

MN AGREEMENT STATE (DRAFT)

Book 1

DRAFT

Minnesota's Draft Application Table of Contents, Book #1:

Letter to Paul Lohaus for submission

4.1 Legal Elements

4.1.1 Statutory Authority

4.1.2 Program Organization

4.1.3 Content of Agreement

4.2 Regulatory Elements

4.2.1 Radiation Protection Standards

4.1

LEGAL ELEMENTS

4.1.1
**STATUTORY
AUTHORITY**

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Statutes Overview for Minnesota

Statutes:

Statutory authority for Minnesota's radiation control and proposed agreement state activities is primarily found in Minnesota Statutes, Sections 144.12-144.121. A copy of these statutes is included in the request for agreement. Other statutes that encompass another portion of the agreement state activities are listed below. All of Minnesota's statutes and rules are accessible on the internet at www.leg.state.mn.us/reg/statutes.html

<u>Mn. Statutory reference</u>	<u>Subject and Reason for mentioning</u>
13.02	Collection, security, and dissemination of records; these are the definitions for Minnesota's data privacy statutes.
13.39	Civil investigation portion covers the requirements the commissioner follows in a pending civil legal action.
13.41	Licensing data covers the requirements that the commissioner must follow to ensure that data collected for licenses is kept within the statutory guidelines of data privacy.
144.989	This legislation is the title for the following enforcement pieces. The parts from 144.989 to 144.993 are referred to as the "Health Enforcement Consolidation Act of 1993."
144.99	Enforcement legislation outlines the authority that the commissioner has to access information, issue correction orders, issue administrative penalty orders, injunctive relief, cease and desist orders, suspension or revocation of permits, licenses, registrations or certificates. Allows for hearings, misdemeanor penalties, and the authority to impound radioactive materials and associate shielding.
144.991	This legislation outlines the administrative penalty order procedure that must be followed.
144.992	False information. This portion points out that a person cannot make false material statements, representation or certification in any of the commissioner's areas or they are subject to actions listed in section 144.99, subdivision 1.
144.993	Recovery of litigation costs and expenses allows the commissioner to recover any costs brought on my any litigation that happens.

- 144.12 Regulations, enforcement, licenses and fees. Overall commissioner authority to regulate, adopt rules, enforce, license and collect fees.
- 144.12(15) Specific to sources of radiation and radioactive isotopes. Lists out specifically the authority does apply to sources of radiation.
- 144.121 X-ray machine and facilities using other sources of ionizing radiation can be registered and commissioner can collect fees and perform inspections.
- 144.1201 Definitions for agreement state program and provides clarification for 144.1202
- 144.1202 U.S. NRC. agreement legislation giving the responsibility and authority for an agreement state program to the Department of Health.
- 144.1203 Training authority given to the commissioner to adopt rules to ensure that individuals handling or utilizing radioactive materials are properly trained and have the qualifications to do so.
- 144.1204 Surety requirement legislation gives the commissioner authority to require financial assurance for radioactive materials licensees.
- 144.1205 Radioactive material; source and special nuclear material; fees; inspection legislation gives the commissioner authority to collect fees, penalties, and conduct inspections.
- 181.931 This legislation covers the definitions used in the sections 181.931 to 181.935. This entire section covers the employee rights.
- 181.932 Disclosure of information by employees covers the actions that are prohibited by an employer who has an employee who files a complaint against the employer.
- 181.933 Notice of termination covers the employee who has been involuntarily terminated, and any defamation action is prohibited.
- 181.934 The department of labor and industry will have rules for the notification of employees by employers of an employee's rights.

181.935

Individual remedies; penalty section refers to the ability of the employee to bring civil action to recover costs and damages caused by violation of 181.932.

Minnesota Statutes 2001, Table of ChaptersTable of contents for Chapter 13**13.02 Collection, security, and dissemination of records; definitions.**

Subdivision 1. **Applicability.** As used in this chapter, the terms defined in this section have the meanings given them.

Subd. 2. **Commissioner.** "Commissioner" means the commissioner of the department of administration.

Subd. 3. **Confidential data on individuals.** "Confidential data on individuals" means data which is made not public by statute or federal law applicable to the data and is inaccessible to the individual subject of that data.

Subd. 3a. **Criminal justice agencies.** "Criminal justice agencies" means all state and local prosecution authorities, all state and local law enforcement agencies, the sentencing guidelines commission, the bureau of criminal apprehension, the department of corrections, and all probation officers who are not part of the judiciary.

Subd. 4. **Data not on individuals.** "Data not on individuals" means all government data which is not data on individuals.

Subd. 5. **Data on individuals.** "Data on individuals" means all government data in which any individual is or can be identified as the subject of that data, unless the appearance of the name or other identifying data can be clearly demonstrated to be only incidental to the data and the data are not accessed by the name or other identifying data of any individual.

Subd. 6. **Designee.** "Designee" means any person designated by a responsible authority to be in charge of individual files or systems containing government data and to receive and comply with requests for government data.

Subd. 7. **Government data.** "Government data" means all data collected, created, received, maintained or disseminated by any state agency, political subdivision, or statewide system regardless of its physical form, storage media or conditions of use.

Subd. 7a. **Government entity.** "Government entity" means a state agency, statewide system, or political subdivision.

Subd. 8. **Individual.** "Individual" means a natural person. In the case of a minor or an individual adjudged mentally incompetent, "individual" includes a parent or guardian or an individual acting as a parent or guardian in the absence of a parent or guardian, except that the responsible authority shall withhold data from parents or guardians, or individuals acting as parents or guardians in the absence of parents or guardians, upon request by the minor if the responsible authority determines that withholding the data would be in the best interest of the minor.

Subd. 8a. **Not public data.** "Not public data" means any government data which is classified by statute, federal law, or temporary classification as confidential, private, nonpublic, or protected nonpublic.

Subd. 9. **Nonpublic data.** "Nonpublic data" means data not on individuals that is made by statute or federal law applicable to the data: (a) not accessible to the public; and (b) accessible to the subject, if any, of the data.

Subd. 10. **Person.** "Person" means any individual, partnership, corporation, association, business trust, or a legal representative of an organization.

Subd. 11. **Political subdivision.** "Political subdivision" means any county, statutory or home rule charter city, school district, special district, any town exercising powers under chapter 368 and located in the metropolitan area, as defined in section 473.121, subdivision 2, and any board, commission, district or authority created pursuant to law, local ordinance or charter provision. It includes any nonprofit corporation which is a community action agency organized pursuant to the Economic Opportunity Act of 1964 (Public Law Number 88-452) as amended, to qualify for public funds, or any nonprofit social service agency which performs services under contract to any political subdivision, statewide system or state agency, to the extent that the nonprofit social service agency or nonprofit corporation collects, stores, disseminates, and uses data on individuals because of a contractual relationship with state agencies, political subdivisions or statewide systems.

Subd. 12. **Private data on individuals.** "Private data on individuals" means data which is made by statute or federal law applicable to the data: (a) not public; and (b) accessible to the individual subject of that data.

Subd. 13. **Protected nonpublic data.** "Protected nonpublic data" means data not on individuals which is made by statute or federal law applicable to the data (a) not public and (b) not accessible to the subject of the data.

Subd. 14. **Public data not on individuals.** "Public data not on individuals" means data which is accessible to the public pursuant to section 13.03.

Subd. 15. **Public data on individuals.** "Public data on individuals" means data which is accessible to the public in accordance with the provisions of section 13.03.

Subd. 16. **Responsible authority.** "Responsible authority" in a state agency or statewide system means the state official designated by law or by the commissioner as the individual responsible for the collection, use and dissemination of any set of data on individuals, government data, or summary data. "Responsible authority" in any political subdivision means the individual designated by the governing body of that political subdivision as the individual responsible for the collection, use, and dissemination of any set of data on individuals, government data, or summary data, unless otherwise provided by state law.

Subd. 17. **State agency.** "State agency" means the state, the University of Minnesota, and any office, officer, department, division, bureau, board, commission, authority, district or agency of the state.

Subd. 18. **Statewide system.** "Statewide system" includes any record keeping system in which government data is collected, stored, disseminated and used by means of a system common to one or more state agencies or more than one of its political subdivisions or any combination of state agencies and political subdivisions.

Subd. 19. **Summary data.** "Summary data" means statistical records and reports derived from data on individuals but in which individuals are not identified and from which neither their identities nor any other characteristic that could uniquely identify an individual is ascertainable.

HIST: 1974 c 479 s 1; 1975 c 401 s 1; 1976 c 239 s 2; 1976 c 283 s 1-5; 1977 c 375 s 1-5; 1978 c 790 s 1; 1979 c 328 s 2-6; 1980 c 603 s 1-6; 1980 c 618 s 25; 1981 c 311 s 2-6,39; 1982 c 545 s 1,24; 1984 c 436 s 1; 1989 c 351 s 2; 1996 c 440 art 1 s 1; 1999 c 227 s 22; 2000 c 468 s 3; 2001 c 202 s 1

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Minnesota Statutes 2001, Table of ChaptersTable of contents for Chapter 13**13.39 Civil investigation.**

Subdivision 1. **Definitions.** A "pending civil legal action" includes but is not limited to judicial, administrative or arbitration proceedings. Whether a civil legal action is pending shall be determined by the chief attorney acting for the state agency, political subdivision or statewide system.

Subd. 2. **Civil actions.** (a) Except as provided in paragraph (b), data collected by state agencies, political subdivisions, or statewide systems as part of an active investigation undertaken for the purpose of the commencement or defense of a pending civil legal action, or which are retained in anticipation of a pending civil legal action, are classified as protected nonpublic data pursuant to section 13.02, subdivision 13, in the case of data not on individuals and confidential pursuant to section 13.02, subdivision 3, in the case of data on individuals. Any agency, political subdivision, or statewide system may make any data classified as confidential or protected nonpublic pursuant to this subdivision accessible to any person, agency or the public if the agency, political subdivision, or statewide system determines that the access will aid the law enforcement process, promote public health or safety or dispel widespread rumor or unrest.

(b) A complainant has access to a statement provided by the complainant to a state agency, statewide system, or political subdivision under paragraph (a).

Subd. 2a. **Disclosure of data.** During the time when a civil legal action is determined to be pending under subdivision 1, any person may bring an action in the district court in the county where the data is maintained to obtain disclosure of data classified as confidential or protected nonpublic under subdivision 2. The court may order that all or part of the data be released to the public or to the person bringing the action. In making the determination whether data shall be disclosed, the court shall consider whether the benefit to the person bringing the action or to the public outweighs any harm to the public, the agency, or any person identified in the data. The data in dispute shall be examined by the court in camera.

Subd. 3. **Inactive investigative data.** Inactive civil investigative data are public, unless the release of the data would jeopardize another pending civil legal action, and except for those portions of a civil investigative file that are classified as not public data by this chapter or other law. Any civil investigative data presented as evidence in court or made part of a court record shall be public. Civil investigative data become inactive upon the occurrence of any of the following events:

(1) a decision by the state agency, political subdivision, or statewide system or by the chief attorney acting for the state agency, political subdivision, or statewide system not to pursue the civil action;

(2) expiration of the time to file a complaint under the statute of limitations or agreement applicable to the civil

action; or

(3) exhaustion of or expiration of rights of appeal by either party to the civil action.

Data determined to be inactive under clause (1) may become active if the state agency, political subdivision, statewide system, or its attorney decides to renew the civil action.

HIST: 1981 c 311 s 22,39; 1982 c 545 s 11,24; 1985 c 298 s 11; 1987 c 351 s 5; 1994 c 618 art 1 s 6,7

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Minnesota Statutes 2001, Table of ChaptersTable of contents for Chapter 13**13.41 Licensing data.**

Subdivision 1. **Definition.** As used in this section "licensing agency" means any board, department or agency of this state which is given the statutory authority to issue professional or other types of licenses, except the various agencies primarily administered by the commissioner of human services. Data pertaining to persons or agencies licensed or registered under authority of the commissioner of human services shall be administered pursuant to section 13.46, subdivision 4.

Subd. 2. **Private data; designated addresses and telephone numbers.** (a) The following data collected, created or maintained by any licensing agency are classified as private, pursuant to section 13.02, subdivision 12: data, other than their names and designated addresses, submitted by applicants for licenses; the identity of complainants who have made reports concerning licensees or applicants which appear in inactive complaint data unless the complainant consents to the disclosure; the nature or content of unsubstantiated complaints when the information is not maintained in anticipation of legal action; the identity of patients whose medical records are received by any health licensing agency for purposes of review or in anticipation of a contested matter; inactive investigative data relating to violations of statutes or rules; and the record of any disciplinary proceeding except as limited by subdivision 4.

(b) An applicant for a license shall designate on the application a residence or business address and telephone number at which the applicant can be contacted in connection with the license application. A licensee shall designate a residence or business address and telephone number at which the licensee can be contacted in connection with the license. By designating an address under this paragraph other than a residence address, the applicant or licensee consents to accept personal service of process by service on the licensing agency for legal or administrative proceedings. The licensing agency shall mail a copy of the documents to the applicant or licensee at the last known residence address.

Subd. 3. **Board of peace officer standards and training.** The following government data of the board of peace officer standards and training are private data:

(1) home addresses of licensees and applicants for licenses; and

(2) data that identify the state agency, statewide system, or political subdivision that employs a licensed peace officer.

The board may disseminate private data on applicants and licensees as is necessary to administer law enforcement licensure or to provide data under section 626.845, subdivision 1, to law enforcement agencies who are conducting employment background investigations.

Subd. 4. **Confidential data.** The following data collected, created or maintained by any licensing agency are

classified as confidential, pursuant to section 13.02, subdivision 3: active investigative data relating to the investigation of complaints against any licensee.

Subd. 5. **Public data.** Licensing agency minutes, application data on licensees, orders for hearing, findings of fact, conclusions of law and specification of the final disciplinary action contained in the record of the disciplinary action are classified as public, pursuant to section 13.02, subdivision 15. The entire record concerning the disciplinary proceeding is public data pursuant to section 13.02, subdivision 15, in those instances where there is a public hearing concerning the disciplinary action. If the licensee and the licensing agency agree to resolve a complaint without a hearing, the agreement and the specific reasons for the agreement are public data. The license numbers, the license status, and continuing education records issued or maintained by the board of peace officer standards and training are classified as public data, pursuant to section 13.02, subdivision 15.

Subd. 6. **Releasing data.** Any licensing agency may make any data classified as private or confidential pursuant to this section accessible to an appropriate person or agency if the licensing agency determines that failure to make the data accessible is likely to create a clear and present danger to public health or safety.

HIST: 1981 c 311 s 27,39; 1982 c 545 s 12-14,24; 1984 c 436 s 16; 1984 c 654 art 5 s 58; 1987 c 351 s 6; 1990 c 573 s 5; 1993 c 351 s 5; 1994 c 618 art 1 s 8; 1997 c 214 s 1; 1Sp1997 c 3 s 4; 1999 c 227 s 22; 2000 c 468 s 11

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Minnesota Statutes 2001, Table of ChaptersTable of contents for Chapter 144**144.12 Regulation, enforcement, licenses, fees.**

Subdivision 1. **Rules.** The commissioner may adopt reasonable rules pursuant to chapter 14 for the preservation of the public health. The rules shall not conflict with the charter or ordinance of a city of the first class upon the same subject. The commissioner may control, by rule, by requiring the taking out of licenses or permits, or by other appropriate means, any of the following matters:

(1) The manufacture into articles of commerce, other than food, of diseased, tainted, or decayed animal or vegetable matter;

(2) The business of scavenging and the disposal of sewage;

(3) The location of mortuaries and cemeteries and the removal and burial of the dead;

(4) The management of boarding places for infants and the treatment of infants in them;

(5) The pollution of streams and other waters and the distribution of water by persons for drinking or domestic use;

(6) The construction and equipment, in respect to sanitary conditions, of schools, hospitals, almshouses, prisons, and other public institutions, and of lodging houses and other public sleeping places kept for gain;

(7) The treatment, in hospitals and elsewhere, of persons suffering from communicable diseases, including all manner of venereal disease and infection, the disinfection and quarantine of persons and places in case of those diseases, and the reporting of sicknesses and deaths from them;

Neither the commissioner nor any board of health as defined in section 145A.02, subdivision 2, nor director of public health may adopt any rule or regulation for the treatment in any penal or correctional institution of any person suffering from any communicable disease or venereal disease or infection, which requires the involuntary detention of any person after the expiration of the period of sentence to the penal or correctional institution, or after the expiration of the period to which the sentence may be reduced by good time allowance or by the lawful order of any judge or the department of corrections;

(8) The prevention of infant blindness and infection of the eyes of the newly born by the designation, from time to time, of one or more prophylactics to be used in those cases and in the manner that the commissioner directs, unless specifically objected to by a parent of the infant;

(9) The furnishing of vaccine matter; the assembling, during epidemics of smallpox, with other persons not vaccinated, but no rule of the board or of any public board or officer shall at any time compel the vaccination of a child, or exclude, except during epidemics of smallpox and when approved by the

local board of education, a child from the public schools for the reason that the child has not been vaccinated; any person required to be vaccinated may select for that purpose any licensed physician and no rule shall require the vaccination of any child whose physician certifies that by reason of the child's physical condition vaccination would be dangerous;

(10) The accumulation of filthy and unwholesome matter to the injury of the public health and its removal;

(11) The collection, recording, and reporting of vital statistics by public officers and the furnishing of information to them by physicians, undertakers, and others of births, deaths, causes of death, and other pertinent facts;

(12) The construction, equipment, and maintenance, in respect to sanitary conditions, of lumber camps, migratory or migrant labor camps, and other industrial camps;

(13) The general sanitation of tourist camps, summer hotels, and resorts in respect to water supplies, disposal of sewage, garbage, and other wastes and the prevention and control of communicable diseases; and, to that end, may prescribe the respective duties of agents of a board of health as authorized under section 145A.04; and all boards of health shall make such investigations and reports and obey such directions as the commissioner may require or give and, under the supervision of the commissioner, enforce the rules;

(14) Atmospheric pollution which may be injurious or detrimental to public health;

(15) Sources of radiation, and the handling, storage, transportation, use and disposal of radioactive isotopes and fissionable materials; and

(16) The establishment, operation and maintenance of all clinical laboratories not owned, or functioning as a component of a licensed hospital. These laboratories shall not include laboratories owned or operated by five or less licensed practitioners of the healing arts, unless otherwise provided by federal law or regulation, and in which these practitioners perform tests or procedures solely in connection with the treatment of their patients. Rules promulgated under the authority of this clause, which shall not take effect until federal legislation relating to the regulation and improvement of clinical laboratories has been enacted, may relate at least to minimum requirements for external and internal quality control, equipment, facility environment, personnel, administration and records. These rules may include the establishment of a fee schedule for clinical laboratory inspections. The provisions of this clause shall expire 30 days after the conclusion of any fiscal year in which the federal government pays for less than 45 percent of the cost of regulating clinical laboratories.

Subd. 2. **Mass gatherings.** The commissioner may regulate the general sanitation of mass gatherings by promulgation of rules in respect to, but not limited to, the following areas: water supply, disposal of sewage, garbage and other wastes, the prevention and control of communicable diseases, the furnishing of suitable and adequate sanitary accommodations, and all other reasonable and necessary precautions to protect and insure the health, comfort and safety of those in attendance. No permit, license, or other prior

approval shall be required of the commissioner for a mass gathering. A "mass gathering" shall mean an actual or reasonably anticipated assembly of more than 1,500 persons which will continue, or may reasonably be expected to continue, for a period of more than ten consecutive hours and which is held in an open space or temporary structure especially constructed, erected or assembled for the gathering. For purposes of this subdivision, "mass gatherings" shall not include public gatherings sponsored by a political subdivision or a nonprofit organization.

Subd. 3. **Licenses; permits.** Applications for licenses or permits issued pursuant to this section shall be submitted with a fee prescribed by the commissioner pursuant to section 144.122. Licenses or permits shall expire and be renewed as prescribed by the commissioner pursuant to section 144.122.

HIST: (5345) RL s 2131; 1917 c 345 s 1; 1923 c 227 s 1; 1951 c 537 s 1; 1953 c 134 s 1; 1957 c 361 s 1; 1975 c 310 s 4; 1975 c 351 s 1; 1977 c 66 s 10; 1977 c 305 s 45; 1977 c 406 s 1; 1983 c 359 s 9; 1985 c 248 s 70; 1986 c 444; 1987 c 309 s 24

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Minnesota Statutes 2001, Table of ChaptersTable of contents for Chapter 144**144.99 Enforcement.**

Subdivision 1. **Remedies available.** The provisions of chapters 103I and 157 and sections 115.71 to 115.77; 144.12, subdivision 1, paragraphs (1), (2), (5), (6), (10), (12), (13), (14), and (15); 144.1201 to 144.1204; 144.121; 144.1222; 144.35; 144.381 to 144.385; 144.411 to 144.417; 144.495; 144.71 to 144.74; 144.9501 to 144.9509; 144.992; 326.37 to 326.45; 326.57 to 326.785; 327.10 to 327.131; and 327.14 to 327.28 and all rules, orders, stipulation agreements, settlements, compliance agreements, licenses, registrations, certificates, and permits adopted or issued by the department or under any other law now in force or later enacted for the preservation of public health may, in addition to provisions in other statutes, be enforced under this section.

Subd. 2. **Access to information and property.** The commissioner or an employee or agent authorized by the commissioner, upon presentation of credentials, may:

(1) examine and copy any books, papers, records, memoranda, or data of any person subject to regulation under the statutes listed in subdivision 1; and

(2) enter upon any property, public or private, for the purpose of taking any action authorized under statutes, rules, or other actions listed in subdivision 1 including obtaining information from a person who has a duty to provide information under the statutes listed in subdivision 1, taking steps to remedy violations, or conducting surveys or investigations.

Subd. 3. **Correction orders.** (a) The commissioner may issue correction orders that require a person to correct a violation of the statutes, rules, and other actions listed in subdivision 1. The correction order must state the deficiencies that constitute the violation; the specific statute, rule, or other action; and the time by which the violation must be corrected.

(b) If the person believes that the information contained in the commissioner's correction order is in error, the person may ask the commissioner to reconsider the parts of the order that are alleged to be in error. The request must be in writing, delivered to the commissioner by certified mail within seven calendar days after receipt of the order, and:

(1) specify which parts of the order for corrective action are alleged to be in error;

(2) explain why they are in error; and

(3) provide documentation to support the allegation of error.

The commissioner must respond to requests made under this paragraph within 15 calendar days after receiving a request. A request for reconsideration does not stay the correction order; however, after reviewing the request for reconsideration, the commissioner may provide additional time to comply with the

order if necessary. The commissioner's disposition of a request for reconsideration is final.

