of the metallic minerals in determining mill concentrate value will now be allowed as deductions in determining net return value. The additional allowed deductions include refinery charges, refinery losses, and penalties for impurities. Transportation charges were not an allowable charge in determining mill concentrate value and remain a charge which is not an allowable deduction in determining net return value. The changes in deductions decrease the value of the metallic minerals and associated minerals products against which the royalty rate is assessed.

The Commissioner chooses to adopt the new means of establishing the value of metallic minerals and associated mineral deposits because the Commissioner has determined that a reduction in royalty amount was reasonable and necessary for certain types of deposits, that no reduction was appropriate for certain other types of deposits, and that an increase in amount of royalty paid was reasonable and necessary for still other types of deposits.

After analysis of several mine models, and consideration of how valuation of output from those models would be affected by the new net return value definition, a new percentage rate was selected to continue to provide for a fair return to the State. The new base royalty rate is intended to provide from each mine a similar dollar amount return to the State as would have been provided from that mine under the old valuation system and base royalty rate. The newly selected percentage rate is 3.95%, a change from the previous rate of 3.5%.

The new definition of net return value and the new base royalty rate are intended to provide an objective and even-handed treatment to individuals developing different types of mineral deposits while maintaining approximately the same dollar amount return to the State for each individual mineral deposit.

The current royalty structure contemplates a recovery of the metallic minerals mainly by smelting. Recently developed hydrometallurgical and pyrometallurgical techniques now offer the option of recovering the metallic minerals by use of techniques other than smelting. Because of this, a new section is added to the rules to describe value determination when the final metal product is recovered in a hydrometallurgical process, or in a process which is a combination of hydrometallurgy and pyrometallurgy.

When the computed value of the recovered metallic minerals surpasses certain dollar amounts, the current base royalty rate increases. The increase is determined from a linear algebraic formula. The new base royalty rate attempts to preserve the increase in rate as the dollar value increases and attempts to decrease the significance of the specified amounts at which the rate increase occurs. This is done by adopting a base royalty rate derived from a graph of a quadratic formula. Under the new system, rather than having a small number of points at which the base royalty rate deflects upward, the rate flows smoothly upward along a well defined curve. As was done with the rental rate, several different possibilities were examined. Various curves were examined to find one which would result in a net royalty decrease for certain types of deposits, maintain the return to

the state for certain other types of deposits, and produce a greater return for still other types of deposits.

Review of exploration plans. The amendments formalize and provide appropriate authority for the existing process of internally reviewing exploration plans and subjecting activities under the leases to special features or uses (for example, state trails, wildlife management areas, designated trout streams, and others). The lease is changed to provide for the lessee's submission and the commissioner's review of exploration plans. Special features or uses identified by the Commissioner within the leased premises at the time a lease is offered, may require the lessee to adjust exploration plans. The lessee will be required to submit and comply with a plan for exploration site closure and stabilization.

Bids. Administrative procedures for the public lease sales are changed to ease submission of bids and the processing of bids.

Regional geological reconnaissance authorization. The rules recognize the regional geological reconnaissance authorization, which authorizes geophysical and geological exploration activities. The authorization does not grant any rights to a lease and is non-exclusive.

Notice to surface owners. The rules require that when the leased premises do not include the surface estate, the lessee must give notice to the owner of the surface estate prior to any activities which will require use of the surface estate. The notice must sufficiently describe the activities to enable the owner to evaluate the extent of the use of the surface estate.

Predetermination of state's option to cancel the lease. The lessee may request that the state determine in advance whether it will exercise its option to cancel the lease during the 21st and 36th year of the lease.

Miscellaneous. The issuance of all metallic minerals leases, whether issued under the preference rights leasing system, through negotiation, or through bidding at a public lease sale, continues to require the approval of the State Executive Council. However, the presence of a member of the Council at public lease sale bid openings will no longer be required.

The amendments update the rules due to changes in Minnesota Statutes, section 93.25. Obsolete leasing rules relating to gold ores and source materials would be repealed by these rules.

II. RULE BY RULE REVIEW OF PROPOSED AMENDMENTS

The proposed amendments are not addressed in the order in which they occur in the rules. General and miscellaneous provisions are grouped together and are addressed first in paragraph A. The amendments addressed in this group are amendments of a primarily procedural nature.

New sections to the rules, amendments thought to be of a more substantive nature, and amendments to basic features of the lease form (for example, rental and royalty) are addressed in separate paragraphs beginning with paragraph B and ending with paragraph M. A Table of Contents has been provided to assist with locating areas of this Statement which explain various sections of the proposed amendments to the rules.

A. GENERAL AND MISCELLANEOUS PROVISIONS

1. Title of rules and repeal of part 6125.0300. The Legislature by Laws of Minnesota 1993, Chapter 113, Article 1, section 2, amended Minnesota Statutes, section 93.25. Prior to this amendment, the statute contained a subdivision granting authority to the commissioner to issue permits to prospect for certain minerals. The statute contained a second subdivision granting authority to the commissioner to issue leases for the purpose of mining and removing those minerals. The rules reflected

this division in two ways. One was by including the word "Permits" in the title of the rules. The second reference in the rules to permits is in part 6125.0300 which characterized the first two years of the lease as the prospecting permit.

The amendment to the statutes removed any use of the word "permit" from Minnesota Statutes, section 93.25. The amended statute makes it clear that the commissioner has authority to issue leases and that prospecting, mining and removal of metallic minerals may all occur under the terms of the lease. The amendment to the rules is to remove any use of the word "permit" from the rules. This change is reasonable and necessary to remove any possible confusion.

2. Amendment of part 6125.0400 to improve language authorizing commissioner to issue leases and to include in rules authority to lease certain mineral interests for which statutory authority to lease was granted subsequent to most recent adoption of these rules. Part 6125.0400 currently states that the Commissioner "shall adopt rules for the issuance of leases". The very existence of these rules makes it obvious that the Commissioner has taken that step. A more appropriate wording of the rules in the current circumstances is that the Commissioner "may issue leases" under authority of these rules. This change to the wording of the rules to change the sense of the rules from prospective to permissive is reasonable and necessary in this case.

The second change to this part was made necessary by action of the Legislature, which by Laws of Minnesota 1988, Chapter 508, amended Minnesota Statutes, section 93.55. The amendment became effective on April 14, 1988. The amended statutory section grants authority to the Commissioner to lease, before completion of forfeiture proceedings, severed mineral interests for which the owner has failed to file the verified statement of ownership required by Minnesota Statutes, section 93.52. Upon completion of the forfeiture, these mineral interests become the absolute property of the State.

At the time these rules were last amended, the Commissioner had no authority to lease this type of severed mineral interest. There is therefore no mention of this type of severed mineral interest in the current rules. It is necessary that the lease authority granted by the statute also be included in the rules. It is therefore necessary and reasonable that the rules be amended to include authority for the Commissioner to lease severed mineral interests for which the owner has failed to file the required verified statement of ownership.

3. Simplification of language and procedures related to public sale of leases, including notice, obtaining mining unit books, submitting bids, and certain other matters (part 6125.0500). Most of the changes to this part are intended to ease submission and processing of bids and to make certain other changes in administrative procedures. Certain other changes are necessary to

make the language of this part conform to changes made in other parts of the rules. Substantive changes to this part include the requirement of submission of the first full year's rental on a mining unit with the bid and a removal of the requirement that a member of the Executive Council be present at the bid opening.

In the current rules, subpart 1 states that leases shall be issued by public sale except those issued through negotiations (part 6125.0600). It is necessary to add an additional clause to subpart 1 to reflect that under the amended rules preference rights leases (part 6125.0610) are also available (in addition to negotiated leases and leases by public sale).

The amendment to the rules authorizing preference rights leases requires that notice be given in the State Register and EQB Monitor when mining units are to be offered through preference rights leasing. Although under the current metallic minerals leasing rules this has not been required for public lease sales, Environmental Quality Board rules (Minnesota Rules, part 4410.5200, subpart 1) require publication of notice of public lease sale in the EQB Monitor. The Department has been voluntarily publishing notices of public lease sales in the State Register. It is reasonable and necessary to amend the rules governing public sale of leases to make these rules consistent with the rules of the Environmental Quality Board and the current procedures of the Department. Further, it is reasonable to require this additional

notice of this type for public sale of leases to make notice requirements for public lease sales consistent with notice requirements for the preference rights leasing system. The additional notice is necessary and reasonable because this notice increases the knowledge of the public about these leases without placing any additional undue burden on the notice giver.

It is reasonable to amend the rules to remove specific references to publication in "not to exceed two" additional newspapers and "two" trade magazines. It is necessary that the Commissioner have discretion to publish notice in more than two additional newspapers and trade magazines when it is appropriate to do so. This change grants that discretion to the Commissioner.

All changes made to subpart 2 except for the change in the amount of the fee to be charged for a mining unit book are language simplification changes and do not affect the substance of the subpart. The change to the fee to be charged for a mining unit book is necessary because experience has shown that the size of the mining unit book can vary dramatically. There have been instances in the past when the fee was greater than the cost of the materials for producing the mining unit book and there have been instances when the fee was much less than the cost of the materials. It is reasonable that the fee for the mining unit book reflect actual costs of copying and mailing.

The changes to subpart 3 release the Commissioner from the requirement that all bid forms be exactly as designated in the rule and allow instead for a tailoring of the bid form to fit the requirements of each sale. In addition, each individual bidder will be able to submit a single bid form which contains all bids being submitted by that entity. It must be noted, however, that by retaining specific requirements of what information must be included on the bid, the Commissioner retains sufficient control over the bidding process to eliminate confusion over what has been bid upon. These changes to this subpart are a reasonable exercise of the Commissioner's authority in that the changes simplify the bidding process without jeopardizing the security of the sealed bid process.

Subpart 3 is also changed to require that the first year's rental for each mining unit be submitted along with the bid. This submission is reasonable in that it puts the State in possession of the first year's rental as the processing of the bid and granting of the lease is completed. Also, new subpart 4 now specifies that the application fee and first year's rental are not returned if the high bidder attempts to withdraw the bid before the lease is awarded. This is necessary to protect the integrity of the sealed bid lease sale and to help protect the State and other bidders from an attempted withdrawal of a high bid after the bid opening. All bids not accepted become void and the application fee and rental will be returned to the bidder.

