

State of Minnesota

STATE REGISTER

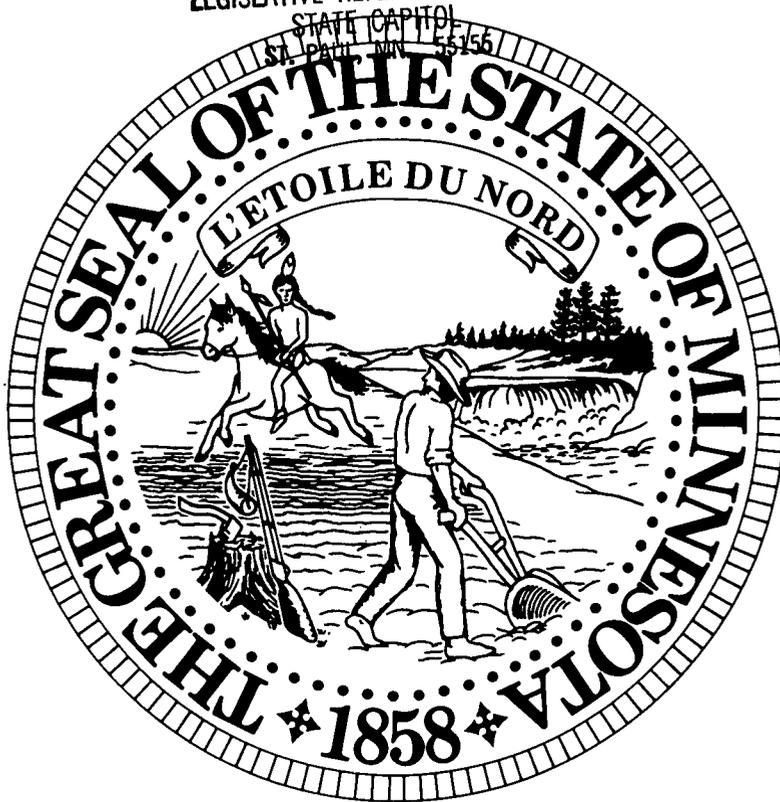
Department of Administration—Documents Division

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STATE REGISTER

Judicial Notice Shall Be Taken of Material Published in the State Register

The *State Register* is the official publication of the State of Minnesota, containing executive orders of the governor, proposed and adopted rules of state agencies, official notices to the public, state and non-state public contracts, grants, supreme court and tax court decisions, and a monthly calendar of cases to be heard by the state supreme court.

Volume 12 Printing Schedule and Submission Deadlines

Vol. 12 Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
34	Monday 8 February	Friday 12 February	Monday 22 February
35	Friday 12 February	Monday 22 February	Monday 29 February
36	Monday 22 February	Monday 29 February	Monday 7 March
37	Monday 29 February	Monday 7 March	Monday 14 March

*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

**Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the State Register editorial offices, 504 Rice Street, St. Paul, Minnesota 55103, (612) 296-4273.

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Department of Administration**

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FOR LEGISLATIVE NEWS

Publications containing news and information from the Minnesota Senate and House of Representatives are available free to concerned citizens and the news media. To be placed on the mailing list, write or call the offices listed below:

SENATE

Briefly-Preview—Senate news and committee calendar; published weekly during legislative sessions.

Perspectives—Publication about the Senate.

Session Review—Summarizes actions of the Minnesota Senate.

Contact: Senate Public Information Office
Room 231 State Capitol, St. Paul, MN 55155
(612) 296-0504

HOUSE

Session Weekly—House committees, committee assignments of individual representatives; news on committee meetings and action. House action and bill introductions

This Week—weekly interim bulletin of the House.

Session Summary—Summarizes all bills that both the Minnesota House of Representatives and Minnesota Senate passed during their regular and special sessions.

Contact: House Information Office
Room 175 State Office Building, St. Paul, MN 55155
(612) 296-2146

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NOTICE: How to Follow State Agency Rulemaking in the State Register

The *State Register* is the official source, and only complete listing, for all state agency rulemaking in its various stages. State agencies are required to publish notice of their rulemaking action in the *State Register*. Published every Monday, the *State Register* makes it easy to follow and participate in the important rulemaking process. Approximately 75 state agencies have the authority to issue rules. Each agency is assigned specific *Minnesota Rule* chapter numbers. Every odd-numbered year the *Minnesota Rules* are published. This is a ten-volume bound collection of all adopted rules in effect at the time. Supplements are published to update this set of rules. Proposed and adopted emergency rules do not appear in this set because of their short-term nature, but are published in the *State Register*.

If an agency seeks outside opinion before issuing new rules or rule amendments, it must publish a NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION in the *Official Notices* section of the *State Register*. When rules are first drafted, state agencies publish them as **Proposed Rules**, along with a notice of hearing, or notice of intent to adopt rules without a hearing in the case of noncontroversial rules. This notice asks for comment on the rules as proposed. Proposed emergency rules and withdrawn proposed rules are also published in the *State Register*. After proposed rules have gone through the comment period, and have been rewritten into their final form, they again appear in the *State Register* as **Adopted Rules**. These final adopted rules are not printed in their entirety in the *State Register*, only the changes made since their publication as **Proposed Rules**. To see the full rule, as adopted and in effect, a person simply needs two issues of the *State Register*, the issue the rule appeared in as proposed, and later as adopted. For a more detailed description of the rulemaking process, see the *Minnesota Guidebook to State Agency Services*.

The *State Register* features partial and cumulative listings of rules in this section on the following schedule: issues 1-13 inclusive; issues 14-25 inclusive; issue 26, cumulative for issues 1-26; issues 27-38 inclusive; issue 39, cumulative for 1-39; issues 40-51 inclusive; and issue 52, cumulative for 1-52. An annual subject matter index for rules appears in August. For copies of the *State Register*, a subscription, the annual index, the *Minnesota Rules* or the *Minnesota Guidebook to State Agency Services*, contact the Minnesota Documents Division, 117 University Avenue, St. Paul, MN 55155 (612) 297-3000 or toll-free in Minnesota 1-800-652-9747 and ask for "Documents."

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Proposed Rules

Pursuant to Minn. Stat. of 1982, §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Board of Architecture, Engineering, Land Surveying, and Landscape Architecture

Proposed Permanent Rules Relating to Fees

Notice of Intent to Adopt a Rule Without a Public Hearing

Notice is hereby given that the State Board of Architecture, Engineering, Land Surveying and Landscape Architecture ("board") intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the rule is section 214.06 and 326.06.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the board will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to: Mr. Lowell E. Torseth, Executive Secretary, Board of Architecture, Engineering, Land Surveying and Landscape Architecture, 402 Metro Square, St. Paul, Minnesota, 55101, Telephone: (612) 296-2388.

The proposed rule may be modified if the modifications are supported by data and views submitted to the board and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this Notice.

Copies of this Notice and the proposed rule are available and may be obtained by calling Lowell E. Torseth.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Lowell E. Torseth upon request.

Proposed Rules

You are hereby advised, pursuant to *Minnesota Statutes*, section 14.115 (1986), "Small business considerations in rulemaking," that the proposed rule amendments will have no adverse effect on small businesses.

Copies of the proposed rule amendments have been served upon the Chairs of the House Appropriations Committee and Senate Finance Committee pursuant to *Minnesota Statutes*, section 16A.128, subdivision 2a.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Lowell E. Torseth.

Dated: 8 February 1988

Lowell E. Torseth
Executive Secretary, Board of
Architecture, Engineering,
Land Surveying and Landscape
Architecture

Rules as Proposed

1800.0500 FEES.

Subpart 1. [Unchanged.]

Subp. 2. **Refunds; validity of application.** Examination or registration fees may not be refunded. Applications for examination shall be valid for a period of one year following notification of the date of examination, except as hereinafter provided. An applicant who fails to appear for examination shall be required to resubmit ~~his~~ an application, together with an examination fee, unless ~~his~~ the failure to appear is due to circumstances which, in the opinion of the board, justify relief from the requirement. Any application ~~which is still pending upon which no action has been taken~~ for three years after the date of its receipt by the board shall be void.

Subp. 3. **Initial licensure and renewal.** The fee for licensure, or renewal of licensure, as an architect, professional engineer, land surveyor, or landscape architect is ~~\$22.50~~ \$26 per year. The initial license fee is prorated at six-month intervals during each biennium. The fee for months 24 to 18 is ~~\$45~~ \$52; for months 18 to 12, ~~\$33.75~~ \$39; for months 12 to 6, ~~\$22.50~~ \$26; and for months 6 to 0, ~~\$11.25~~ \$13. The renewal fee shall be paid biennially on or before June 30 of each even-numbered year. The board may delete from the roster the name of any licensee who fails to timely pay the required renewal fee. The renewal fee, when paid by mail, is not timely paid unless it is postmarked on or before June 30 of each even-numbered year.

Subp. 4. [Unchanged.]

Subp. 5. **Certification or licensure examination fee.** The fee for examination for certification or licensure as an architect, professional engineer, land surveyor, or landscape architect is as follows:

A. Architect:

- (1) ~~application for admission to examination,~~ \$25;
- (2) ~~uniform Architecture~~ Registration Examination (ARE), ~~\$220~~ \$340.

B. Professional engineer:

- (1) fundamentals of engineering examination, \$30;
- (2) principles and practice of engineering examination, ~~\$100~~ \$70.

~~The fee for the fundamentals of engineering examination taken for the board will be credited to the applicant toward the fee for application for the principles and practice of engineering examination for up to ten years.~~

An applicant for examination in more than one branch of engineering shall submit a separate examination fee for each additional branch of engineering for which the applicant has applied for examination.

C. Land surveyor:

- (1) fundamentals of land surveying examination, ~~\$30~~ \$32.50;
- (2) principles and practice of land surveying examination, \$100.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. **Strike outs** indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. **Strike outs** indicate deletions from proposed rule language.

Proposed Rules

D. Landscape architect:

(1) ~~application for admission to examination, \$25;~~

(2) ~~Uniform National Examination, \$105- (UNE), 1988 \$235, 1989 \$250.~~

Subp. 6. **Reexamination fees.** The fee for retaking all or any part of any examination for certification or registration is as follows each time the examination, or any part of it, is retaken:

A. Architect, uniform architect registration examination:

(1) ~~division A, pre-design, \$33~~ \$35;

(2) ~~division B, site design, \$33~~ \$70;

(3) ~~division C, building design, \$55~~ \$85;

(4) ~~division D D/F, structural technology, general, \$16.50~~ \$30;

(5) ~~division E, structural technology, lateral forces, \$12.50~~ \$15;

(6) ~~division F, structural technology, long span, \$8.50;~~

(7) ~~division G, mechanical, plumbing, electrical, and life safety, \$16.50~~ \$35;

(8) ~~(7) division H, materials and methods, \$24~~ \$35;

(9) ~~(8) division I, construction documents and services, \$24~~ \$35.