Subd. 4. **Administrative penalty orders.** (a) The commissioner may issue an order requiring violations to be corrected and administratively assessing monetary penalties for violations of the statutes, rules, and other actions listed in subdivision 1. The procedures in section 144.991 must be followed when issuing administrative penalty orders. Except in the case of repeated or serious violations, the penalty assessed in the order must be forgiven if the person who is subject to the order demonstrates in writing to the commissioner before the 31st day after receiving the order that the person has corrected the violation or has developed a corrective plan acceptable to the commissioner. The maximum amount of an administrative penalty order is \$10,000 for each violator for all violations by that violator identified in an inspection or review of compliance.

(b) Notwithstanding paragraph (a), the commissioner may issue to a large public water supply, serving a population of more than 10,000 persons, an administrative penalty order imposing a penalty of at least \$1,000 per day per violation, not to exceed \$10,000 for each violation of sections 144.381 to 144.385 and rules adopted thereunder.

Subd. 5. **Injunctive relief.** In addition to any other remedy provided by law, the commissioner may bring an action for injunctive relief in the district court in Ramsey county or, at the commissioner's discretion, in the district court in the county in which a violation of the statutes, rules, or other actions listed in subdivision 1 has occurred to enjoin the violation.

Subd. 6. **Cease and desist.** The commissioner, or an employee of the department designated by the commissioner, may issue an order to cease an activity covered by subdivision 1 if continuation of the activity would result in an immediate risk to public health. An order issued under this paragraph is effective for a maximum of 72 hours. In conjunction with the issuance of the cease and desist order, the commissioner may post a sign to cease an activity until the cease and desist order is lifted and the sign is removed by the commissioner. The commissioner must seek an injunction or take other administrative action authorized by law to restrain activities for a period beyond 72 hours. The issuance of a cease and desist order does not preclude the commissioner from pursuing any other enforcement action available to the commissioner.

Subd. 7. **Plan for use of administrative penalties and cease and desist authority.** The commissioner of health shall prepare a plan for using the administrative penalty and cease and desist authority in this section. The commissioner shall provide a 30-day period for public comment on the plan. The plan must be finalized by December 1, 1993.

Subd. 8. **Denial or refusal to reissue permits, licenses, registrations, or certificates.** (a) The commissioner may deny or refuse to renew an application for a permit, license, registration, or certificate required under the statutes or rules cited in subdivision 1, if the applicant does not meet or fails to maintain the minimum qualifications for holding a permit, license, registration, or certificate or has any unresolved violations related to the activity for which the permit, license, registration, or certificate was issued.

(b) The commissioner may also deny or refuse to renew a permit, license, registration, or certificate required under the statutes or rules cited in subdivision 1 if the applicant has a persistent pattern of violations related to the permit, license, registration, or certificate, or if the applicant submitted false material information to the department in connection with the application.

(c) The commissioner may condition the grant or renewal of a permit, license, registration, or certificate on a demonstration by the applicant that actions needed to ensure compliance with the requirements of the statutes listed in subdivision 1 have been taken, or may place conditions on or issue a limited permit, license, registration, or certificate as a result of previous violations by the applicant.

Subd. 9. Suspension or revocation of permits, licenses, registrations, or certificates. The commissioner may suspend, place conditions on, or revoke a permit, license, registration, or certificate issued under the statutes or rules cited in subdivision 1 for:

(1) serious or repeated violations of the requirements in the statutes, rules, or other actions listed in subdivision 1 that apply to the permit, license, registration, or certificate;

(2) submitting false material information to the department in connection with activities for which the permit, license, registration, or certificate is issued;

(3) allowing the alteration or use of one's own permit, license, registration, or certificate by another; or

(4) within the previous five years, conviction of a crime in connection with activities for which the permit, license, registration, or certificate was issued.

Subd. 10. Hearings related to denial, refusal to renew, suspension, or revocation of a permit, license, registration, or certificate. If the commissioner proposes to deny, refuses to renew, suspends, or revokes a permit, license, registration, or certificate under subdivision 8 or 9, the commissioner must first notify, in writing, the person against whom the action is proposed to be taken and provide the person an opportunity to request a hearing under the contested case provisions of chapter 14. If the person does not request a hearing by notifying the commissioner within 20 days after receipt of the notice of proposed action, the commissioner may proceed with the action without a hearing. This subdivision does not apply to:

(1) the denial of or refusal to renew a permit, license, registration, or certificate based on the applicant's failure to meet or maintain the minimum qualifications for holding the permit, license, registration, or certificate; or

(2) the denial of, refusal to renew, suspension of, or revocation of a permit, license, registration, or certificate if the person against whom the action is proposed to be taken has been granted a hearing under this subdivision within the previous 12 months.

Subd. 11. Misdemeanor penalties. A person convicted of violating a statute or rule listed in subdivision 1 is guilty of a misdemeanor.

Subd. 12. **Securing radioactive materials.** (a) In the event of an emergency that poses a danger to the public health, the commissioner shall have the authority to impound radioactive materials and the associated shielding in the possession of a person who fails to abide by the provisions of the statutes, rules, and any other item listed in subdivision 1. If impounding the source of these materials is impractical, the commissioner shall have the authority to lock or otherwise secure a facility that contains the source of such materials, but only the portions of the facility as is necessary to protect the public health. An action taken under this paragraph is effective for up to 72 hours. The commissioner must seek an injunction or take other administrative action to secure radioactive materials beyond the initial 72-hour period.

(b) The commissioner may release impounded radioactive materials and the associated shielding to the owner of the radioactive materials and associated shielding, upon terms and conditions that are in accordance with the provisions of statutes, rules, and other items listed in subdivision 1. In the alternative, the commissioner may bring an action in a court of competent jurisdiction for an order directing the disposal of impounded radioactive materials and associated shielding or directing other disposition as necessary to protect the public health and safety and the environment. The costs of decontamination, transportation, burial, disposal, or other disposition shall be borne by the owner or licensee of the radioactive materials and shielding or by any other person who has used the radioactive materials and shielding for business purposes.

HIST: 1993 c 206 s 8; 1Sp1993 c 6 s 33; 1994 c 465 art 2 s 1; 1995 c 165 s 5-9; 1995 c 180 s 13; 1995 c 213 art 1 s 12; 1997 c 205 s 29,30; 1998 c 261 s 2; 1998 c 407 art 2 s 80; 1999 c 245 art 2 s 28,29

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Minnesota Statutes 2001, Table of ChaptersTable of contents for Chapter 144**144.991 Administrative penalty order procedure.****Subdivision 1. Amount of penalty; considerations.**

(a) In determining the amount of a penalty under section 144.99, subdivision 4, the commissioner may consider:

- (1) the willfulness of the violation;
- (2) the gravity of the violation, including damage to humans, animals, air, water, land, or other natural resources of the state;
- (3) the history of past violations;
- (4) the number of violations;
- (5) the economic benefit gained by the person by allowing or committing the violation; and
- (6) other factors as justice may require, if the commissioner specifically identifies the additional factors in the commissioner's order.

(b) For a violation after an initial violation, the commissioner shall, in determining the amount of a penalty, consider the factors in paragraph (a) and the:

- (1) similarity of the most recent previous violation and the violation to be penalized;
- (2) time elapsed since the last violation;
- (3) number of previous violations; and
- (4) response of the person to the most recent previous violation identified.

Subd. 2. Contents of order. An order assessing an administrative penalty under section 144.99, subdivision 4, must include:

- (1) a concise statement of the facts alleged to constitute a violation;
- (2) a reference to the section of the statute, rule, variance, order, stipulation agreement, or term or condition of a permit that has been violated;
- (3) a statement of the amount of the administrative penalty to be imposed and the factors upon which the penalty is based; and
- (4) a statement of the person's right to review of the order.

Subd. 3. Corrective order. (a) The commissioner may issue an order assessing a penalty and requiring the violations cited in the order to be corrected within 30 calendar days from the date the order is received.

(b) The person to whom the order was issued shall provide information to the commissioner before the 31st day after the order was received demonstrating that the violation has been corrected or that the person has developed a corrective plan acceptable to the commissioner. The commissioner shall determine whether the violation has been corrected and notify the person subject to the order of the commissioner's determination.

Subd. 4. **Penalty.** (a) Except as provided in paragraph (b), if the commissioner determines that the violation has been corrected or the person to whom the order was issued has developed a corrective plan acceptable to the commissioner, the penalty must be forgiven. Unless the person requests review of the order under subdivision 5 before the penalty is due, the penalty in the order is due and payable:

(1) on the 31st day after the order was received, if the person subject to the order fails to provide information to the commissioner showing that the violation has been corrected or that appropriate steps have been taken toward correcting the violation; or

(2) on the 20th day after the person receives the commissioner's determination under paragraph (b), if the person subject to the order has provided information to the commissioner that the commissioner determines is not sufficient to show the violation has been corrected or that appropriate steps have been taken toward correcting the violation.

(b) For repeated or serious violations, the commissioner may issue an order with a penalty that will not be forgiven after the corrective action is taken. The penalty is due by 31 days after the order was received unless review of the order under subdivision 5 has been sought.

(c) Interest at the rate established in section 549.09 begins to accrue on penalties under this subdivision on the 31st day after the order with the penalty was received.

Subd. 5. **Expedited administrative hearing.** (a) Within 30 days after receiving an order or within 20 days after receiving notice that the commissioner has determined that a violation has not been corrected or appropriate steps have not been taken, the person subject to an order under this section may request an expedited hearing, using the procedures of Minnesota Rules, parts 1400.8510 to 1400.8612, to review the commissioner's action. The hearing request must specifically state the reasons for seeking review of the order. The person to whom the order is directed and the commissioner are the parties to the expedited hearing. The commissioner must notify the person to whom the order is directed of the time and place of the hearing at least 15 days before the hearing. The expedited hearing must be held within 30 days after a request for hearing has been filed with the commissioner unless the parties agree to a later date.

(b) All written arguments must be submitted within ten days following the close of the hearing. The hearing shall be conducted under Minnesota Rules, parts 1400.8510 to 1400.8612, as modified by this subdivision. The office of administrative hearings may, in consultation with the agency, adopt rules specifically applicable to cases under this section.

(c) The administrative law judge shall issue a report making recommendations about the commissioner's action to the commissioner within 30 days following the close of the record. The administrative law judge may not recommend a change in the amount of the proposed penalty unless the administrative law judge determines that, based on the factors in subdivision 1, the amount of the penalty is unreasonable.

(d) If the administrative law judge makes a finding that the hearing was requested solely for purposes of delay or that the hearing request was frivolous, the commissioner may add to the amount of the penalty the costs charged to the agency by the office of administrative hearings for the hearing.

(e) If a hearing has been held, the commissioner may not issue a final order until at least five days after receipt of the report of the administrative law judge. The person to whom an order is issued may, within those five days, comment to the commissioner on the recommendations and the commissioner will consider the comments. The final order may be appealed in the manner provided in sections 14.63 to 14.69.

(f) If a hearing has been held and a final order issued by the commissioner, the penalty shall be paid by 30 days after the date the final order is received unless review of the final order is requested under sections 14.63 to 14.69. If review is not requested or the order is reviewed and upheld, the amount due is the penalty, together with interest accruing from 31 days after the original order was received at the rate established in section 549.09.

Subd. 6. **Mediation.** In addition to review under subdivision 5, the commissioner is authorized to enter into mediation concerning an order issued under this section if the commissioner and the person to whom the order is issued both agree to mediation.

Subd. 7. **Enforcement.** (a) The attorney general may proceed on behalf of the state to enforce penalties that are due and payable under this section in any manner provided by law for the collection of debts.

(b) The attorney general may petition the district court to file the administrative order as an order of the court. At any court hearing, the only issues parties may contest are procedural and notice issues. Once entered, the administrative order may be enforced in the same manner as a final judgment of the district court.

(c) If a person fails to pay the penalty, the attorney general may bring a civil action in district court seeking payment of the penalties, injunctive, or other appropriate relief including monetary damages, attorney fees, costs, and interest.

Subd. 8. **Revocation and suspension of permit, license, registration, or certificate.** If a person fails to pay a penalty owed under this section, the agency has grounds to revoke or refuse to reissue or renew a permit, license, registration, or certificate issued by the department.

Subd. 9. **Cumulative remedy.** The authority of the agency to issue a corrective order assessing penalties is in addition to other remedies available under statutory or common law, except that the state may not seek civil penalties under

any other provision of law for the violations covered by the administrative penalty order. The payment of a penalty does not preclude the use of other enforcement provisions, under which penalties are not assessed, in connection with the violation for which the penalty was assessed.

HIST: 1993 c 206 s 9; 1994 c 465 art 1 s 18,19; 1995 c 165 s
10

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Minnesota Statutes 2001, Table of Chapters

Table of contents for Chapter 144

144.992 False information.

A person subject to any of the requirements listed in section 144.99, subdivision 1, may not make a false material statement, representation, or certification in; omit material information from; or alter, conceal, or fail to file or maintain a notice, application, record, report, plan, or other document required under the statutes, rules, or other actions listed in section 144.99, subdivision 1.

HIST: 1993 c 206 s 10

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Minnesota Statutes 2001, Table of ChaptersTable of contents for Chapter 144**144.993 Recovery of litigation costs and expenses.**

In any judicial action brought by the attorney general for civil penalties, injunctive relief, or an action to compel performance pursuant to the authority cited in section 144.99, subdivision 1, if the state finally prevails, and if the proven violation was willful, the state, in addition to other penalties provided by law, may be allowed an amount determined by the court to be the reasonable value of all or part of the litigation expenses incurred by the state. In determining the amount of the litigation expenses to be allowed, the court shall give consideration to the economic circumstances of the defendant.

HIST: 1993 c 206 s 11

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Minnesota Statutes 2001, Table of ChaptersTable of contents for Chapter 144**144.1201 Definitions.**

Subdivision 1. **Applicability.** For purposes of sections 144.1201 to 144.1204, the terms defined in this section have the meanings given to them.

Subd. 2. **By-product nuclear material.** "By-product nuclear material" means a radioactive material, other than special nuclear material, yielded in or made radioactive by exposure to radiation created incident to the process of producing or utilizing special nuclear material.

Subd. 3. **Radiation.** "Radiation" means ionizing radiation and includes alpha rays; beta rays; gamma rays; x-rays; high energy neutrons, protons, or electrons; and other atomic particles.

Subd. 4. **Radioactive material.** "Radioactive material" means a matter that emits radiation. Radioactive material includes special nuclear material, source nuclear material, and by-product nuclear material.

Subd. 5. **Source nuclear material.** "Source nuclear material" means uranium or thorium, or a combination thereof, in any physical or chemical form; or ores that contain by weight 1/20 of one percent (0.05 percent) or more of uranium, thorium, or a combination thereof. Source nuclear material does not include special nuclear material.

Subd. 6. **Special nuclear material.** "Special nuclear material" means:

(1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material that the Nuclear Regulatory Commission determines to be special nuclear material according to United States Code, title 42, section 2071, except that source nuclear material is not included; and

(2) a material artificially enriched by any of the materials listed in clause (1), except that source nuclear material is not included.

HIST: 1999 c 245 art 2 s 16

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Minnesota Statutes 2001, Table of ChaptersTable of contents for Chapter 144**144.1202 United States Nuclear Regulatory Commission agreement.**

Subdivision 1. **Agreement authorized.** In order to have a comprehensive program to protect the public from radiation hazards, the governor, on behalf of the state, is authorized to enter into agreements with the United States Nuclear Regulatory Commission under the Atomic Energy Act of 1954, section 274b, as amended. The agreement shall provide for the discontinuance of portions of the Nuclear Regulatory Commission's licensing and related regulatory authority over by-product, source, and special nuclear materials, and the assumption of regulatory authority over these materials by the state.

Subd. 2. **Health department designated lead.** The department of health is designated as the lead agency to pursue an agreement on behalf of the governor and for any assumption of specified licensing and regulatory authority from the Nuclear Regulatory Commission under an agreement with the commission. The commissioner of health shall establish an advisory group to assist in preparing the state to meet the requirements for reaching an agreement. The commissioner may adopt rules to allow the state to assume regulatory authority under an agreement under this section, including the licensing and regulation of radioactive materials. Any regulatory authority assumed by the state includes the ability to set and collect fees.

Subd. 3. **Transition.** A person who, on the effective date of an agreement under this section, possesses a Nuclear Regulatory Commission license that is subject to the agreement is deemed to possess a similar license issued by the department of health. A department of health license obtained under this subdivision expires on the expiration date specified in the federal license.

Subd. 4. **Agreement; conditions of implementation.**
(a) An agreement entered into before August 2, 2003, must remain in effect until terminated under the Atomic Energy Act of 1954, United States Code, title 42, section 2021, paragraph (j). The governor may not enter into an initial agreement with the Nuclear Regulatory Commission after August 1, 2003. If an agreement is not entered into by August 1, 2003, any rules adopted under this section are repealed effective August 1, 2003.

(b) An agreement authorized under subdivision 1 must be approved by law before it may be implemented.

HIST: 1999 c 245 art 2 s 17; 1Sp2001 c 9 art 1 s 28

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Minnesota Statutes 2001, Table of ChaptersTable of contents for Chapter 144**144.1203 Training; rulemaking.**

The commissioner shall adopt rules to ensure that individuals handling or utilizing radioactive materials under the terms of a license issued by the commissioner under section 144.1202 have proper training and qualifications to do so. The rules adopted must be at least as stringent as federal regulations on proper training and qualifications adopted by the Nuclear Regulatory Commission. Rules adopted under this section may incorporate federal regulations by reference.

HIST: 1999 c 245 art 2 s 18

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Minnesota Statutes 2001, Table of ChaptersTable of contents for Chapter 144**144.1204 Surety requirements.**

Subdivision 1. **Financial assurance required.** The commissioner may require an applicant for a license under section 144.1202, or a person who was formerly licensed by the Nuclear Regulatory Commission and is now subject to sections 144.1201 to 144.1204, to post financial assurances to ensure the completion of all requirements established by the commissioner for the decontamination, closure, decommissioning, and reclamation of sites, structures, and equipment used in conjunction with activities related to licensure. The financial assurances posted must be sufficient to restore the site to unrestricted future use and must be sufficient to provide for surveillance and care when radioactive materials remain at the site after the licensed activities cease. The commissioner may establish financial assurance criteria by rule. In establishing such criteria, the commissioner may consider:

- (1) the chemical and physical form of the licensed radioactive material;
- (2) the quantity of radioactive material authorized;
- (3) the particular radioisotopes authorized and their subsequent radiotoxicity;
- (4) the method in which the radioactive material is held, used, stored, processed, transferred, or disposed of; and
- (5) the potential costs of decontamination, treatment, or disposal of a licensee's equipment and facilities.

Subd. 2. **Acceptable financial assurances.** The commissioner may, by rule, establish types of financial assurances that meet the requirements of this section. Such financial assurances may include bank letters of credit, deposits of cash, or deposits of government securities.

Subd. 3. **Trust agreements.** Financial assurances must be established together with trust agreements. Both the financial assurances and the trust agreements must be in a form and substance that meet requirements established by the commissioner.

Subd. 4. **Exemptions.** The commissioner is authorized to exempt from the requirements of this section, by rule, any category of licensee upon a determination by the commissioner that an exemption does not result in a significant risk to the public health or safety or to the environment and does not pose a financial risk to the state.

Subd. 5. **Other remedies unaffected.** Nothing in this section relieves a licensee of a civil liability incurred, nor may this section be construed to relieve the licensee of obligations to prevent or mitigate the consequences of improper handling or abandonment of radioactive materials.

HIST: 1999 c 245 art 2 s 19

Minnesota Statutes 2001, Table of ChaptersTable of contents for Chapter 144**144.1205 Radioactive material; source and special nuclear material; fees; inspection.****Subdivision 1. Application and license renewal fee.**

When a license is required for radioactive material or source or special nuclear material by a rule adopted under section 144.1202, subdivision 2, an application fee according to subdivision 4 must be paid upon initial application for a license. The licensee must renew the license 60 days before the expiration date of the license by paying a license renewal fee equal to the application fee under subdivision 4. The expiration date of a license is the date set by the United States Nuclear Regulatory Commission before transfer of the licensing program under section 144.1202 and thereafter as specified by rule of the commissioner of health.

Subd. 2. **Annual fee.** A licensee must pay an annual fee at least 60 days before the anniversary date of the issuance of the license. The annual fee is an amount equal to 80 percent of the application fee under subdivision 4, rounded to the nearest whole dollar.

Subd. 3. **Fee categories; incorporation of federal licensing categories.** (a) Fee categories under this section are equivalent to the licensing categories used by the United States Nuclear Regulatory Commission under Code of Federal Regulations, title 10, parts 30 to 36, 39, 40, 70, 71, and 150, except as provided in paragraph (b).

(b) The category of "Academic, small" is the type of license required for the use of radioactive materials in a teaching institution. Radioactive materials are limited to ten radionuclides not to exceed a total activity amount of one curie.

Subd. 4. **Application fee.** A licensee must pay an application fee as follows:

Radioactive material, source and special material	Application fee	U.S. Nuclear Regulatory Commission licensing category as reference
Type A broadscope	\$20,000	Medical institution type A
Type B broadscope	\$15,000	Research and development type B
Type C broadscope	\$10,000	Academic type C
Medical use	\$4,000	Medical Medical institution Medical private practice
Mobile nuclear medical laboratory	\$4,000	Mobile medical laboratory
Medical special use sealed sources	\$6,000	Teletherapy High dose rate remote afterloaders Stereotactic radiosurgery devices
In vitro testing	\$2,300	In vitro testing laboratories
Measuring gauge, sealed sources	\$2,000	Fixed gauges

		Portable gauges
		Analytical instruments
		Measuring systems - other
Gas chromatographs	\$1,200	Gas chromatographs
Manufacturing and distribution	\$14,700	Manufacturing and distribution - other
Distribution only	\$8,800	Distribution of radioactive material for commercial use only
Other services	\$1,500	Other services
Nuclear medicine pharmacy	\$4,100	Nuclear pharmacy
Waste disposal	\$9,400	Waste disposal service prepackage
		Waste disposal service processing/repackage
Waste storage only	\$7,000	To receive and store radioactive material waste
Industrial radiography	\$8,400	Industrial radiography fixed location
		Industrial radiography portable/temporary sites
Irradiator - self-shielded	\$4,100	Irradiators self-shielded less than 10,000 curies
Irradiator - less than 10,000 Ci	\$7,500	Irradiators less than 10,000 curies
Irradiator - more than 10,000 Ci	\$11,500	Irradiators greater than 10,000 curies
Research and development, no distribution	\$4,100	Research and development
Radioactive material possession only	\$1,000	Byproduct possession only
Source material	\$1,000	Source material shielding
Special nuclear material, less than 200 grams	\$1,000	Special nuclear material plutonium-neutron sources less than 200 grams
Pacemaker manufacturing	\$1,000	Pacemaker byproduct and/or special nuclear material - medical institution
General license distribution	\$2,100	General license distribution
General license distribution, exempt	\$1,500	General license distribution - certain exempt items
Academic, small	\$1,000	Possession limit of ten radionuclides, not to exceed a total of one curie of activity
Veterinary	\$2,000	Veterinary use
Well logging	\$5,000	Well logging

Subd. 5. **Penalty for late payment.** An annual fee or a license renewal fee submitted to the commissioner after the

due date specified by rule must be accompanied by an additional amount equal to 25 percent of the fee due.