Subpart 3 also includes new language requiring the bidder to provide evidence within 45 days of the request that the bidder is qualified to hold State mineral leases. That this is a necessary and reasonable requirement is discussed at paragraph B. later in this statement.

The removal of the requirement that a member of the State Executive Council be present for the bid opens is reasonable in that the Executive Council continues to exercise control over the leases. The Commissioner has authority in numerous other situations to accept bids on natural resources and it is therefore not necessary that a member of the Council be present at the bid opening. Leases continue to be awarded only with the approval of the Executive Council.

4. Use of surface of lands (part 6125.0700, paragraph 3). The title sentence of this paragraph is changed from "Purpose of lease". This is reasonable and necessary because, particularly after the additions are made to the paragraph, "Use of surface of lands" more accurately describes the content of the paragraph.

In addition, two sentences are added to the paragraph. "All buildings and ditches must be constructed in accordance with applicable local ordinances. The locations of railroads, roads, and other improvements are subject to review by the commissioner." This addition to the lease form is intended to further clarify what obligations are expected of the lessee and what oversight will be

exercised by the Commissioner with regard to construction on the mining unit.

It is often necessary that buildings, ditches, railroads, roads and other improvements be constructed on the mining unit during exploration and development. The lease grants authority to the lessee to engage in a variety of activities on the leased premises. However, of the activities permitted by the lease, buildings and ditches are the activities for which there are likely to also be local ordinances regulating the activity. It is a sound natural resource management practice that activities conducted on the leased premises conform to applicable local ordinances. It is therefore necessary and reasonable that the lease form require that construction of buildings and ditches be conducted not only in accordance with the lease but also in accordance with applicable local ordinances.

Railroads, roads, and other improvements have the potential to exert a long term influence on the State owned lands where they are constructed. The Commissioner recognizes the necessity of this construction in the development of mineral resources. However, the Commissioner also recognizes that the management of all natural resources requires a weighing of activities for mineral resource development against other natural resource concerns. The Commissioner finds it necessary to retain discretion to review location of these improvements to assure that competing natural resource management concerns are adequately addressed before construction and to assure that construction is done in a way to

minimize to the maximum extent possible any adverse effects on other natural resource assets.

5. Written notice whenever the Commissioner is planning to issue a mineral lease for minerals other than the metallic minerals leased under these rules (part 6125.0700, paragraph 4). A new notice requirement is proposed for the lease form. This paragraph of the lease form has always reserved to the Commissioner the right to enter into leases for other minerals located in the mining unit. New rules regulating leasing of industrial minerals are in the process of adoption. The new industrial minerals rules contain a notice requirement identical to the notice requirement proposed for inclusion in these rules. It is reasonable that notice be given when the Commissioner's right to enter into other mineral leases is exercised. It is reasonable that the notice given by these rules conforms to the notice provision being promulgated in the industrial minerals rules so that the same type of notice shall be provided in both sets of circumstances. It is reasonable that the Commissioner specify that a meeting be held with the lessee to obtain information for terms and conditions under which multiple mineral development could occur because the information obtained will assist the Commissioner in making a reasoned and informed decision, and will therefore assist the Commissioner in sound natural resource management.

6. Any right granted to enter the mining unit to cut and remove timber will be by "permit", not by "contract" (part 6125.0700, paragraph 5). The rules retain to the State the right to sell and dispose of all timber upon the mining unit without hindrance to the lessee. The State no longer grants a "contract" to the purchaser of the timber. The timber purchaser now receives a "permit". It is necessary and reasonable that this part of the rules by amended to reflect what the actual current State practice is with regard to sale and disposition of timber.

7. Sources of average market price of various metals (part 6125.0700, paragraph 9, subparagraph g). Several changes have been made to this paragraph. A source for the average market price of palladium and of platinum has been added. Past exploration activity in Minnesota indicates that palladium and platinum are metals which might be discovered and mined in Minnesota. It is therefore necessary and reasonable that average market prices for these metals be included in the lease form.

The sources selected for determining the average market prices of palladium and platinum are in each case the London Metal Exchange price. New York based prices are also widely available. The London Metal Exchange prices were selected because the Commissioner has determined that palladium and platinum are commonly processed and sold in what is a worldwide market. The use of London prices is necessary and reasonable because the London Metal Exchange prices are the most accurate reflection of the value

of palladium and platinum metals in the world market. The North American market and the New York prices are dependent upon conditions established by the world market. The New York prices would not always provide an accurate reflection of the true value of palladium and platinum in the market in which they are commonly processed and sold.

All of the average market prices for metals which are used in the rules are prices as reported in Metals Week magazine. An examination of a recent issue of this magazine revealed that the quotations as described in the rules were not always the actual quotation as currently given in the magazine. For example, the current rules specify an average market price of copper is that quoted for "MW US Producer Cathode (MW US PROD CATH)" as reported in Metals Week. The actual quotation for the average market price of copper as it is actually currently quoted in Metals Week is for "U.S. producers, cathode". Changes have been made to the rules so that the rules describe the quotations as they are actually currently being given in the magazine. This is necessary and reasonable to make the rules as clear and concise as possible and thereby eliminate or greatly lessen any chance of confusion.

8. Changes affecting payment form, monthly report dates, interest on late payments, and interest on sums due on termination (part 6125.0700, paragraphs 6, 11, 15, and 17). The lease form is changed (part 6125.0700, paragraph 17) to make all remittances by the lessee under the lease payable to the Department

of Natural Resources instead of the State Treasurer. The Department of Natural Resources has authority to accept the payments on behalf of the State for deposit with trust funds and other accounts maintained by the State Treasurer. This is a reasonable change which is necessary to help alleviate any possible confusion on the part of the lessee.

A change has been made in that portion of the lease (part 6125.0700, paragraph 15) which specifies the period after which a lessee must transmit monthly reports to the Commissioner. This section in the current rules requires transmission of these reports within 30 days after the end of each calendar month. The Commissioner has had extensive experience with monthly reporting from holders of iron ore leases. The Commissioner has determined that to assure that sound natural resource management practices be maintained that it is necessary that monthly reports be transmitted within 20 days after the end of each calendar month. The change should not greatly inconvenience the lessee and will greatly enhance the Commissioner's ability to perform necessary administrative functions. It is therefore reasonable that the lessee transmit these monthly reports to the Commissioner within 20 days after the end of each calendar month.

The lease form is also changed to require that any rental or royalty payments not received by the date due are subject to interest at a rate of six percent per year from the due date (part

6125.0700, paragraph 6 and paragraph 11). The lease form is also changed to require that any sums not received within 20 days after the effective date of termination are also subject to interest at the rate of six percent per year from the effective date of termination (part 6125.0700, paragraph 30). It is reasonable and necessary that interest be charged as an incentive to the lessee to pay the rentals or royalties on time, and to assure the submittal of any amounts due in a timely manner.

The rate of six percent is reasonable when viewed in context of market interest rates and is also reasonable in that it is the rate specified by Minnesota Statutes, section 334.01, subdivision 1, as the rate of interest for any legal indebtedness unless a different rate is contracted for in writing.

Part 6125.0700, paragraph 11, requires royalty payments to be made on or before May 20, August 20, November 20, and February 20. Part 6125.0700, paragraph 6, currently requires rental payments to be made on May 20, August 20, November 20, and February 20. It is reasonable that rental payments be accepted on or before the specified date. It is reasonable that the same payment schedules be included for rental and royalty payments. It is therefore necessary that the rules be amended to allow the payment of rental on or before the specified dates.

9. Exploration data (part 6125.0700, paragraph 16, subparagraph a). A clause is added to the section on exploration data which the lessee is required to furnish to the Commissioner.

The amendment adds "all mineral analyses and assays" to the list of data required to be submitted. The purpose of this clause is to remove any possible confusion and to make more certain that all mineral analyses and assays are among the data which the lessee is required to furnish. It is necessary and reasonable that the Commissioner receive this information upon termination of the lease in order that the data be available for subsequent prospective lessees. It is necessary and reasonable that the Commissioner as the representative of the State as land owner be provided with any and all information about resource development on State land to assure preservation of that data for future utilization and to thereby help assure that the Commissioner is able to make well informed decisions on development and utilization of the State's natural resources.

10. Reversion of title on land conveyed to state for stockpiling purposes (part 6125.0700, paragraph 21). The Commissioner has authority to accept conveyances of land to the State for any purpose pertaining to the activities of the Department (Minnesota Statutes, section 84.085, subdivision 1). The long standing policy of the Department has been with respect to lands conveyed to the State for stockpiling purposes to accept the lands with the condition that when the land is no longer needed or used for that purpose that the land should revert to the previous owner. It is reasonable to recognize that in some situations the grantor of the lands may not wish to retain any such reversionary

interest in the lands. There may also be situations in which the State wishes to take title to the land without any such possibility of reversion. The State has statutory authority to accept title to lands without the possibility of reversion. It is therefore necessary and reasonable that the lease form be amended to allow the Commissioner to accept a conveyance of land without a possibility of reversion when such a conveyance is in the best interests of and is the wish and desire of both parties.

11. Lessee's obligations under applicable mineland reclamation statutes and rules (part 6125.0700, paragraph 23). This paragraph is changed by adding the notice that all activities shall be conducted in conformity with the applicable mineland reclamation statutes and rules. The current rules make it clear that all operations under the lease are to be conducted in conformity with all applicable state and federal statutes, orders, rules and regulations. However, since these rules were last promulgated, Mineland Reclamation Rules have been adopted by the Commissioner (Minnesota Rules, parts 6132.0100 through 6132.5300, effective March 24, 1993). It is reasonable to recognize the existence of those rules and to reemphasize that all activities under the lease are to be conducted in conformity with them.

12. Conduct of operations (part 6125.0700, paragraph 24). The amendments to the rules propose three changes to this paragraph. The current rules require operations to be conducted in

accordance with good mining and metallurgical engineering. The adoption of Mineland Reclamation Rules is one of many events which have occurred since these rules were last promulgated which recognize that increased scrutiny is being accorded to environmental matters. It is reasonable in light of that increased scrutiny to amend this portion of the lease form to require operations to also be conducted in accordance with good environmental engineering.