B. Professional engineer:

(1) ~~fundamentals of engineering, \$20~~ \$25;

(2) ~~principles and practice of engineering, \$20;~~

(a) ~~April 1988, \$35;~~

(b) ~~October 1988, \$55.~~

C. Land surveyor:

(1) ~~fundamentals of land surveying (effective as of September 1, 1988), \$20~~ \$32.50;

(2) ~~principles and practice of land surveying:~~

(a) ~~part III, \$15~~ \$30;

(b) ~~part IV, \$30~~ \$35;

(c) ~~parts III and IV, \$45~~ \$65.

D. Landscape architect:

(1) ~~subject A, history, \$15;~~

(2) ~~subject B, professional practice, \$15;~~

(3) ~~subject C, design, \$37.50;~~

(4) ~~subject D, design implementation, \$37.50.~~

(1) ~~section 1, professional practice 1988 \$20, 1989 \$22;~~

(2) ~~section 2, design, 1988 \$25, 1989 \$28;~~

(3) ~~section 3, design application, 1988 \$74, 1989 \$77;~~

(4) ~~section 4, design implementation, 1988 \$69, 1989 \$71; and~~

(5) ~~section 5, grading and drainage, 1988 \$47, 1989 \$52.~~

Subp. 7. [Unchanged.]

Board of Nursing

Proposed Permanent Rules Relating to Registration Fees

Notice of Intent to Adopt a Rule Without a Public Hearing

Notice is hereby given that the Minnesota Board of Nursing intends to adopt a rule relating to registration fees. The Board intends to adopt the rule without a public hearing, following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes* sections 14.22 to 14.28. The statutory authority to adopt the rule is *Minnesota Statutes* sections 148.231 and 148.294.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to *Minnesota Statutes* sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to: Joyce M. Schowalter, Executive Director, Suite 108, 2700 University Avenue West, St. Paul, Minnesota 55114, telephone (612) 642-0567.

The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this notice.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from Joyce M. Schowalter, at the above address, upon request.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Joyce M. Schowalter at the above address.

Dated: 8 February 1988

Joyce M. Schowalter
Executive Director
Minnesota Board of Nursing

Rules as Proposed

6310.2900 REGISTRATION RENEWAL PROCEDURES.

Subpart 1. to 6. [Unchanged.]

Subp. 6a. **Conversion period.** Licensees holding registration certificates with an expiration date unrelated to their month of birth will be registered in the following manner during a conversion period.

A. [Unchanged.]

B. Licensees will be charged a renewal fee for the six- to 29-month conversion registration period which is prorated at ~~\$0.835~~ \$1.04 a month from May 1, 1988 to August 1, 1988, and \$1.08 thereafter and rounded to the nearest dollar according to the length of each licensee's conversion registration period.

C. and D. [Unchanged.]

Subp. 7. to 10. [Unchanged.]

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Proposed Rules

6310.3600 REGISTRATION FEES.

Subpart 1. **Amount.** The amount of fees shall be as follows:

- A. registration renewal, ~~\$20~~ \$25 per registration period effective May 1, 1988, and \$26 effective August 1, 1988;
- B. late application, ~~\$15~~ \$20 effective May 1, 1988;
- C. replacement license, ~~\$10~~ \$20 effective May 1, 1988;
- D. replacement registration certificate, ~~\$10~~ \$20 effective May 1, 1988;
- E. verification of licensure status, ~~\$15~~ \$20 effective May 1, 1988;
- F. verification of examination scores, ~~\$15~~ \$20 effective May 1, 1988;
- G. a copy of licensure application materials, ~~\$10~~ \$20 effective May 1, 1988; and
- H. service charge for a dishonored check, \$15.

Subp. 2. **Effective date** Nonrefundable. The fees in subpart 1 are effective January 1, 1987, unless specified otherwise. All fees are nonrefundable.

Minnesota Racing Commission

Proposed Permanent Rules Relating to Horse Racing

Notice of Proposed Adoption of a Rule Without a Public Hearing

NOTICE is hereby given that the Minnesota Racing Commission proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the rule is *Minnesota Statutes*, sections 240.23 and 240.24 (1986).

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Donald Price
Minnesota Racing Commission
11000 West 78th Street, Suite 201
Eden Prairie, MN 55344
Telephone: (612) 341-7555

The proposed rule may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this notice.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from the Minnesota Racing Commission upon request.

Promulgation of the proposed rule will not result in the expenditure of public monies by local public bodies, fix or adjust any fees, or have an impact on agricultural land. The affect, if any, that the proposed rule may have on small businesses is discussed in the Statement of Need and Reasonableness.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney

Proposed Rules

General, or who wish to receive a copy of the adopted rule, must submit the written request to the Minnesota Racing Commission at the address listed above.

Donald Price
Executive Director
Minnesota Racing Commission

Rules as Proposed

7873.0190 PICK SIX.

Subpart 1. to 5. [Unchanged.]

Subp. 6. **Calculation of pool.** The pick six pari-mutuel pool shall be calculated as follows according to one of the two following methods as approved by the commission:

A. ~~One hundred~~ (1) Seventy-five percent of the net amount in the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed among the holders of pari-mutuel tickets which correctly designate the official winner in each of the six races comprising the pick six. Twenty-five percent of the net amount in the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed among holders of pari-mutuel tickets which correctly designate the second greatest number of official winners of the six races comprising the pick six.

~~B. (2)~~ In the event there is no pari-mutuel ticket properly issued which correctly designates the official winner in each of the six races comprising the pick six, 75 percent of the pari-mutuel pool shall not be distributed but shall be retained by the association as distributable amounts and shall be carried over and included in the pick six pari-mutuel pool for the next succeeding racing date as an additional net amount to be distributed among the holders of pari-mutuel tickets which correctly designate the official winner in each of the six races comprising the pick six pool that day.

B. (1) Fifty percent of the net amount in the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed among the holders of pari-mutuel tickets which correctly designate the official winner in each of the six races comprising the pick six. Fifty percent of the net amount in the pari-mutuel pool subject to distribution among winning ticket holders shall be distributed among holders of pari-mutuel tickets which correctly designate the second greatest number of official winners of the six races comprising the pick six.

(2) In the event there is no pari-mutuel ticket properly issued which correctly designates the official winner of each of the six races comprising the pick six, 50 percent of the pari-mutuel pool shall not be distributed but shall be retained by the association as a distributable amount and shall be carried over and included in the pick six pari-mutuel pool for the next succeeding racing date as an additional net amount to be distributed among the holders of pari-mutuel tickets which correctly designate the official winner in each of the six races comprising the pick six pool that day. The remaining 25 50 percent shall be distributed among the holders of pick six tickets which correctly designate the most official winners of the six races comprising the pick six.

The method of distribution shall be selected by the racing association and implemented after approval by the commission.

C. Should no distribution be made pursuant to item A or B on the last day of the association's meeting, then the entire distributable pool and all money accumulated in the pool shall be distributed to the holders of tickets correctly designating the most winning selections of the six races comprising the pick six for that day. If, for any reason, the final day of racing is canceled or the pick six pool has not been distributed, the pool shall be escrowed by the association, and the pool, as well as all accrued interest, shall be carried over and included in the pick six pari-mutuel pool for the next succeeding racing date as an additional net amount to be distributed.

Subp. 7. to 10. [Unchanged.]

7875.0200 EQUIPMENT.

Subpart 1. to 7. [Unchanged.]

Subp. 8. **Preservation.** All photo-finish film or videotape records shall be preserved for at least ~~90~~ 30 days after ~~a~~ the close of a meeting or until legal proceedings involving a recorded race are concluded, whichever is later.

Subp. 9. [Unchanged.]

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Proposed Rules

7877.0125 CRITERIA FOR DETERMINING ELIGIBILITY.

Subpart 1. [Unchanged.]

Subp. 2. **Burden of proof.** If an applicant for a Class C license has had a license denied or had his or her license suspended or revoked or been excluded by another racing jurisdiction, or has engaged in conduct that the commission determines would adversely affect the public health, welfare, and safety or the integrity of racing in Minnesota, the commission shall consider such fact as prima facie evidence that the applicant is unfit to be granted a Class C license, and the burden of proof shall rest upon the applicant to establish his or her fitness. In reviewing such applications, the commission shall consider the factors provided in part 7877.0100, subpart 2.

Subp. 3. [Unchanged.]

7883.0140 CLAIMING RACES.

Subpart 1. **Who may claim.** In claiming races any horse is subject to claim for its entered price by any person who is eligible to claim or by his or her authorized agent. The following persons shall be eligible to claim:

A. A licensed owner who has a horse registered to race at the current meeting.

B. A licensed owner who lost his or her last horse through fire, misfortune, or claim, may ~~nevertheless claim (if he or she is otherwise eligible) for 30 racing days after he or she has lost his or her last horse. The 30 racing days may extend from one racing season to the next a horse, provided:~~

(1) the horse is claimed during the same race meeting that the horse was lost; or

(2) the horse is claimed at another racetrack licensed by the Minnesota Racing Commission during a race meet operating concurrently with the race meet during which the horse was lost.

A person claiming under this item is required to establish eligibility to claim with the stewards and to receive his or her confirmation in writing prior to making a claim.

C. and D. [Unchanged.]

Subp. 2. to 30. [Unchanged.]

7890.0110 MEDICATIONS PROHIBITED.

No person shall administer or cause to be administered to a horse within 48 hours of a race in which it is scheduled to run any medication (except as permitted by part 7890.0100, subpart 13, items A to D) by injection, oral or topical administration, rectal infusion or suppository, or by inhalation and no horse participating in a race shall carry in its body any substance foreign to the natural horse, except as permitted by part 7890.0100, subpart 13, items A to D.

7890.0130 FINDINGS OF CHEMIST.

Subpart 1. **Prima facie evidence.** A finding by a chemist ~~that of any medication, substance foreign to the natural horse, or Bute~~ exceeding the allowable test level provided in part 7890.0100, subpart 13, item A, in the test sample of a horse shall be considered prima facie evidence that such the medication or, substance, or Bute was administered to the horse and carried in the body of the horse while participating in a race. Such finding shall also be considered prima facie evidence that the trainer and, if applicable, the assistant trainer or substitute trainer was negligent in the handling or care of the horse.

Subp. 2. [Unchanged.]

7892.0100 DETENTION BARN.

Subpart 1. **Barn.** Each association shall provide a detention barn suitable for taking test samples. The barn shall include:

A. an office area which can be locked, and which has a floor area of not less than 100 square feet;

B. a ~~three~~ wash ~~rack~~ racks not less than ~~12~~ ten feet by 12 feet;

C. not fewer than ~~four~~ six stalls ten feet by ten feet each, with dutch doors and observation holes;

D. a refrigerator of not less than ten cubic feet;

E. a freezer not less than 16 cubic feet;

F. hot and cold running water; and

~~F. G.~~ a walking ring; and

H. other equipment considered necessary by the commission for the bathing and watering of horses.

Subp. 2. **Security.** Each association shall furnish a not less than one security officer to guard the detention barn during racing hours and until the last specimen is ~~taken~~ secured for the day.

7895.0110 THOROUGHBRED BREEDERS' FUND.

Subpart 1. **Definitions.** For purposes of this part, the following terms have the meaning given them unless another intention clearly appears.