Subd. 6. **Inspections.** The commissioner of health shall make periodic safety inspections of the radioactive material and source and special nuclear material of a licensee. The commissioner shall prescribe the frequency of safety inspections by rule.

Subd. 7. **Recovery of reinspection cost.** If the commissioner finds serious violations of public health standards during an inspection under subdivision 6, the licensee must pay all costs associated with subsequent reinspection of the source. The costs shall be the actual costs incurred by the commissioner and include, but are not limited to, labor, transportation, per diem, materials, legal fees, testing, and monitoring costs.

Subd. 8. **Reciprocity fee.** A licensee submitting an application for reciprocal recognition of a materials license issued by another agreement state or the United States Nuclear Regulatory Commission for a period of 180 days or less during a calendar year must pay one-half of the application fee specified under subdivision 4. For a period of 181 days or more, the licensee must pay the entire application fee under subdivision 4.

Subd. 9. **Fees for license amendments.** A licensee must pay a fee to amend a license as follows:

(1) to amend a license requiring no license review including, but not limited to, facility name change or removal of a previously authorized user, no fee;

(2) to amend a license requiring review including, but not limited to, addition of isotopes, procedure changes, new authorized users, or a new radiation safety officer, \$200; and

(3) to amend a license requiring review and a site visit including, but not limited to, facility move or addition of processes, \$400.

HIST: 1Sp2001 c 9 art 1 s 29

* NOTE: This section, as added by Laws 2001, First Special Session chapter 9, article 1, section 29, is effective July 1, 2002. Laws 2001, First Special Session chapter 9, article 1, section 29, the effective date.

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Minnesota Statutes 2001, Table of ChaptersTable of contents for Chapter 144**144.121 X-ray machines and facilities using other sources of ionizing radiation.**

Subdivision 1. **Registration; fees.** The fee for the registration for x-ray machines and other sources of ionizing radiation required to be registered under rules adopted by the state commissioner of health pursuant to section 144.12, shall be in an amount as described in subdivision 1a pursuant to section 144.122. The registration shall expire and be renewed as prescribed by the commissioner pursuant to section 144.122.

Subd. 1a. **Fees for x-ray machines and other sources of ionizing radiation.** A facility with x-ray machines or other sources of ionizing radiation must biennially pay an initial or biennial renewal registration fee consisting of a base facility fee of \$132 and an additional fee for each x-ray machine or other source of ionizing radiation as follows:

(1) medical or veterinary equipment	\$106
(2) dental x-ray equipment	\$ 66
(3) accelerator	\$132
(4) radiation therapy equipment	\$132
(5) x-ray equipment not used on humans or animals	\$106
(6) devices with sources of ionizing radiation not used on humans or animals	\$106
(7) sources of radium	\$198

Subd. 1b. **Penalty fee for late registration.** Applications for initial or renewal registrations submitted to the commissioner after the time specified by the commissioner shall be accompanied by a penalty fee of \$20 in addition to the fees prescribed in subdivision 1a.

Subd. 1c. **Fee for x-ray machines and other sources of ionizing radiation registered during last 12 months of a biennial registration period.** The initial registration fee of x-ray machines or other sources of radiation required to be registered during the last 12 months of a biennial registration period will be 50 percent of the applicable registration fee prescribed in subdivision 1a.

Subd. 2. **Inspections.** Periodic radiation safety inspections of the sources of ionizing radiation shall be made by the state commissioner of health. The frequency of safety inspections shall be prescribed by the commissioner on the basis of the frequency of use of the source of ionizing radiation; provided that each source shall be inspected at least once every four years.

Subd. 3. **Exemption.** Notwithstanding rules adopted by the commissioner under section 144.12, subdivision 1, clause (15), practitioners of veterinary medicine are not required to conduct densitometry and sensitometry tests as part of any ionizing radiation quality assurance program.

Subd. 4. **Radiation monitoring.** Whenever involved in radiation procedures, practitioners of veterinary medicine and staff shall wear film-based radiation monitoring badges to monitor individual exposure. The badges must be submitted

periodically to a dosimetry service for individual exposure determination.

Subd. 5. **Examination for individual operating X-ray equipment.** After January 1, 1997, an individual in a facility with X-ray equipment for use on humans that is registered under subdivision 1 may not operate, nor may the facility allow the individual to operate, X-ray equipment unless the individual has passed an examination approved by the commissioner of health, or an examination determined to the satisfaction of the commissioner of health to be an equivalent national, state, or regional examination, that demonstrates the individual's knowledge of basic radiation safety, proper use of X-ray equipment, darkroom and film processing, and quality assurance procedures. The commissioner shall establish by rule criteria for the approval of examinations required for an individual operating an X-ray machine in Minnesota.

Subd. 6. **Inspection.** At the time a facility with X-ray equipment is inspected by the commissioner of health in accordance with subdivision 2, an individual operating X-ray equipment in the facility must be able to show compliance with the requirements of subdivision 5.

Subd. 7. Repealed, 1999 c 86 art 2 s 6

Subd. 8. **Exemption from examination requirements; operators of certain bone densitometers.** (a) This subdivision applies to a bone densitometer that is used on humans to estimate bone mineral content and bone mineral density in a region of a finger on a person's nondominant hand, gives an x-ray dose equivalent of less than 0.001 microsieverts per scan, and has an x-ray leakage exposure rate of less than two milliroentgens per hour at a distance of one meter, provided that the bone densitometer is operating in accordance with manufacturer specifications.

(b) An individual who operates a bone densitometer that satisfies the definition in paragraph (a) and the facility in which an individual operates such a bone densitometer are exempt from the requirements of subdivisions 5 and 6.

HIST: 1974 c 81 s 1; 1975 c 310 s 35; 1977 c 305 s 45; 1985 c 248 s 70; 1993 c 188 s 1,2; 1995 c 146 s 1-3; 1997 c 203 art 2 s 7-10; 1999 c 245 art 2 s 20

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Minnesota Statutes 2001, Table of Chapters

Table of contents for Chapter 144

144.989 Title; citation.

Sections 144.989 to 144.993 may be cited as the "Health Enforcement Consolidation Act of 1993."

HIST: 1993 c 206 s 7

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Minnesota Statutes 2001, Table of Chapters

Table of contents for Chapter 181

181.931 Definitions.

Subdivision 1. **Generally.** For the purpose of sections 181.931 to 181.935 the terms defined in this section have the meanings given them.

Subd. 2. **Employee.** "Employee" means a person who performs services for hire in Minnesota for an employer. Employee does not include an independent contractor.

Subd. 3. **Employer.** "Employer" means any person having one or more employees in Minnesota and includes the state and any political subdivision of the state.

HIST: 1987 c 76 s 1

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Minnesota Statutes 2001, Table of ChaptersTable of contents for Chapter 181**181.932 Disclosure of information by employees.**

Subdivision 1. **Prohibited action.** An employer shall not discharge, discipline, threaten, otherwise discriminate against, or penalize an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because:

(a) the employee, or a person acting on behalf of an employee, in good faith, reports a violation or suspected violation of any federal or state law or rule adopted pursuant to law to an employer or to any governmental body or law enforcement official;

(b) the employee is requested by a public body or office to participate in an investigation, hearing, inquiry;

(c) the employee refuses an employer's order to perform an action that the employee has an objective basis in fact to believe violates any state or federal law or rule or regulation adopted pursuant to law, and the employee informs the employer that the order is being refused for that reason; or

(d) the employee, in good faith, reports a situation in which the quality of health care services provided by a health care facility, organization, or health care provider violates a standard established by federal or state law or a professionally recognized national clinical or ethical standard and potentially places the public at risk of harm.

Subd. 2. **Disclosure of identity.** The identity of any employee making a report to a governmental body or law enforcement official under subdivision 1, clause (a) or (d), is private data on individuals as defined in section 13.02. The identity of an employee providing information under subdivision 1, clause (b), is private data on individuals if:

(1) the employee would not have provided the information without an assurance that the employee's identity would remain private, because of a concern that the employer would commit an action prohibited under subdivision 1 or that the employee would be subject to some other form of retaliation; or

(2) the state agency, statewide system, or political subdivision reasonably believes that the employee would not have provided the data because of that concern.

If the disclosure is necessary for prosecution, the identity of the employee may be disclosed but the employee shall be informed prior to the disclosure.

Subd. 3. **False disclosures.** This section does not permit an employee to make statements or disclosures knowing that they are false or that they are in reckless disregard of the truth.

Subd. 4. **Collective bargaining rights.** This section does not diminish or impair the rights of a person under any collective bargaining agreement.

Subd. 5. **Confidential information.** This section does not permit disclosures that would violate federal or state law or diminish or impair the rights of any person to the continued protection of confidentiality of communications provided by common law.

HIST: 1987 c 76 s 2; 1988 c 659 s 2; 1997 c 237 s 16; 1999 c 227 s 14

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Minnesota Statutes 2001, Table of ChaptersTable of contents for Chapter 181**181.933 Notice of termination.**

Subdivision 1. **Notice required.** An employee who has been involuntarily terminated may, within 15 working days following such termination, request in writing that the employer inform the employee of the reason for the termination. Within ten working days following receipt of such request, an employer shall inform the terminated employee in writing of the truthful reason for the termination.

Subd. 2. **Defamation action prohibited.** No communication of the statement furnished by the employer to the employee under subdivision 1 may be made the subject of any action for libel, slander, or defamation by the employee against the employer.

HIST: 1987 c 76 s 3; 2001 c 95 s 1

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Minnesota Statutes 2001, Table of Chapters

Table of contents for Chapter 181

181.934 Employee notice.

The department of labor and industry shall promulgate rules for notification of employees by employers of an employee's rights under sections 181.931 to 181.935.

HIST: 1987 c 76 s 4

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Minnesota Statutes 2001, Table of Chapters

Table of contents for Chapter 181

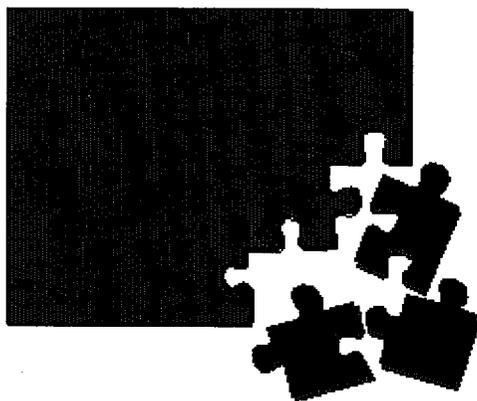
181.935 Individual remedies; penalty.

(a) In addition to any remedies otherwise provided by law, an employee injured by a violation of section 181.932 may bring a civil action to recover any and all damages recoverable at law, together with costs and disbursements, including reasonable attorney's fees, and may receive such injunctive and other equitable relief as determined by the court.

(b) An employer who failed to notify, as required under section 181.933 or 181.934, an employee injured by a violation of section 181.932 is subject to a civil penalty of \$25 per day per injured employee not to exceed \$750 per injured employee.

HIST: 1987 c 76 s 5

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Data Privacy Standards and Guidelines for Environmental Health Staff

Table of Contents

 Click icon to print in PDF format

- [Introduction](#)
- [Definitions](#)
- [Persons With Data Practices Related Responsibilities](#)
- [EHD General Data Practices Policy](#)
- [Collecting And Storing Data on Individuals](#)
- [Data Protection And Security](#)
- [Rights of Data Subjects: Tennesen Warning](#)
- [Releasing Public Data](#)
- [Releasing Private or Nonpublic Data](#)
- [Court Orders And Search Warrants](#)
- [Subpoenas](#)
- [Releasing Confidential or Protected Nonpublic Data](#)
- [Releasing Personnel Data](#)
- [Applicants For Credentials](#)
- [Examination Data](#)
- [Credit Card Information](#)
- [Debtor Information](#)
- [Advisory Boards and Commissions](#)
- [Inspection Data](#)
- [Complaints And Investigations](#)
- [Procurement](#)
- [Calendars](#)
- [Attorney Client Privileged Information](#)
- [Information Systems and Networks](#)
- [Denying Access to Data](#)
- [Correcting Data](#)
- [Fees For Providing Data](#)
- [Conclusion](#)

Attachments

- [Tennesen Warning Example](#)
- [Summary of Data Release Requirements](#)
- [Complaints and Investigations Flow Chart](#)
- [Frequently Asked Questions](#)

Introduction

The Minnesota Government Data Practices Act, [Minnesota Statutes, chapter 13](#), requires public agencies to:

- safeguard the privacy rights of data subjects about whom state and local governments collect, store, and use data; and
- facilitate access to all government data which should be rightfully disclosed.

All Environmental Health Division (EHD) programs and staff must comply with the [Minnesota Government Data Practices Act](#). Chapter 13 applies to all EHD programs that collect data. In addition, some EHD programs have specific statutory authority or requirements pertaining to data practices. How you use and maintain the data will vary depending on how the data are classified. Your supervisor, who is responsible for the security of data your program collects and maintains, may authorize data access to you, other EHD staff, and the staff of other agencies or private entities. As staff who may be responsible for program data, you must familiarize yourself with how data are classified and when and to whom data can be released.

This document will help to guide you in releasing or not releasing data to those who may request access to data you maintain.

[Go to > Table of Contents](#)

Definitions

The following definitions were adapted from those found in Minnesota Statutes and legal dictionaries.

Authorized Representative. Any individual authorized in writing by a data subject to receive government data about the data subject.

Civil Investigative Data. Data collected by state agencies, political subdivisions, or statewide systems as part of an active investigation undertaken for the purpose of the commencement or defense of a pending civil legal action, or which are retained in anticipation of a pending civil legal action.

Civil Legal Action(s). Legal actions undertaken by state agencies, political subdivisions, or statewide systems under the State civil law (torts) as opposed to criminal law, including but not limited to administrative penalty orders, notices of violation, license revocations, and civil lawsuits.

Confidential Data. Data on an individual that are (a) not public and (b) not available to the individual.

Credential. A document granting specific permission from the Commissioner to perform or engage in a certain controlled activity, e.g. a license or a certification.

Data Steward. An entity or individual maintaining data. Usually also involved in processing or collecting data.

Data Subject. Individual or entity about whom data are collected or maintained.

Designees. EHD staff designated to oversee individual files or systems containing data and to help handle data requests.

EHD. The Environmental Health Division, an operating division of MDH.

Government Data (Data). All data, information, or records collected, created, received, maintained, or distributed by public agencies regardless of its physical form, storage media, or conditions of use. Government data is not just the information collected under the authority of a specific statute authorizing a public health study or a credentialing program. It is all data received by the government including complaints and information from citizens.

Inactive Civil Investigative Data. Civil investigative data become inactive upon the occurrence of any of the following events:

- a decision by the state agency, political subdivision, or statewide system or by the chief attorney acting for the state agency, political subdivision, or statewide system not to pursue the civil action;
- expiration of the time to file a complaint under the statute of limitations or agreement applicable to the civil action; or
- exhaustion of or expiration of rights of appeal by either party to the civil action.

Individual. A person. For a minor (person under 18) or an individual judged mentally incompetent, it is a parent or guardian.

Informed Consent. An individual's voluntary authorization to release data. Informed consent must include all of the following:

- the agency or person requested to provide data;
- the nature of the data to be released;
- the party(ies) to whom the data may be released; and
- the purpose(s) for which data may be used.

You might need informed consent to collect data about an individual from a third party, or you might need informed consent to release to a third party data the EHD has about an individual.

MDH. The Minnesota Department of Health.

Nonpublic Data. Data not on individuals that are (a) not public and (b) accessible to the data subject. Also information about information systems and networks that might be used to compromise this data.

Personnel Data. Data about:

- paid government employees
- applicants for government employment
- members of, or applicants for, advisory boards or commissions
- volunteers to government agencies
- private individuals under government contract

Private Data. Data on an individual that are (a) not public and (b) accessible to the individual.

Protected Nonpublic Data. Data not on individuals that are (a) not public (b) not accessible to the data subject.

Public Data. Data accessible to anyone for any reason.

Real Property. "Real property" means one or more defined interests, benefits, and rights inherent in the ownership of real estate. Lands, tenements and hereditaments which, on the death of the owner intestate, passes to his/her heir. It is either corporeal and incorporeal. Land and anything permanently affixed to the land, such as buildings, fences, and those things attached to the buildings, such as light fixtures, plumbing and heating fixtures, or other such items which would be personal property of not attached to the building or land. For example, a built in refrigerator would be real property whereas a dorm size fridge would be personal property.

Responsible Authority. The MDH Commissioner is ultimately responsible for the collection, use, and dissemination of MDH's data on individuals, government data, and summary data.

Summary Data. Statistical records and reports compiled from data on individuals but in which individuals are not identified and from which an individual cannot be identified. (Also known as "aggregate data.")

Tennessee Warning. A notice you must give to an individual who is asked to supply private or confidential data about himself or herself. Go to > [sample warning](#).

Go to > [Table of Contents](#)

Persons with Data Practices Related Responsibilities

Responsible Authority. According to Minnesota Rules, part 1205.0200, subpart 13, the Responsible Authority for MDH is the Commissioner. The Responsible Authority is the individual who assures the agency complies with the Data Privacy Act. Responsibilities include the collection, use and dissemination of any set of data on individuals, government data or summary data, and the implementation and administration of the Act. Most, but not all, of the Responsible Authority duties are detailed in Minnesota Statutes, section 13.05. Others are outlined in Minnesota Rules, chapter 1205.

Designees. A designee is a person appointed in writing by the Responsible Authority to be in charge of individual files or systems containing governmental data, and to comply with requests for governmental data. See Minnesota Statutes, section 13.02, subd. 6.

Commissioner of Administration. In 1993, the legislature granted to the Commissioner of the Department of Administration the authority to issue written advisory opinions, upon request of any person, on questions of public access to governmental data, rights of data subjects, and classifications of data. See Minnesota Statutes, section 13.072. Opinions issued by the Commissioner of Administration are not binding on the state agency, but must be given deference by a court in a proceeding involving the data. The Commissioner of the Department of Administration also grants or denies requests for a temporary classification.

The Attorney General. A formal written opinion by the Attorney General takes precedence over an advisory opinion of the Commissioner of the Department of Administration. Agency staff may seek informal advice from attorneys in the Office of the Attorney General on data practices issues but this advice is not entitled to any precedential value in a legal dispute.

The Courts. The Act creates a procedure for when data that is not public can be released by Court order. See Minnesota Statutes, section 13.03, subd. 6. The Act affords remedies to individuals who maintain that a governmental agency is violating or not properly administering the provisions of the Act. Agencies who violate the Act and cause damage to an individual can be sued. The individual may recover actual damages, costs and attorney fees. In cases of willful violations, the individual may recover up to \$10,000 in exemplary damages. See Minnesota Statutes, section 13.09. Any person who willfully violates the provisions of Chapter 13, or any rule adopted under this chapter, is guilty of a misdemeanor. Willful violation of this chapter by any public employee constitutes just cause for suspension without pay or dismissal. See Minnesota Statutes, section 13.09.

Go to > [Table of Contents](#)

EHD General Data Practices Requirements

- All data collected, created, received, maintained, or disseminated by EHD are public unless otherwise classified by statute.
- Before collecting private and confidential data on individuals, you must inform them of their rights using a Tennessee warning.
- You must only release private, confidential, nonpublic, and protected nonpublic data under the conditions described in this document. If you receive any of these types of data unsolicited or unnecessarily, you must destroy it or return it to the person or entity who submitted it.
- If you violate the provisions of the Minnesota Government Data Practices Act you may be subject to disciplinary action and/or civil penalties.
- You must complete basic data practices training. Training will be provided by your supervisor. Your training will include specific information about the data maintained by your program. Staff from the Department of Administration and the Office of the Attorney General may also provide training opportunities.

- You must refer non-routine data practices questions to your supervisor, manager, assistant division director or the policy, planning and analysis unit. Don't guess get a second or third opinion if you are in doubt of the status of the data in question.
- Your section or program must maintain a list of the data you collect or maintain that is not available to the public. The list must include statutory references defining it as not available to the public. The document must also contain copies of the forms you use to collect this data.

[Go to > Table of Contents](#)

Collecting and Storing Data on Individuals

You must limit the collection and storage of data on individuals and the use of these data to that necessary for the administration of EHD programs or as mandated by law. If you collect private or confidential data from an individual, the data can only be used for the purposes stated to the individual at the time of collection. If you receive confidential, private, nonpublic and/or protected nonpublic data unsolicited, contact the party who sent the data as soon as possible, describe the situation and agree whether to return the data or to shred it.

[Go to > Table of Contents](#)

Data Protection and Security

To comply with the [Minnesota Government Data Practices Act](#) and adequately protect EHD's data assets, you must:

- Put private and confidential data away when you leave your desk and close client files when being visited.
- Make copies of private data only when necessary and shred copies when they are no longer needed. Please check with your administrative support staff regarding shredding procedures.
- Use screen savers that are protected by secure passwords.
- Back up, and keep secure, data files containing private or confidential data.
- Keep the data behind two locks, such as the locked entrance door and a locked file cabinet or password.
- Use applicable data classifications and statutes to determine if and how data can be released.
- Seek advice from your supervisor, manager, assistant division director or the policy, planning and analysis unit when in doubt about data classification or security.

[Go to > Table of Contents](#)

Rights of Data Subjects: Tennesen Warning

You must issue a Tennesen warning to individuals before asking them to provide private or confidential data about themselves. This includes recording a complaint. To avoid repeating the warning each time additional information is requested, the initial Tennesen warning must include a reference to future data requests.

The content of the Tennesen warning must include the following points:

- the purpose and intended use of the requested data;
- whether individuals may refuse or are legally required to supply the requested data;
- the consequences of supplying or refusing to supply the requested data; and

- the identity of other persons or agencies authorized by law to receive the data.

If possible, the Tennesen warning should be written at the seventh grade reading level. You may give the Tennesen warning either verbally or in writing. If you give the warning verbally, what is said should be documented, signed, dated, and filed. If possible it is best to give the warning in writing, have the individual sign it, make a copy for the individual to keep, and file the original. If it is not possible to provide a written warning, please read from a written text to ensure that all essential items are covered.

Additional Information. A [sample Tennesen warning](#) from the Indoor Air Unit.

[Go to > Table of Contents](#)

Releasing Public Data

Public data can be released to anyone. When requested, you must provide documents that are produced for public distribution. Programs may limit the number of free copies provided.

If the requester wants public data not produced for public distribution or large quantities of documents produced for public distribution, employees must explain costs and inform the requester that payment will be required.