The amendments remove from this paragraph the requirement that the lessee advise the commissioner when exploration drilling, trenching, or testpitting is about to begin. A new paragraph, which is described elsewhere in this statement (part 6125.0700, paragraph 26), is being proposed for addition to the lease form. This new paragraph requires submission by the explorer and review by the Commissioner of exploration plans before any exploration can occur. Removal from this paragraph of the requirement that the lessee advise the Commissioner of exploration drilling, trenching, or testpitting will not hinder the Commissioner's objective of remaining informed about exploration activities. In addition, the removal will serve the objective of reducing unnecessary repetitive language in the lease form and thereby reduce the possibility of confusion for the lessee about what is required of the lessee before exploration activities can begin.

The current rules require that surface lands owned by the State are not to be cleared or used for construction or stockpiling purposes until such use has been approved by the Commissioner. The proposed change intends to make it clear that such approval from the Commissioner must be in writing. The Commissioner has a responsibility as manager of State owned lands to manage those surface lands to meet all of the natural resource needs of the people of the State. It is reasonable that the Commissioner exercise a high level of review and supervision of any extensive or invasive uses of State owned surface lands. It is therefore necessary and reasonable that these rules be amended to further clarify that extensive or invasive uses of State owned surface lands must be approved by the Commissioner in writing.

13. Lessee's obligation for damages (part 6125.0700, paragraph 27. A sentence in this paragraph which currently reads: "The lessee is obligated to save the state harmless from all damages or losses . . ." is changed to: "The lessee hereby agrees and is obligated to indemnify and hold the state harmless from all damages or losses . . ." This change intends to make the wording of this paragraph consistent with the paragraph's true intentions.

The State does not intend to be liable for money judgments for the tortious act of a lessee. The addition of the word "indemnify" should clarify that the State would seek reimbursement from the lessee for any money judgment against the State for damages or losses caused by operations under the lease. The change is also

necessary to make this paragraph more consistent with the standard form of liability clause used by the State in State contracts and in other types of surface use leases.

This change is reasonable and necessary in that it clarifies the meaning and intention of this paragraph, promotes uniformity in the use of a standard form of liability clause, and makes less likely any dispute over the lessee's obligations for damages under the lease.

14. Clarification of what rights and privileges may be surrendered by lessee following tenth anniversary date of lease (part 6125.0700, paragraph 30) and related change to part 6125.0700, paragraph 6. The description in paragraph 30 of what may be surrendered is changed from "governmental descriptions" to "part or parts of (the mining unit)" and a definition is given for "part of the mining unit". Part 6125.0700, paragraph 6 currently refers to rentals to be paid upon surrender of "part or parts of the mining unit". Part 6125.0700, paragraph 6 is changed to clarify that this surrender by lessee is a right under paragraph 30 of the lease.

The change to paragraph 30 makes the description of what may be surrendered the same in paragraph 30 as it is in paragraph 6. To make certain what it is that may be surrendered, the definition of "part or parts of the mining unit" is added to paragraph 30. These changes are necessary and reasonable to improve the lease

form by eliminating a possible source of confusion about the rights of the lessee under the lease.

15. Agreements, assignments or contracts affecting the lease must be presented to the Commissioner in triplicate instead of in quadruplicate (part 6125.0700, paragraph 36). These documents affecting the lease have historically been submitted in quadruplicate to allow one completely executed copy to be retained by the Minerals Division in Saint Paul, one retained by the Minerals Division office in Hibbing, one returned to the lessee, and one to be filed with the State Auditor. It is no longer the practice that a copy be filed with the State Auditor and the submission of three documents will fully meet the needs of the Commissioner. It is therefore necessary and reasonable that the rules be changed to allow for the submission of these documents in triplicate instead of in quadruplicate.

B. QUALIFICATIONS TO HOLD LEASE AND AUTHORIZATION TO CONDUCT GEOLOGICAL DATA GATHERING ACTIVITIES (PART 6125.0410).

It is reasonable and necessary to require the meeting of certain minimum standards by an explorer before that explorer may hold a lease or conduct geological data gathering activities on State owned lands. In requiring that certain minimum connections be established between the explorer and the State, these rules recognize that the exploration industry has the potential to have

an enormous economic, social, and environmental impact on the State and its residents. These rules are part of an important first step in establishing the relationship between the explorer and the State.

The proposed minimum requirements are a reasonable exercise of the State's authority as landowner. The requirements of the amendments that the explorer be qualified to do business in Minnesota are necessary and reasonable in that qualification to do business in Minnesota shows that the explorer has established certain minimum relationships with the State which make the explorer subject to enforcement of the laws of the State, and subject to the authority of the courts of the State. This relationship will enable the Commissioner to enforce decisions and policies requiring sound mining practices and natural resource conservation.

Part B. of this subpart requires that the applicant be qualified to conduct exploratory borings in Minnesota by fulfilling the requirements of Minnesota Statutes, section 103I.601, subdivision 3. Exploratory boring is a basic tool in the exploration process and it is therefore necessary and reasonable to require that the explorer provide evidence that it is qualified to conduct exploratory boring. Responsible land management also directs that a potential lessee should demonstrate compliance with other applicable State laws including the registration provisions of the exploratory borings law. It is necessary and reasonable

that the explorer provide evidence that it will be able to comply with exploratory borings requirements before either authorization to explore or a lease is granted.

It is the Commissioner's intention to promote the orderly development of mining. This policy requires exploration activities on State owned land be conducted only by an explorer which can demonstrate an ability to fully and adequately explore for mineral resources which may be present on that land. It is necessary and reasonable that the rules require that the explorer demonstrate to the Commissioner that it is qualified to fully explore the State owned lands under lease.

It is reasonable that the Commissioner in furtherance of responsible land management may request additional evidence that the applicant is technically and financially capable of performing under the terms of the lease and that the applicant has shown the capability to comply with environmental laws and permits. As the applicant will be engaged in activities which will be regulated by the Commissioner, it is reasonable that the explorer show an ability to perform the tasks which will be regulated by providing evidence of successful performance in the past of the same or similar tasks, or otherwise establish that it has the capability to perform the tasks.

Current procedure calls for submission by the potential lessee of evidence relating to financial and technical capability to perform. This procedure has proven to be valuable in assessing the

potential lessee's ability to perform under the terms of the lease. It is necessary and reasonable that this current procedure be promulgated into rule. Evidence which may be requested includes, but is not limited to, items such as a corporate report, audited corporate financial statement, resumes of officers of the corporation, and evidence of past compliance with environmental laws and permits in this or other states or in other countries.

If such evidence is requested, it is reasonable and necessary that the evidence be submitted within 45 days of receipt of the request. It is reasonable for purposes of administrative efficiency that a time period be established for submission of additional evidence. The period of 45 days is long enough to allow gathering and submission of additional evidence while also being short enough to assure that information will be submitted and will be available to allow a final decision to be reached within a reasonable period of time. The 45 day period is also consistent with both part 6125.0500 on public sale of leases and part 6125.0610 on preference rights leases which grant the Commissioner authority to reject a bid or application for a lease if requested information is not submitted within the 45 day period.

C. NOTICES OF PUBLIC LEASE SALES, NEGOTIATED LEASES AND PREFERENCE RIGHTS LEASES (PART 6125.0420).

The addition of part 6125.0420 to the rules requires the creation and maintenance of a list of persons and that persons on

the list be given notice of public lease sales, applications for negotiated leases, and preference rights leasing offerings. The creation of the list is intended to increase opportunities for interested parties to receive notice of leasing activities. The creation of this list will also assist the Commissioner in obtaining information and opinions from interested parties which will assist the Commissioner in deciding whether or not to offer lands for leasing or whether or not to enter into a negotiated lease.

This addition is necessary and reasonable in part because the rules are also being changed to create new procedures to be used in certain circumstances for leasing State owned mineral lands. The addition, in particular, of preference rights leases, makes it necessary that a process be created to provide notice to interested parties about lands being placed on the preference rights availability leasing list pursuant to part 6125.0610.

A mechanism is established in the rules to allow the removal of names from the list after an inquiry has been made to determine if the listed person wishes to maintain their name on the list. This is a necessary and reasonable process which will assure that the list remains current, will assure that those on the list genuinely wish to be on the list, and will eliminate unnecessary expenditure by the Department for those who no longer wish to remain on the list.

It is necessary and reasonable that if notice is to be provided concerning preference rights leasing, that similar notice

be provided about negotiated lease applications received pursuant to part 6125.0600. It is also reasonable that the same list be used to provide notice of public lease sales when such notice is published pursuant to part 6125.0500.

D. CLARIFICATION OF CIRCUMSTANCES UNDER WHICH NEGOTIATED LEASES MAY BE ISSUED (PART 6125.0600).

Under the existing rules, the Commissioner may issue a negotiated lease when it is impractical to hold a public sale on any mining unit because of its location or size or the extent of the State's interest in the minerals. Negotiated leases are uncommon. Out of 2,649 leases issued since 1966, only 25 leases have been negotiated leases. Over a period of time, internal procedures have been developed regarding the negotiated lease criteria of location, size, and extent of State ownership of the minerals. The procedures attempt to identify types of situations in which the best interest of the State will be served by issuing a negotiated lease. The rule amendments are intended to formalize in rule the considerations that have been identified and developed as internal policy.

All of the situations described in the rule amendments are instances where a public lease sale of the State's interest would most likely produce a situation where the leaseholder of the State's interest would not have an interest which could be independently developed. The State's leaseholder would have to

enter into negotiations with either a majority mineral owner or the owner of adjoining mineral interests before development could occur. In these situations, the State's best interest is equally well served by the State being the party to enter into negotiations with the majority or adjoining mineral owner.

The procedures as developed are a reasonable protection of the State's best interest and it is therefore necessary that the procedures be made a part of the rules. Promulgation of the procedures into rule will also lessen possible confusion about what circumstances must exist to make it likely that the State will negotiate a lease.

The amendment also addresses the situation where the State acquires additional mineral ownership or identifies additional mineral ownership in a government section where other State owned mineral lands are already under lease. Additional mineral ownership might be acquired by purchase, donation, additional tax forfeiture, or severed mineral interest forfeiture.

Previously unknown State mineral ownership is sometimes identified by the Minerals Division through its program of mineral interest ownership research. This program seeks to verify ownership of lands in which the State has a claim and to discover new ownership claims where none had previously been identified. Title research is conducted in areas which are already under lease and in areas where it is believed there may be leasing interest in the future. As a result of this title research, the State

sometimes identifies additional mineral ownership in a government section where other State owned mineral lands are already under lease.