A. ~~“Minnesota-owned”~~ means:

(1) ~~In the case of a horse owned by an individual, the owner must reside in Minnesota, declare himself or herself to be a resident of Minnesota for purposes of Minnesota Statutes, chapter 290, and declare that he or she is not a resident of any other state.~~

(2) ~~In the case of a horse owned by a corporation, the corporation must:~~

~~(a) be legally incorporated in the state of Minnesota;~~

~~(b) have its principal place of business in Minnesota;~~

~~(c) have at least 51 percent of all outstanding shares of stock owned by shareholders who are residents of Minnesota for purposes of Minnesota Statutes, chapter 290, and who declare that they are not residents of any other state.~~

(3) ~~In the case of a horse owned by a limited partnership, the general partners and at least 51 percent of the limited partners must be residents of Minnesota for purposes of Minnesota Statutes, chapter 290, and declare that they are not residents of any other state.~~

(4) ~~In the case of a horse owned by a partnership, all partners must be residents of Minnesota for purposes of Minnesota Statutes, chapter 290, and declare that they are not residents of any other state.~~

~~Every owner of a Minnesota-owned horse must hold a Class C owner's license issued by the commission as required in part 7877.0130, subparts 1 and 2.~~

~~B. “Minnesota-foaled” or “Minnesota-bred”~~ means a horse foaled in Minnesota.

~~C. “Minnesota-bred”~~ means a horse foaled in Minnesota.

~~D. B. “Minnesota-sire”~~ means a stallion owned at least 50 percent by residents of Minnesota or leased entirely by Minnesota residents, and which has stood the entire breeding season, between ~~February 15~~ January 31 and July 31, in Minnesota.

Subp. 2. **Division of money.** The money available from the breeders' fund for the thoroughbred breed category shall be divided as follows:

~~A. 34~~ Thirty-one percent shall be set aside and paid to breeders of Minnesota-bred horses as breeders' awards;

~~B. 34~~ percent shall be set aside and paid to owners of Minnesota-bred horses as owners' awards;

~~C. 34~~ Sixty-two percent shall be paid to supplement purses in races which are restricted to Minnesota-bred or ~~Minnesota-owned~~ Minnesota-foaled horses. ~~In all such races Minnesota-bred horses shall be preferred, and~~ The purse supplements shall be apportioned in accordance with the quality of the race as determined by the commission.

~~D. C.~~ Seven percent shall be set aside and paid as stallion awards to the owners of the Minnesota-sire at the time of breeding.

Subp. 3. **Distribution of money.** The money available from the thoroughbred breeders' fund, other than purse supplements, shall be distributed as follows:

A. “Breeders' awards” shall be paid to the breeder of a Minnesota-bred horse, as reflected on the Jockey Club certificate, that finishes ~~fifth~~ third or better in any pari-mutuel race.

~~B. “Owners' awards”~~ shall be paid to the owners of Minnesota-bred horses that finish fifth or better in any race.

~~C. “Stallion awards”~~ shall be paid to the owners of the Minnesota-sire of a Minnesota-bred horse that finishes ~~fifth~~ third or better in any pari-mutuel race.

Subp. 4. **Methods of payment.** The amount of money distributed by the commission for awards or purse supplements pursuant to subpart 3 shall be paid out in the same percentage as the purse money in the race. Purse supplements earned shall not be included in determining breeders' or stallion awards. The amount of money to be distributed shall be in accordance with subpart 5.

Subp. 5. **Adjustments.** The racing commission shall set percentages to be applied to each category of the breeders' fund for the

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purpose of determining the amount of awards and purse supplements that may be earned during the current race meeting. The racing commission may, in its discretion, during the course of a race meeting vary the percentages set in each category for the purpose of keeping awards and purse supplements consistent with the amount of money being earned in the breeders' fund and subsequent awards disbursements. The racing commission shall consider the following criteria in determining the applicable percentages:

A. ~~the number of potential award recipients;~~

B. ~~the total amount of awards and purse supplements to be distributed;~~

C. B. ~~the need to distribute awards and purse supplements among Minnesota breeders and owners~~ in a fair and equitable manner with a view toward encouraging the continued support of the horse industry in Minnesota, thereby providing incentive to breeders and owners of thoroughbred horses within the state; and

D. C. ~~that the set amount of the awards and purse supplements or any adjustments made thereto are in the best interest of horse racing within the state.~~

Subp. 6. **Time of payment.** Purse supplements are part of the purse and shall be credited to owners' accounts at the time such the purses are earned. All money allocated for breeders' awards, owners' awards, and stallion awards shall be distributed within 30 days of the end of the thoroughbred race meeting.

Subp. 7. [See Repealer.]

Subp. 8. **Residual funds.** ~~After complying with subparts 4 to 7:~~

A. ~~any remaining funds in the stallion awards account shall be transferred to and distributed through the owners' account; and~~

B. ~~any remaining funds in the owners' awards account and the breeders' awards account shall be distributed in proportion to the award money earned by each individual Minnesota-bred horse to the total award money earned by Minnesota-bred horses as a group.~~

~~After complying with subparts 4 to 8, any remaining funds in the breeders' and owners' accounts, and All unearned purse supplements, shall be retained and carried forward to be included as net distributable funds in the succeeding thoroughbred race meeting.~~

7895.0125 THOROUGHBRED REGISTRATION.

Subpart 1. [Unchanged.]

Subp. 2. **Stallion registration.** To be eligible to receive any stallion award payments, the following requirements must be met:

A. Stallions must be in Minnesota and registered or the registration renewed with the racing commission or official registering agency by ~~February 1~~ January 31 of the current breeding year. The stallion's original jockey club certificate must be received by the racing commission or official registering agency. If the stallion is leased, a copy of the lease must accompany the registration application. The lease must include a statement that the lessee is authorized to sign the breeding certificate.

B. Stallions must remain in Minnesota for the entire breeding season from ~~February 15~~ January 31 to July 31.

C. ~~Stallion reports (record of mares bred) must be received by the racing commission or official registering agency by September 30 of the immediately preceding breeding season~~

A newly acquired stallion which has not been in Minnesota for breeding purposes before January 31 of the current breeding season may be eligible for stallion awards if the stallion has been properly registered with the commission prior to servicing any mare and the stallion has not serviced any mare after December 31 of the preceding year.

D. ~~Failure to submit stallion reports (record of mares bred) by the September 30 cutoff date will disqualify any subsequent claims for stallion award payments.~~

Subp. 3. [Unchanged.]

Subp. 4. to 6. [See Repealer.]

7895.0250 STANDARDBRED BREEDERS' FUND.

Subpart 1. **Definitions.** For purposes of this part, the following terms have the meaning given them unless another intention clearly appears.

A. to C. [Unchanged.]

D. ~~"Minnesota-owned"~~ means:

(1) ~~In the case of a horse owned by an individual, the owner must reside in Minnesota, declare himself or herself to be~~

a resident of Minnesota for purposes of Minnesota Statutes, chapter 290, and declare that he or she is not a resident of any other state.

(2) In the case of a horse owned by a corporation, the corporation must:

(a) be legally incorporated in the state of Minnesota;

(b) have its principal place of business in Minnesota;

(c) have at least 51 percent of all outstanding shares of stock owned by shareholders who are residents of Minnesota for purposes of Minnesota Statutes, chapter 290, and who declare that they are not residents of any other state.

(3) In the case of a horse owned by a limited partnership, the general partners and at least 51 percent of the limited partners must be residents of Minnesota for purposes of Minnesota Statutes, chapter 290, and declare that they are not residents of any other state.

(4) In the case of a horse owned by a partnership, all partners must be residents of Minnesota for purposes of Minnesota Statutes, chapter 290, and declare that they are not residents of any other state.

Every owner of a Minnesota-owned horse must hold a Class C owner's license issued by the commission as required in part 7877.0130, subparts 1 and 2.

E. "Minnesota sire" means a stallion owned at least 50 percent by residents of Minnesota or leased entirely by Minnesota residents, and which has stood the entire breeding season, from January 1 to ~~September 31~~ to July 31 in Minnesota.

Subp. 2. **Division of money.** The money available from the breeders' fund for the standardbred breed category shall be divided as follows:

A. 25 percent shall be set aside and paid to breeders as breeders' awards; and

B. 75 percent shall be paid to supplement purses in races which are restricted to horses that are Minnesota-bred, or Minnesota-foaled, or Minnesota-owned. ~~In all such races, Minnesota-bred and Minnesota-foaled shall have first preference, and Minnesota-owned horses shall have second preference.~~

Subp. 3. [Unchanged.]

Subp. 4. **Methods of payment.** The amount of money distributed for breeders' awards or purse supplements pursuant to subpart 3, shall be paid out in the same percentage as the purse money in the race. Purse supplements earned shall not be included in determining breeders' or stallion awards.

Subp. 5. **Adjustments.** The racing commission shall set percentages to be applied to each category of the breeders' fund for the purpose of determining the amount of awards and purse supplements that may be earned during the current race meeting. The racing commission may, in its discretion, during the course of a race meeting vary the percentages set in each category for the purpose of keeping awards and purse supplements consistent with the amount of money being earned in the breeders' fund and subsequent breeders' award disbursements. The racing commission shall consider the following criteria in determining the applicable percentages:

A. the number of potential breeders' award recipients;

B. the total amount of breeders' awards and purse supplements to be distributed;

C. the need to distribute breeders' awards and purse supplements ~~among the Minnesota breeders and owners~~ in a fair and equitable manner with a view toward encouraging the continued support of the horse industry in Minnesota, thereby providing incentive to breeders and owners of standardbred horses within the state; and

D. that the set amount of the breeders' awards and purse supplements or any adjustments made thereto are in the best interest of horse racing within the state.

Subp. 6. **Time of payment.** Purse supplements are part of the purse and shall be credited to owners' accounts at the time ~~such~~ the purses are earned. All money allocated for breeders' awards and stallion awards shall be distributed within 30 days of the end of the standardbred race meeting.

Subp. 7. [See Repealer.]

Subp. 8. **Residual funds.** After complying with subparts 4 to 7 6, any remaining funds in the breeders' awards account, and all

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unearned purse supplements, shall be retained and carried forward to be included as net distributable funds in the succeeding standardbred race meeting.

7895.0275 STANDARDBRED REGISTRATION.

Subpart 1. **Stallion registration.** To be eligible to participate in the standardbred breeders' fund program, the following requirements must be met:

A. Stallions must be in Minnesota and registered or the registration renewed with the racing commission or official registering agency by January + 31 of the current breeding year. The stallion's original United States Trotting Association (USTA) certificate must be received by the racing commission or official registering agency. If the stallion is leased, a copy of the lease must accompany the registration application or renewal. The lease agreement must contain a statement that the lessee is authorized to sign the breeding certificate.

B. Stallions must remain in Minnesota for the entire breeding season from January + ~~to September~~ + 31 to July 31.

~~C. Stallion reports (record of mares bred) must be received by the racing commission or official registering agency by September 30 (excluding Saturday and Sunday) of the current breeding season~~

A newly acquired stallion which has not been in Minnesota for breeding purposes before January 31 of the current breeding season may be eligible for stallion awards if the stallion has been properly registered with the commission prior to servicing any mare and the stallion has not serviced any mare after December 31 of the preceding year.

Subp. 2. [Unchanged.]