[Go to > Table of Contents](#)

Releasing Private and Nonpublic Data

Individuals or entities about whom EHD has data may request access to those data. As a general rule, unless the data has been classified as confidential or protected nonpublic, the data is available to the data subject or an authorized representative upon request as described below.

Written, Faxed, or E-mail Requests. You may release private or nonpublic data to the data subject if a written, faxed or e-mailed request includes:

- the requester's name and address
- a form of identification or similar identifier that only the data subject should know
- an informed consent from the data subject if the writer is an authorized representative
- a description of the data requested

You must not send private or nonpublic data via e-mail. E-mail is not a secure means of transmitting data.

You must ensure the return fax number is that of the data subject or authorized representative. If you cannot verify this, you must mail the data to the data subject or ask the requester to appear in person.

Telephone Requests. If you receive requests for private or nonpublic data via telephone, you must not provide the data over the phone unless you are certain the person is the data subject or an authorized representative. Data must never be left on an answering machine or voice mail system. If you are uncertain, mail the data to the data subject or ask the requester to appear in person.

Drop-In Requests. Upon request, an individual who is the subject of stored private or public data on individuals must be shown this data without any charge. If they desire, we also must inform them of the content and meaning of that data. We are required to comply immediately, if possible, with these types of requests. If we are unable to make the data available to them immediately for example, the

data may be stored off-site and need to be retrieved we have ten working days from the date of the request to make it available. See *Minnesota Statutes*, section 13.04.

Drop-in requests by others are not generally allowed. An appointment must be made to examine the data. To protect the privacy rights of data subjects, you must allow yourself time to examine the data to ensure it does not contain information the requester is not authorized to see. The data may also not be stored on-site and need to be retrieved.

To verify the identity of a requester, ask to see a picture identification (driver's license, state ID, etc.) before releasing private or non-public data to an unknown requester. If that is not available, ask questions of the requester to ensure identity. An authorized representative must have a signed statement from the data subject authorizing access. You or another EHD staff member must be present while requesters examine any data to prevent loss or tampering. You cannot charge any type of access or inspection fee.

Written informed consent is required for release of private or nonpublic data to persons other than the subject of the data, unless there is statutory authority allowing for the data to be treated differently. The written consent must include the items found in *Minnesota Statutes*, section 13.05, subd. 4(d).

Sharing Data with Other Government Agencies. Without specific statutory authority or a court order, we cannot share confidential, private, nonpublic or protected nonpublic data with other state, federal or local agencies. Specific program statutes may give you direction on what, if any, other entities with whom you may share data. For example, the lead statute specifically states what agencies MDH can share elevated blood lead data with. Otherwise, contact your supervisor or manager to discuss.

Additional Information. [Table providing a summary of data release requirements.](#)

Court Orders and Search Warrants

Private or nonpublic data may be released pursuant to a court order or search warrant. Court orders and search warrants are signed by a judge of either a state or federal court and specify the data to be released. If presented with a court order or search warrant, contact your supervisor immediately. Your supervisor will then contact your manager, the assistant division director and the division director to discuss the release of the data. There may be a basis on which EHD opposes its release. If that is the case, your assistant attorney general should be informed to provide counsel.

[Go to > Table of Contents](#)

Subpoenas

A subpoena in and of itself is not a court order allowing for the release of private or nonpublic data. If you are served with a subpoena requesting the release of private or nonpublic data, the data should not be released and your supervisor, manager or assistant division director should assist you to inform the court about the statutory provision restricting the disclosure of the data.

[Go to > Table of Contents](#)

Releasing Confidential or Protected Nonpublic Data

Data that are classified as confidential or protected nonpublic are not to be released unless the requester has authority under the law or a court order. Contact your supervisor immediately if you

receive a request for either of these types of data.

[Go to > Table of Contents](#)

Releasing Personnel Data

Employees. The following data about public employees (including contract employees or staff of contractors) are public and must be released to anyone if requested:

- name
- salary, expense reimbursement, pension
- job title, job description, education and training, previous work experience
- value and nature of employer-paid fringe benefits
- date of first and last employment
- the existence and status of any complaints or charges against the employee
- the final disposition of any disciplinary action
- work location, work telephone number
- honors and awards received
- payroll time sheets
- city and county of residence

The following data about public employees are private and must not be released without written and signed consent of the employee:

- home address, home telephone number
- name and number of dependents
- marital status
- performance reviews, other evaluations of job performance
- bank account numbers
- Social Security numbers (employee, dependents)
- birth date
- information about disciplinary action that has not reached a final disposition
- informal notes in personnel file
- reasons for use of sick or other medical leave
- medical information

Applicants for Employment. The following data about applicants for public employment are public and must be released if requested:

- veteran status
- relevant test scores
- rank on eligible list
- job history
- education and training
- work availability

The names of applicants are private data if they have not been certified eligible for appointment to a vacancy, or are not considered to be finalists for a position in public employment. (A finalist is an applicant who has been selected for an interview.) The names of applicants who have been certified eligible or are finalists are public.

[Go to > Table of Contents](#)

Applicants for Credentials

All applications for credentials must contain a Tennesen warning. While an application for a credential is pending, all of the information submitted on the application, **except the name and address**, are not be released outside of EHD, unless authorized or required by law. Talk to your supervisor for specific authorizations or requirements to provide pending credentialing data with outside parties.

Note that applicants do not have to provide their home address and telephone number, but can give a business address and telephone number. See *Minnesota Statutes* section 13.41, subd 2(b).

If the credentialing process becomes contested, all of the information submitted by the applicant may become public, e.g. during the hearing process. After a credential is issued by EHD, all information from the application becomes public information, except for any social security numbers. Social security numbers are always private data.

Go to > [Table of Contents](#)

Examination Data

Testing, examination materials, and scoring keys used solely to determine individual qualifications for credentialing are classified as nonpublic, except pursuant to court order. Completed versions of credentialing examinations are accessible to the individual who completed the examination, unless we determine that access would compromise the objectivity, fairness, or integrity of the examination process. We are not required to provide copies of completed examinations or answer keys to any individual who has completed an examination.

Go to > [Table of Contents](#)

Credit Card Information

Some EHD programs allow payment of certain costs and fees with credit cards. Pursuant to *Minnesota Statutes*, section 16A.626, item (f), all credit card, charge card, debit card, or other method of electronic funds transfer account numbers are nonpublic data not on individuals as defined in section 13.02, subdivision 9, or private data on individuals as defined in section 13.02, subdivision 12.

Go to > [Table of Contents](#)

Debtor Information

If entities owe money to the state and are referred to the Attorney General and/or the Department of Finance for debt collection, *Minnesota Statutes*, section 16D.06 outlines the following requirements.

- Upon request from the finance commissioner or the attorney general, state agencies, political subdivisions, and statewide systems shall disseminate not public data to the finance commissioner or the attorney general for the sole purpose of collecting debt. Not public data disseminated under this provision is limited to financial data of the debtor or data related to the location of the debtor or the assets of the debtor.
- Data received, collected, created, or maintained by the finance commissioner or the attorney general to collect debts are classified as private data on individuals under section 13.02,

subdivision 12, or nonpublic data under section 13.02, subdivision 9. The commissioner or the attorney general may in certain cases disclose not public data. See section 13.02 for more information.

- The finance commissioner and the attorney general may not disclose data that is not public to a private collection agency or other entity with whom the commissioner has contracted under section 16D.04, subdivision 4, unless disclosure is otherwise authorized by law.

[Go to > Table of Contents](#)

Advisory Boards and Commissions

Names and home addresses of applicants for appointment to and members of advisory boards or commissions are public.

[Go to > Table of Contents](#)

Inspection Data

After a routine inspection is performed, the inspection report is public and always remains public, unless a judge orders otherwise. If based on the inspection, you determine that an investigation and/or disciplinary action is not required or not required at this time, the closed inspection file is entirely public.

A routine inspection is not the same as an investigation. If you determine that an investigation and/or disciplinary action is necessary, the requirements discussed below apply.

Additional Information. [Outline of release requirements for complaint and inspection data.](#)

[Go to > Table of Contents](#)

Complaints and Investigations

This section applies to all EHD data collected related to a complaint regardless of whether we have specific statutory authority to collect such data. Note that before recording any complaint, you must provide a Tennesen warning to the complainant.

Data practices requirements vary based the type of entity being investigated.

Investigations of Credentialed Individuals. If you receive a complaint against an individual or an individual doing business under an assumed name and that individual is credentialed, then the entire complaint file is confidential while the complaint is under investigation. The complainant has access to any statement that he or she provided to you.

If no disciplinary action is required, the file becomes inactive investigative data and is entirely private. Specifically, the nature or content of unsubstantiated complaints when the information is not maintained in anticipation of legal action; the nature or content of unsubstantiated complaints when the information is not maintained in anticipation of legal action is private.

If disciplinary action is taken, once the investigation becomes inactive, the inactive investigative data are private, except that the following data are public:

- the final disciplinary action;
- any agreement that was reached to resolve the matter without a hearing, along with the specific reasons for the agreement; and
- if there has been a public hearing regarding the disciplinary action, then the entire record concerning the proceeding is public unless the administrative law judge has ordered any part of the record closed.

Investigations of Credentialed Companies and Noncredentialed Entities. If you receive a complaint against a corporation or partnership that is credentialed or any type of entity that is not credentialed, as long as the investigative data are active, the entire file is protected nonpublic or confidential data Except the complainant may access any statement that he or she made to you.

Regardless of whether any discipline ensues, when the investigative data becomes inactive the file becomes public unless classified differently elsewhere in statute, or release would jeopardize other pending civil actions or the data have been presented as evidence in court. The one exception is that the identity of the complainant may be confidential under Minnesota Statutes, section 13.44.

Specifically, if an individual complains about violations or alleged violations of law concerning the use of real property, their identity is classified as confidential. A large number of the complaints you receive most likely concern the use of real property. The definition of real property is very broad. Please consult your supervisor, manager or PPA staff if you have questions.

Go to > [Table of Contents](#)

Procurement by State Agencies

There are two important items related to data privacy and the procurement process.

- Sealed bids received, along with the number of bids, received during a procurement process are nonpublic data prior to the opening of the bids.
- Most state professional/technical contracts do not contain accounting information as part of the actual contract document. In order to insure that agency personnel are able to correctly encumber the contract, a worksheet has been created. The worksheet is considered to be a stand alone document and not a part of the contract. Some of the information, such as the Employer Identification Number (EIN), contained on the worksheet is considered to be private data. The encumbrance worksheet must be kept separate from the contract document. This will reduce the chance of inadvertent release.

Other data privacy requirements may apply to specialized procurement processes and documents. MDH Finance and Administration Division (F&A) staff are knowledgeable about these requirements. Please work closely with the appropriate F&A staff to insure compliance.

Go to > [Table of Contents](#)

Calendars

The data in appointment calendars, either paper or electronic are classified as private personnel data, pursuant to Minnesota Statutes, section 13.43. However, if you record, in your calendar, information from telephone calls and meetings relevant to some work issue or concern, that information would not be classified as private personnel data. If the data meets the definition of public data, anyone has the right to see the data. If the data are not public, you must safeguard as required.

Go to > [Table of Contents](#)

Attorney/Client Privileged Information

Certain communications between the division and its attorneys are subject to the attorney/client privilege and are not public data subject to disclosure under the Minnesota Government Data Practices Act. Data that may be covered by the attorney/client privilege, such as letters, memos, electronic messages, reports and other documents that may contain either a request for legal advice or legal advice, will not be maintained in public files. If there is a question about the release of attorney/client data, the division staff person will contact the attorney who is handling the matter for the division. Once data has been released, it can not be claimed as attorney/client privileged information. Only the MDH Commissioner has authority to waive the attorney/client privilege.

Go to > [Table of Contents](#)

Information Systems and Networks

Any information about information systems and networks, including but not limited to access codes, specifications, programming notes and procedures that might be used to compromise protected data is nonpublic data and must be treated as such. The Information Resources Management (IRM) Unit is responsible for safeguarding this data or providing appropriate training to staff who work with this data. Please see your supervisor or manager if you feel you need this training.

Go to > [Table of Contents](#)

Denying Access to Data

If the requested data are classified in such a way that the requester must be denied access, you must inform the requester in writing that the data cannot be released and the statutory provision that prohibits the release of the data. You may do this either at the time of the request or in writing as soon after as possible. Your supervisor or section manager can assist you in preparing this response. A requester who disagrees with the determination may appeal the decision by writing to the Commissioner, [Department of Administration](#), 50 Sherburne Avenue, St Paul, MN 55155

Go to > [Table of Contents](#)

Correcting Data

When a data subject believes his or her file contains inaccurate or incomplete data, the data subject must notify you in writing of the dispute within 30 days. After consulting with your supervisor, you will either correct the data found to be inaccurate and attempt to notify past recipients of incorrect data, or notify the data subject that EHD believes the data to be correct. The data subject may appeal the decision by writing to the Commissioner, [Department of Administration](#), 50 Sherburne Avenue, St Paul, MN 55155

Go to > [Table of Contents](#)

Fees for Providing Data

Fees cannot be charged to inspect data, however, fees must be charged for retrieving and providing data. Fees are not intended to earn income for EHD but to offset our incurred costs. MDH has made a decision, however, to waive charges if the cost to provide the data is less than the cost to process the payment.

The following actual costs can be included in the fee:

- employee time or other costs searching for and retrieving the data, whether the data is kept in hard copy or electronically
- employee time or other costs for enhancing the data at the request of the person seeking access
- employee time for electronically transmitting the data
- employee time for making and putting copies together along with photocopying charges (July 2000: \$0.035 per image)
- postage

Costs cannot be charged for separating public data from private, confidential, nonpublic, or protected nonpublic data. Refer to MDH Policy #203.01 for billing information. (July 2000: The finance and administration division contact is John Masiulis.)

[Go to > Table of Contents](#)

Conclusion

Five Important Items to Remember:

- Data are public UNLESS the law explicitly states otherwise.
- Data practices laws are frequently changed. Be aware of the current requirements.
- Maintain written records of all requests for data.
- If you have questions or doubts, ASK your supervisor, manager, or policy, planning and analysis unit staff.
- When dealing with people from outside MDH on data practices matters, always clearly explain the reasons why the data are being collected or released or why the request for release is being denied.

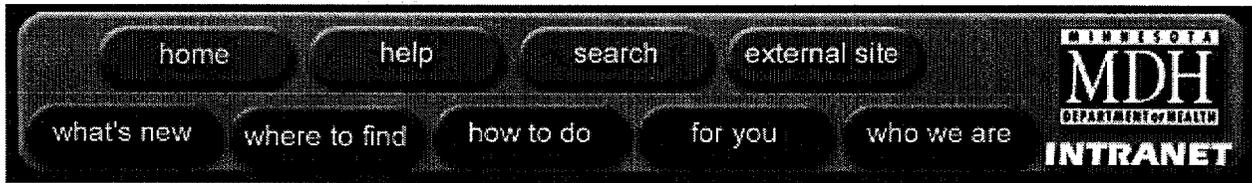
[Go to > Table of Contents](#)

Last updated Tuesday, 06-Nov-01 12:37:20
by jeanne.eggleston@health.state.mn.us

[|what's new|](#)[|where to find|](#)[|how to do|](#)[|for you|](#)[|who we are|](#)
[|search|](#)[|help|](#)[|home|](#)
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**FREQUENTLY ASKED QUESTIONS
ABOUT DATA PRIVACY**

- [What is government data?](#)
- [How is data classified?](#)
- [What are my basic responsibilities regarding data security?](#)
- [What if we receive protected data unsolicited?](#)
- [What about sharing data with other government agencies?](#)
- [What about my personal calendar and notes that I write on?](#)
- [What about credit card numbers, bank account numbers, and other financial information received during](#)
- [Is department budget information nonpublic?](#)
- [Can someone make a standing request for certain data, and if so, how should I handle this type of request?](#)
- [Where do I go for help with data privacy questions?](#)

What is government data?

All data, information, or records collected, created, received, maintained, or distributed by public agencies regarding storage media, or conditions of use. Government data is not just the information collected under the authority of public health study or a credentialing program. It is all data received by the government including complaints an

Go to > [top](#)

How is data classified?

Classification		Definition
Data on Individual	Data not on Individuals	
Public	Public	All government data unless specified by law.
Private	Nonpublic	Not public, accessible to data subject
Confidential	Protected Nonpublic	Not public, not accessible to data subject

Go to > [top](#)

What are my basic responsibilities regarding data security?

- Put private and confidential data away when you leave your desk and close client files when being visited
- Make copies of private data only when necessary and shred copies when they are no longer needed. Please contact administrative support staff regarding shredding procedures.
- Use screen savers that are protected by secure passwords.
- Back up, and keep secure, data files containing private or confidential data.
- Keep the data behind two locks, such as the locked entrance door and a locked file cabinet or password.
- Use applicable data classifications and statutes to determine if and how data can be released.
- Seek advice from your supervisor, manager, assistant division director or the policy, planning and analysis division regarding data classification or security.

Go to > [top](#)

What if we receive protected data unsolicited?

If you receive confidential, private, nonpublic and/or protected nonpublic data unsolicited, contact the party who possible, describe the situation and agree whether to return the data or to shred it.

Go to > [top](#)

What about sharing data with other government agencies?

Without specific statutory authority or a court order, we cannot share confidential, private, protected, or protecte state, federal, or other agencies. Specific program statutes may give you direction on what, if any, other entities data. For example, the lead statute specifically states what agencies MDH can share elevated blood lead data w supervise or manager to discuss.

Go to > [top](#)

What about my personal calendar and notes that I write on?

The data in appointment calendars, either paper or electronic, are classified as private personnel data, pursuan [13.43](#). However, if you record in your calendar information from telephone calls and meetings relevant to some information would not be classified as personnel data. If the data meets the definition of public data, anyone has not public, you must safeguard it as required.

Go to > [top](#)

What about credit card numbers, bank account numbers, and other financial information received durin

Some programs allow payment of certain costs and fees with credit cards. Pursuant to [Minnesota Statutes, sec card, change card, debit card or other method of electronic funds transfer account numbers are nonpublic data section 13.02, subdivision 9, or private data on individuals as defined in section 13.02, subdivision 12.](#)

Go to > [top](#)

Is department budget information nonpublic?

No, all department budget information is public, with one exception. Information and data prepared for the Gove classified as confidential until released by the Governor.

Go to > [top](#)

Can someone make a standing request for certain data, and if so, how should I handle this type of requ

Yes, standing requests are allowed. You should document clearly the request. You should establish a tracking s aware of new data subject to the request, so you can transmit the data to person(s) as soon as it is available. It periodically with the requester to see if s/he still wants to maintain the standing request.

Go to > [top](#)

Where do I go for help with data privacy questions?

- [The Data Privacy Puzzle](#)
- Minnesota Department of Health data practices policies and procedures
- Staff of the Policy and Planning Unit

- Your supervisor and/or manager.

Go to > [top](#)

Return to > [Data Privacy Table of Contents](#)

Thursday, 27-Sep-01 16:19:30

by: jeanne.eggleston@health.state.mn.us

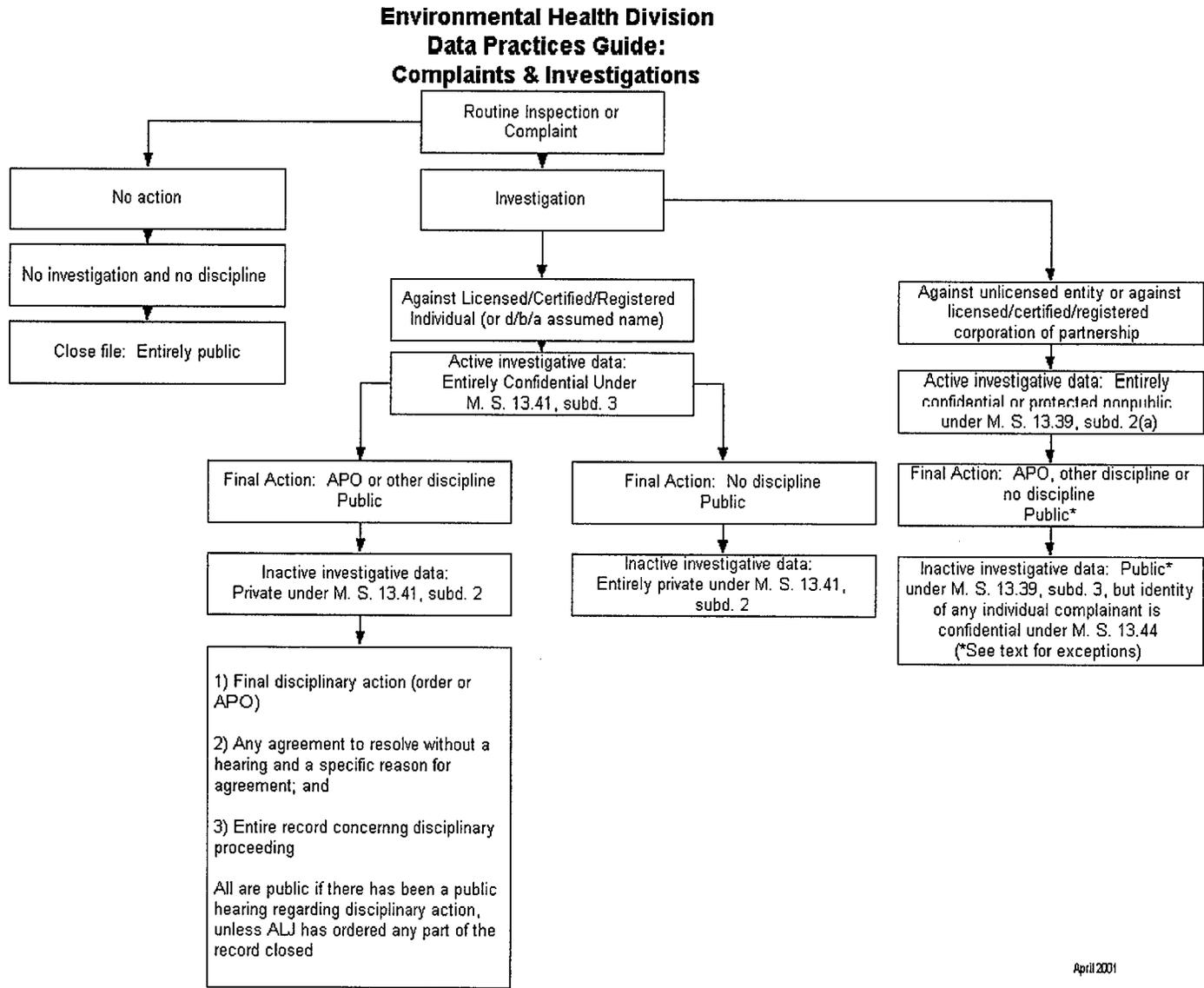
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 **Figure C**



April 2001


Figure B

Summary of Data Release Requirements					
Classification		Definition	Who has access?	Examples	
<i>Data on Individuals</i>	<i>Data not on Individuals</i>			<i>Data on Individuals</i>	<i>Data not on Individuals</i>
Public	Public	All government data unless specified by law.	Anyone for any reason.	Names and addresses of certified asbestos inspectors	Names and addresses of well contractors
Private	Nonpublic	Not public, but accessible to data subject.	Data subject or authorized representative; no public access.	Home addresses of state employees	Complaint statements regarding credentialed businesses accessible to complainant.
Confidential	Protected Nonpublic	Not public and not accessible to data subject.	Only MDH/ other agency staff with a "need to know."	Identity of a complainant. Data on a child with an elevated blood lead level	Active investigative data.