It would be extremely difficult for a separate mineral lessee to independently develop a mining operation on the newly acquired or identified additional mineral land. Further, had the State known about the additional mineral ownership interest at the time the government section was offered for lease, the additional interest would have been included in what was offered. It is therefore reasonable to consider entering into a negotiated lease with the already present state lessee. It is reasonable that the royalty rate for a negotiated lease for these new State interest be the same royalty rate as for the other previously leased lands unless there has been activity such as new drilling or production which provides new information about mineral potential in the new lands. It is reasonable that if additional information is available, the Commissioner retains the rights to negotiate a royalty rate which is the best interest of the State.

The rules are amended to clarify that the $100 required to be submitted with an application for a negotiated lease is submitted as a fee for filing the application and that the application fee will not be refunded under any circumstances. Nonrefundability of the negotiated lease application fee is consistent with treatment of application fees for the public lease sale. The negotiated lease applicant at the time of application is in a position

analogous to the high bidder at a public lease sale. By making the application, the applicant has placed the Commissioner in a position where administrative tasks must be completed to determine whether the applicant is qualified under the rules to hold a lease. Further, the Commissioner must make a decision either to issue the lease or to reject the application. The high bidder in a public lease sale has placed the Commissioner in similar position where those same tasks and decisions are necessary. The rules make it clear that the application fee will not be returned to the high bidder at a public lease sale who later attempts to withdraw that bid. It is necessary and reasonable that the applicant for a negotiated lease receive similar and equal treatment.

It is necessary and reasonable for the protection of the best interest of the State that the Commissioner reserve the right to reject any and all applications for negotiated leases. The Commissioner already has this authority even without the addition of this language to the rules but it is reasonable to clearly make this statement in the rules to avoid any misunderstanding.

E. PREFERENCE RIGHTS LEASES (PART 6125.0610).

Subpart 1. Purpose. The Commissioner has determined that it is in the best interests of the natural resources of the State to encourage exploration for the mineral resources of the State. This

is especially true in areas that are not currently being explored. One way to encourage exploration is to make exploration easier by offering easier access to potential exploration sites. One purpose of the proposed system of preference rights leases is to offer this easy access as an incentive to explorers to explore in areas of the State which are not currently being explored even though the Department feels the areas have mineral potential.

In addition, the Department has received comments and requests from the exploration industry to the effect that exploration is hindered in Minnesota by insufficient availability of State land. Specifically, the comment is that State land is available only at the time of public lease sales. The exploration industry has stated that budgets and plans do not always correspond well to the schedule for public lease sales. Explorers have requested some mechanism to make at least some lands available at times other than public lease sales in order to increase options for exploration. The addition to the rules of preference rights leases is an attempt to respond to this expressed concern. Adopting a system of preference rights leases is reasonable because preference rights leasing will only be available when the Commissioner determines that preference rights leasing will serve the best interests of the State.

Subpart 2. Compilation of Preference Rights Availability List. It is necessary and reasonable that criteria be established for determining which lands should be considered for this new system.

It would not be appropriate to bypass the public lease sale system by making all State land available for preference rights leasing. For example, lands which contain an identified mineral resource would be specifically excluded from preference rights leasing.

Preference rights leasing is intended to make available lands which have not been bid upon at a relatively recent public lease sale and to make these lands available at a time other than at the public lease sale. It is intended that the available lands will be lands for which there is a lesser likelihood of competitive bidding should those lands be included in a public lease sale. The lands should therefore meet criteria assuring that the lands are not in an area subject to current competitive exploration interest as evidenced by more than one party currently holding leases in the area.

It is reasonable and necessary that the Commissioner accept from the outside parties suggestions of mining units to be included on the preference rights availability list. It is the intention of this system to make available for leasing lands for which there has been no publicly expressed interest. It seems likely that the Commissioner often will not be aware without this input from the exploration industry of an explorer's interest in leasing certain lands. Allowing outside parties to submit suggestions of mining units to be considered for inclusion on the preference rights availability list provides an avenue for the explorer to inform the

Commissioner of its interest and thereby increase the likelihood of availability of lands which it desires to explore.

It is necessary that a system be established to provide an orderly means of adding lands to and withdrawing lands from the preference rights lease availability list. The addition of lands on a monthly basis is reasonable in that a regular schedule of additions means that those interested in leasing will know in advance when lands might be added and will therefore be more able to keep themselves familiarized with what lands are on the list. It is reasonable that the Commissioner have authority to withdraw lands at any time. The Commissioner needs this authority over the availability list because conditions may change and lands on the list may no longer meet the criteria for inclusion in the list. When this occurs the Commissioner needs sufficient authority to withdraw the lands immediately. It is reasonable that if the Commissioner has authority to create a preference rights leasing availability list, that the Commissioner have authority to maintain the list in a manner which the Commissioner's discretion deems most appropriate.

The interests of the State and of explorers will be best served, confusion will be minimized, administrative convenience will be served, and even the appearance of impropriety will be removed if a written record is maintained of date and time of all additions and withdrawals from the preference rights lease

availability list. It is therefore necessary and reasonable that such a written record be maintained.

Because the lands being offered for preference rights leasing are publicly owned, it is necessary that public notice be given before any lands be included on the availability list. The notice provisions provided for in this subpart are reasonable in that they are the same notice requirements as are deemed reasonable in providing notice of a public lease sale.

Subpart 3. Preference Rights Lease Availability List. The best interests of the State and of explorers will be served if the list is maintained and available for inspection in a single location. The administrative convenience of the Commissioner is best served if that location is the Saint Paul office of the Division of Minerals. It is reasonable that members of the public be able to obtain a copy of the list and that a fee based on copying and mailing costs be charged to obtain that copy.

Subpart 4. Application for Preference Rights Lease. The requirements and procedures proposed for application for a preference rights lease parallel the requirements and procedures being put into place for bidders at a public lease sale. The necessity and reasonableness of the public lease sale application fee and rental submission is addressed in another section of this statement.

It is necessary and reasonable that the Commissioner require submission with the preference rights application of verification that the applicant is qualified to hold a mineral lease as specified in the rules. The reasonableness and necessity of those qualifications to hold a lease are discussed in another part of this statement. The application fee and rental to be submitted are reasonable as they are the same as the application fee and rental to be submitted by a public lease sale bidder. It is necessary and reasonable that the application fee not be returned to the applicant under any circumstances. This is true because the receipt of an application will require review by appropriate staff and decisions on whether the applicant and the applications meet the required standards. However, as is the case with unsuccessful bids at the public lease sale, it is reasonable that the rental payment accompanying preference rights lease applications which are rejected be returned to the applicant.

It is necessary that standards be established for the times and places of acceptance of applications. The proposed requirements for time and place of submission are reasonable in order to assure an orderly process for the reception of applications and to enable the Commissioner to efficiently complete the administrative tasks related to the applications.

Subpart 5. Commissioner's Review of Application. It is necessary that procedures be established for the review and approval or rejection of applications for preference rights leases.

It is reasonable that the Commissioner review the applications to assure that all requirements of the application process have been complied with and that the application is complete in all respects.

Subpart 6. Rejection of Applications. It is necessary that the Commissioner's authority to reject applications be recognized in the rules. It is reasonable that the Commissioner provide standards to the applicants in order that they may be aware prior to making an application of circumstances in which the Commissioner will reject applications. The conditions specified in this subpart for rejection of an application are that the application is incomplete or that conditions exist which render the lands in question no longer eligible for preference rights leasing.

One example of the latter type of condition is simultaneous filing of applications. The proposed rule provides that the simultaneous filing of more than one application for the same mining unit is evidence that exploration interest in that mining unit is sufficiently high that the land should be withdrawn from preference rights leasing and only be offered for lease by public lease sale. Other examples of conditions which will cause rejection of the application are conditions in which the lands in question were not on the preference rights lease availability list or lands which were for some reason withdrawn from the list. All of the various conditions listed for rejection of a preference rights lease application, including the reservation of the right to reject any and all applications, are reasonable exercises of the

Commissioner's discretion to enter into leases only when the Commissioner finds that it is in the best interests of the State to do so.

The rule amendments establish procedures by which a party can determine in advance whether conditions exist which would cause a preference rights lease application to be rejected. The applicant may also request a review of the applicant's qualifications to hold a mineral lease. These provisions are necessary in that they allow the applicant to avoid paying the non-refundable application fee when circumstances already exist which will require the Commissioner to reject the application. It is reasonable that the Commissioner provide this information when it is available in order to not unduly burden the exploration budgets of potential preference rights lease applicants.

Subpart 7. Issuance of Lease. It is necessary and reasonable that if the Commissioner determines that a lease should be issued that such a lease should be issued using the same lease form and with the same Executive Council approval as leases issued pursuant to a public lease sale and leases issued by negotiation.

A distinction is made in the proposed preference rights lease system rule amendments in that base rental rates and base royalty rates are specified for preference rights leases to be not less than the rates for leases issued pursuant to public lease sale and leases issued by negotiation. The Commissioner intends that preference rights leases should usually be issued at the base

royalty rate as is specified in part 6125.0700, paragraph 8, for those other types of leases. Availability of this type of lease at the base rate is part of the intended incentive of the preference rights lease system, namely the incentive being offered to encourage exploration in areas where there is not currently any active competitive exploration interest. However, there may be times when circumstances dictate that the rate in a particular area be higher than the base rate. It is the Commissioner's intention that in such a circumstance the mining units for which a higher rate would be expected would be designated in the preference rights availability list as being available only at a rate higher than the base rate.

It is necessary and reasonable to assure a fair return to the State for its natural resources that base rental rates and base royalty rates for preference rights leases be not less than those rates for leases issued pursuant to a public lease sale and leases issued by negotiation and that at the Commissioner's discretion there be instances where the royalty rate would be higher than rates for those other types of leases.

Subpart 8. Report to Executive Council. The preference rights lease system is a new system for making lands available for exploration and lease. Because the system has not been previously tried, it is reasonable that the Executive Council be kept informed about the use and results of the system through required annual reports.