Subp. 3. to 5. [See Repealer.]

7895.0300 QUARTER HORSE BREEDERS' FUND.

Subpart 1. **Definitions.** For purposes of this part, the following terms have the meaning given them unless another intention clearly appears:

A. "Breeder" means the owner or lessee of the dam at the time of conception in Minnesota.

B. "Minnesota-foaled" means a horse foaled in Minnesota.

C. "Minnesota-bred" means:

- (1) a horse sired by a registered stallion who stood his entire breeding season in Minnesota; and
- (2) a horse born in Minnesota.

D. "Minnesota-owned" means:

~~(1) in the case of a horse owned by an individual, the owner must reside in Minnesota, declare himself or herself to be a resident of Minnesota for purposes of Minnesota Statutes, chapter 290, and declare that he or she is not a resident of any other state.~~

~~(2) in the case of a horse owned by a corporation, the corporation must:~~

- ~~(a) be legally incorporated in the state of Minnesota;~~
- ~~(b) have its principal place of business in Minnesota;~~

~~(c) have at least 51 percent of all outstanding shares of stock owned by shareholders who are residents of Minnesota for purposes of Minnesota Statutes, chapter 290, and who declare that they are not residents of any other state.~~

~~(3) in the case of a horse owned by a limited partnership, the general partners and at least 51 percent of the limited partners must be residents of Minnesota for purposes of Minnesota Statutes, chapter 290, and declare that they are not residents of any other state.~~

~~(4) in the case of a horse owned by a partnership, all partners must be residents of Minnesota for purposes of Minnesota Statutes, chapter 290, and declare that they are not residents of any other state.~~

~~Every owner of a Minnesota-owned horse must hold a Class C owner's license issued by the commission as required in part 7877.0130, subparts 1 and 2.~~

~~E. "Minnesota-sire" means a stallion owned at least 50 percent by residents of Minnesota or leased entirely by Minnesota residents, and which has stood the entire breeding season, from ~~February 15~~ January 31 through July 31, in Minnesota.~~

Subp. 2. **Division of money.** The money available from the breeders' fund for the quarter horse category shall be divided as follows:

A. 35 percent shall be set aside and paid as breeders' awards to:

(1) ~~until December 31, 1988~~, breeders of Minnesota-bred or Minnesota-foaled horses; and

(2) ~~January 1, 1989, and thereafter breeders of a Minnesota-bred horse or a horse born in Minnesota prior to 1987;~~

B. 35 percent shall be set aside and paid as owners' awards to:

(1) ~~until December 31, 1988~~, owners of Minnesota-bred or Minnesota-foaled horses; and

(2) ~~January 1, 1989, and thereafter owners of a Minnesota-bred horse or a horse born in Minnesota prior to 1987;~~

C. 20 percent shall be paid to supplement purses in races which are restricted to Minnesota-bred, or Minnesota-foaled, or Minnesota-owned horses. ~~In all such races Minnesota-bred or Minnesota-foaled horses shall be preferred, and~~ The purse supplements shall be apportioned in accordance with the quality of the race as determined by the commission; and

D. 10 percent shall be set aside and paid as stallion awards to the owners of the Minnesota-sire at the time of breeding.

Subp. 3. [Unchanged.]

Subp. 4. **Methods of payment.** The amount of money distributed by the commission for awards or purse supplements pursuant to subpart 3 shall be paid out in the same percentage as the purse money in the race. The amount of money to be distributed shall be in accordance with subpart 5. Purse supplements earned shall not be included in determining breeder's or stallion awards.

Subp. 5. [Unchanged.]

Subp. 6. **Time of payment.** Purse supplements are part of the purse and shall be credited to owners' accounts at the time ~~such~~ the purses are earned. All money allocated for breeders' awards, owners' awards, and stallion awards shall be distributed ~~by December 31 of the year in which they are earned~~ within 30 days of the end of the quarterhorse race meeting.

7895.0350 QUARTER HORSE REGISTRATION.

Subpart 1. [Unchanged.]

Subp. 2. **Stallion registration.** To be eligible to receive any stallion award payments, the following requirements must be met:

A. Stallions must be in Minnesota and registered or the initial registration renewed with the racing commission or official registering agency by ~~February 1~~ January 31 of the current breeding year. The stallion's original American Quarter Horse Association (AQHA) certificate must be received by the racing commission or official registering agency. If the stallion is leased, a copy of the lease must accompany the registration application. The lease must include a statement that the lessee is authorized to sign the breeding certificate.

B. Stallions must remain in Minnesota for the entire breeding season from ~~February 15~~ January 31 through July 31.

~~C. Stallion reports (roster of mares bred) must be received by the racing commission or official registering agency by September 30 (excluding Saturday and Sunday) of the immediately preceding breeding season~~

A newly acquired stallion which has not been in Minnesota for breeding purposes before January 31 of the current breeding season may be eligible for stallion awards if the stallion has been properly registered with the commission prior to servicing any mare and the stallion has not serviced any mare after December 31 of the preceding year.

~~D. Failure to submit stallion reports (roster of mares bred) by the September 30 cutoff date will disqualify any subsequent claims for the stallion award payments.~~

Subp. 3. [Unchanged.]

Subp. 4. to 6. [See Repealer.]

7897.0100 PROHIBITED ACTS.

Subpart 1. **Scope.** The following activities are considered prohibited acts ~~if they are committed, or attempted to be committed,~~ while on the grounds of an association.

Subp. 2. to 5. [Unchanged.]

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Proposed Rules

Subp. 6. **Altercations.** No person shall provoke or engage in a physical altercation while on the grounds of an association.

Subp. 7. to 9. [Unchanged.]

Subp. 10. **Financial responsibility.** No licensee shall willfully or deliberately refuse to pay any money when due for any service, supplies, or fees connected with his or her activities as a licensee, nor shall he or she falsely deny any such amount due or the validity of the claim therefor with the purpose of hindering or defrauding the person to whom ~~such~~ the indebtedness is due. All financial responsibility complaints against a licensee shall be made in writing, signed by the complainant, and accompanied by (a) a judgment from a court of competent jurisdiction; or (b) a check, issued by the licensee or by a business entity owned or controlled by the licensee, which indicates on its face that the bank upon which the check is drawn has refused payment due to insufficient funds, alteration, forgery, or because the check was written on a closed or nonexistent account.

Subp. 11. to 18. [Unchanged.]

Subp. 19. **Abusive language.** No person shall use profane, abusive, or indecent language to a racing official.

REPEALER. Minnesota Rules, parts 7895.0100, subpart 7; 7895.0110, subpart 7; 7895.0125, subparts 4, 5, and 6; 7895.0250, subpart 7; 7895.0275, subparts 3, 4, and 5; and 7895.0350, subparts 4, 5, and 6; are repealed.

Secretary of State

Proposed Permanent Rules Relating to Bonding of Vendors

Notice of Intent to Adopt a Rule Without a Public Hearing

Notice is hereby given that the Secretary of State intends to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the rules is *Minnesota Statutes*, section 206.57, subd. 1.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Jeff Sigurdson
Election Division
180 State Office Building
St. Paul, MN 55155
(612) 296-6011

The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed. A copy of the proposed rule is attached to this notice.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from the Election Division upon request.

You are hereby advised, pursuant to *Minnesota Statute* 14.115, that the proposed rules will have a probable quantitative and qualitative impact on small businesses that provide voting and vote tabulation equipment or programs related to such equipment for sale or lease in the state of Minnesota. The probable qualitative effect of these rules will be to (1) provide the mechanism for small business vendors of these products to post a bond with the secretary of state as required by *Minnesota Statutes* 206.57 and 206.82 and (2) forfeit all or part of the bond if the vendor offers these products in a manner other than required by *Minnesota Statutes* and *Rules*. In addition notice of any such forfeiture by any vendor will be sent to public vendees in Minnesota.

The probable quantitative effect will be to impose an additional expense to small business vendors of these products to the extent that the bond requirement imposes additional expenses. Such additional expense may be off set to the extent that public vendees of these products remove their bonding requirements in light of the new requirement to post a bond with the secretary of state.

Proposed Rules

Also, pursuant to *Minnesota Statutes*, section 14.11, the adoption of these rules will not have any impact upon agricultural land nor will the adoption of these rules result in additional spending by local public bodies in excess of \$100,000 per year, in either of the two years immediately following the adoption of these rules.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to the Election Division.

Dated: 5 February 1988

Joan Anderson Growe
Secretary of State

Rules as Proposed

8220.0650 APPROVAL OF MACHINES OR SYSTEMS.

Subpart 1. **Certification.** If, from the reports of the demonstration and testing, the secretary of state determines that the machine or system complies with Minnesota statutes and parts 8220.0050 to 8230.4250 and can be used safely at elections, the secretary of state shall issue to the vendor a certification of the machine or system for use in Minnesota. The certification must be limited to specific hardware and software configurations and may not extend to models or configurations not examined. The certification may include stipulations or special procedures for use of the machine or system. No certification may be issued until the vendor has:

A. and B. [Unchanged.]

C. certified that the vendor will immediately notify the secretary of state of any modifications to the machine or system and will not offer for sale or provide for use in Minnesota any modified machine or system if the secretary of state advises the vendor that, in the opinion of the secretary, the modifications constitute a significant change requiring that the machine or system be reexamined; ~~and~~

D. deposited with the secretary of state a copy of all programs, documentation, and source code. If the vendor considers this data proprietary, the secretary of state shall maintain the integrity and security of the data; ~~and~~

E. deposited with the secretary of state a bond in the amount of \$5,000 conditioned on the vendor offering the machine or system for sale in the manner required by parts 8220.0050 to 8230.4450 and any conditions under which the machine or system is certified for use in Minnesota. The form and execution of the bond must be acceptable to the secretary of state. Bonds must be issued by corporations authorized to contract as a surety in Minnesota. This bond is not in lieu of any right of action by the purchaser or the state of Minnesota against the vendor or the surety. The bond is required until the adoption, use, or purchase of the machine, system, or program is discontinued in Minnesota.

Subp. 2. [Unchanged.]

Subp. 3. Forfeiture of bond. If the secretary of state determines that a vendor has offered for sale or use at an election a voting machine or system in a manner other than that required by parts 8220.0050 to 8230.4450 or any conditions under which the machine or system was certified, the bond required by subpart 1, item E, must be forfeited. The secretary of state shall notify the vendor of the intent to forfeit the bond in writing and provide the vendor an opportunity to furnish a written explanation to the secretary of state prior to forfeiture. No machine or system may be subsequently offered for sale or use at an election by the vendor who has received a notice of intent to forfeit the bond or whose bond has been forfeited, until the vendor has submitted an additional bond in the amount of \$5,000. The secretary of state shall notify each official on the user list of a receipt, forfeiture, or restoration of these bonds.

8220.0800 PROGRAM PREPARATION BONDS.

Subpart 1. Amount of bonds: Each vendor preparing programs for use with an electronic voting system shall deposit a bond with the secretary of state in the amount of \$5,000. The form of the bond must be acceptable to the secretary of state. Bonds must be issued by corporations authorized to contract as a surety in Minnesota. This bond is not in lieu of any right of action by the purchaser or the state of Minnesota against the vendor or the surety. The bond is required until the adoption, use, or purchase of the machine, system, or program is discontinued in Minnesota.