Figure A Tennessee Warning Example: Indoor Air Unit

We are requesting your name, address and phone number so that we may contact you for further information, to request your testimony if needed, and to let you know how your complaint was handled.

You are not required to provide this information. However, without it we will not be able to contact you regarding additional information that may be needed to respond to your complaint. All information you provide which might identify yourself is legally classified as confidential data on individuals and can only be released to:

- ▶ Department of Health employees, who need it to process your complaint;
- ▶ Department representatives in the Attorney General's Office;
- ▶ Staff of the Office of Administrative Hearings or the courts; and
- ▶ Anyone having a court order to obtain the information.

Unless you are a witness or an order is issued by the Office of Administrative Hearings or the courts, all personal information you provide will remain confidential at the conclusion of this matter.

Notice given by: _____

Date: _____

Verbally over the phone

Verbally in person

Other (specify): _____


Figure B

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4.1.2
**PROGRAM
ORGANIZATION**

OVERALL VIEW FOR THE AGREEMENT STATE PROGRAM IN MINNESOTA

The agreement state program will consist of management, supervisory, license review, inspection, data tracking and analysis activities. There will also be registration and registration review of generally licensed devices and associated activities, such as collection of fees.

These activities will be carried out by 7.5 individuals, but not all of these individuals will be assigned solely to the agreement state program full-time and will be phased in over the next year. The position of the agreement state supervisor will be filled prior to time the U.S. NRC gives the Minnesota program its agreement state status. Since the fees to support the program will not be collected until the program is established in Minnesota, there has not been funding to support the supervisor position. In the meantime, the rule writing, training assignments, form creation and other start-up activities have been carried out by Susan McClanahan, Radiation Supervisor.

When the agreement state program has the new supervisor, Susan will return to supervising only the x-ray program. In addition, she is currently supervising the x-ray program, which includes the non-power plant emergency response program, training and staff meetings for the technical advisors for the power plant emergency response team, mammography inspections and the FDA level II compliance program.

The licensing portion of the agreement state program will consist of the review of applications and amendments, oversight of decommissioning activities and transportation of radioactive materials through Minnesota. One staff person will have primary responsibility for licensing and another staff person will serve as the back-up for this position. The back-up individual for licensing will be one of the inspectors at the start-up of the program.

The inspection portion of the program will consist of initial, reactive or incident, routine; follow-up; and special types of inspections. There will be one full-time inspector with one half-time inspector and one back-up individual. Another individual for the back-up position will be hired or moved into that position from the x-ray program as the program and training progress.

The philosophy of the agreement state program staff is to:

1. Establish a history of interaction with licensed parties. Many of these facilities are already familiar with the staff as they have worked together in the x-ray program, but have no working history of the facilities' activities in the radioactive material arena.
2. Determine compliance with Minnesota Rules Chapter 4731 in relationship to their licensed activities.
3. Create a database of conditions or tie-downs that can should be added to respective licenses. This would be based on license types, activities, radionuclides and use.

Because Minnesota radiation staff have never visited these facilities in order to determine compliance for radioactive materials handling, it will become apparent that the license review

and inspections that MDH staff conduct will be different from those activities as they are conducted by the U.S. NRC. The Minnesota inspections will initially seem to be more intense and more interactive than current U.S. NRC inspections because the MDH staff lack the long history that NRC staff has with the licensees.

By statute, Minnesota will be inspecting each licensee at least once every four years instead of the frequency followed by the U.S. NRC. Minnesota has a statute mandating this frequency of inspection of any facility using radiation. This will be a change for many of the current licensees in Minnesota.

MINNESOTA DEPARTMENT OF HEALTH RADIATION CONTROL UNIT HISTORY

Radiation control has been a concern for health groups ever since the discovery of x-rays by Wilhelm Roentgen in 1895 and the realization of radiation properties of radium by Madam Curie in 1901. The earliest x-ray injury on record appears to have been observed in January 1896, and again in March 1896, when Edison reported that both he and his assistant were troubled by severe smarting of the eyes after several exposures from a discharge tube. By the end of 1896, skin dermatitis was reported by several observers. Study of the biological action of x-rays was soon the subject of numerous reports.

Radiation protection programs in their early development, did not seem to follow any orderly or systematic plan. For the first two decades after the discovery of x-rays and radium, radiation uses and applications were mainly in the medical field in the hands of the physicians or the engineers who were working with physicians. In 1928 the International X-Ray and Radium Protection Committee was formed. Roots of what is now known as the National Council of Radiation Protection and Measurements(NCRP) go back to this group. Standards and guidance from these groups and the National Bureau of Standards provided some basis for establishing radiation protection limits at that time. Successors of these groups continue to provide radiation standards to this day.

Beginning of the Minnesota Program

Concern for all aspects of public health is the primary purpose of the Minnesota State Board of Health (now the Minnesota Department of Health). Individual problems or conditions often arise that require special consideration and action. It was in this way that in 1938 the Minnesota State Board of Health was granted federal funds to begin an Industrial Health Division along with the Division of Environmental Sanitation (now the Division of Environmental Health). In 1939 the Minnesota Legislature authorized the Division of Industrial Health. The immediate main concerns of the Industrial Health Division were radium dial painters and medical use of radium in therapy.

Among the types of actual or potential hazards to be considered by the Division were ionizing radiation used by the public. Medical and industrial usage of radiation was just becoming common at this time. Concern arose nationally, as well as in Minnesota, about radium dial painting. In accord with common practices of the time, the Industrial Health Division checked the radium dial painters' hands for thorough washing with the use of ultraviolet light. The National Council of Radiation Protection and Measurements established a maximum permissible body burden(MPBB) for radium. The MPBB served as a guide along with other standards published by the National Bureau of Standards and standards from the American Conference of Governmental Industrial Hygienists.

In addition to use of radium for dials, radium was commonly used in therapy for medical treatment. Radiation protection measures for patients, staff and the public were developed. Some surveys of hospitals, clinics, and private offices were conducted by the Industrial Health Division inspectors during the 1940's to check on proper radiation protection procedures in the handling and disposal of radium plaques and needles.

During the late 1940's, another potential hazard became apparent. The use of foot fluoroscopes in shoe fitting was widespread. Because of the large dose that could be received from faulty or incorrectly operated units, it was necessary to survey and adjust foot fluoroscopes frequently. Surveys began to include other types of x-ray equipment in hospitals and medical and dental offices. Radiation detecting and measuring instruments were purchased to conduct the surveys. By 1950 some 200 foot fluoroscopes had been inspected and adjusted.

The 1950's

During 1951 the mobile x-ray units in the state were surveyed. Because of the drive for early detection of tuberculosis, there were many mobile units operating throughout the state. A study was begun in Minnesota at this time to determine the ionizing radiation exposure of personnel operating x-ray machines.

A series of presentations on radiation effects of atomic warfare was given to graduate doctors and graduate nurses at the University of Minnesota. A working relationship with the University of Minnesota Health Services was established whereby assistance could be given in teaching courses concerning radiation.

In 1952 the Division of Industrial Health began to accept the submission of structural building plans for examination and approval of radiation shielding for new hospitals or additions to existing facilities. Visits to isotope users in the state were made accompanying U.S. Atomic Energy Commission (now U.S. Nuclear Regulatory Commission) inspectors. An organized effort to survey every x-ray unit in hospitals and medical and dental offices began in mid-1952.

With the advent of atomic and nuclear weapons testing, the Minnesota State Board of Health became aware of fallout and possible resulting dangers. The Board began participation in the National Air Sampling Network in 1953. To gain knowledge and skill about the procedures, one of the staff members participated as an off-site monitor at the Nevada Test Site. The Minnesota State Board of Health participated in the U.S. Public Health Service national radiation surveillance network for air, milk and water as long as it remained in existence and now administered by the U.S. Environmental Protection Agency (EPA) program in the modified form. During 1953 the Section of Radiation and Occupational Health (formerly the Division of Industrial Health) began to collect environmental samples and analyze samples from western Minnesota after concerns were expressed about illness of the public in the area and unusual environmental findings.

In a continuing effort to keep radiation personnel informed, the Minnesota State Board of Health, the University of Minnesota and the U.S. Public Health Service jointly sponsored a three-day Radiological Health Seminar in May 1955.

A few months later one of the Section of Radiation and Occupational Health staff members was appointed as Radiological Defense Officer for the State Civil Defense. The Minnesota State Board of Health maintained an active role in the State Civil Defense test run of the emergency evacuation plan and utilization of an emergency central office. Assistance was also given in calculating a postulated fallout pattern in case of a nuclear attack.

In 1955 the Elk River Rural Cooperative Association made application to the Atomic Energy Commission for a permit to build a nuclear power reactor. Studies were begun by the Minnesota State Board of Health and the U.S. Public Health Service to ascertain any possible health hazards. Surface waters and biological samples were added to previous types of samples to determine existing radioactivity levels. The types of samples and increased work load necessitated the purchase of more sophisticated and sensitive laboratory instruments in 1956. By 1957 it became apparent that use of sources of ionizing radiation would require controls and direction.

In July 1957, Governor Freeman appointed a committee to study and advise on atomic development problems. The Minnesota Atomic Development Problems Committee, as the group was known, was composed of about two dozen Minnesota citizens with a special competence or professional ability in a field related to the development or utilization of nuclear energy. The majority of the committee were scientists in relevant fields. The 1957 Legislature amended M.S. 144.12 of the MN Board of Health (now Commissioner of Health) authority on "Regulation, Enforcement, Licenses, Fees" to include Paragraph (15) which specifies "Sources of radiation, and the handling, storage, transportation, use and disposal of radioactive isotopes and fissionable materials." The Minnesota Legislature authorized the MN Board of Health to adopt regulations for the control of sources of ionizing radiation.

The following year, after detailed consultations with the Governor's Committee on Atomic Development Problems, as well as with medical organizations and other groups, the rules were written and promulgated. "Regulations on Ionizing Radiation" were adopted by the MN State Board of Health on Dec. 4, 1958. Included with the regulations were requirements for the registration of all sources of ionizing radiation, designation of a radiation safety officer at each installation to be responsible for the radiation source and exposure received as a result of operation of the source, regulation for proper storage and transportation of ionizing radiation sources, designation of times and locations for the use of the radiation symbol, and banning the use of the foot fluoroscopes. Minnesota was one of the first states to have such regulations.

In 1958 a detailed environmental radiation study program was initiated. A low background anticoincidence counter was purchased for the Industrial Health Division to assist in sample analysis.

The water surveillance had expanded by that time, to monthly sampling and analysis of 40 surface waters and 20 ground water supplies.

To assist in proper radiation protection the Section of Radiation and Occupational Health began to notify the state Fire Marshal of the location of isotope users. The first instructors course in radiological science was cosponsored with the MN Civil Defense. In an attempt to maintain a good working relationship with the U.S. Atomic Energy Commission, some MN Board of Health members visited the Chicago operations offices in 1957. Communication channels were opened for continued cooperation.

In 1958, the environmental study revealed the presence of Strontium-90 in varying amounts in milk. A study supported by the U.S. Public Health Service was undertaken to investigate consistent farm-to-farm differences in the concentrations of Strontium-90 found in milk produced within a small milkshed in central Minnesota. Monthly milk samples were taken from 5 milksheds throughout the state. Results indicated that Strontium-90 levels in milk were well within maximum permissible concentration levels. Although the amount of fallout had decreased since the aboveground nuclear weapons testing ban, milk, water, and air environmental sampling programs have been maintained. Additional environmental monitoring was conducted in a preoperational monitoring program around the Elk River Reactor site.

To carry out the various programs in radiation protection and monitoring, the staff of the Section of Radiation and Occupational Health was expanded to include a radiochemist, a chemical engineer, two chemist aids and a radiological health physicist who was on loan from the U.S. Public Health Service. The direction of the Board of Health's radiological health program expanded emphasis from one of prime concern for nuclear weapons fallout prior to the aboveground testing ban to also focus on medical and industrial sources of radiation as an area of considerable exposure.

The 1959 legislature appropriated \$25,000 for each year of the next biennium for the purpose of developing the MN Board of Health's radiological health program. A radiochemical laboratory was constructed and equipped as part of the program. Three additional technical staff were hired, and a U.S. Public Health Service radiation physicist assignee was obtained. The Board of Health appointed a Radiation Safety Advisory Committee to advise the Board on matters of policy, program objective, and regulatory and legislative needs in the field of radiation.

County wide surveys of operating conditions of x-ray and fluoroscopic installations were initiated. By 1959 most of Minnesota's general hospitals had established chest x-ray programs for tuberculosis checks. The x-ray units used for the checks were surveyed by the Section of Radiation and Occupational Health. The number and type of exposures and machine settings were obtained for each exposure administered during a specified period of time in an attempt to assess exposures administered to patients and personnel. A radiation safety survey program for dental x-ray machines was initiated with the cooperation and participation of the Minnesota Dental Association.

The basic materials and program procedures were provided by the U.S. Public Health Service "sur-pack" program for dental machines to limit size and exposure for dental exams. The sur-packs were sent to each dental office. The information was to be sent to the Minnesota State Board of Health. As the state inspectors went to dental offices to survey x-ray machines, they often assisted the dental office in obtaining the sur-pack information.

The 1960's

During August and September 1962 the I-131 concentrations in Minnesota milk had risen to a level that required some action to reduce the I-131 content. After numerous meetings with the dairy industry, the MN Department of Agriculture and others concerned, an aged feeding program for fluid milk dairy herds was chosen as a satisfactory means of reducing I-131 in market milk. Milk samples were collected and analyzed on a 24-hour basis. Using aged feed was effective in reducing I-131 levels in milk. In fiscal 1963 the U.S. Public Health Service continued to maintain the service of assignees to the radiation safety program. In addition, a federal assistance grant of \$27,000 was awarded to the program.

In 1965, routine radium leak-testing was initiated following an extensive study of methods and techniques. Because of the extreme hazards associated with leaking radium sources and contaminated areas, the radiation safety had been expanded to include leak testing of radium sources every six months.

Concern about color television radiation emission prompted surveys of various models of color television receivers to determine the levels of x-radiation. Survey results did not indicate emissions sufficient to warrant further action beyond the U.S. Public Health Service recommendations.

Continuation of the environmental monitoring and x-ray survey programs occupied the majority of the staff time. Iodine levels remained in the non-detectable range except during June 1966 when eight milk samples rose slightly but remained well within acceptable limits following a Chinese nuclear weapons test in May, 1966. The general trend for Strontium-90 and Cesium-137 in milk continued downward but remained within the detectable range. Daily sampling of air particulates for evaluation by the Public Health Service Radiation Surveillance Network was continued. Reports on the results of the environmental monitoring were published in "Radiological Health Data and Reports," a monthly bulletin distributed by the Public Health Service. Reports entitled "Survey of Environmental Radioactivity," prepared jointly by the Rural Cooperative Power Association of Elk River and the Minnesota Board of Health, were released biannually.

A demonstration nuclear power plant was built for the U.S. Atomic Energy Commission (AEC, now U.S. NRC) at a site on the Mississippi River near Elk River, MN. The pre-operational and operational environmental monitoring was performed by the University of Minnesota School of Public Health, under the direction of the Governor's Committee on Atomic Development Problems. The Elk River reactor operated during 1967-1968.

Various structural and radiation problems were discovered during the operational period. The AEC owned the Elk River reactor initially but expected a Minnesota company to purchase the power reactor. Subsequent to discovery of the problems with the reactor, the Minnesota company did not purchase the reactor.

After an investigation of potential health hazards, the Minnesota State Board of Health had no objection to Northern States Power Company being granted a provisional construction permit by the Atomic Energy Commission for the Monticello nuclear generating station. A statement to that effect was read at the hearing held on May 25, 1967 at Buffalo, Minnesota.

In April 1968, because of increasing demands in each area, the Section of Radiation and Occupational Health was divided into two sections, the Section of Radiation Control and the Section of Industrial Hygiene. By 1969 the Section of Radiation Control hired 3 additional staff and the Public Health Service assignees were reassigned by the Public Health Service.

In 1969 the AEC commissioned the Elk River Rural Cooperative Power Association (now the United Power Association) to dismantle the reactor at Elk River and decontaminate the site. The Elk River reactor was one of the first reactors in the country to be dismantled. Many of the procedures had to be developed. In 1970 the Elk River Rural Cooperative Power Association representative met with the Radiation Control Section to discuss the plans for decommissioning the reactor and the implications for public health. Also discussed was the environmental monitoring the MN Board of Health would be conducting. The University of Minnesota, School of Public Health, was no longer involved with the Elk River reactor.

After investigations to determine the safety and potential health hazards of locating a nuclear reactor at Red Wing, Minnesota, a statement of the approval by the State Board of Health was submitted on May 21, 1968, to the hearing board for the Prairie Island nuclear power generating plant.

The 1970's

In 1970, approximately 2500 facilities in the state used about 7000 x-ray and radioactive material sources. Widespread use of radiation sources resulted in schools obtaining some of the sources. Seven hundred and forty-one secondary schools and universities in Minnesota were requested in 1970 to submit information about sources of ionizing radiation located in schools or in the possession of students. Although 200 schools reported the possession of sources of ionizing radiation, such as x-ray equipment, particle accelerators, and radioisotopes, the majority of the sources reported were small enough to be exempt from registration in Minnesota. The information gathered was reviewed and a pilot study was initiated to determine if any significant hazards result from the presence of these sources.

The Basic Radiological Health course was presented in Minneapolis, MN by the U.S. Public Health Service on July 6-17, 1970. Twenty students from state and local health departments and related fields participated.

During May 1970, a one-day seminar for chiropractors was cosponsored with the Minnesota Chiropractors Association. The U. S. Public Health Service assisted in delivering presentations. The MDH (formerly known as the MN Board of Health) wrote and put in place emergency response plans for non-power plant incidents and accidents that involve radiation. The plan has been updated periodically since then.

In 1969 an extensive environmental monitoring and sample analysis program was initiated for the pre-operational monitoring of the Monticello nuclear reactor site. The Monticello Nuclear Reactor began operation in 1971. The extensive environmental monitoring and sample analysis program continued. By special arrangement Northern States Power Company (now the Nuclear Management Company) worked with the MDH to provide the environmental monitoring and sample analysis to comply with the NRC requirements. That special arrangement was dissolved a few years later.

The Rules and Regulations of the MDH relating to Ionizing Radiation were revised in 1971 following meetings and discussions with the Advisory Committee on Radiation Safety and other interested parties. The rules included regulations specific to radiation equipment and the requirement to register radiation sources with the MDH.

In about 1971, the MDH began meeting with the Dept. of Public Safety, Division of Civil Defense (now Emergency Management) and other state and local agencies to write a MN Emergency Response Plan for accidents at the nuclear reactor. The MDH has continued to meet and coordinate with the Division of Emergency Management (DEM) since that time. A plan was written for the emergency response by the MDH and other state and local agencies to an accidental release of radioactivity from the Monticello nuclear reactor. An emergency response team from the MDH was trained and maintained in readiness. Instruments and other equipment and materials were assembled and reserved for emergency use. The MDH has continued to meet and coordinate with the Division of Emergency Management (DEM) since that time. The roles and responsibilities of the MDH in the emergency response plan have changed through the years. The emergency response plan also includes response to emergencies at the Prairie Island nuclear reactors.

In 1971, the pre-operational environmental monitoring and sample analysis program for the Prairie Island Nuclear Reactor site was initiated. In 1973 the Prairie Island Nuclear Reactor began operation. The same extensive environmental monitoring and sample analysis program as was performed for the Monticello Nuclear Reactor site was conducted at the Prairie Island Nuclear Reactor site.

In about 1973, the Elk River Reactor was fully decommissioned. The MDH had performed environmental monitoring around the site during the decommissioning and for the transport of nuclear waste from the site. The low-level radioactive waste was transported to a disposal site in Illinois (no longer active). The final analysis of the site for reactor-originated radioactive contamination was performed by the MDH using Pressurized Ion Chambers (PIC).

The MN Pollution Control Agency had a requirement that no reactor-originated radioactive material could remain at the site.

The 1974 Legislature authorized the requirement of fees for registration of x-ray machines and radium and mandated a 4-year (minimum) inspection cycle. The registration fee was incorporated into rule in 1976. The x-ray machine and radium inspection program was implemented. By 1976-1980 all facilities had been inspected, and some frequently used facilities such as hospitals were inspected every two years. Also in 1974, the MDH entered into a contract with the Food and Drug Administration to inspect new and/or refurbished x-ray system installations using the FDA protocol for inspections.

The FDA contract has been modified several times but has been renewed annually since that time. In 1978 the Commissioner of Health approved the requirement to have Commissioner approval prior to performing x-ray screening for the public. The approval requirement was a measure to reduce the public exposure to radiation from x-ray screening at free mobile chest x-ray units (for TB) set up at shopping centers and similar locations.

In about 1974, the MDH participated in the pilot study for the National Evaluation of X-Ray Trends (NEXT). NEXT evaluates the radiation exposure for specific x-ray projections from all of the participating states and informs the state of how facilities from that state used in the study compare with the national radiation exposure. Minnesota has continued participation in NEXT since the pilot study. The specific x-ray projection changes from year to year.

Because of the widespread use of radioactive materials in medicine and industry, many sources are transported by air, rail and motorized vehicle. Periodic transportation accidents of the vehicle carrying sources occur at the airport, on city streets, on highways, and in rural areas. The Radiation Control staff respond to the accidents and incidents to ensure that the radiation source is properly handled, stored, transferred or disposed, and that individuals that may have been exposed to radiation are directed to where medical assistance is available. Response to transportation accidents and incidents had been conducted since the Division of Industrial Health was formed and continues today.

In 1977 China conducted some aboveground nuclear bomb tests. Additional environmental monitoring detected additional radioactivity in MN in the milk and in the air. The additional radioactivity in the environment was not high enough to recommend any protective actions. India also conducted some aboveground bomb tests; however, no additional radioactivity in the air or milk was detected. See diagrams on page 13 and 14. Additional environmental monitoring was also conducted in MN following the Three Mile Island Reactor accident in 1978. No additional environmental contamination was found in MN.