F. AUTHORIZATION TO CONDUCT GEOLOGICAL DATA GATHERING ACTIVITIES (PART 6125.0620).

The Department of Natural Resources began issuing walk-on authorizations in 1979. These authorizations allowed parties to conduct limited surface data gathering activities relating to the continuity of geologic formations. Beginning in 1991, these authorizations were modified and became known as regional geological reconnaissance authorizations. These authorizations allowed the same activities and added the right to conduct drilling through the glacial overburden. The authorization is for a specific area and allows drilling of the overburden with bedrock penetration limited to 20 feet. Prior to conducting any activities, the holder of the authorization must obtain permission to proceed from the surface owners and the State reserves the right to refuse permission to conduct any surface activities or drilling activities on particular sites due to natural resource management concerns. In addition, the authorization is nonexclusive and nontransferable and it does not grant any prescriptive rights to a mineral lease on the property.

The regional geological reconnaissance authorization has been developed to allow some preliminary level of exploration activity without a formal lease. This has been done with the powers and duties vested in the Commissioner by statute (Minnesota Statutes, section 84.027) with respect to the minerals of the State. In the exercise of those powers and also in consideration of the

Commissioner's statutory authority to lease lands, the Commissioner has authority to allow uses of State owned land for which the right of use granted is less comprehensive than the right of use granted by a lease. Thus, contained within the Commissioner's general powers and the authority to lease is the Commissioner's authority to allow geological data gathering activity on State land without the granting of a State lease. Because the data gathering activities are early stages of exploration, it is necessary and reasonable that these activities now be covered by these rules.

The authorization gives the explorer an alternative to the leasing procedures. The authorization may be used by all parties in their area of interest for future leasing activities. It can be utilized by small businesses and individuals to lessen the lease acquisition costs.

The regional geological reconnaissance authorization also provides additional benefit to the State in that the authorization requires that all data gathered as a result of the authorization must be submitted to the State after the expiration of the authorization. This data becomes public data which is available for further analysis by State researchers and by other potential explorers. The submission of this data benefits the State by increasing what is known about the geologic setting of the State.

The data gathering activities which the Commissioner will allow are not as extensive as activities which could be undertaken by a holder of a State lease. These data gathering activities will be allowed without a lease and therefore without any of the

procedures connected with a lease which are intended to guarantee the State a fair return from any discovered resources. It is therefore reasonable and necessary that the authorization does not grant any rights to a lease and is only a non-exclusive right to gather data. Any explorer seeking a lease must still meet the requirements for holding a lease and obtain a lease before securing any exclusive right to explore and develop any mineral discovery.

It is reasonable and necessary to collect a fee to help defray administrative costs. This fee, along with the qualification standards of part 6125.0410, will discourage frivolous applications and applications from parties unable to perform under the terms of the authorization.

G. ANNUAL RENTAL (PART 6125.0700, PARAGRAPH 6).

The current lease provides for rentals that increase during the term of the lease. The proposed amendments to the rules include a proposed increase in these rental rates. The proposed increases result from the overall goal of the State of providing a reasonable return to the trust funds receiving revenue from State leases while also recognizing that it is the policy of the Commissioner to encourage exploration of state lands. Realizing that exploration budgets are limited, the Commissioner's preference is that exploration dollars be used principally for conducting exploration work and be used secondarily for payment of rental.

This means that rental rates are being kept low in the first several years of the lease to help encourage exploration.

It is also important, however, that the trust funds and other funds which receive revenue from the leases receive a return which is reasonably related to a fair market value of the land rental. The beginning rental rate of $1 per acre per year for the first two years of the lease has not been increased since 1966. In considering whether to increase rental rates at this time, the Commissioner reviewed and considered rental rates in leases from other states, rental rates in a few publicly available private leases, and the rate of inflation since 1966 and since 1988 (when the lease rules were last amended). The proposed changes are considered necessary to offer a return to the trusts of an amount of revenue closer to the fair market value of rental of these lands. An earlier draft of the rules amendments contained increases in rental rates which were larger than the increases settled upon for the final draft. Comments received from the public were generally in opposition to any increase in rental rates. The comments often took the form of stating that exploration money should be spent on exploration and that an increase in rentals would decrease the portion of an exploration budget which could be spent on actual exploration. While the final draft contains increases which are smaller than the increases contained in earlier drafts, the increases are retained. The changes are considered reasonable in that even with the increase, rental will remain a cost which makes up only a small percentage of

the typical exploration budget. The increases are not so great as to unduly burden exploration budgets.

The current lease provides that rentals for any calendar year be used as credits against royalties due and payable during the same calendar year. This provision is changed to limit the amount that may be used as a credit to any amount paid in excess of the rate of five dollars per acre per year. The limitation is a recognition that the State lease constitutes an exclusive right to the State owned minerals and, in the Commissioner's opinion, it is appropriate that some rental should be paid each year for this exclusive right. The intent of the new wording of this section is that not all rental obligations be discharged by the payment of mineral royalties and that a certain minimum rental be due and payable even during a period when mineral production requires the payment of a royalty. Even with this new limitation on credit against rental for royalty payment, a credit against royalty for rentals paid in a year in which royalties are due and payable is still allowed as the Commissioner recognizes that the best interests of both the lessee and the State can be served by retaining an incentive to the lessee to engage in royalty producing mining activities.

Another change to this section removes from the lease the allowance that any amount paid for rental in excess of eight dollars per acre per year for any previous calendar year may be

credited on royalty that may become due. The removal of this crediting of rental paid to royalty is a further recognition that the State lease constitutes an exclusive right to the State owned minerals and, in the Commissioner's opinion, it is appropriate that some rental should be paid each year for this exclusive right. The removal of this credit also recognizes that the State lands under lease may have significant other natural resource values. These values are part of the reason why rental payments are required. Further, the basic unit of time for which rentals are paid is the calendar year. Even if the lessee is actively engaged in mining and producing ores during any one calendar year, this does not have any effect on the presence of natural resource values during other calendar years. This change to the rules recognizes that each calendar year should be treated as a completely separate period and that it is therefore not appropriate for rental from one calendar year to be credited against royalties due during another calendar year.

Another change in this paragraph is to change the description of what lands may be included in a mining unit. The wording here in the lease is changed to be identical with the wording of part 6125.0400. Part 6125.0400 says the Commissioner may issue leases and then describes lands for which those leases may be issued. This section of the lease describing what may be included in a mining unit will now contain a description identical to the description contained in 6125.0400. This change is reasonable and

necessary as it will standardize the wording in two different parts of the rules and thereby eliminate a potential source of confusion and disagreement.

H. ROYALTY AND BASE ROYALTY RATE TABLE (PART 6125.0700, PARAGRAPH 8, AND EXHIBIT A).

The current royalty rate is based on the value of the metallic minerals and associated mineral products recovered in the mill concentrate, less deductions for smelter charges. The royalty rate would be changed to be based on a net return value of the metallic minerals and associated mineral products. The change from use of mill concentrate to use of net return value is discussed in the next section of this statement. Because of the allowance of additional deductions, the value of the metallic minerals and associated minerals products against which the royalty rate is assessed will be decreased. It is reasonable and necessary that a new base royalty rate be selected. The new base royalty rate is intended to provide from each mine a similar dollar amount return to the State as would have been provided from that mine under the old valuation system and base royalty rate. The new definition of net return value and the new base royalty rate are intended to provide an objective and even-handed treatment to individuals developing different types of mineral deposits while maintaining approximately the same dollar amount return to the State for each

individual mineral deposit. The newly selected percentage rate is 3.95%, a change from the previous rate of 3.5%.

An earlier draft of the rules amendments contained a base royalty rate which was higher than the rate settled upon for the final draft. Comments received from the public were generally in opposition to this higher rate. The comments often took the form of stating that an increase in the base royalty rate would discourage exploration at a time when exploration budgets are limited. A higher royalty rate would have the effect of encouraging explorers to do their exploration elsewhere. After consideration of the comments and reconsideration of earlier calculations, a base royalty rate lower than the rate of the earlier drafts was selected for the final draft. The base royalty rate as selected is necessary and reasonable to provide a fair return to the State for its nonrenewable natural resources while still providing a reasonable opportunity for explorers.

It is reasonable that the State obtain a higher percentage rate of return for ores which have a very high value. The costs of producing the ore are not dependent upon the value of the ore and it is appropriate that the State participate in any unusually rich discovery by receiving a higher royalty for highly valued ore. It is therefore reasonable that when the value of the ore increases beyond an established point, the royalty percentage rate also increases. The point established in these rules beyond which the

base royalty rate begins to increase is when the net return value of the metallic minerals and associated mineral products recovered from each ton of dried cured ore mined from the mining unit exceeds $75. All ores which have a net return value of greater than $75 per ton will require the payment of a base royalty rate which is higher than the minimum rate of 3.95%.

This "bonanza clause " adjustment to the base royalty rate is not new to the rules. The current rules also contain a formula for an upward adjustment of royalty rates for ores with a value of greater than $75 per ton. The current rule increases the royalty rate by use of a linear algebraic formula. A graph of royalty rates produced by this formula would show a flat line (indicating no change in royalty rate) for values per ton from zero to $75. At $75, the graph would incline upwards (indicating an increase in royalty rate) with an increase in upward slope of the line at two additional points ($150 and $225).

The new rule seeks to lessen the importance of the three change points through use of incremental increases in the base royalty rate. The incremental increase amounts will be established by use of a quadratic formula. A graph of royalty rates produced by the new formula takes the form of a parabola. Various formulas were derived and analyzed by the Department. The formula that was selected was selected because the graph of the parabola from this formula closely resembles the shape of the graph of the linear

formula used in the current rules. The formula produces increases in the royalty rate at approximately the same rate as the old formula, but the use of the quadratic formula results in a smooth and consistent rate of increase for the royalty base rate. The consistent rate of increase should discourage any possibly unsound resource decisions motivated by an attempt to manipulate ore value around a specific value for the purposes of affecting the base royalty rate. The incremental increase of the royalty base rate is reasonable and necessary to assure that decisions about quality and quantity of ore to be mined are made solely on the basis of sound mining practice and not for speculative reasons.

It is also reasonable that there be a maximum royalty rate. These amendments continue the provision which was already present in the rules which states that the royalty rate must be not more than 20%. Under the amendments to the rules, this maximum royalty would be assessed for ores which have a net return value of $444.01 and above.

It is necessary and reasonable that every attempt be made to lessen confusion about what the base royalty rate is for any given net return value of ore. This has been done in the proposed amendments to the rules by providing a table of royalty rates showing what the royalty rate is for every net return value.