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Proposed Rules

Subp. 2. Forfeiture of bonds. If the secretary of state determines that a program used with an electronic voting system was not prepared in the manner required by parts 8220.0050 to 8230.4450 and the written instructions of the official responsible for preparation of the ballots, the bond must be forfeited to the extent necessary to cover actual expenses resulting from the failure of the program. The secretary of state shall determine within 45 days after receiving notification of the failure of a program and a request for reimbursement of expenses resulting from the failure of the program from the appropriate election officials, what actual costs were incurred as a result of the program failure. The secretary of state shall notify the vendor of the intent to forfeit the bond in writing and provide the vendor an opportunity to furnish a written explanation to the secretary of state prior to forfeiture. If required to meet actual expenses in excess of the amount of the bond posted under subpart 1, the secretary of state shall use, to the extent necessary, any bond posted by the vendor under part 8220.0650 as compensation to the election jurisdiction. The secretary of state shall notify each official on the user list of any receipt, forfeiture, or restoration of these bonds.

Adopted Rules

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.14-14.28 have been met and five working days after the rule is published in *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

An emergency rule becomes effective five working days after the approval of the Attorney General as specified in Minn. Stat. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted emergency rule will be published in the manner provided for adopted rules under § 14.18.

Board of Animal Health

Adopted Permanent Rules Relating to Importation of Swine into Minnesota (1700.2590 to 1700.3010); Pseudorabies Control (1705.2400 to 1705.2520); Sale of Livestock at Auction Markets, Consignment, Community, and other Sales (1715.0210 to 1715.0580); State-Federal Approved Markets for Swine (1715.0590 to 1715.0770); Public Stockyards (1715.1290 to 1715.1480)

The rules proposed and published at *State Register*, Volume 12, Number 13, pages 561-576, September 28, 1987 (12 S.R. 561) are adopted with the following modifications:

Rules as Adopted

IMPORTATION OF SWINE

1700.2590 DEFINITIONS.

Subp. 1a. Feral swine. "Feral swine" means undomesticated swine that ordinarily run wild and are not included in any pseudorabies surveillance program.

Subp. 2. **Imported breeding swine.** "Imported breeding swine" means swine imported for the purpose of producing offspring, including domestic and feral swine of both sexes and all ages.

Subp. 3. **Imported feeder swine.** "Imported feeder swine" means domestic and feral swine imported into Minnesota for the purpose of feeding until sold to slaughter and does not include boars or post-parturient sows.

1700.2650 PERMITS.

~~Veterinarians examining feeder and breeding swine must secure a permit from the board for each certificate of veterinary inspection. Prior to importation of swine, except for swine going directly to slaughter, the veterinarian completing the certificate of veterinary inspection under part 1700.2700 must obtain a permit number from the board. Before a permit is issued, the board must be given the following information: the source of the swine to be imported, the number of swine to be imported, and the destination of the swine. The permit number issued by the board must be included on the certificate of veterinary inspection.~~

1700.2700 REQUIREMENT FOR CERTIFICATE OF VETERINARY INSPECTION.

All domestic and feral swine imported into Minnesota must be accompanied by a certificate issued by an accredited veterinarian, except: slaughter swine consigned to a public stockyard; ~~feeder and~~ slaughter swine consigned to a market operating under a permit from the board; and swine going directly to slaughter at a slaughtering establishment having federal inspection.

1700.2800 CONTENTS OF CERTIFICATE OF VETERINARY INSPECTION.

Certificates of veterinary inspection for feeder swine must list ~~individual~~ identification ~~ear~~tag numbers, the herd of origin, the destination, and one of the following statements: "these feeder swine originate from a pseudorabies-monitored herd," "these feeder swine originate from a pseudorabies qualified herd," "these feeder swine have all been tested for pseudorabies within 30 days before importation and found negative," or "these feeder swine originate from an officially designated low-prevalence pseudorabies area ~~recognized by the board.~~", as defined in part 1705.2400, subpart 5a.

Certificates of veterinary inspection for breeding swine must show the individual identification number of each animal. Acceptable individual identification must be either eartag, tattoo, registration number, or approved ear notch system, the date of test, if tested, the validated and qualified herd number and date of last test, if not tested within 30 days before importation.

Certificates of veterinary inspection for feral swine must list individual eartag numbers and show that the swine were tested for pseudorabies and found negative within 30 days before importation.

One copy of the ~~health~~ certificate of veterinary inspection approved by the animal health department of the state of origin must be forwarded to the board within 14 days.

1700.2850 FEEDER SWINE.

Feeder swine must originate from pseudorabies monitored ~~pseudorabies-negative~~ herds, qualified pseudorabies-negative herds, or an officially designated low-prevalence pseudorabies area ~~recognized by the board~~, or must be tested negative within 30 days, and must not be transported or confined with swine of unknown status. Feral swine may not be imported into Minnesota without a negative pseudorabies test within the previous 30 days.

1700.3010 RESTRICTION OF IMPORTED FEEDING SWINE.

Imported feeder swine are restricted to the premises where they are to be fed until they are sold for slaughter except that:

A. feeder swine imported for resale at a market are restricted to the premises of the buyer where they are to be fed until sold to slaughter; or

B. feeder swine imported for resale by a licensed livestock dealer must be sold to a feeding premises within 72 hours.

~~An owner of feeder swine may apply to the board for permission to move them to other premises if a request is made in writing and sufficient data is given to allow the board to make a decision.~~

1705.2400 DEFINITIONS.

Subp. 5a. Low-prevalence pseudorabies area. "Low-prevalence pseudorabies area" means a state or area that has met the standards for class A or B states of the National Pseudorabies Control Board ~~by having a system of pseudorabies surveillance that detected no new cases of pseudorabies in the second year of surveillance.~~

Subp. 5b. Pseudorabies monitored pseudorabies-negative herd. "Pseudorabies monitored ~~pseudorabies-negative~~ herd" means a herd that is in compliance with part 1705.2474.

1705.2410 PSEUDORABIES TEST PROCEDURES.

Subpart 1. **Blood sample.** Blood samples drawn in administering an official pseudorabies test must be drawn by an accredited veterinarian, and serological tests must be conducted by a laboratory approved to conduct pseudorabies tests by the United States Department of Agriculture ~~or the board.~~

1705.2430 INFECTED HERD QUARANTINE AND DISPOSAL PROCEDURES.

Subpart 1. **Quarantine.** The board shall immediately quarantine a herd of swine that is affected with, shows symptoms of, or has been exposed to pseudorabies, as authorized by Minnesota Statutes, section 35.05. The board shall release quarantines of swine herds under part 1705.2440.

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Adopted Rules

Livestock other than swine infected with pseudorabies must be quarantined. The board shall lift the quarantine ten days after the diagnosis of infection if there are no signs or symptoms of pseudorabies in the quarantined livestock.

Subp. 3. **Permitted disposal.** Livestock from an infected herd of swine must be disposed of pursuant to item A or B.

1705.2434 QUARANTINED FEEDLOT PROCEDURES.

Subpart 1. **Qualifications.** ~~Except as provided elsewhere in this part, the board shall grant a quarantined feedlot permit allowing a quarantined feedlot to obtain feeder pigs from quarantined herds and to feed them out if the feedlot meets the following qualifications: No person may accept feeder swine from quarantined herds for purposes of feeding them out unless a permit is obtained from the board. A person seeking a permit must agree to provide access to the feedlot and records required by this part during business hours. The board shall grant a quarantined feedlot permit when otherwise authorized by this part and part 1705.2472, subpart 2, item F. The permit allows the person to whom it is issued to obtain feeder pigs from quarantined herds and feed them out. A quarantined feedlot must comply with the following requirements:~~

D. Feeder swine must be vaccinated for pseudorabies at the owner's expense on or before arrival at a quarantined feedlot. Vaccination records must be maintained for one year for inspection by board personnel.

F. Hogs must be sold directly to slaughter accompanied by a shipping permit or owner's notice of shipment as required in part 1705.2430, subpart 3a. One copy must be sent to the board office.

G. Records of swine purchases and sales, including names of sellers and buyers, dates of purchase, and number of head, must be kept for one year and made available for inspection by board personnel.

Subp. 2. **Location.** ~~After January 1, 1988,~~ No quarantined feedlot may be established within the Minnesota northern zone established in part 1705.2472, subpart 1.

Subp. 4. **Annual reapproval renewal.** ~~The district veterinarian shall inspect each quarantined feedlot in the district at least annually and renew the quarantined feedlot permit if quarantined feedlot rules are being complied with. If the quarantined feedlot approval is canceled due to noncompliance, the feedlot remains under pseudorabies quarantine until the quarantine is released under part 1705.2440. Quarantined feedlot permits must be renewed annually by the board, based upon an annual report of the district veterinarian for the district in which the feedlot is located. The permit must be renewed if the district veterinarian finds that the feedlot is and has been in compliance with the board's rules. The district veterinarian shall inspect a quarantined feedlot on the complaint of any person or at the board's direction. The board may suspend or cancel the permit of a quarantined feedlot for noncompliance with the requirements in this part. Whenever the permit of a quarantined feedlot is suspended, canceled, or not renewed, the feedlot remains under pseudorabies quarantine until the quarantine is released under part 1705.2440.~~

Subp. 5. **Phasing out quarantined feedlots located near qualified and controlled vaccinated herds.** In order to protect Minnesota's swine bloodlines and the health of Minnesota swine, quarantined feedlots located near qualified pseudorabies-negative herds and controlled vaccinated herds must comply with the following restrictions:

A. After January 1, 1988, a quarantined feedlot located within a one-mile radius of a qualified or controlled vaccinated herd may no longer purchase and feed out quarantined swine.

B. After January 1, 1990, a quarantined feedlot located within a two-mile radius of a qualified or controlled vaccinated herd may no longer purchase and feed out quarantined swine.

C. Quarantined feedlots that are not within a two-mile radius of a qualified or controlled vaccinated herd as of January 1, 1988, are not subject to the restrictions of this subpart should a neighboring herd become subsequently a qualified or controlled vaccinated herd.

1705.2440 RELEASE OF QUARANTINE.

Subpart 1. **Methods.** Swine herd quarantine release may be accomplished by any of the methods in items A to D.

A. **Depopulation; repopulation:** The entire herd may be sold to slaughter accompanied by a shipping permit or owner notice of shipment. The premises must be cleaned and disinfected under the direction of the board. The quarantine must be released 30 days after completion of the cleaning and disinfection. If cleaning and disinfection are not done, the hog facility may stand empty for 12 months and the quarantine must then be released.

B. **Test and removal:** All swine positive to an official test may be removed from the premises. All remaining swine in the breeding herd must then pass a negative official test at least 30 days after the removal of the infected swine. Herds must be released from quarantine if they have passed one negative test of their breeding herd after January 1, 1987.

C. **Offspring segregation:** Progeny may be weaned, isolated from a quarantined herd under direction of the board, and pass two negative official tests of 100 percent of these pigs at least 30 days apart. The second test must be on pigs older than five months. If all tests are negative, the quarantine must be released.