In 1979 the Prairie Island Nuclear Reactor had a small "loss of coolant" accident caused by a rupture in the recirculating water pipe. The accident was controlled in a couple of hours. The MDH was notified in accord with the emergency response plan of the time. Radiation Control

staff reported to the Division of Emergency Management control room to provide evaluation of radiation information and recommend protective actions. Other Radiation Control staff were dispatched to conduct monitoring and take samples near the Prairie Island Reactor site. The release during the accident was mostly noble gasses- krypton and xenon, and a small amount of iodine-131 that did not actually get much beyond the plant boundary. The two-mile circle around the plant was evacuated as a protective measure. To close out the emergency the MDH needed to provide data from the environmental samples collected and analyzed by the Radiation Control, program staff during the emergency. Governor Quie waited in the capitol until the MDH was able to demonstrate that the off-site areas were at background levels and the public could return to their homes.

The 1980's

In about 1985, some cobalt-60 was left with scrap metal and eventually used to make table legs. The tables were sold all over the country, including in Minnesota. When the MDH was notified, dozens of restaurants and other facilities throughout the state were using the tables, and many more tables were in storage. The Radiation Control staff were directed by the Commissioner of Health to inspect each of the potentially affected tables; the table legs were the most affected. After weeks of inspections, all of the potentially contaminated tables were inspected. In about 1987, another radioactive source was mixed with scrap metal and contaminated metal that was made into chain link fencing. The Radiation Control staff was again dispatched to inspect the fencing that had already been distributed and installed as fencing, and also rolls of chain link fencing that were still in storage.

A different type of contamination occurred in about 1985 when some 3M anti-static devices that contain polonium-210 began to lose some of the polonium-210 discs. The dislodged sources created a potentially contaminated area. Many of the devices were located in manufacturing or processing facilities, however, some of the anti-static devices had been installed in food producing establishments. The NRC sent staff to inspect the facilities and ensure that they were not contaminated. MDH, Radiation Control staff assisted by inspecting some of the facilities, particularly the food producing locations such as Hormel Meats in Austin, MN and Baldinger Bakery in West St. Paul, MN.

The accident in 1986 at the Chernobyl reactor in the then Soviet Union (now Ukraine) required extensive additional environmental monitoring. It was necessary to make frequent contact with the U.S. Dept. of Energy and the Environmental Protection Agency to get updates on data regarding the reactor and the content and amount of radioactivity in the release. The media requested very frequent information updates on the amount of radioactivity found in MN environmental monitoring. Some increased radioactivity was found in MN environmental samples; however, the level was not high enough to warrant a special protective action. See page 13 and 14 for diagrams.

The Current State Regulatory Program

In 1986 fees for registration of x-ray machines and radium were increased. This was the first increase since 1976 when the fees were put into rule. In 1988 the staggered biennial renewal for radiation sources by groups of counties was initiated to decrease the workload of processing the paperwork from all counties renewing at the same time. In 1990 the registration fees for radiation sources were increased to make it self-supporting by 1995. The 1991 Legislature authorized the Cease and Desist powers and Administrative penalties; rules were drafted following the authorization. The Health Enforcement Act was adopted to give the Department the ability to fine facilities and individuals for violation or noncompliance and repeated noncompliance with regulations. The penalty for violations may be up to \$10,000 per inspection. Fines for noncompliance has helped bring facilities into compliance.

In 1986 Minnesota was one of the first states to initiate mammography inspections. Later the MDH partnered with Medicare who had become the lead organization for all mammography inspections. In 1992 Congress passed the Mammography Quality Standards Act (MQSA) and later charged the U.S. Food and Drug Administration (FDA) with the national mammography standards and inspection responsibilities. Since MQSA's inception, FDA has contracted with MDH to inspect approximately 250 facilities and 15 mobile organizations in Minnesota to evaluate their compliance with MQSA regulations.

The MDH Rules Relating to Ionizing Radiation, Chapter 4730, were revised in September, 1991. The most significant changes included incorporation of the Federal Performance Requirements for x-ray systems, requirements for Quality Assurance, increased registrant responsibilities, and revised shielding rules for new construction and major reconstruction. Thirty four seminars were conducted on the new rules for vendors in August 1991 and for registrants from September through November 1991 throughout the state. The seminars were focused so that about half of the seminars explained changes affecting medical facilities, and half explained the changes affecting dental facilities. Enforcement of the regulations on Quality Assurance was delayed to permit registrants to write procedures and obtain the necessary equipment. The rules for Quality Assurance became effective in July 1993. In 1991 there were about 4500 facilities with over 12,000 x-ray systems in the state.

Following the adoption of the 1991 revised rules, the Radiation Control x-ray inspection procedures were modified to incorporate many of the FDA compliance tests. By inspecting for the FDA compliance tests, the Department ensures compliance not only with the Department's rules but also the manufacturer's specification. At the same time the inspection procedures were changed to assure that the MN statutory mandate of inspection of every radiation source at least once every four years could be completed, the assignment of inspections was changed. Instead of having an inspector responsible for inspecting a specific portion of the state, all inspectors are assigned to work in a given quarter of the state to complete the inspections in that year. The quarters are rotated so that the entire state is inspected every 4 years.

In August 1992 the Minnesota Public Utilities Commission (PUC) issued an order permitting storage of high level nuclear waste at the Prairie Island Nuclear Generating Station. The PUC order included a requirement that the utility consult with the MDH and the Prairie Island Indian Community for the preparation of a radiation monitoring plan. The PUC also ordered, as part of the radiation monitoring program, the installation of two pressurized ionization chambers (PIC) with telemetry links to the MDH office. Since 1995 the Radiation Control Unit has had continuous monitoring of radiation levels near the Independent Spent Fuel Storage Installation (ISFSI) where the casks containing high level nuclear waste are located.

In 1997, the MDH Rules Relating to Ionizing Radiation, Chapter 4730, were revised to specifically address some radiation sources, such as asphalt density meters, used primarily by the road and building construction industries, and x-ray fluorometers, including units with NARM (Naturally occurring and Accelerator produced Radioactive Material), used for testing lead in paint.

The added requirements include maintaining formal written operating and emergency procedures, specific rules for record keeping, and certified calibrations of radiation survey meters. Radiation Control staff conducted six workshops throughout the state explaining the new rules.

The 1998 Legislature authorized the negotiation of an agreement with the U.S. Nuclear Regulatory Commission for the purpose of designating Minnesota as an Agreement State. Governor Arne H. Carlson sent the letter to Shirley Ann Jackson, Ph.D., Commissioner of the U.S. Nuclear Regulatory Commission requesting assistance from the NRC to enable the MDH to meet the NRC agreement state requirements to assume regulatory authority for non-power plant radiation hazards pursuant to section 274b of the Atomic Energy Act of 1954 as amended.

Emerging Issues

Radiation Control staff met with the MN Dept of Agriculture food irradiation subcommittee, including county and local health representatives and MN Beef Council representatives to discuss the use and effects of food irradiation. The MDH maintains information on food irradiation on its website and distributes an information sheet as needed. The Radiation Control staff responds to inquiries on food irradiation as they come to the department. The MDH sponsored a national seminar on food irradiation in 1998.

In 2000 Huisken Meats (now a division of Sara Lee) introduced for public consumption, hamburgers that had been irradiated with a SureBeam irradiator to kill foodborne pathogens. To introduce irradiated beef Huisken Meats served a luncheon with irradiated hamburger for individuals who had a role in promoting and evaluating irradiated foods. Irradiated meat, particularly hamburger, has been available for purchase since then. Later that summer the Minnesota Beef Council, in cooperation with the MDH, had samples of irradiated hamburger available for the public at the Minnesota State Fair.

In 2000 the Positron Emission Tomography(PET) cyclotron facility at the Mayo Clinic began production of Fluorine-18(F-18) for diagnostic scanning. The Radiation Control staff was involved in discussions with Mayo Clinic staff prior to and during construction of the PET cyclotron facility. At each new phase, the Radiation Control staff visited and asked questions about the facility.

In 2000 the PET cyclotron facility in Roseville began production of F-18. As with the Mayo Clinic facility, the Radiation Control staff were in discussion with the owner prior to and during construction of the cyclotron facility. Several times prior to and during construction, the Radiation Control staff visited the facility.

In 2000 the number of 5000 facilities with about 12000 x-ray units appears to have stabilized. Approximately 1200 x-ray unit inspections are performed each year. The staff continues to research new technologies and issues, such as lasers, PET, EMF (electromagnetic radiation), and food irradiation to ensure public health as the Radiation Control program primary focus.

In 2001 the Radiation Control staff updated the inspection procedures for Computerized Tomography(CT) scanners. CT is not a new modality and some of the 162 units in use in the state at this time may not be functioning in accordance with current standards. All of the CT scanners in the state are being inspected during 2001-2002.

Figure 5-1
Beta Radioactivity in Air in Minneapolis
 1974 - 1986

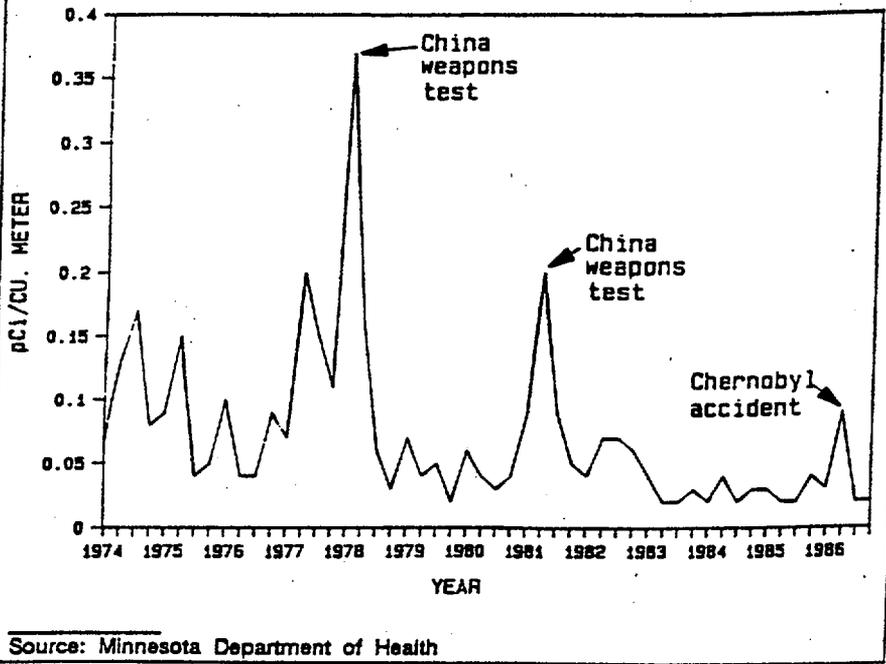


Figure 5-2
Beta Radioactivity in Air in Minneapolis
 During Chernobyl Accident

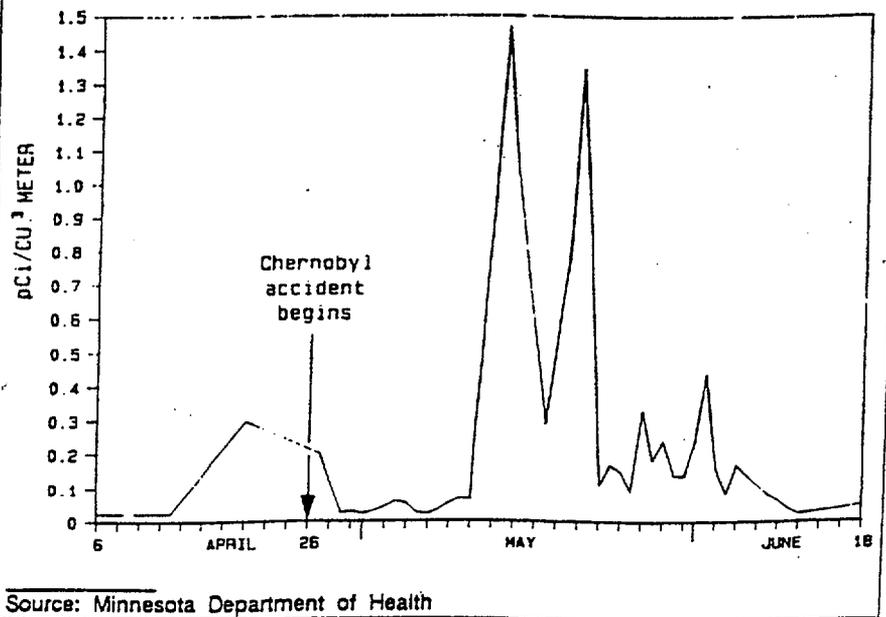
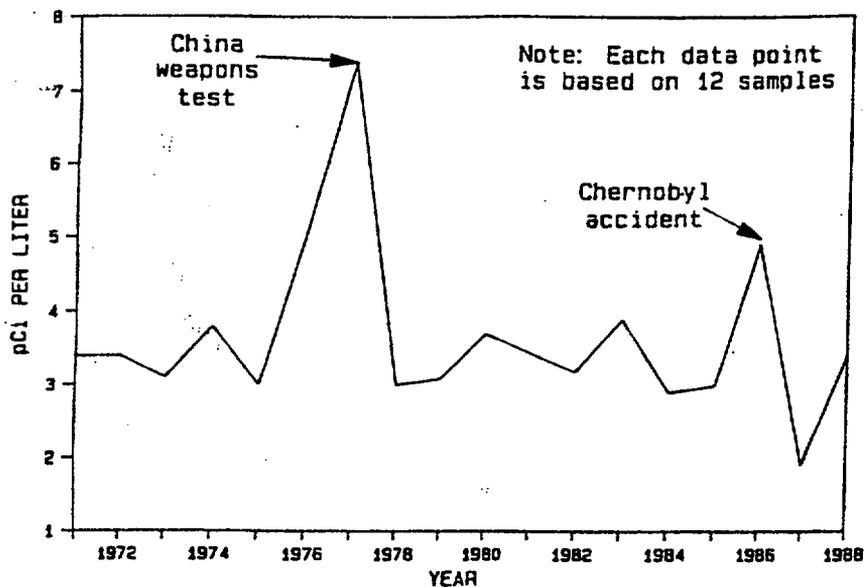


Figure 5-3
Radioactivity in Milk in the Metro Area

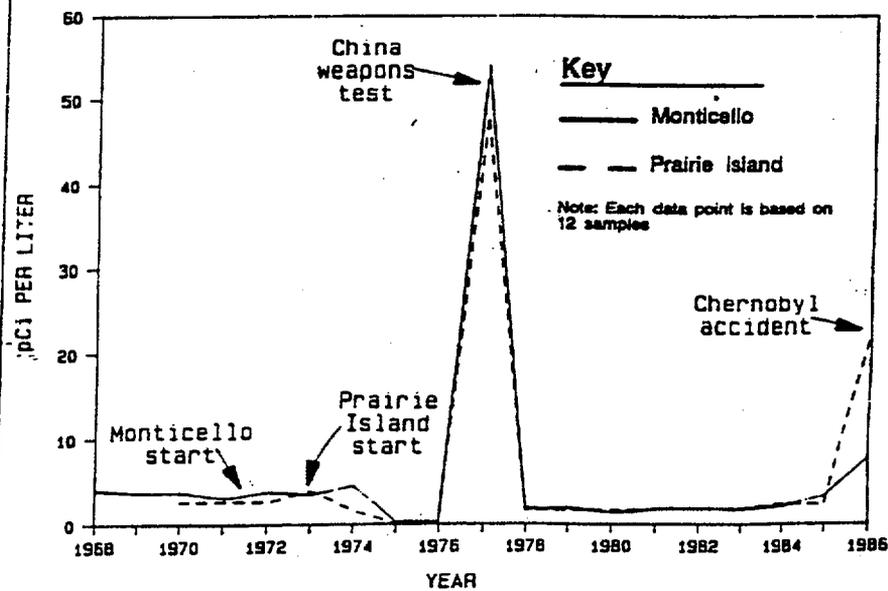
1971 - 1987



Source: Minnesota Department of Health

Figure 5-4
Radioactivity in Milk Near Minnesota Nuclear Power Plants

1968 - 1986



Source: Minnesota Department of Health

4.1.3

CONTENT OF AGREEMENT

DRAFT

Minnesota's content of agreement

This application by the State of Minnesota includes a program description and other pertinent data requested and required by the U.S. NRC to demonstrate that the State is prepared to satisfy and comply with all Federal requirements for becoming an Agreement State and is both prepared and qualified to assume regulatory oversight, authority, and responsibility for:

- Byproduct material as defined in the Atomic Energy Act of 1954, as amended, and
- Source material and special nuclear materials, as defined in the Atomic Energy Act of 1954, as amended of quantities not sufficient to form a critical mass.

The State of Minnesota's application consists of:

- A written description of and copies of all applicable State statutes and rules under which the State will administer and control the program for the oversight of radioactive materials and sources of radiation hazards,
- Copies of each program or policy used for the control and oversight of radioactive material including the Licensing Program, Inspection Program, Enforcement Policy, Radiation Protection Program and the Quality Assurance Programs, and
- A descriptive narrative which will present a description of the history, current practices, capabilities and proposed activities for the State of Minnesota relative to a complete and effective radiation safety program.

Application of the State of Minnesota for Agreement State Status

The State of Minnesota hereby applies supplicant to assume regulatory authority, oversight and responsibility for the regulation of radioactive materials, source materials, and special nuclear materials of quantities insufficient to form a critical mass.

4.2

REGULATORY ELEMENTS

4.2.1
RADIATION
PROTECTION
STANDARDS

**RULE
INDEX**

GENERAL PROVISIONS

4731.0100 Definitions

4731.0101 Purpose

- Subp. 1. Scope
- Subp. 2. Exemptions
- Subp. 3. Responsibilities

4731.0102 License types for radioactive material

- Subp. 1. General Licenses
- Subp. 2. Specific licenses

4731.0103 Registration of x-ray equipment and generally licensed devices that contain radioactive material

- Subp. 1. Registration requirements of x-ray facilities
- Subp. 2. Registration of generally licensed devices
- Subp. 3. Biennial renewal of registration for x-ray facilities
- Subp. 4. Biennial renewal of registration for generally licensed devices

4731.0104 Fee Schedules for radioactive material licenses, x-ray and generally licensed device registration

- Subp. 1. Fees for radioactive material licenses
- Subp. 2. Registration fees for x-ray
- Subp. 3. Registration fee schedule for generally licensed devices

4731.0105 Data Privacy

4731.0106 Opportunities to inspect and conduct tests for all facilities

- Subp. 1. Inspections
- Subp. 2. Tests
- Subp. 3. Allegations and complaints

4731.0107 Variances

4731.0108 Violations, enforcement and penalties

4731.0109 Deliberate misconduct and employee protection

- Subp. 1. Any licensee or registrant
- Subp. 2. Employee protection and employment

4731.0110 Prohibitions

- Subp. 1. General provisions
- Subp. 2. Other prohibited radiation dose levels
- Subp. 3. Prohibited radiation producing equipment and procedures
- Subp. 4. Unauthorized exposure of personnel monitoring dosimeters
- Subp. 5. Possession of radium-226 by secondary or elementary schools

4731.0111 Vendor and manufacturers responsibility

- Subp. 1. General requirements for all vendors and manufacturers
- Subp. 2. Notification requirements
- Subp. 3. Calibration reports at time of installation

- Subp. 4. Providing Individual monitoring devices
- Subp. 5. Phantom use
- 4731.0112 Environmental and health protection regulations**
- 4731.0113-.0119 reserved

SAFETY PROVISIONS

- 4731.0120 Standards for protection against radiation**
- 4731.0121 Implementation of license or registration**
- 4731.0122 Safety posting procedures for all facilities**
 - Subp. 1. Caution signs
 - Subp. 2. Posting Requirements
 - Subp. 3. Posting of notices to employees for facilities using RAM
 - Subp. 4. Exceptions to posting requirements
 - Subp. 5. Prohibited uses of radiation symbol
 - Subp. 6. Conditions for sign use
- 4731.0123 Precautionary procedures for radioactive material facilities**
 - Subp. 1. Use of individual respiratory protection equipment
 - Subp. 2. Use of process or other engineering controls
 - Subp. 3. Labeling containers and radiation producing equipment
 - Subp. 4. Exemptions to labeling requirements
 - Subp. 5. Procedures for receiving and opening packages
- 4731.0124 Dose limit requirements**
 - Subp. 1. Occupational dose limits for adults
 - Subp. 2. Occupational dose limits for minors
 - Subp. 3. Occupational dose to an embryo/fetus
 - Subp. 4. Occupational dose for a planned special exposures
- 4731.0125 Determination of occupational dose for all licensees and registrants**
 - Subp. 1. Determination of prior occupational dose
 - Subp. 2. Conditions requiring individual monitoring of occupational external and internal dose
 - Subp. 3. Compliance with requirements for summation of external and internal doses
 - Subp. 4. Determination of internal exposure
 - Subp. 5. Determination of external dose from airborne radioactive material
- 4731.0126 Dose limits for public**
 - Subp. 1. Dose limits for individual members of the public
 - Subp. 2. Compliance with dose limits for individual members of the public
- 4731.0127 Radiation safety officer requirements for all facilities**
- 4731.0128 Radiation safety officer training and experience**
 - Subp. 1. General requirements for all facilities
 - Subp. 2. Industrial radiography facilities using radioactive material
 - Subp. 3. Industrial irradiator facilities
 - Subp. 4. Well logging facilities
 - Subp. 5. Accelerators/Cyclotrons (PET) facilities

- Subp. 6. Sealed and unsealed sources in industrial and research facilities
- Subp. 7. Healing arts facilities using radioactive material
- 4731.0129 Radiation safety officer duties**
 - Subp. 1. General requirements for all facilities
 - Subp. 2. Industrial radiography facilities that use radioactive materials
 - Subp. 3. Industrial irradiator facilities
 - Subp. 4. Well logging facilities
 - Subp. 5. Accelerators/Cyclotron (PET) facilities
 - Subp. 6. Sealed and unsealed sources in industrial and research facilities.
 - Subp. 7. Healing arts facilities using radioactive materials
 - Subp. 8. Healing Arts facilities using X-Ray
- 4731.0130 Individual Monitoring requirements**
 - Subp 1. General requirements for all facilities
 - Subp 2. Individual monitoring notifications and reports for all facilities
 - Subp 3. Individual monitoring requirements for industrial facilities
- 4731.0131 Radiation safety programs**
 - Subp 1. General requirements for all facilities
 - Subp 2. Control access to high radiation areas
 - Subp.3. Control access to very high radiation areas
 - Subp.4. Healing arts facilities using radiation producing equipment including x-ray.
- 4731.0132 Radiation safety surveys**
 - Subp.1. General requirements for all facilities
 - Subp.2. Requirements for all facilities using radioactive material.
 - Subp.3. Requirements for all facilities using radiation producing equipment.
- 4731.0133 Requirements for radiation safety survey instrument calibration**
 - Subp. 1. General requirements for all facilities
 - Subp. 2. Industrial radiography facilities.
 - Subp. 3. Industrial irradiator facilities
- 4731.0134 Leak Testing Requirements**
 - Subp. 1. All facilities using radioactive materials, including medical facilities
 - Subp. 2. Healing arts facilities using x-ray
- 4731.0135 Storage and control of licensed or registered sources of radiation**
 - Subp 1. Security of stored sources of radiation and gauges
 - Subp. 2. Control of sources of radiation not in storage
- 4731.0136 Waste management for radioactive material facilities**
 - Subp. 1. General requirements
 - Subp. 2. Methods of obtaining approval of proposed disposal procedures
 - Subp. 3. Disposal by discharge release into sanitary sewerage or by incineration
 - Subp. 4. Disposal of specific wastes
 - Subp. 5. Transfer for disposal and manifests
 - Subp. 6. Waste classification
 - Subp. 7. Waste characteristics
 - Subp. 8. Labeling waste packages
- 4731.0137 General shielding requirements**

4731.0138 Shielding requirements for medical, chiropractic, podiatric, osteopathic, and veterinary medicine facilities

- Subp. 1. Applicability
- Subp. 2. General shielding requirements for diagnostic radiographic facilities constructed or structurally remodeled six months after Sept 10, 1991.
- Subp. 3. Requirements for lead or lead equivalent shielding for diagnostic radiographic facilities constructed or structurally remodeled six months after September 10, 1991.
- Subp. 4. Design requirements for diagnostic radiographic facility.
- Subp. 5. Space requirements for an operator's booth in a diagnostic radiography facility.
- Subp. 6. Structural requirements for an operator's booth in a diagnostic radiographic facility.
- Subp. 7. X-ray control placement for an operator's booth in a diagnostic radiographic facility.
- Subp. 8. Viewing system requirements for an operator's booth in a diagnostic radiographic facility.