BASE ROYALTY RATE FORMULAS FOR STATE METALLIC MINERAL LEASES

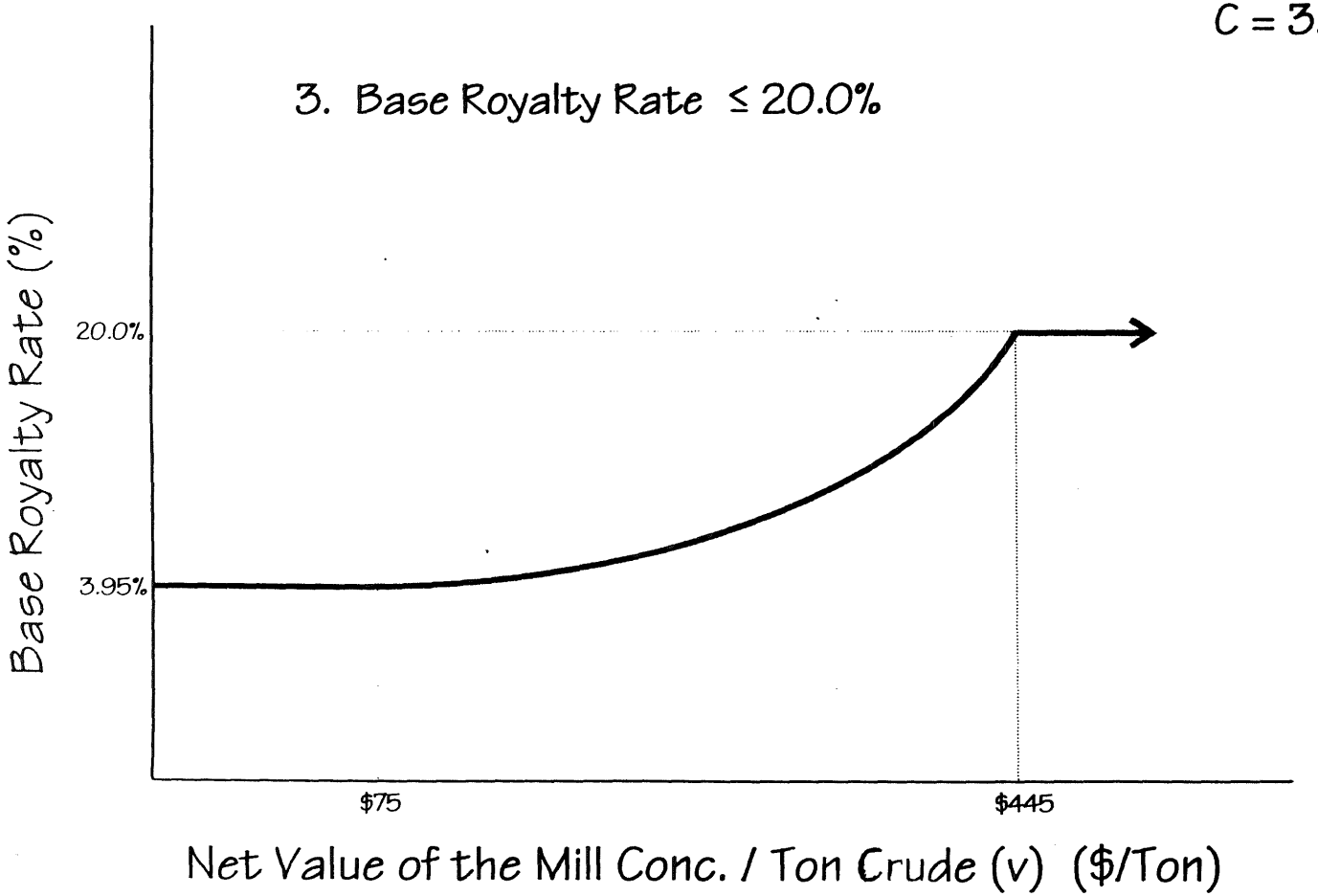
1. Net Value of the Mill Conc. (v) ≤ $75 ; Base Royalty Rate = 3.95%
2. Net Value of the Mill Conc. (v) > $75 ; Base Royalty Rate = $Av^2 + Bv + C$

where... $A = 9.74795020 \times 10^{-5}$

$B = -7.31096265 \times 10^{-3}$

$C = 3.95$

3. Base Royalty Rate ≤ 20.0%



The base royalty rate table is based on the graph of the quadratic formula. However, it should be clearly understood that the base royalty rate table provides the royalty rate. The quadratic formula and the graph of the line derived from the quadratic formula is provided in this statement only as a means of showing how the base royalty rate table was derived. It is intended that the base royalty rate table, not the graph of the line derived from the quadratic formula, be used to determine base royalty rate.

The actual quadratic equation used to produce the graph of a line which the base royalty rate table is based upon is as follows:

$$Av^2 + Bv + C = \text{base royalty rate;}$$

where:

v = net return value of the metallic minerals and associated mineral products;

A = $9.74795020 \times 10^{-5}$;

B = $-7.31096265 \times 10^{-3}$; and

C = 3.95

The current rules redefine the points at which the "bonanza clause" increases the base royalty rate by using the Producer Price Index for All Commodities as published by the Bureau of Labor Statistics of the United States Department of Labor. The adjustment done by this escalator clause would change the points at

which the royalty increases from $75, $150, and $225 to other points which would be equal to those points as adjusted for the change in the Producer Price Index. The amendments to the rules retain the basic concept behind this system but for reasons of simplicity adopt a different procedure.

If the current procedure were maintained, it would be necessary to apply the escalator clause to every net return value in the base royalty table. It was decided to use the Producer Price Index to deescalate the net return value to a value adjusted for the change in the Producer Price Index. The deescalated net return value will be used to determine base royalty rate from the base royalty rate table. The change to a deescalated net return value will eliminate the necessity of continually revising the base royalty table. The system is designed to maintain the relative position of the base royalty rate increase against some constant value of the points at which royalty rates increase. The intention is not to penalize the lessee with a higher base royalty rate for increases in ore value which are solely caused by inflation. An example of how the adjustment will be done is provided in the rules.

The rules are amended to change from 1967 to 1982 as the year for which the Producer Price Index for All Commodities equals 100. The United States government agency which publishes this index now publishes the index in the 1982 format. It would be possible to continue to use the 1967 index by converting published data to that index, but it is more convenient for the Commissioner to use data

as published and based on 1982. The change to 1982 does not affect the calculations conducted under this part of the rules. It is necessary and reasonable that the rules use the base year which is used in the published form of these statistics.

An earlier draft of the rules amendments deleted the escalation clause entirely. Comments received from the public favored the retention of the escalation clause as an adjustment for inflation. The comments stated that failure to adjust the base royalty rate table for inflation had the effect of punishing potential producers with an increased royalty rate for the increased value of ore which might be produced solely by inflation. The Department notes that fluctuations in metal prices and production costs can be very erratic. Increases in net return value will not always be related solely to inflation. Nevertheless, the comments convinced the Commissioner that some adjustment to the base royalty rate table for inflation is reasonable. A deescalator clause was inserted into the final draft of the rules.

The amount of interest due and payable on deferred royalties is will be reduced from eight percent to six percent per year. This is reasonable in that the percentage rate is consistent with the interest rate proposed in another part of the rules to be due and payable for overdue rental payments. The rate of six percent is reasonable when viewed in the context of market interest rates

and is also reasonable in that it is the rate specified by Minnesota Statutes, section 334.01, subdivision 1, as the rate of interest for any legal indebtedness unless a different rate is contracted for in writing.

I. NET RETURN VALUE (PART 6125.0700, PARAGRAPH 9).

The amendments to the rules propose to assess the amount of royalty to be paid based on a net return value of the metallic minerals and associated mineral products recovered from each ton of dried crude ore mined from the mining unit.

The current rules require a determination of value of metallic minerals and associated mineral products from a mill concentrate, less deductions for smelter charges. The amendments to the rules add additional items to the list of what are allowable charges. The charges proposed to be added to the list of allowable charges include deductions for refinery charges, refinery losses and penalties for impurities. The value obtained after the allowable charges are subtracted will be defined as the "net return value".

It is necessary that the method of determining the value of metallic minerals and associated mineral products be revised to remedy certain inequities created by the existing rules. The current rules allow only deductions for the base smelter treatment charges and smelter losses that are deducted to arrive at the gross payment to the lessee. However, some metallic mineral ores do not require a smelting step in the process of preparing the metal

product for sale. Those metallic mineral ores which do not require smelting have an artificial economic advantage when compared to mineral ores of a similar basic economic value which do require smelting. The allowance of additional deductions is a reasonable step to remedy the inequities in the current rules and to equalize the conditions of valuation for all metallic minerals and associated mineral products.

Refinery charges and refinery losses are added to the list of allowable charges. These charges are made as a result of mineral losses which occur when it is necessary to purify the recovered metals by refining. Penalties for impurities are also added to the list of allowable deductions. Metal concentrates usually contain more than one metal. Depending upon the composition of the concentrate, some metals can cause lowered rates of recovery for desirable metals, increased treatment costs, and increased costs for waste disposal. These charges and penalties can appear as a separate item, as an adjustment to the metal price paid to the producer, or as an unseen component of the smelter treatment charge. These costs are beyond the control of the producer and it is reasonable that they be allowed as deductions to provide for a determination of value of the recovered metallic minerals and associated mineral products that is more closely related to actual return to the producer.

Comments received from the public favored the inclusion of transportation costs as an allowable charge. The comments stated that after mining it is often necessary to transport the ore a

great distance to a smelter or refinery for additional processing. The comments stated that this is an unavoidable cost and should therefore be an allowable charge. The Commissioner finds that while this cost in unavoidable, it is not a cost over which the lessee would have no control. There are often two or more processing facilities for the miner to choose from. This means that the lessee would, in fact, have some control over the transportation costs. Additionally, the allowance of transportation costs would introduce a major third party, the transporter, into the determination of value of State owned metallic minerals. The area of transportation cost determination is an area which is already likely to produce monitoring problems for the State. The Commissioner has determined that it is necessary and reasonable that transportation not be an allowable charge in determination of net return value.

Comments received from the public also favored the adoption of what the comments called "an industry standard" for determining value, a "net smelter return". The Commissioner finds that while the term "net smelter return" is in wide use, their is not any consensus on what "net smelter return" actually means. There are nearly as many definitions of "net smelter return" as there are contracts calling for valuation by this technique. Further the Commissioner finds that "net return value" as defined in these rules comes very close to being "net smelter return" as it is often defined except that "net return value" does not allow inclusion of transportation costs as an allowable charge. The Commissioner does

not find it necessary or reasonable to adopt "net smelter return" as the means of determining value of recovered metallic minerals and associated mineral products.