D. ~~Herd quarantines may be released by other herd testing schedules approved by the United States Department of Agriculture and the board as being consistent with the eradication goals of parts 1705.2400 to 1705.2520.~~ Other procedures: Quarantines of swine herds may be released by herd testing schedules in addition to those in this part if they are approved by the United States Department of Agriculture, are equally reliable and effective as the other methods in this part, and are consistent with the eradication goals of parts 1705.2400 to 1705.2520.

Subp. 3. **Ten-day period for release.** A quarantine on livestock other than swine must be released ten days after the diagnosis or exposure if there are no signs or symptoms of pseudorabies in the herd.

1705.2470 INTRASTATE MOVEMENT OF FEEDER PIGS.

Subp. 2. ~~Restricted-movement Feeder pig identification.~~ Restricted-movement Feeder pigs must be identified at the swine concentration point by a metal eartag or at the herd of origin with a metal eartag or a legible ear tattoo containing the monitored herd number assigned to that herd.

Subp. 3. ~~Restricted-movement certificate.~~ Restricted-movement feeder pigs bearing a metal eartag must be moved from the swine concentration point to the herd of destination accompanied by a certificate explaining the restricted-movement feeder pig status. A copy of this restricted-movement certificate must be retained for two years at the swine concentration point and one copy must be submitted to the board. At the herd of destination all restricted-movement feeder pigs must be maintained in isolation from breeding swine until they are sold for slaughter. They may not be used for breeding purposes or resold for breeding purposes except pursuant to subpart 6.

Subp. 5. **Sale of restricted-movement feeder pigs.** Restricted-movement feeder pigs may be sold as market hogs through any livestock marketing channel. They may not, however, be sold through a marketing facility at which breeding stock or pseudorabies-monitored feeder pigs are sold unless the facility maintains separate chutes, pens, and scales for breeding swine and pseudorabies monitored feeder pigs.

1705.2472 CONTROL AND ERADICATION OF PSEUDORABIES.

Subpart 1. **Zoning of state.** For purposes of controlling the spread of pseudorabies and eventually eradicating the disease, the state is divided into two zones, a northern zone and a southern zone. The northern zone includes the counties of Washington, Ramsey, Hennepin, Wright, Meeker, Kandiyohi, Chippewa, Swift, Big Stone, and all counties to the north of them. The southern zone includes all counties not included in the northern zone. ~~If at a later date the board decides to expand the northern zone, it may do so.~~

C. ~~January 1, 1989~~ July 1, 1988, mandatory feeder pig herd monitoring in the northern zone; and

Subp. 2. **Phased-in control of intrastate movement of feeder pigs.** After ~~January 1, 1989~~ July 1, 1988, in the northern zone and after January 1, 1990, statewide, feeder swine bought, sold, leased, loaned, or traded, including those moved for contract feeding, must comply with the feeder swine movement regulations in this subpart. The current feeder swine movement requirements in part 1705.2470 remain in effect until those dates.

D. All feeder pigs from monitored herds sold through a swine concentration point must be identified ~~by the sale management with a green metal eartag in the right ear or a legible pseudorabies monitored herd number ear tattoo or eartag imprinted with the monitored herd number assigned to that herd.~~

F. In order to prevent the spread of pseudorabies into the northern zone and into qualified pseudorabies-negative herds, the board shall take the following actions:

(2) The board shall establish no new quarantined feedlots within a two-mile radius of a qualified or controlled vaccinated herd in Minnesota.

(3) After ~~January 1, 1989~~ July 1, 1988, only monitored feeder pigs may be moved into the northern zone.

1705.2474 PSEUDORABIES MONITORED PSEUDORABIES-NEGATIVE HERD PROCEDURES.

Subpart 1. **Initial herd certification.** In order to be certified as a pseudorabies monitored ~~pseudorabies-negative~~ herd, a representative sample of the breeding herd must be tested annually and be negative for pseudorabies. Testing must be done at the owner's expense unless state funds are available for this purpose. The sample must include all herd boars and 30 percent of additions to the breeding herd since the last herd monitoring test. The sample sizes must be as follows:

Subp. 2. **Proof of herd status.** All swine producers or dealers selling feeder pigs in Minnesota shall provide to the buyer proof

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Adopted Rules

of the pseudorabies monitored ~~pseudorabies-negative~~ status of the herd of origin upon request. That proof must include one of the following:

- A. a current pseudorabies monitored ~~pseudorabies-negative~~ herd identification card or other proof of a current herd monitoring test;
- B. a qualified pseudorabies-negative herd number; or
- C. a pseudorabies-controlled vaccinated herd number.

~~Livestock dealers selling monitored feeder pigs shall furnish the buyer with the producer's monitored herd number if so requested.~~

Subp. 4. **Monitoring of pseudorabies-vaccinated herds.** Pseudorabies-vaccinated herds may gain monitored herd status by testing negative by one of the following methods:

A. Maintaining a number of unvaccinated sentinel animals, barrows, or gilts in the breeding herd for a minimum of 60 days and testing them. ~~The number of animals tested must be equal to the number required in unvaccinated herds. In herds of ten sows or less, an equal number of unvaccinated sentinel swine must be used and tested. In herds of 11 to 35 sows, ten sentinel animals must be used and tested. In herds of 36 sows or more, 30 percent up to a maximum of 30 head must be used and tested.~~

B. Leaving a number of unvaccinated breeding animals within the herd and testing them annually. The number of animals tested must be equal to the number required in ~~unvaccinated herds~~ item A.

C. Using a subunit or other vaccine on the breeding herd that will stimulate a blood titre that can be differentiated from the field virus titre by annual testing of a representative sample. When such a test becomes available, it must be used.

~~D. Using a killed vaccine at least six months before testing the breeding herd, and annual testing of a representative sample.~~

~~E. Use of another herd monitoring method approved by the board.~~

1705.2476 PSEUDORABIES SURVEILLANCE AND CONTROL OF SPREAD.

Subp. 2. **Slaughter plant surveillance.** The board will cooperate with the United States Department of Agriculture in its efforts to develop a program of pseudorabies testing cull boars or sows at all slaughter plants and to identify them back to the herds of origin. All herds determined to be pseudorabies-positive must be quarantined under parts 1705.2430 to 1705.2450. No quarantine will be imposed on a herd meeting the requirements of part 1705.2440, subpart 2.

Subp. 4. **Circle testing around all qualified or controlled vaccinated herds.** The board shall require a test of a representative sample of swine in herds within a one-mile radius of all Minnesota qualified pseudorabies-negative or controlled vaccinated herds. Currently qualified, controlled vaccinated, or monitored herds that have been tested within the last year need not be retested. The test sample size must be as follows:

D. In herds where the sows are vaccinated or in finishing herds, a number of market hogs over four months of age must be tested. The number to be tested must be the same as the number of sows tested in unvaccinated herds. If a test that differentiates vaccine titres is available, it must be used.

Subp. 5. **Cleanup of herds disclosed to be positive near qualified and controlled vaccinated herds.** In order to protect Minnesota's swine bloodlines, all herds that are disclosed to be pseudorabies-positive within a one-mile radius of all qualified and controlled vaccinated herds must:

- B. vaccinate all ~~unmonitored~~ feeder pigs coming into finishing herds.

Subp. 6. **Circle testing around quarantined herds.** The board shall require a test of a representative sample of swine in herds within a one-mile radius of the following herds:

B. all new pseudorabies quarantined herds in any part of the state disclosed to be infected ~~following the effective date of part 1705.2476.~~

The test sample size must be the same as that in subpart 3. Currently qualified, controlled vaccinated, or monitored herds that have been tested within the last year need not be retested. If positive titres are disclosed on this test, or the owner refuses to test, the herd must be considered an infected herd and placed under quarantine. This testing must be done at state expense if the funds are available.

1705.2520 TRANSPORTATION OF PSEUDORABIES-INFECTED OR -EXPOSED ANIMALS.

Subpart 1. **Vehicles exposed.** All vehicles used as public carriers for livestock known to be infected with or exposed to pseudorabies must:

B. be cleaned and disinfected pursuant to subpart 2 before being used for transportation of other livestock or livestock feed and feed ingredients.

1715.0210 DEFINITIONS.

Subp. 12. **Monitored feeder swine.** "Monitored feeder swine" means the offspring of a pseudorabies monitored pseudorabies-negative herd complying with part 1705.2474.

1715.0300 IDENTIFICATION TAGS.

If cattle are required to be identified by eartag, the official veterinarian shall use only official identification tags bearing the Minnesota prefix. Swine must be identified with metal eartags that include the letters "Minn" on the reverse side or a legible pseudorabies monitored herd number ear tattoo or metal herd numbered eartag.

1715.0550 SALE OF SWINE.

Subpart 1. **Order of sale in mixed market facilities.** Slaughter swine must be sold after feeder and breeding swine in markets that do not use completely separate facilities for slaughter swine. No feeder or breeding swine may be sold through slaughter swine facilities until the facilities are cleaned and disinfected. Breeding swine must be sold through the sales ring first, followed by monitored feeder pigs, and then nonmonitored feeder pigs.

Subp. 2. **Breeding swine.** Breeding swine must:

C. be sold through completely separate facilities if nonmonitored before feeder pigs are sold at the market; and

Subp. 3. **Feeder pigs.** Feeder pigs and all swine other than breeding or slaughter swine must:

A. be identified by an eartag and a green eartag if from a monitored herd a metal eartag or a legible pseudorabies monitored herd numbered ear tattoo or herd numbered eartag;

C. beginning on July 1, 1988, in the northern zone as defined in part 1705.2472, subpart 2, or on January 1, 1990, statewide, feeder pigs sold must originate from:

(3) an officially designated low-prevalence pseudorabies area recognized by the board; or

(4) another place with a record of a negative pseudorabies test within 30 days before the sale; or

(5) a monitored pseudorabies-negative herd complying with part 1705.2474 effective January 1, 1989, in the northern zone as defined in part 1705.2472, subpart 2, and effective January 1, 1990, in the southern zone as defined in part 1705.2472, subpart 2; a pseudorabies monitored herd complying with part 1705.2474.

If feeder pigs to be sold do not originate from one of the kinds of herds in clauses (1) to (4), they must have a negative test for pseudorabies within the previous 30 days.

When nonmonitored and monitored feeder pigs are sold at the same sale, completely separate facilities must be used or the monitored feeder pigs must be sold before the unmonitored feeder pigs. While in transit through marketing channels, all feeder pigs from monitored herds must be maintained so that they are not exposed to swine of unknown pseudorabies status or maintained in facilities or trucks contaminated by those swine. Failure to do so causes them to lose their monitored status.

1715.0705 SALE OF SWINE.

Subp. 2. **Breeding swine.** Breeding swine must:

D. be sold through completely separate facilities if nonmonitored before feeder pigs are sold at the market; and

Subp. 3. **Feeder pigs.** Feeder pigs and all other swine other than breeding or slaughter swine must:

A. be identified by an a metal eartag or a legible pseudorabies monitored herd numbered ear tattoo or pseudorabies herd eartag;

E. originate from an officially designated low-prevalence pseudorabies area recognized by the board;

G. originate from a pseudorabies monitored pseudorabies-negative herd complying with part 1705.2474, effective ~~January 1, 1989~~ July 1, 1988, in the northern zone and January 1, 1990, in the southern zone as defined in part 1705.2472, subpart 2.