4731.0139 Shielding requirements for dental radiographic facilities

- Subp. 1. General requirements for all dental radiographic facilities.
- Subp. 2. Requirements for new or structurally remodeled dental facilities.

4731.0140 Shielding requirements for therapeutic x-ray facilities

- Subp. 1. Applicability
- Subp. 2. Shielding requirements for therapeutic systems and medical accelerators.
- Subp. 3. Facility design requirements for therapeutic x-ray systems with energies of 50 kVp and above.
- Subp. 4. Additional requirements for therapeutic systems and medical accelerators with energies of 150 kVp and above.
- Subp. 5. Additional requirements for medical accelerators

4731.0141 Shielding requirements for industrial x-ray, industrial accelerators, and sealed source radiography facilities

- Subp. 1. Applicability
- Subp. 2. General shielding and design requirements
- Subp. 3. Shielding requirements for Class A and industrial accelerator facilities

4731.0142-.0149 Reserved

ADMINISTRATION PROVISIONS

4731.0150 Employee qualifications

- Subp. 1. Industrial radiography using radioactive materials
- Subp. 2. X-ray operators
- Subp. 3. Employee requirement for facilities using x-ray equipment
- Subp. 4. Equivalent examinations
- Subp. 5. Individuals operating x-ray equipment during training

4731.0151 Employee site specific training

- Subp. 1. General requirements for all facilities
- Subp. 2. Industrial radiography facilities using radioactive materials
- Subp. 3. Industrial irradiator facilities
- Subp. 4. Well logging facilities
- Subp. 5. Accelerator/ cyclotron (PET) facilities
- Subp. 6. Sealed and unsealed sources used in industrial and research facilities
- Subp. 7. Healing arts facilities using x-ray
- Subp. 8. Records

4731.0152 Radiation user training requirements

- Subp. 1. General requirements for users at all facilities
- Subp. 2. Industrial facilities using radioactive materials
- Subp. 3. Industrial irradiator facilities
- Subp. 4. Well logging facilities
- Subp. 5. Accelerators/Cyclotrons (PET) facilities
- Subp. 6. Sealed and unsealed sources in industrial or research facilities
- Subp. 7. Healing arts facilities using radioactive materials
- Subp. 8. Healing arts facility experienced RSO, teletherapy or medical physicist, authorized user, and nuclear pharmacist.

4731.0153-.0159 Reserved

NOTIFICATION AND FOLLOW-UP REPORT REQUIREMENTS

4731.0160 General Notification and Report Requirements for all facilities

4731.0161 Notification and follow-up report on stolen, lost, missing licensed or registered sources of radiation, including x-ray.

- Subp. 1. Telephone reports to the commissioner
- Subp. 2. Preparation and submission of written notification follow up reports
- Subp. 3. Submission of additional information.
- Subp. 4. Names of individuals on reports

4731.0162 Notification and follow-up report of incidents or accidents, including x-ray.

- Subp. 1. Notification of incidents to commissioner
- Subp. 2. Preparation and submission of written reports
- Subp. 3. Industrial radiography notification
- Subp. 4. Medical event notifications
- Subp. 5. Notification of a dose to an embryo/fetus or a nursing child

4731.0163 Notification and follow-up report of exposure, radiation levels, concentration of radioactive material exceeding the limits, and medical events (including x-ray)

- Subp. 1. Reportable events
- Subp. 2. Content of reports

4731.0164 Report of planned special exposures, including x-ray

4731.0165 Notifications and Reports of individual monitoring

4731.0166 Vacating premises for all facilities

- Subp. 1. License termination
- Subp. 2. X-Ray machine removal from registration

4731.0167 Reserved

RECORDKEEPING REQUIREMENTS

4731.0168 General requirements for the format and retention of records at all facilities

- Subp. 1. Retention period conflict
- Subp. 2. Maintenance of appropriate records

4731.0169 General requirements for keeping records of specific information for all facilities

- Subp. 1. Records for radiation safety programs
- Subp. 2. Records for radiation safety surveys
- Subp. 3. Records for radiation survey equipment calibration
- Subp. 4. Records of ambient radiation exposure rate for healing arts facilities using radioactive material
- Subp. 5. Records of shielding survey results
- Subp. 6. Records of quality assurance program for facilities that use radiation producing equipment, quality control and equipment performance measurements.
- Subp. 7. Records of individual monitoring device calibration

4731.0170 Reserved

4731.0171 Records of individual monitoring results

4731.0172 Records of any planned special exposure

- Subp. 1. Content of records
- Subp. 2. Retention period

4731.0173 Records of testing entry control devices for very high radiation areas.

4731.0174 Records of equipment performance evaluation for x-ray

4731.0175-.0179 Reserved

RADIOACTIVE MATERIAL RECORDS

4731.0180 General requirements for all facilities using radioactive material

4731.0181 Record of inventory and balance of radioactive materials

- Subp. 1. Inventory and balance
- Subp. 2. Contents of records and providing copies

4731.0182 Reserved

4731.0183 Records for maintenance of radioactive waste transfer

- Subp. 1. Records and reports for licensed activities
- Subp. 2. Records retention period
- Subp. 3. Record of location and quantity of radioactive wastes
- Subp. 4. Record of receipt and acceptance of radioactive waste
- Subp. 5. Record of safeguards
- Subp. 6. Copy of financial report
- Subp. 7. Annual reports to the commissioner
- Subp. 8. Report of accidental criticality
- Subp. 9. Transfer of radioactive material

- Subp. 10. Electronic recordkeeping system
- 4731.0184 Records for receipt, transfer, and disposal of radioactive material, including source material**
 - Subp. 1. Activities that require records
 - Subp. 2. Record retention period
 - Subp. 3. Prior to license termination
 - Subp. 4. Records for activities that are transferred or assigned
- 4731.0185 Transportation shipment records of radioactive materials**
- 4731.0186 Records for industrial radiographic uses of radioactive material**
- 4731.0187 Records for industrial irradiators**
- 4731.0188 Records for well logging**
 - Subp. 1. Records required at licensee's facility and field stations
 - Subp. 2. Records required at temporary jobsites.
- 4731.0189 Records for sealed and unsealed sources in industrial and research facilities**

X-RAY RECORDS

- 4731.0190 Requirements for all facilities using x-ray equipment**
 - Subp. 1. Individual x-ray systems
 - Subp. 2. Mammographic image retention
 - Subp. 3. Recordkeeping
- 4731.0191 Records for industrial facilities using radiation producing equipment**
- 4731.0192 Records for equipment performance tests**
- 4731.0193 Records for quality assurance tests.**
- 4731.0194-.0299 Reserved

LICENSING PROVISIONS

- 4731.0300 Licensing of Radioactive Materials**
 - Subp. 1. Applicability
 - Subp. 2. General license requirements
 - Subp. 3. Additional license requirements
 - Subp. 4. Modification and revocation of licenses for radioactive material users
 - Subp. 5. Terms and conditions of licenses
 - Subp. 6. Right to cause the withholding or recall of radioactive material
 - Subp. 7. Right to grant a variance to requirements
- 4731.0301 Radiological Criteria for License Termination**
 - Subp. 1. General provisions and scope
 - Subp. 2. Criteria for unrestricted use after license termination
 - Subp. 3. Criteria license termination under restricted conditions
 - Subp. 4. Alternative criteria for license termination
 - Subp. 5. Public notification and public participation in termination
- 4731.0302 Determination of Critical Mass**
 - Subp. 1. Calculation of total quantity

Subp 2. Application of critical mass

General Licenses

4731.0303 General Licenses for Source Material

- Subp. 1. For small quantities of source material
- Subp. 2. Depleted uranium in industrial products and devices

4731.0304 General Licenses For Radioactive Material Other Than Source Material

- Subp. 1. Certain devices and equipment
- Subp. 2. Certain measuring, gauging, or controlling devices
- Subp. 3. Luminous safety devices for aircraft
- Subp. 4. Ownership of radioactive material, including special nuclear material
- Subp. 5. Calibration and reference sources
- Subp. 6. General license for use of radioactive material for certain in vitro clinical or laboratory testing
- Subp. 7. General license for strontium-90 in ice detection devices

4731.0305-.0307 Reserved

Specific Licenses

4731.0308 Application For Specific Licenses

- Subp. 1. Requirements for application
- Subp. 2. Requirements for application for certain types of sources
- Subp. 3. Application for renewal of licenses
- Subp. 4. Application for amendment of licenses
- Subp. 5. Commissioner action on applications to renew or amend

4731.0309 General Requirements for the Issuance of Specific Licenses

- Subp. 1. Application approved by commissioner
- Subp. 2. Decommissioning funding plan and certificate for financial assurance
- Subp. 3. Financial assurance for decommissioning
- Subp. 4. Recordkeeping for decommissioning

4731.0310 Requirements for Specific Licenses of Broad Scope

- Subp. 1. Types of broad scope licenses
- Subp. 2. Application for a Type A specific license of broad scope.
- Subp. 3. Application for a Type B specific license of broad scope.
- Subp. 4. Application for a Type C specific license of broad scope.
- Subp. 5. Conditions for specific licenses of broad scope

4731.0311 Special requirements for a specific license to manufacture, assemble, repair or distribute commodities, products or devices which contain radioactive material , including NARM.

- Subp. 1. Licensing the manufacture of products containing radioactive materials in exempt concentrations.
- Subp. 2. Licensing the distribution of NARM in exempt quantities.

- Subp. 3. Licensing the incorporation of NARM into gas and aerosol detectors.
- Subp. 4. Radioactive material contained in devices for use under 4731.0304, subp. 2; requirements for license to manufacture or initially transfer.
- Subp. 5. Luminous safety devices for use in aircraft: requirements for license to manufacture, assemble, repair or initially transfer.
- Subp. 6. Special requirement for license to manufacture calibration sources containing Americium-241, Plutonium or Radium-226 for distribution to persons generally licensed under part 4731.0304.
- Subp. 7. Manufacture and distribution of radioactive material for certain in vitro clinical or laboratory testing under general license.
- Subp. 8. Ice detection devices containing Strontium-90; licensing the manufacture and distribution of ice detection devices.
- Subp. 9. Manufacture preparation, or transfer for commercial distribution of radioactive drugs containing radioactive material for medical use .
- Subp. 10. Manufacture and distribution of sources or devices containing radioactive material for medial use.
- Subp. 11. Manufacture and distribution of generators or reagent kits for preparation of radiopharmaceutical containing radioactive material
- Subp. 12. Requirements for license to manufacture and distribute industrial products containing depleted uranium for mass-volume applications.
- Subp. 13. A licensee, manufacturer or an initial distributor of a sealed source or device containing a sealed source whose product is intended for use under a general or specific license.

4731.0312 Issuance of Specific Licenses.

- Subp. 1. License satisfies requirements
- Subp. 2. Special license requirements
- Subp. 3. License termination date
- Subp. 4. Emergency plan
- Subp. 5. Preparation of Technetium-99m
- Subp. 6. Special nuclear material license

4731.0313 Specific terms and conditions of licenses

- Subp. 1. Rules for license
- Subp. 2. License restrictions
- Subp. 3. Notification of bankruptcy
- Subp. 4. Authorized use of radioactive material, including special nuclear material
- Subp. 5. Separate license requirements
- Subp. 6. Work location

4731.0314 Expiration and Termination of Licenses and Decommissioning of Sites and Separate Buildings or Outdoor areas

- Subp. 1. Final 60 days preceding expiration of license
- Subp. 2. Termination of license
- Subp. 3. Submission of decommissioning plan
- Subp. 4. Completion of decommissioning

- Subp. 5. Recordkeeping
- 4731.0315 Transfer of radioactive material**
 - Subp. 1. Authorization required
 - Subp. 2. Approved transfer
 - Subp. 3. Licensee requirements for transfer
 - Subp. 4. Information for transferor
 - Subp. 5. Confirmation for transferor
 - Subp. 6. Shipment and transport of radioactive material
- 4731.0316 Reciprocal Recognition of Licenses for Radioactive Materials, including Source, NARM, and Special nuclear Material less than Critical Mass.**
 - Subp. 1. Provisions for reciprocity
 - Subp. 2. Additional requirements for general licenses and work in federal jurisdictions and in non-agreement states
- 4731.0317 Emergency Planning**
 - Subp. 1. Emergency plan requirements.
 - Subp. 2. Applications that require emergency planning
- 4731.0317-.0499 Reserved

INDUSTRIAL RADIOGRAPHY WITH RADIOACTIVE MATERIALS

- 4731.0500 Requirements for Industrial Radiography Facilities Using Radioactive Materials**
 - Subp. 1. Applicability
 - Subp. 2. License or registration requirements for industrial radiography use
 - Subp. 3. Records
- 4731.0501 Performance Requirements for Industrial Radiography Equipment**
 - Subp. 1. Performance requirements criteria
 - Subp. 2. Additional requirements
- 4731.0502 Individual Monitoring**
- 4731.0503 Entrances in Permanent Radiographic Installations**
- 4731.0504 Operating Procedures**
 - Subp. 1. Basic operating procedures
 - Subp. 2. Procedures for use and maintenance
 - Subp. 3. Specific operating procedures
 - Subp. 4. Procedures at field stations and temporary jobsites
- 4731.0505 Emergency Procedures**
 - Subp. 1. Basic emergency procedures
 - Subp. 2. Records
- 4731.0506 Supervision of Industrial Radiography Operations**
 - Subp. 1. Radiographer's assistants
 - Subp. 2. Two persons
- 4731.0507 Inspection and Maintenance**
 - Subp. 1. Inspection requirements

- Subp. 2. Maintenance requirements
- 4731.0508 Depleted uranium (DU) shielding contamination**
- 4731.0509 Opening of a source or source holder**
- 4731.0510 Radiation safety surveys**
 - Subp. 1. Requirements of the surveys
 - Subp. 2. Requirements of the radiation survey instruments
- 4731.0511 Visual inventory and records of radioactive material use**
- 4731.0512 Labeling and Posting**
- 4731.0513 Security During Storage, Transportation and Use**
- 4731.0514 Offshore waters operations**
- 4731.0515-.0599 Reserved

INDUSTRIAL X-RAY REQUIREMENTS

- 4731.0600 General Requirements for Industrial X-Ray Equipment (.0701)**
 - Subp. 1. Applicability
 - Subp. 2. Classes
 - Subp. 3. Operating and emergency procedures
- 4731.0601 Inspection and Maintenance of Equipment**
 - Subp. 1. Inspection and maintenance requirements
 - Subp. 2. Calibration of radiation survey instruments
 - Subp. 3. Use Logs
 - Subp. 4. Safety device
 - Subp. 5. Warning devices
 - Subp. 6. Security
 - Subp. 7. Records
 - Subp. 8. Individual monitoring requirements
- 4731.0602 Class A industrial X-ray equipment**
 - Subp. 1. Applicability
 - Subp. 2. Permanent, shielded enclosure
 - Subp. 3. Interlocks
 - Subp. 4. Visible and audible signals
 - Subp. 5. Ceiling barrier
- 4731.0603 Class B industrial X-ray equipment**
 - Subp. 1. Applicability
 - Subp. 2. Restricted areas
- 4731.0604 Class C industrial X-ray equipment**
 - Subp. 1. Applicability
 - Subp. 2. Individual monitoring requirements
- 4731.0605 Class D industrial X-ray equipment**
 - Subp. 1. Applicability
 - Subp. 2. Ports
 - Subp. 3. Shutters

- Subp. 4. Radiation shielding of components
- 4731.0606 Class E Industrial Equipment (repealed)**
- 4731.0607 Class F industrial X-ray equipment**
 - Subp. 1. Applicability
 - Subp. 2. Class F equipment within a housing
 - Subp. 3. Class F equipment without a housing
- 4731.0608-.0699 Reserved

IRRADIATOR REQUIREMENTS

- 4731.0700 Requirements for Industrial Irradiators**
 - Subp. 1. Applicability
 - Subp. 2. License requirements for irradiator uses
 - Subp. 3. Applications for proposed alternatives
 - Subp. 4. Records
- 4731.0701 Performance Criteria for Sealed Irradiator Sources**
- 4731.0702 Design and Construction Requirements for Irradiator Facilities**
 - Subp. 1. Start of construction
 - Subp. 2. Irradiator design requirements
 - Subp. 3. Construction monitoring and acceptance testing
- 4731.0703 Shielded Dose Rates**
 - Subp. 1. For panoramic irradiators
 - Subp. 2. For dry-source-storage panoramic irradiators
 - Subp. 3. For pool irradiators
- 4731.0704 Individual Monitoring**
- 4731.0705 Radiation Monitors**
 - Subp. 1. Irradiators with automative product conveyer systems
 - Subp. 2. Underwater irradiators that are not in a shielded radiation room
- 4731.0706 Requirements for Irradiator Pools**
 - Subp. 1. General requirements
 - Subp. 2. Pool water purity
 - Subp. 3. Access control for underwater irradiators
- 4731.0707 Requirements for Panoramic Irradiators**
 - Subp. 1. Control of panoramic irradiator source movement
 - Subp. 2. Access control for panoramic irradiators
- 4731.0708 Operating and Emergency Requirements for Irradiators**
 - Subp. 1. Operating procedures requirements
 - Subp. 2. Attendance during operation
 - Subp. 3. Emergency procedure requirements
 - Subp. 4. Emergency situations
 - Subp. 5. Revision of operating and emergency procedures
- 4731.0709 Inspection and Maintenance**
- 4731.0710 Radiation safety surveys**

- Subp. 1. Requirements for surveys
- Subp. 2. Requirements of the radiation survey instruments
- Subp. 3. Modification
- 4731.0711 Irradiation of explosive or flammable materials**
- 4731.0712-.0799 Reserved

WELL LOGGING

- 4731.0800 Well Logging requirements**
 - Subp. 1. Applicability
 - Subp. 2. License requirements for well logging use
 - Subp. 3. Records
- 4731.0801 Design and Performance Criteria for Sealed Sources Other Than sealed Sources that Contain Licensed Material in Gaseous Form**
- 4731.0802 Individual Monitoring**
- 4731.0803 Operating and Emergency Procedures**
 - Subp. 1. Operating procedures
 - Subp. 2. Emergency procedures
- 4731.0804 Radioactive Contamination Control**
- 4731.0805 Inspection and Maintenance**
- 4731.0806 Opening of a Source or Source Holder**
- 4731.0807 Radiation Safety Surveys**
 - Subp. 1. Requirements of the surveys
 - Subp. 2. Requirements of the radiation survey instruments
 - Subp. 3. Records
- 4731.0808 Visual inventory and records of material use**
- 4731.0809 Labels, Security During Storage, Transportation and Use.**
- 4731.0810 Abandonment of Irretrievable Sources**
 - Subp. 1. Agreement with well or boring owner or operator
 - Subp. 2. Abandonment (sealing) procedures for irretrievable sources
 - Subp. 3. Commissioner approval
- 4731.0811 Use of a sealed source in a well or boring without a surface casing**
- 4731.0812 Special Uses in Well Logging**
 - Subp. 1. Radioactive markers
 - Subp. 2. Uranium sinker bars
 - Subp. 3. Energy compensation source
 - Subp. 4. Tritium neutron generator target source
- 4731.0813 Subsurface tracer studies**
- 4731.0814-.0899 Reserved

ACCELERATORS/CYCLOTRONS

- 4731.0900 General Requirements for Accelerators**

- Subp. 1. Applicability
- Subp. 2. Records
- 4731.0901 Safety and Security**
 - Subp. 1. Safety and warning lights or devices
 - Subp. 2. Security
 - Subp. 3. Accelerator controls and interlock systems
 - Subp. 4. Additional Requirements for Radiation Monitoring of Cyclotrons, including Positron Emission Tomography (PET) facilities
 - Subp. 5. Shielding and safety design requirements
 - Subp. 6. Ventilation systems
- 4731.0902 Individual Monitoring**
- 4731.0903 Operating and Emergency Procedures**
 - Subp. 1. Operating procedures
 - Subp. 2. Emergency procedures
- 4731.0904 Use Logs**
- 4731.0905 Inspection and Maintenance**
- 4731.0906 Radiation Safety Surveys**
 - Subp. 1. Requirements of the survey
 - Subp. 2. Requirements of the radiation survey instruments
- 4731.0907 Additional Requirements for Accelerators in Medical Treatment Settings**
- 4731.0908-.0999 Reserved

SEALED AND UNSEALED SOURCES

- 4731.1000 Sealed and Unsealed Sources Used in Industrial and Research facilities**
 - Subp. 1. Applicability
 - Subp. 2. License or registration requirements for specific industrial uses
 - Subp. 3. Records
- 4731.1001 Design and performance criteria for sealed sources**
- 4731.1002 Individual monitoring**
 - Subp. 1. NVLAP-accredited individual dosimeters
 - Subp. 2. Bioassay services
- 4731.1003 Operating and Maintenance Procedures**
 - Subp. 1. Operating and maintenance procedures for sealed and unsealed sources
 - Subp. 2. Special operating procedures for sealed sources
 - Subp. 3. Special operating procedures for unsealed sources
- 4731.1004 Emergency Procedures**
 - Subp. 1. Emergency procedures for both sealed and unsealed sources
 - Subp. 2. Special emergency procedures for sealed sources
 - Subp. 3. Special emergency procedures for unsealed sources
- 4731.1005 Inspection of Sealed and Unsealed Sources**
- 4731.1006 Opening of a Source or Source Holder**
- 4731.1007 Radiation Safety Surveys**