As discussed in a previous section of this statement, the change to net return value will result in generally lower values being obtained for the final metal products. These lower values make it necessary that a higher base royalty percentage rate be used to assure that the State under the new rules will obtain approximately the same amount of dollars in royalty for ore of similar value as it obtained under the lower base royalty percentage rate in the current rules.

The system of valuation in the current rules assume that all metal products will be recovered from the ore by smelting or by use of a similar technique. Comments received from the public in response to an earlier draft of the rules pointed out that in modern recovery processes, the final metal product may be recovered in a hydrometallurgical process, or in a process which combines hydrometallurgy and pyrometallurgy. The amendments to the rules now recognize this reality. The amendments provide definitions of "hydrometallurgy" and "pyrometallurgy" and provide a method of determining "net return value" when a hydrometallurgical process is used to recover the final metal product. This is necessary because modern mineral recovery techniques often include both

hydrometallurgical processes and combination hydrometallurgical and pyrometallurgical processes.

Development of a system to define what were allowable charges in determining the net return value of metallic minerals and associated mineral products recovered in a hydrometallurgical process or in a combination hydrometallurgical and pyrometallurgical process utilized comments received from the public. The comments were analyzed and a system was developed in which the allowable charges are intended to be those charges which are allowable charges in an analogous stage of metal recovery in a smelting process. For example, those charges attributable to recovery of dissolved metal from the leaching solution in a hydrometallurgical process are analogous to charges for base smelter treatment and refinery charges when recovery is from a smelting process. Both of those types of charges are allowable charges under the rules amendments. Charges attributable to the leaching of ores for recovery of metals in a hydrometallurgical process are analogous to preparation of a mill concentrate for a smelting process. Both of these types of charges are not allowable charges under the rules amendments. The proposed method for obtaining a net return value for metallic minerals and associated mineral products recovered in a hydrometallurgical process or a combination hydrometallurgical and pyrometallurgical process is reasonable because it provides equal treatment to recovery by a smelting process and recovery by a hydrometallurgical process or a combination hydrometallurgical and pyrometallurgical process.

The proposed amendments require that the lessee provide to the State certified copies of all smelter contracts, settlement sheets, and other agreements which detail and describe the allowable charges. This is a necessary and reasonable requirement to allow the State to determine if the charges are, in fact, allowable. This determination by the State is necessary to assure that the State receives fair and full value for its mineral resources.

J. NOTICE TO OWNER OF SURFACE ESTATE (PART 6125.0700, PARAGRAPH 25).

The State lease does not grant legal rights to property interests not owned by the State. The leased premises often are State owned mineral rights only and do not include the surface estate. When the State does not own the surface estate, occasions will arise when it is necessary for the State to act less as a mineral landowner and act more as a regulator and defender of the public interest. Because of this, current practice is to instruct lessees to contact surface owners. Experience has shown that lessees do contact surface owners to inform them of proposed activities and that arrangements are made to pay for any damages to surface interests.

It is reasonable that what is current practice be included as part of the rules and the lease form. The proposed amendments to the rules require that the lessee give notice, in writing, to the owner or administrator of the surface estate at least 20 days in

advance of any activities which will require use of the surface estate on the leased premises. The administrator or owner of the surface estate may be an individual, a business organization, or another unit of government. Whichever the case may be, it is reasonable to assume that the owner or administrator will be better able to evaluate the extent of use of the surface estate by the State mineral lessee if the owner or administrator has advance notice of that surface use. In addition, inclusion of this notification requirement in the lease form will assure that the lessee will contact the surface owner and that those parties will be able to discuss the lessee's responsibility for damages to surface interests. It is therefore necessary and reasonable that the State require that advance notice be given.

It is necessary and reasonable that the notice be given at least 20 days in advance of any activities which will require use of the surface estate. The Commissioner's experience in the past in regulating exploration leads the Commissioner to conclude that many or most of the exploration activities which will require use of the surface estate have minimal or no impact on other surface uses. The Commissioner has determined that for the types of activities which will have an impact on surface uses, 20 days is sufficient time for the surface owner or administrator to evaluate the extent of the use of the surface estate by the explorer. The surface owner or administrator will have time in that period to determine the extent of the conflict with current uses and to

discuss with the lessee its proposed actions in response to or in concert with the proposed exploration activities.

K. REVIEW OF EXPLORATION AND EXPLORATION SITE CLOSURE AND STABILIZATION (PART 6125.0700, PARAGRAPH 26); DEFINITION OF "EXPLORATION".

Pursuant to the terms of the State lease, the Commissioner has always exerted a measure of control of exploration activities. The State lease includes provisions governing surface use, drilling, conduct of operations, and compliance with applicable laws. To aid the exploration process, State lessees have been provided, since the 1970's, with a "Checklist for State Lessees" to guide exploration activities on all State metallic mineral leases. The checklist informed the lessee of steps which were to be taken before exploration activities could begin. The checklist requires the lessee to submit information that allows the Commissioner to review the location of exploration and the plans for such exploration. This review is important because it allows the Commissioner to be aware of exploration which may have an impact on other special features or uses of the leased premises. The review allows the Commissioner to review exploration plans and advise about ways to minimize any negative impact.

The checklist also made the explorer aware of requirements of the exploratory borings law, of the necessity to contact surface managers, and of the necessity of reviewing with the Commissioner

proposed methods of exploration. It is reasonable that the Commissioner exert this control over location and methods of exploration. The amendments to the rule are necessary to formalize this review procedure by adoption of the procedure into rule.

These amendments to the rules include the substitution of the word "explore" (and forms of the word "explore") for the word "prospect" (and forms of the word "prospect") in parts 6125.0100, 6125.0400, and throughout the rules. The terms "explore", "explorer", "exploration", and other forms of the word are now used throughout the lease form. It is necessary and reasonable that a definition of "exploration" be included in the rules. The definition, now provided in part 6125.0700, paragraph 26, will clarify when the provisions of this paragraph are applicable.

The proposed definition is intentionally broad and intends to include any and all activities involved in the searching for or investigating of a mineral deposit. It includes procedures which do not disturb the land surface such as aerial magnetic surveys as well as similar activities carried out by a person walking on the ground. It also includes activities which involve disturbance of the land surface including all of the listed activities. This is a reasonable definition of "exploration" in that the Commissioner wishes to be informed of and exercise some measure of control over all of these types of activities.

Forms of the word "explore" are substituted for forms of the word "prospect" throughout the rules. Among the purposes that these rules are meant to serve is that they are to encourage discovery and appropriate development of the metallic minerals resources of the State. To properly serve that purpose, it is necessary that the language of the rules reflect to the maximum extent possible the overall purpose of the rules. Viewed within this context, and also in consideration of dictionary definitions and current use in the metallic minerals exploration industry, and also considering that the amended rules will contain a definition of "exploration", but will not contain a definition of "prospecting", it is reasonable that the word "explore" be used in place of the word "prospect" throughout these rules.

Review of these considerations leads to the conclusion that it is necessary and reasonable that the rules be amended in each place where the word "prospect" appears and that the word "explore" instead be inserted in that place.

Part 6125.0700, paragraph 26, subparagraph a. specifies the steps to be followed and the information required to be submitted for exploration plan review. It is reasonable that the Commissioner be notified at least 20 days in advance of any exploration on the leased premises. This period of time normally is sufficient to allow the Commissioner to evaluate the plan of exploration. The Commissioner's review will be to determine that

the plan is consistent with other natural resource management concerns for the leased premises.

Current practice is to include special conditions in the lease. This practice was started in the 1980's in response to expressed environmental concerns. Current leases make the leasehold "subject to" a variety of features and conditions. These features and conditions include wildlife management areas, peatland watershed areas, natural heritage sites or features, designated trout streams, State canoe and boating routes, historic or archaeological sites, wildlife management sites, special review of plans, rights-of-way, fire towers, campgrounds, public access sites, State highway rest areas, special management areas and trails, and other encumbrances. The lessee is required to conduct any exploration giving special regard to the feature or condition that the lease is "subject to".

Under the proposed amendments, the Commissioner will identify special features or uses within the leased premises. At the time the property is offered for lease, known special features or uses will be identified in the mining unit book or the preference rights lease availability list. During the review of exploration plans, the Commissioner may require the lessee to adjust its exploration plans or to take other steps to mitigate any impacts on identified special features or uses. The review of exploration plans also makes it possible for the Commissioner to identify special features such as bald eagle nests which may come into being after the lease is issued. The information required to be submitted is reasonable

in that it will allow the Commissioner to make an evaluation of the exploration plan to assure minimum future adverse impact on other identified natural resources.

Submission of the plan does not constitute an unreasonable burden on the explorer because the information required is of the sort which the explorer can reasonably be expected to generate in the course of preparing for exploration. Submission of the plan requires that all of this information be shared with and reviewed by the Commissioner.

Comments received from the public in response to an earlier draft of the rules pointed out that while the time was clearly specified for when the exploration plan must be submitted to the Commissioner, there was no clear deadline for the Commissioner to approve or disapprove of the plan. The comments stated that uncertainty could arise about whether approval had actually been granted. That uncertainty and delay would constitute a substantial burden upon the explorer. In response to these comments a new provision was added to the rules to specify that unless notified to the contrary by the Commissioner within 20 days after receipt of the exploration plan by the Commissioner, the lessee may proceed with exploration as described in the submitted exploration plan. The specified time frame is a reasonable amount of time for the Commissioner to conduct at least a preliminary review of the proposed exploration and respond to the explorer. It must be noted, however, that the response within 20 days might not always

include complete approval or disapproval. The Commissioner's response might include requests for modifications to the exploration plan or other conditional responses.

The information required to be submitted includes a proposed plan for site closure and stabilization, if needed. The Commissioner recognizes that many exploration plans will involve minimal or no disturbance of the surface of the land and that for those activities a site closure and stabilization plan may not be necessary.