When nonmonitored and monitored feeder pigs are sold at the same sale, completely separate facilities must be used and the monitored feeder pigs must be sold first. The eartags used to identify monitored feeder pigs must be green in color. While in transit

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through marketing channels, all feeder pigs from monitored herds must be maintained so that they are not exposed to swine of unknown pseudorabies status or maintained in facilities or trucks contaminated by those swine. Failure to do so causes them to lose their monitored status.

1715.0770 MOVEMENTS FROM MARKETS.

Subp. 4. **Identification.** All swine except swine sold for slaughter must be individually identified by eartag or ~~other acceptable identification~~ legible pseudorabies monitored herd numbered ear tattoo or pseudorabies monitored herd numbered eartag.

1715.1450 SALE OF SWINE.

Subp. 2. **Breeding swine.** Breeding swine must:

C. be identified by an eartag, tattoo, brand, or ear notch recognized by a breed association; ~~and~~

D. leave the sale with a restricted-movement certificate if the sales premises is used to sell feeder pigs, market hogs, or other untested swine; ~~and~~

E. be sold before any feeder pigs are sold at the market.

Subp. 3. **Feeder pigs.** Feeder pigs and all other swine other than breeding or slaughter swine must:

A. be identified by a metal eartag, and if from a monitored herd be identified by a green colored eartag or legible pseudorabies monitored herd numbered ear tattoo or pseudorabies monitored herd numbered eartag;

C. commencing on July 1, 1988, in the northern zone, as defined in part 1705.2472, subpart 2, and commencing statewide on January 1, 1990, all feeder pigs must originate from:

(1) a qualified pseudorabies-negative herd;

(2) a pseudorabies-controlled vaccinated herd;

(3) an officially designated low-prevalence pseudorabies area ~~recognized by the board; or~~

(4) ~~another place with a record of a negative psuedorabies test within 30 days before sale; or~~

(5) a monitored pseudorabies-negative herd complying with part 1705.2474, effective January 1, 1989, in the northern zone as defined in part 1705.2472, subpart 2, and effective January 1, 1990, in the southern zone as defined in part 1705.2472, subpart 2.

If any feeder pigs to be sold do not originate from one of the herds in subitems (1) to (4) they must have a negative test for pseudorabies within the previous 30 days. Monitored feeder pigs must be sold before nonmonitored feeder pigs. While in transit through marketing channels, all feeder pigs from monitored herds must be maintained so that they are not exposed to swine of unknown pseudorabies status or maintained in facilities or trucks contaminated by those swine. Failure to do so causes them to lose their monitored status.

Department of Labor and Industry

Adopted Permanent Rules Relating to Occupational Safety and Health Standards

Adopted Standards Governing Occupational Safety and Health (OSHA)

On May 25, 1987, the Department of Labor and Industry, Occupational Safety and Health Division (hereinafter: Minnesota OSHA) proposed the adoption of additions and modifications to the Minnesota Occupational Safety and Health Standards (11 S.R. 2138). During the 30-day comment period, 28 written comments were filed. After a comprehensive review of all comments, Minnesota OSHA adopted a major portion of those proposed standards on October 5, 1987 (12 S.R. 634). The most complex and controversial standards were scheduled for public hearing on November 12, 1987; those standards are:

5205.0116 and 5207.0310—Carbon Monoxide Monitoring

5205.0401—Application of the Elevator, Dumbwaiter, Escalator and Moving Walks Standards

5205.0675—Covers and Overhead Doors

5205.0710 and 5207.0720—Alteration of Tools and Equipment

5207.0755—Police and Patrol Vehicles

5207.0865 and 5207.0620—Machine Controls and Equipment

5205.0880 and 5207.0610—Motor Start Button

5205.1000 to 5205.1040 and 5207.0300—Confined Spaces

The public hearing was held on November 12, 1987 before Administrative Law Judge Peter C. Erickson. Oral testimony was presented by 15 individuals. The hearing record remained open for the submission of written comments until November 30, 1987. Thirty-six written comments were received. All written comments as well as the statements and information provided at the public hearing have been carefully reviewed and analyzed by Minnesota OSHA. Changes have been made in the proposed standards where deemed appropriate.

The following synopsis summarizes the major comments, objections and issues that were presented by commenters and Minnesota OSHA's response to those comments. The complete text of the adopted standards, showing additions and deletions from the original proposed version, follows this synopsis.

Authority to adopt these modifications and additions to the Minnesota Occupational Safety and Health Standards is found in *Minnesota Statutes* § 182.655, subdivision 1 (1986).

Ray Bohn, Commissioner
Department of Labor and Industry

SYNOPSIS OF COMMENTS:

5205.0116 and 5207.0310—CARBON MONOXIDE MONITORING

The Minnesota Department of Labor and Industry and the Department of Health each year receive several complaints or reports of employees becoming ill because of excessive carbon monoxide exposure. In general industry, these reports usually result from powered industrial truck (lift truck) activity within warehouses or factory buildings. On construction sites, the cause is operation of engines indoors and/or the use of unvented space heaters. The U.S. Department of Labor considers carbon monoxide to be one of the most widespread and dangerous industrial hazards. Approximately 10,000 workers suffer from exposure to debilitating levels of carbon monoxide each year; it is estimated that 200 of these workers are in Minnesota and are becoming ill because of inadequate air monitoring, maintenance of equipment and ventilation. In addition, there are a large number of cases that go unreported or are incorrectly diagnosed because symptoms of carbon monoxide overexposure are similar to the onset of other common illnesses such as the flu.

In an attempt to eliminate worker over-exposure to carbon monoxide in the workplace, Minnesota OSHA proposed to adopt these standards—5205.0116 which applies to carbon monoxide monitoring in general industry workplaces, and 5207.0310 which applies to construction worksites. These new standards require the ability to test for carbon monoxide on work sites where carbon monoxide exposures are generated. The present OSHA standards imply that employers test routinely for this problem to ensure employee exposures remain below the permissible exposure limit. However, Minnesota OSHA's experience has shown that testing is not done periodically, and problems arise unexpectedly. There is a common misperception that propane-fueled engines burn clean and do not produce carbon monoxide. Poorly tuned propane-fueled engines can produce carbon monoxide overexposure problems similar to gasoline-fueled engines. Construction sites often bring a variety of motorized equipment inside buildings, which include engine-powered platforms, lift trucks, front-end loaders, cement buggies, troweling machines, and concrete-mix trucks. These engine-exhaust sources add to problems created by unvented space heaters that may be used in the winter season.

Numerous comments were received concerning this standard since it was originally proposed on May 25, 1987; many of those comments addressed the wide coverage of the original standard in general industry where it may not be appropriate. As originally written, the standard would have required service garages to monitor periodically; this is not necessary because of the ventilation requirements already in place in *Minnesota Rule* 5205.0200 and under the State Building Code. The problems have almost always been associated with lift-truck (or powered industrial-truck) use. The standard has been amended to limit the required periodic monitoring to this specific industry; that is, the use of powered industrial trucks. In addition, several commenters misunderstood the intent of bi-monthly monitoring; i.e., monitoring every two months. Other commenters suggested quarterly monitoring would be more appropriate. Minnesota OSHA agreed and made these changes in the proposed standard prior to the November 12 public hearing.

The public hearing generated several more comments concerning the proposed standards. Darrel Neely, Associate Corporate Safety Director for ConAgra, Inc. indicated their opposition to both standards because they have never had an employee injury or illness related to the use of internal combustion engine powered industrial trucks. The statistics cited above indicate that 10,000

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workers are affected each year with an anticipated large number of injuries and illnesses that go unreported. It is agreed that certain circumstances are less likely to create hazardous carbon monoxide conditions (i.e., large warehouses with few lift trucks or small warehouses with one, seldom-used lift truck); however, other conditions are not predictable and hazardous conditions can occur (i.e., the engine is badly out of tune and emissions are extraordinarily high or work is done in very restricted, poorly ventilated space such as aisles between full storage racks or in coolers or semitrailers). This standard was proposed because employers typically are not maintaining monitoring equipment on the premises and are not testing periodically. Standards 1910.1000 and 1910.178(i) are not adequate in themselves to control carbon monoxide over-exposure problems.

Mr. Neely also suggested that a definition for the word "indoors" be included in the standard. Such a definition should not be necessary since any building with more than two side walls can create limited ventilation conditions and allow carbon monoxide buildup.

We agree with Mr. Neely's comment that the terms "monitoring" and "sampling" should not be used interchangeably in the standard since they may cause some confusion to readers of the standard. We have, therefore, changed the term "sampling" to "monitoring" where appropriate.

Experience has shown that recently tuned and adjusted engines can produce extremely high carbon monoxide emissions. The specification in Subpart 2 of 5205.0116 requiring testing emissions at idle and three-fourths throttle during final engine tuning during a regular maintenance program will establish criteria where gross carbon monoxide contamination from badly tuned engines will be eliminated. Engine exhaust gas testing is commonly done on modern engines and either electronic engine analyzers or a hot gas probe with a high range detector tube are readily available to employers or service garages.

Engine tuning criteria for carbon monoxide emissions below 1 percent for propane-fueled engines and 2 percent for gasoline-fueled engines is based on Plate VS-908.1, first published in 1974, from the manual, "Industrial Ventilation," published by the American Conference of Governmental Industrial Hygienists (19th Edition, 1986). This criteria as part of a regular lift truck engine maintenance program is necessary if ACGIH recommended ventilation rates are going to be capable of controlling carbon monoxide exposures within limits. The emissions criteria in Subpart 2 are not intended to imply that exhaust gas concentrations will never exceed the 1 percent or 2 percent recommended limits for carbon monoxide. They are expected to be goals for mechanics to achieve when they are doing regular maintenance on the lift truck engine.

Mr. Neely is concerned about the internal combustion engine powered emergency generators used in their facilities; these emergency generators are permanent installations and are not covered by 5207.0310 which applies only to the construction industry.

Because exhaust gases from engines are under positive pressure in the pipe leading from the engine to the out-of-doors, there are many possibilities for carbon monoxide problems. There may be leaks in the manifold, muffler, or exhaust pipe or termination outside the building in a location where the exhaust gases will re-enter the building. Good design and maintenance are critical for carbon monoxide control with fixed, vented indoor engine installations. This issue was addressed by the wording change to 5207.0310.

Mr. Neely also expressed concern about the need for testing an unvented space heater with only its pilot operating during the nonheating season. This heater is not considered to be in operation and quarterly testing is not required during the nonheating season.

Annual testing or inspection by a qualified technician, as was suggested by several commenters, is not adequate surveillance for unvented space heaters used on construction sites nor is it an adequate frequency for warehouse lift truck activities where 5205.0116 has its major impact.

Richard Anderson, Director of Safety for the Minnesota Department of Transportation (MNDOT), objected to the requirement for air sampling to be done quarterly since they have over 280 facilities throughout the state where vehicles are garaged and they have neither the sampling equipment nor the trained personnel to take sampling on a quarterly basis. These MNDOT facilities are, for the most part, service and storage garages; few, if any, contain powered industrial trucks (lift trucks). Therefore, this standard does not apply to most, if not all, of MNDOT's facilities. As noted earlier, ventilation in service and storage garages is governed by *Minnesota Rule 5205.0200* and the State Building Code.