- Subp. 1. Requirements of the surveys for both sealed and unsealed sources
- Subp. 2. Special radiation safety surveys for sealed sources
- Subp. 3. Special radiation safety surveys for unsealed sources
- Subp. 4. Requirements of the radiation survey instruments
- 4731.1008 Visual Inventory and Records of Radioactive Material Use**
- 4731.1009 Labels and Security During Storage, Transportation and Use**
 - Subp. 1. Label and package
 - Subp. 2. Storage
 - Subp. 3. Transport of the source
 - Subp. 4. Security
- 4731.1010 Storage and control of volatiles and gasses**
- 4731.1011-.1199 Reserved

HEALING ARTS FACILITIES USING RADIOACTIVE MATERIALS

- 4731.1200 Applicability**
- 4731.1201 License for Medical Use of Radioactive Materials**
 - Subp. 1. License required
 - Subp. 2. Application for license, amendment, or a renewal
 - Subp. 3. License amendments
 - Subp. 4. Notification of license changes
 - Subp. 5. Exemptions regarding Type A specific licenses of broad scope
 - Subp. 6. License issuance
 - Subp. 7. Other medical uses of radioactive material or radiation from radioactive material
- 4731.1202 Radiation Safety Program**
 - Subp. 1. Authority and responsibilities for radiation safety program
 - Subp. 2. Radiation safety program changes
 - Subp. 3. Radiation review committee
 - Subp. 4. Preparation of radioactive material under supervision
 - Subp. 5. Responsibility for supervised individual
 - Subp. 6. Written directives
 - Subp. 7. Procedures for administrations requiring a written directive
- 4731.1203 Requirements for Patient or Human Subject Research Program**
 - Subp. 1. Provisions for research involving human subject
 - Subp. 2. Safety instructions on patient and human research subjects who cannot be released under 4731.1204, subp. 2
 - Subp. 3. Safety precautions for radiopharmaceutical therapy
 - Subp. 4. Safety instruction for patients and human research subjects on implant therapy
 - Subp. 5. Safety precautions for patients and human research subjects on implant therapy
 - Subp. 6. Safety procedures and instructions for remote afterloaders, teletherapy units, and gamma stereotactic radiosurgery units
 - Subp. 7. Safety precautions for remote afterloaders, teletherapy units, and gamma

stereotactic radiosurgery units

4731.1204 Radiation Safety Surveys on Patients or Human Research Subjects

- Subp. 1. Radiation surveys of patients and human research subjects treated with remote afterloaders
- Subp. 2. Release of individual containing unsealed radioactive material or implants containing radioactive material
- Subp. 3. Surveys after source or implant removal

4731.1205 Radiation Safety Surveys for Equipment

- Subp. 1. Radiation surveys
- Subp. 2. Five-year service for teletherapy and gamma stereotactic radiosurgery units
- Subp. 3. Therapy-related computer services

4731.1206 Radiation Safety Program Requirements

- Subp. 1. Labeling and shielding of vials and syringes
- Subp. 2. Surveys for ambient radiation exposure rate
- Subp. 3. Provision of mobile service
- Subp. 4. Decay-in storage
- Subp. 5. Installation, maintenance, and repair of source and source holder for therapeutic medical devices

4731.1207 Training for Certain Medical Procedures

- Subp. 1. Training for uptake, dilution. And excretion studies - low dose
- Subp. 2. Training for imaging and localization studies - low dose
- Subp. 3. Training for use of unsealed radioactive material for therapy or for use of unsealed radioactive material that requires a written directive
- Subp. 4. Training for use of manual brachytherapy sources
- Subp. 5. Training for use of sealed sources for diagnosis
- Subp. 6. Training for use of therapeutic medical devices
- Subp. 7. Training for therapeutic use of unsealed radioactive material
- Subp. 8. Training for treatment of hyperthyroidism
- Subp. 9. Training for treatment of thyroid carcinoma
- Subp. 10. Training for brachytherapy sources
- Subp. 11. Training for ophthalmic use of strontium-90
- Subp. 12. Training for the oral administration of sodium iodide-I-131 requiring a written directive in quantities less than or equal to 33 millicuries (1.22 Mbq)
- Subp. 13. Training for the oral administration of sodium iodide-II-131 requiring a written directive in quantities greater than 33 millicuries (1.22 Mbq)
- Subp. 14. Training for use of remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units

4731.1208 Instruments

- Subp. 1. Possession, use, calibration,, and check of instruments to measure the activity of photon-emitting radionuclides
- Subp. 2. Calibration and check of survey instruments
- Subp. 3. Reserved
- Subp. 4. Determination of dosages of unsealed radioactive material for medical use

- Subp. 5. Authorization for calibration, transmission, and reference sources
- Subp. 6. Requirements for possession of sealed sources and brachytherapy sources
- Subp. 7. Dosimetry equipment for sealed sources for diagnosis
- 4731.1209 Instrument Calibration**
 - Subp. 1. Full calibration measurements on teletherapy units
 - Subp. 2. Full calibration measurements on remote afterloaders
 - Subp. 3. Full calibration measurements of gamma stereotactic radiosurgery units
 - Subp. 4. Full calibration measurements of brachytherapy sources
- 4731.1210 Periodic Spot-checks for Instruments**
 - Subp. 1. Periodic spot-checks for teletherapy units
 - Subp. 2. Periodic spot-checks for high dose-rate and pulsed dose-rate remote afterloaders
 - Subp. 3. Reserved
 - Subp. 4. Periodic spot-checks for gamma stereotactic radiosurgery units
 - Subp. 5. Additional technical requirements for mobile remote afterloaders
- 4731.1211 Use of sealed sources for Medical Applications**
 - Subp. 1. Use of sealed sources for diagnosis
 - Subp. 2. Suppliers for sealed sources or devices for medical use
 - Subp. 3. Use of sealed source in a device for therapeutic medical uses
 - Subp. 4. Decay of strontium-90 sources for medical applications
- 4731.1212 Use of Unsealed Sources for Medical Applications**
 - Subp. 1. Use of unsealed radioactive material for uptake, dilution, and excretion studies for which a written directive is not required
 - Subp. 2. Use of unsealed radioactive material for imaging and localization studies for which a written directive is not required
 - Subp. 3. Permissible molybdenum-99 concentration
 - Subp. 4. Use of unsealed radioactive material for which a written directive is required
- 4731.1213 Brachytherapy**
 - Subp. 1. Use of sources for manual brachytherapy
 - Subp. 2. Radiation surveys of patients or human subjects treated with implants
 - Subp. 3. Brachytherapy sources accountability
- 4731.1214 Records**
 - Subp. 1. Administrative records
 - Subp. 2. Survey records
 - Subp. 3. Records of radioactive material
 - Subp. 4. Calibration records
 - Subp. 5. Spot-check records
 - Subp. 6. Retention on inspection records for selected procedures
- 4731.1215-.1299 Reserved

HEALING ARTS USERS OF X-RAY

4731.1300 Registrant's Safety Requirements

- Subp. 1. Registrant's responsibility for all facilities
- Subp. 2. X-ray system and accelerator compliance
- Subp. 3. Individuals who may apply radiation
- Subp. 4. Procedure and safety instruction
- Subp. 5. Radiographic technique chart
- Subp. 6. Exposure of individual other than the patient
- Subp. 7. Gonad protection
- Subp. 8. Holding
- Subp. 9. Prevention of unauthorized use
- Subp. 10. Facility design requirements
- 4731.1301 Radiologic Practice Standards**
 - Subp. 1. Procedures and auxiliary equipment
 - Subp. 2. Darkroom standards
- 4731.1302 Ordering of radiographic Examinations**
- 4731.1303 Required Quality Assurance Programs**
 - Subp. 1. Applicability
 - Subp. 2. Registrant and registrant's employees QA resources
- 4731.1304 Calibrations for diagnostic radiographic systems**
- 4731.1305 Calibrations for therapeutic x-ray systems**
 - Subp. 1. Calibrations for therapeutic x-ray systems of less than 1.0 MeV
 - Subp. 2. Calibrations for therapeutic x-ray systems greater than 1.0 MV
- 4731.1306 Therapeutic x-ray system spot checks of calibration**
 - Subp. 1. Spot checks of calibration for therapeutic x-ray systems of less than 1.0 MV
 - Subp. 2. Spot checks of calibration for therapeutic x-ray systems greater than 1.0 MV
- 4731.1307 Computed tomography equipment performance measurements and calibrations.**
 - Subp. 1. Equipment performance measurements and calibration procedures.
 - Subp. 2. Additional computed tomography operator equipment performance measurements.
- 4731.1308 Diagnostic equipment performance tests for quality assurance program**
 - Subp. 1. Frequency of tests
 - Subp. 1a. Image receptors
 - Subp. 2. Automatic processing
 - Subp. 3. Manual processing
 - Subp. 4. All diagnostic radiographic tubes
 - Subp. 5. Facilities with fluoroscopes and c-arm fluoroscopes, except radiation therapy simulators, manufacture before May 19, 1995.
 - Subp. 5a. Facilities with fluoroscopes and c-arm fluoroscopes, except radiation therapy simulators, manufactured after May 19, 1995
 - Subp. 6. Facilities with mammography systems
 - Subp. 7. Facilities with tomography systems other than computed tomography
 - Subp. 8. Facilities with computed tomography scanners
 - Subp. 9. Facilities with cinefluorographic and special procedure systems

- Subp. 10. Facilities with dental intraoral systems
- Subp. 11. Facilities with dental extraoral systems including panoramic systems
- 4731.1309 Exposure time control limits for single phase full-wave rectified generator**
- 4731.1310 Therapy equipment performance tests and limits for measurement equipment**
 - Subp. 1. Local standard
 - Subp. 2. Other field instruments
 - Subp. 3. Relative dosimetric equipment
 - Subp. 4. Survey instruments
 - Subp. 5. Positioning equipment
 - Subp. 6. Phantoms and attenuators
 - Subp. 7. Accessory equipment
- 4731.1311 Equipment performance test for external beam teletherapy and simulation systems.**
 - Subp. 1. Dosimetry
 - Subp. 2. Geometry
 - Subp. 3. Constancy checks- electrons
 - Subp. 4. Treatment accessories
 - Subp. 5. Simulators
- 4731.1312 Healing arts screening**
 - Subp. 1. General requirements
 - Subp. 2. Content of application
 - Subp. 3. Additional information
 - Subp. 4. Notification of commissioner's decision
 - Subp. 5. Changes in screening program
 - Subp. 6. Denial of approval
 - Subp. 7. Appeal procedure
 - Subp. 8. Renewal of screening application
 - Subp. 9. Commissioner-approved healing arts screening
 - Subp. 10. Withdrawal of approval for conditions allowing overexposure
 - Subp. 11. Withdrawal of approval for noncompliance with application
- 4731. 1313 General equipment requirements for all diagnostic radiographic systems**
 - Subp. 1. Applicability
 - Subp. 2. Warning label
 - Subp. 3. Battery charge indicator
 - Subp. 4. Leakage radiation form the diagnostic source assembly.
 - Subp. 5. Radiation from components other than the diagnostic source assembly
 - Subp. 6. Beam quality, half-value layer
 - Subp. 7. Beam quality, filtration controls
 - Subp. 8. Multiple tubes
 - Subp. 9. Mechanical support of tube head.
 - Subp. 10. Technique factors
 - Subp. 11. Timers
 - Subp. 12: Reproducibility

- Subp. 13 X-ray control
- Subp. 14. Exposure reproducibility
- Subp. 15. Additional requirements for general purpose x-ray system

4731.1314 General requirements for certified diagnostic radiographic systems other than fluoroscopic, dental intraoral, veterinary medicine, or computed tomography systems.

- Subp. 1. Applicability
- Subp. 2. Diagnostic radiographic systems
- Subp. 3. Beam limitation
- Subp. 4. General purpose stationary x-ray systems.
- Subp. 5. Diagnostic radiographic systems designed for one image receptor size
- Subp. 6. Stationary and portable general purpose x-ray systems
- Subp. 7. General purpose x-ray systems which contain a tube housing assembly, an x-ray control, and table (if so equipped)
- Subp. 8. Mammography x-ray systems installed after September 5, 1978
- Subp. 9. Automatic or semiautomatic collimators
- Subp. 10. Radiation exposure, x-ray controls
- Subp. 11. Radiation exposure, automatic exposure controls
- Subp. 12. Source-to-skin distance
- Subp. 13. Radiation from capacitor energy storage equipment in standby status

4731.1315. Intraoral Dental Radiograph systems

- Subp. 1. Applicability
- Subp. 2. Source-to-skin distance
- Subp. 3. Field limitation
- Subp. 4. Safety controls

4731.1316 Veterinary medicine radiographic installations

- Subp. 1. Applicability
- Subp. 2. Beam limitation
- Subp. 3. Operating procedures

4731.1317 Fluoroscopic X-ray Systems Except Radiation Therapy Simulators

- Subp. 1. Applicability
- Subp. 2. Limitation of useful beam primary barrier
- Subp. 3. Limitation of useful beam, x-ray field
- Subp. 4. Activation of the fluoroscopic tube
- Subp. 4a.. Entrance exposure rate allowable limits on fluoroscopic systems manufactured before May 19, 1995
- Subp. 5. Entrance exposure rate allowable limits on fluoroscopic systems manufactured after May 19, 1995.
- Subp.6. Barrier transmitted radiation rate limits
- Subp. 7. Measuring compliance of barrier transmission.
- Subp. 8. Indication of kilovoltage and milliamperage
- Subp. 9. Source-to-skin distance
- Subp. 10. Fluoroscopic timer
- Subp. 11. Control of scattered radiation.

Subp. 12. Radiation therapy simulation systems

4731.1318 Computer tomography systems

Subp. 1. Applicability

Subp. 2. Termination of exposure

Subp. 3. Tomographic plane indication and alignment

Subp. 4. Beam-on and shutter status indicators

Subp. 5. Indication of computed tomography conditions of operation

Subp. 6. Extraneous radiation

Subp. 7. Maximum source computed tomography dose index identification.

Subp. 8. Additional requirements for computed tomography x-ray systems containing a gantry manufactured after September 3, 1985

Subp. 9. Audio communication

Subp. 10. Patient observation

Subp. 11. Location of control panel and x-ray control

Subp. 12. Operating procedure information

Subp. 13. Corrective action

4731.1319 Therapeutic x-ray system of less than 1.0 MV

Subp. 1. Applicability

Subp. 2. Leakage radiation

Subp. 3. Leakage from permanent beam limiting devices.

Subp. 4. Removable beam limiting devices.

Subp. 5. Adjustable beam limiting devices

Subp. 6. Filter system

Subp. 7. Tube immobilization

Subp. 8. Focal spot marking

Subp. 9. Beam block

Subp. 10. Timer

Subp. 11. Control panel functions

Subp. 12. Multiple tubes

Subp. 13. Source-to-skin distance

Subp. 14. Shutters

Subp. 15. Low-filtration x-ray tubes

Subp. 16. Entrance interlocks

Subp. 17. Operating procedures

Subp. 18. Additional requirements

4731.1320 X-ray and electron therapy systems with energies of 1.0MV/1.0 MeV and above.

Subp. 1. Applicability

Subp. 2. System requirements: leakage radiation to the patient area

Subp. 3. Leakage of radiation outside the patient area for systems or any part thereof installed after September 10, 1991.

Subp. 4. Beam limiting devices

Subp. 5. Filters

- Subp. 6. Electron beam quality
 - Subp. 7. Radiation monitors
 - Subp. 8. Beam symmetry
 - Subp. 9. Selection and display of dose monitor units.
 - Subp. 10. Termination of irradiation by the dose monitoring system or systems during stationary beam therapy.
 - Subp. 11. Interruption switches
 - Subp. 13. Timer
 - Subp. 14. Selection of radiation type
 - Subp. 15. Selection of energy.
 - Subp. 16. Selection of stationary beam therapy or rotational beam therapy.
 - Subp. 17. Absorbed dose rate.
 - Subp. 18. System checking facilities
 - Subp. 19. Operating procedures
- 4731.1321-.1499 Reserved

TRANSPORTATION OF RADIOACTIVE MATERIAL

4731.1500 Transportation of Radioactive Material

- Subp. 1. Packaging and transportation subject to state and federal rule
- Subp. 2. Modification of requirements
- Subp. 3. A_1 and A_2 values

4731.1501 General Requirements

- Subp. 1. Deliver to carrier
- Subp. 2. Comply with U.S. DOT regulations
- Subp. 3. Instructions to open package

4731.1502 Quality Assurance Requirements

- Subp. 1. Quality assurance program
- Subp. 2. Scope of quality assurance program
- Subp. 3. Document and implement quality assurance program
- Subp. 4. Commissioner approval
- Subp. 5. Records

4731.1503 Preliminary Determinations

4731.1504 Routine Determinations

4731.1505 General License for Use of Nuclear Regulatory Commission Approved Packages

- Subp. 1. License to transport or deliver
- Subp. 2. Approved quality assurance program
- Subp. 3. Compliance with conditions

4731.1506. General License for the Use of Previously Approved Type B Packages

- Subp. 1. Conditions for Type B package
- Subp. 2. Package previously approved by NRC

4731.1507. General License for the Use of U.S. Department of Transportation

specification Container

- Subp. 1. Use of U.S. DOT specification containers
- Subp. 2. Requires approved quality assurance program
- Subp. 3. Comply with specification conditions
- Subp. 4. Specification container use within United States

4731.1508. General License Use of Foreign Approved Package

- Subp. 1. Use of foreign approved package
- Subp. 2. Requires approved quality assurance program
- Subp. 3. Use to ship to or from outside the United states
- Subp. 4. Comply with certificate conditions

4731.1509. Applicability of Operating Controls and Procedures for Fissile Material

4731.1510. General License for Use of Use of Fissile Material, Limited Quantity Package

- Subp. 1. Transport of deliver fissile material
- Subp. 2. Requires approved quality assurance program
- Subp. 3. Package limited to Type A package
- Subp. 4. Package limited to Type A quantity
- Subp. 5. Contains no beryllium. Graphite, or enriched hydrogenous material
- Subp. 6. Special conditions

4731.1511 General License for Use of Packages for Fissile Material, Limited Moderator per Package, and fissile Material, Limited Quantity, Controlled Shipment

- Subp. 1. Limited fissile material, limited moderator per package
- Subp. 2. Approved quality assurance program
- Subp. 3. Limited quantity conditions
- Subp. 4. Comply with 10 CFR 71.22

4731.1512 Air Transport of Plutonium

- Subp. 1. Limitations for plutonium transport
- Subp. 2. Comply with 10 CFR 73.24
- Subp. 3. Comply with 49 CFR 175.704

4731.1513 Exemptions for Low Level radioactive Materials

- Subp. 1. Package with less than 0.002 microcurie per gram
- Subp. 2. Only exempt fissile material
- Subp. 3. Low-specific activity or surface contaminated objects

4731.1514 Advance Notification of Shipment of Radioactive Material

- Subp. 1. Notice to governor
- Subp. 2. Irradiated fuel and special conditions
- Subp.3. Procedures for submitting advance notification
- Subp 4. Information to be furnished in advance notification of shipment
- Subp. 5. Revision notice
- Subp. 6. Cancellation notice

4731.1515-.4731.1599 Reserved

PART XXX: TABLES AND APPENDICIES

4731.3001 Appendicies

- A. Protection factors for respirators – (Part 20 - Appendix A)
- B. Annual limit on intake (ALI's) and derived air concentrations (DAC's) of radionuclides for occupational exposure; effluent concentrations; concentrations for release to sewerage. – (Part 20 - Appendix B)
- C. Quantities of licensed material requiring labeling – (Part 20 appendix C)
- D. Exemptions
- E. Radiographer Certification (Part 34 App A)
- F. Examining organization or entity – medical facility using radioactive materials (Part 35, App. A)
- G. Requirements for transfer of low level radioactive waste intended for disposal at licensed land disposal facilities and manifests. (Part 20 - appendix G)
- H. Quantities for use with decommissioning - (Part 30 Appendix A)
- I. Determination of A_1 and A_2 values – (Part 71 - Appendix A)
- J. Criteria relating to use of financial tests and parent company guarantees for providing reasonable assurance of funds for decommissioning – (Part 30 - Appendix A)
- K. Criteria relating to use of financial tests and self guarantees for providing reasonable assurance of funds for decommissioning – (Part 30- Appendix C)
- L. Criteria relating to use of financial tests and self guarantee for providing reasonable assurance of funds for decommissioning by commercial companies that have no outstanding rated bonds. – (Part 30 - Appendix D)
- M. Criteria relating to use of financial tests and self guarantee for providing reasonable assurance of funds decommissioning by nonprofit colleges, universities and hospitals. – (Part 30 - Appendix E)

4731.3002 Tables

- A. Table of A_1 and A_2 Values for Radionuclides – (Part 71 - Table A-1)
- B. General Values for A_1 and A_2 – (Part 71 - Table A-2)
- C. Activity-Mass relationships for uranium – (Part 71 - Table A-3)
- D. Table of Organ Doses (10CFR32.24 and 10CFR32.28)
- E. Quality Factors
 - a. 20.1004 B1
 - b. 20.1004 B2
- F. Neutron Flux Dose Equivalence See 50-204.20– include par. @calculation
- G. Weighting Factors (20.1003 organ dose)

4731.3003 Schedules

- A. Exempt concentrations
- B. Exempt quantities
- C. Limits for broad license
- D. Quantities of radioactive materials requiring consideration of the need for an emergency

plan following release.

4731.3004 Forms

1. Occupational dose record for a monitoring period
2. Cumulative occupational exposure history
3. Reserved
4. Application for radioactive materials license
5. Notice to employees
6. Certificate - disposition of radioactive materials
7. Certificate - In Vitro testing with radioactive materials
8. Reserved
9. Reserved
10. Registration certificate - use of depleted uranium under general license
11. Registration certificate - generally licensed devices
12. Reserved
13. Reserved
14. Reciprocity- Report of the proposed activities by licensees from outside Minnesota
15. Diagnostic Misadministration/medical event
16. Preceptor statement
17. Request for termination of specific licensed and disposition of radioactive material
18. Application for radioactive materials license authorizing the use of sealed sources in gauge devices and XRFs
19. Training and experience for medical authorized user or radiation safety officer
20. Application for radioactive materials license for industrial radiography
21. Request for termination of registration of generally licensed devices and disposition of radioactive material

PART XL: GUIDANCE AND REFERENCE DOCUMENTS

4731.4001 Minnesota Regulatory Guides

4731.4002