Part 6125,0700, paragraph 26, subparagraph b. describes the obligations of the lessee upon completion of exploration. The amendments follow the requirements currently found in paragraph 33 of the lease, with these requirements made specific to the exploration process. It is reasonable to require that the explorer remove its supplies and equipment from the leased premises when it is no longer exploring the premises. It is reasonable that the premises and roads be restored to a condition satisfactory to the Commissioner. It is reasonable that in those cases where there has been sufficient disturbance of the surface or other activities which require site closure and stabilization that site closure and stabilization be carried out to the satisfaction of the Commissioner. Because the Commissioner has determined that site closure and stabilization, when needed, is a matter of great importance to proper natural resource management, it is necessary

that the lessee notify the Commissioner in writing that the obligations imposed by the exploration site closure and stabilization plan have been completed. It is necessary and reasonable and in support of best natural resource management practices that the lessee shall not be relieved of those obligations until release has been granted by the Commissioner.

L. LESSEE MAY REQUEST AN EARLY DETERMINATION OF WHETHER STATE WILL EXERCISE ITS OPTION TO CANCEL A LEASE DURING THE 21ST AND 36TH FULL YEAR OF THE LEASE (PART 6125.0700, PARAGRAPH 31).

During public comment periods, certain individuals have raised the possibility that in some instances the State's option to cancel a lease during the 21st and 36th full year of the lease may unnecessarily place the lessee at a competitive disadvantage. Specifically, those making comments have suggested that a lessee seeking financing for mine development during the twentieth year of the lease might face reluctance on the part of financial institutions when the development has the inherent insecurity of possible cancellation of the lease by the State in the near future. Those making this comment have suggested removal from the lease of this State right of cancellation.

The Commissioner does not wish to surrender the right of cancellation of the lease. The cancellation right protects the State's interest in having the property developed if it is

environmentally sound to do so. The Commissioner believes that the right of cancellation can serve legitimate policy needs of the State as landowner and as trust manager. The proposed change to this section of the lease form should be seen as an attempt to respond to the concerns expressed during public comment while retaining the State's right of cancellation for those times when cancellation is appropriate.

Under the proposed amendment to the lease form, if the lessee is in a position where the State's right of cancellation poses a obstacle to further development, or for other reasons, the lessee may at any time request a determination of whether the State will exercise its option to cancel the lease. The Commissioner in response to the lessee's request may decide to not exercise the State's option to cancel the lease and thereby agree to continue the lease in effect or the Commissioner may decide to not make an early determination and thereby retain the State's option to cancel the lease at the times specified in the lease.

If the Commissioner decides to not exercise the State's option to cancel the lease, the Commissioner may require the lessee to meet additional conditions and may retain an option to cancel the lease at a time other than the times specified in the lease. For example, if the lessee in the twentieth year of the lease requested a determination not to cancel because the possibility of cancellation was threatening an application for mine development financing, the Commissioner could agree not to exercise the State's option to cancel the lease but attach a condition to that decision

which would require that financing arrangements be finalized and evidence of the financing be presented to the Commissioner within a specified time frame or the Commissioner would have authority to cancel the lease. Similarly, a lessee in the eighteenth year of the lease could request a determination not to cancel because financing was being obtained for a five year plan of development. The five year development would allow the lessee to meet at the end of the twenty-third full year of the lease the conditions which the lease states must be met by the end of the twentieth full calendar year of the lease or the State may cancel the lease. The Commissioner could agree not to exercise the State's option to cancel the lease but attach a condition to that decision which would retain for the Commissioner authority to cancel the lease at the end of the twenty-third year if the lease's original twenty year goals had not been met.

In either of the above examples, the Commissioner would also retain the authority to decline to make the early determination of whether to exercise the State's option to cancel the lease.

This proposed change to the lease form is necessary to respond to a perceived need for security in long range planning by potential explorers and is reasonable in that the Commissioner does not abandon the necessary authority to cancel the lease if the standards specified by the lease are not met.

M. RIGHTS OF LESSOR AND LESSEE DURING 180-DAY PERIOD FOLLOWING TERMINATION OF LEASE (PART 6125.0700, PARAGRAPH 33.

Nonferrous Metallic Mineral Mineland Reclamation Rules (Minnesota Rules, parts 6132.0100 through 6132.5300) were promulgated on March 24, 1993. Several of the restrictions and requirements imposed by paragraph 31 on the lessee during the 180 day period following termination of the lease are matters which are addressed by the Reclamation Rules. It is necessary and reasonable that the lessee be able to look to only one source for reclamation requirements. The proposed changes to this paragraph are therefore necessary and reasonable to remove from the lease rules certain references to activities now regulated by the Reclamation Rules.

III. REPEALER

It is necessary and reasonable that Minnesota Rules, part 6125.0300, which is a part of these rules, be repealed due to a statutory change which is discussed in Part II of this statement. The statutory change removed the word "permit" from the statute and this repeal removes references to "permit" from these rules.

It is necessary and reasonable that Minnesota Rules, parts 6125.1000 through 6125.4100 be repealed due to the fact that those rules are outdated rules regulating permits and leases for gold and other ores, and permits and leases for source material. Those

rules are completely superseded by these rules and other rules and are no longer necessary.

IV. IMPACT ON SMALL BUSINESSES, FISCAL IMPACT ON LOCAL GOVERNMENT AND IMPACT ON AGRICULTURAL LAND.

The Minnesota Administrative Procedures Act and other associated statutes, direct the Commissioner to consider certain issues during the process of rule development and adoption. Issues considered by the Commissioner during consideration of these rule amendments include:

1. Impact of the rules on small businesses, as required by Minnesota Statutes, section 14.115;

2. Impact of the rules on expenditure of public money by local public bodies, as required by Minnesota Statutes, section 14.11, subdivision 1; and

3. Impact of the rules on agricultural land, as required by Minnesota Statutes, section 14.11, subdivision 2, and sections 17.80 through 17.84.

1. Impact of the rules on small businesses. Minnesota Statutes, section 14.115, requires that the Commissioner consider methods to reduce the impact of the proposed amendments to the rules on small businesses to the extent that doing so would not be contrary to statutory objectives that are the basis of the proposed rules. The Commissioner has considered the following:

1. The establishment of less stringent compliance or reporting requirements for small businesses;

2. The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

3. The consolidation or simplification of compliance or reporting requirements for small businesses;

4. The establishment of performance standards for small businesses to replace design or operational standards required in the rule; and

5. The exemption of small businesses from any or all requirements of the rule.

As to items 1, 2, and 3, the Commissioner finds that the compliance and reporting requirements and the schedules and deadlines for compliance and reporting contained in these rules are extensions of the State's authority as a landowner to lease State lands and to obtain information from the lessee about activities conducted on those lands. The requirements are not related to regulatory functions of the State and do not affect any business, large or small, until that business elects to lease State lands. The Commissioner finds that the requirements are necessary and reasonable for the efficient and thorough administration of leases of State owned mineral rights by the State as landowner, and that establishment of less stringent requirements for small businesses would impair administration of the leases. The Commissioner finds

that less stringent requirements for small businesses would not be appropriate.

Several changes to the rules increase the flexibility of the leasing system, providing additional opportunities that may be of benefit to all businesses, including small businesses. For example, the changes to part 6125.0700, paragraph 31 which provide for a conditional predetermination of the Commissioner's option to cancel the lease may make it easier to arrange financing in certain situations. The preference rights leasing system provides more options for obtaining leases, particularly for the timing of when leases may be obtained. These changes may be beneficial to small businesses.

As to item 4, the Commissioner finds that these rules are already basically established upon performance standards. Therefore it is not feasible to establish performance standards for small businesses to replace design or operational standards required in the rule.

As to item 5, the Commissioner finds that it would not be consistent with sound natural resource management practices to exempt small businesses from any or all requirements of the rules. The requirements of the rule are necessary to facilitate the leasing of State owned mineral rights while maintaining protection of the mineral and other natural resource values of the State land. The procedures necessary for protection of natural resources are independent of the size of the business enterprise which creates the necessity for protection.

Minnesota Statutes, section 14.115, subdivision 4, directs the Department to provide an opportunity for small businesses to participate in the rulemaking process. The Department has taken several steps to provide this opportunity.

A notice of intent to solicit outside opinions was mailed to persons and businesses on the mailing list compiled by the Division of Minerals for this topic area. Drafts of the proposed rules have been made available upon request as soon as a draft was completed and throughout the process. In addition to the individual mailing, all notices of intent to solicit outside opinion were published in the State Register and in the EQB Monitor. Finally, the notice of intent to adopt rules, together with the final draft of proposed amendments to the rules, will be published in the State Register. This last notice and final draft will be sent to all State lessees. A letter describing the notice and rules will be mailed to all those who request a copy, to those on the above mentioned mailing list, and to all parties on the Department's list of persons requesting notices on all rulemaking activities.

2. Impact of the rules on expenditure of public money by local public bodies. In accordance with Minnesota Statutes, section 14.11, subdivision 1, the Commissioner has concluded that the proposed amendments to the rules are not anticipated to result in the expenditure of public money by local governmental bodies.

3. Impact of the rules on agricultural lands. Minnesota Statutes, section 14.11, subdivision 2 requires that the Commissioner shall consider the effect of the proposed amendments to the rules on agricultural lands. However, Minnesota Statutes, section 17.81, subdivision 2 specifically excepts leasing of state owned land for mineral exploration or mining from this review.

V. DEPARTMENT CHARGES IMPOSED BY THE RULES

In accordance with Minnesota Statutes, section 16A.1285, pertaining to departmental charges for goods and services, licenses, or regulations, the rules were submitted to the Commissioner of Finance for the Commissioner of Finance's review and comment on the charges established in these rules. The completed form confirming review and comment by the Commissioner of Finance is attached to this Statement.

VI. WITNESSES

If these proposed rule amendments go to a Public Hearing, the witnesses listed below may testify on behalf of the Commissioner in support of the need for and reasonableness of the proposed rule amendments. The witnesses will be available to answer questions about the development and content of the proposed rule amendments.

William C. Brice, Director, Division of Minerals, 500 Lafayette Road, Saint Paul, Minnesota 55155-4045;

Marty K. Vadis, Assistant Director, Division of Minerals, 1525 Third Avenue East, Hibbing, Minnesota 55746;

Any other employee of the Minnesota Department of Natural Resources.

VII. CONCLUSION

Based on the foregoing, the proposed amendments to the rules concerning the leasing of State owned land for the mining of metallic minerals are both necessary and reasonable.

Rodney W. Sando
Commissioner of Natural Resources

By William C Brice
William C. Brice, Director
Division of Minerals

Date: 1/11/95