J. V. Mehta, Senior Engineer with Great Lakes Gas Transmission Company, indicated that he did not believe this monitoring requirement should be applied to internal combustion engines operating inside if the exhaust gases are piped and released outdoors, thereby preventing the exposure of employees to carbon monoxide gases. The standard, as amended prior to the hearing, applies only to "internal combustion engine powered industrial trucks." Therefore, the fixed location compressor engines vented outdoors and used in the gas transmission industry are not covered by 5205.0116. The wording of 5207.0310 has been changed to clarify that construction employers are not required to perform quarterly carbon monoxide monitoring when engine exhaust gases are piped outside the building.

Mark Sather, City Manager for the City of White Bear Lake, noted that carbon monoxide levels within that city's public works garage facility are probably fairly constant and that bi-monthly or quarterly sampling would be unnecessary. It is not expected that the City of White Bear Lake operates "powered industrial trucks" inside most of its buildings; therefore, 5205.0116 does not apply. General ventilation requirements for service and storage garages is defined in *Minnesota Rule 5205.0200* and the State Building

Code. However, if the city does need to monitor certain operations, detector tube sampling systems are relatively inexpensive and readily available.

Louis W. Claeson, Counsel for the Minnesota Automobile Dealers Association, was concerned with the original wording of the proposed standard which, if it had remained unchanged, would have required service garages to monitor for carbon monoxide exposures. However, the amended standard makes it clear that only those facilities where "powered industrial trucks" are operated indoors are covered by 5205.0116.

David E. Kohner, General Counsel for Liberty Diversified Industries, asked whether equipment was available to monitor the percent of carbon monoxide of each lift truck and at what cost. High range detector tubes used with hot gas probes or engine exhaust gas analyzers are readily available for engine exhaust gas testing for carbon monoxide content. Cost for detector tubes and a hot gas probe would be in the \$100 to \$200 price range. Mr. Kohner also questioned why different acceptable levels were given in the standard for the different types of fuels. It is possible to tune propane-fueled engines to lower carbon monoxide emission levels than it is gasoline-fueled engines; therefore, Plate VS-908.1 from the ACGIH Ventilation Manual recommends different maximum carbon monoxide emission levels.

Daniel E. Frigon, Director of Safety and Claims for Minnesota Power, suggested that this standard was unnecessary since OSHA standards already exist governing carbon monoxide exposure. The inadequacy of existing standards for controlling carbon monoxide over-exposure problems has already been discussed. Mr. Frigon also indicated that he felt this new standard will cause employers to relax ongoing efforts. Minnesota OSHA does not agree since, in Minnesota OSHA's experience during inspections, we find very few employers with the ability to test for carbon monoxide on site. This new standard requires employers to have the ability to test for carbon monoxide. Whenever problems are suspected, it is expected that measurements can be made by the employer if testing equipment is readily available on site. This is a major improvement over the present status where very few employers can test and even fewer test regularly.

5205.0401—APPLICATION (ELEVATORS, DUMBWAITERS, ESCALATORS AND MOVING WALKS)

This standard was originally the second paragraph of existing *Minnesota Rule* 5205.0400, which is the scope for the elevator standards. This paragraph was removed from 5205.0400 and given a separate designation to clarify the application of *Minnesota Rules* 5205.0400 to 5205.0590, which govern elevators, dumbwaiters, escalators, and moving walks, both new and existing installations. This standard has not only caused confusion concerning the application of 5205.0400 to 5205.0590, but is in direct conflict with the American National Standards Institute standard for elevators, dumbwaiters, escalators, and moving walks, known as ANSI A17.1 which has been adopted by reference and made a part of Minnesota OSHA's elevator standards.

This standard, as originally written, has been misinterpreted to eliminate the need to bring existing installations into safe operating condition since it states that the standards apply to the construction, installation, alteration, and operation of the installations listed in the first paragraph of the subpart that are constructed, installed, or altered within the limits of the State of Minnesota after the effective date of the code. This statement totally exempts existing installations from coverage.

To correct this inconsistency, the phrase, "which are constructed, installed, or altered within the limits of the State of Minnesota after the effective date of this code." Section 1.3 of the 1984 edition of ANSI A17.1, which was adopted by reference by Minnesota OSHA on October 5, 1987, states that the entire code applies only to new installations, with the exception of Part X, "Routine, Periodic, and Acceptance Inspections and Tests," and Part XII, "Alterations, Repairs, Replacements, and Maintenance," which apply to both new and existing installations. Eliminating the designated phrase from 5205.0401 eliminates the conflict with the national consensus standard and assures that existing elevator installations will be brought into a safe operating condition in accordance with ANSI A17.1, Part X and Part XII, as well as the requirements of *Minnesota Rules* governing elevators.

No written comments were received concerning this change.

5205.0755—POLICE AND PATROL VEHICLES

This standard requires that police and patrol vehicles that are marked in accordance with *Minnesota Statutes* Section 169.98 that may be used to transport violators or offenders must be provided with an effective barrier between the front and back seat to protect the officers from assault. This standard was proposed after extensive research involving municipal law-enforcement personnel, state patrol officers, county sheriffs' departments, and Peace Officer Standards and Training (POST) Board. That research revealed numerous incidents of officers being assaulted or attacked when transporting prisoners. It also revealed that no standard or requirement currently exists which requires barrier guards for police or patrol vehicles.

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Some law enforcement agencies have determined that these barriers are necessary to protect officers and reduce injuries. Some departments use wire-mesh guards, some use barriers with a fine wire mesh, and others use fiberglass or plexiglass guards. Departments installing barrier guards realized an almost immediate benefit in fewer officer assault cases.

Because permanent guards of this type can be a hindrance in some situations, such as traffic accidents where it is necessary to seat accident victims in the back seat during the interview process, the standard allows the guards to be retractable.

The guards are not required in cars used solely for traffic control, in unmarked patrol vehicles, or investigators' cars since the potential for exposure to the hazard of assault by a back seat passenger is very low or nonexistent. Officers are subject to assault by backseat passengers in varying degrees, from the prisoner spitting or vomiting on the officer to physically attacking that officer. Handcuffs and seat belts are inadequate restraints in many cases. Many times these assaults occur while the officer is driving the vehicle, greatly increasing the potential for a serious accident.

Two comments were received in response to the proposed standard. The City of Duluth Police Department felt that barrier guards were unnecessary for their department since they always use two-person patrols, and department policy prohibits one officer from transporting violators alone. After considering all factors, Minnesota OSHA agreed that two-person patrols meet the intent of the standard and eliminate the need for barrier guards if one officer rides in the back seat with the violator or offender. That officer should be in a position to prevent an assault on the officer who is driving the vehicle.

The second comment was submitted by Major Ralph Church of the State Patrol Division. Major Church objected to the standard because mechanisms already exist for officers to get the barrier guards if they want them. In addition, Major Church stated that efficiency of normal traffic and accident work is hampered, visibility to the rear of the vehicle is impaired, and the cost of purchasing and retrofitting all vehicles would be prohibitive. Research done by Minnesota OSHA indicates that, although some departments provide the barrier guards, many others do not, and will not, provide them unless they are required to do so. In some instances, officers have had to use their collective bargaining capabilities in order to force the issue with their departments. This standard will make city-management and law-enforcement personnel aware of the need for this type of protection. The visibility factor is eliminated by wire mesh or plexiglass guards that do not inhibit visibility. Retractable guards allow accident work and normal traffic control work to proceed uninhibited. The cost of these barrier guards for police and patrol vehicles is approximately \$500 to \$650 dollars per unit. Many manufacturers who provide police and patrol vehicles already include barriers as part of the options package, making them as easy to obtain and about as expensive as air conditioning or power steering in the vehicles.

At the hearing, Lt. Colonel Glenn E. Gramse, Assistant Chief for the State Patrol, presented additional objections of the State Patrol to the adoption of this standard. The State Patrol provides barrier guards, or cages, to those State Troopers who want them; approximately 20 percent of State Patrol vehicles are so equipped. Most State Troopers feel the cage hampers their ability to perform their jobs, and does not contribute greatly to their personal safety and, in some cases, actually provides a reduced measure of safety. The cost to the patrol would be a minimum of \$100,000. Lt. Colonel Gramse stated that State Troopers primarily deal with traffic matters and only occasionally transport dangerous felons, most State Troopers do not want the barriers, and mandated barriers would create a financial handicap for the State Patrol. Based on these factors, Lt. Colonel Gramse requested that the State Patrol be exempt from the standard and allowed to retain their policy of providing barrier guards to those State Troopers who request them.

Although the State Patrol operates under a commendable policy of providing barrier guards to those State Troopers who request them, not all law enforcement personnel work under such ideal conditions. Research conducted by Minnesota OSHA prior to proposing the standard found that many officers want the protective barriers and many of those officers were unable to obtain them through "channels." Revising the standard to require provision of the barrier guards upon request of an officer would result in initially the same non-compliance that exists today. In addition, it creates the possibility of officers being prevented from making the request or "coerced" into withdrawing the request. Voluntary compliance is minimal without the standard; it will not improve if the standard makes it mandatory only if requested by an officer.

Minnesota OSHA believes the benefits of barrier guards greatly exceed any negative impact. A delayed effective date has been adopted for this standard to allow enforcement agencies time to come into compliance; barriers must be provided in vehicles used to transport violators or offenders by January 1, 1989.

5205.0675—COVERS AND OVERHEAD DOORS

As originally proposed in May 1987, this standard included both covers and overhead doors in the same standard since the type of hazard and resulting injuries were similar. The intent of the standard is to prevent unintentional closure of unrestrained covers and overhead and sliding doors. Serious injuries to employees have resulted from such accidental closures. The standard was proposed in response to suggestions from field safety investigators who observed actual, as well as potential, hazards with such devices and found that a specific standard covering the hazards did not exist.

After reviewing comments in response to the proposed standard, it became apparent that the standard could be clarified by separating it into two subparts, one to address the covers, the second to address overhead doors. Therefore, the standard was amended to describe covers in subpart 1 and overhead doors in subpart 2.

It is quite obvious that a heavy cover falling on an unsuspecting employee is going to result in injuries, probably serious injuries. This standard is necessary to assure that such covers are restrained in some manner to prevent this accidental closure. The method used to restrain a cover is left to the employer's discretion since the means of restraining a heavy cover will depend on the type and design of the machine, equipment, or operation. In addition, this standard serves notice on employers and employees alike that heavy covers may be a potential hazard.

Subpart 2 includes the requirements for overhead and sliding doors and brings the OSHA Standards into conformance with national consensus specifications and the State Building Code. The Building Code requires safety devices on electrically and mechanically operated garage-door openers and requires the installations of commercial as well as industrial garage doors that have mechanical or electrical closers to comply with a nationally recognized testing laboratory, such as Underwriters' Laboratories (UL). Generally, reputable installers of overhead doors will install UL-approved equipment because of the tremendous liability of installing nonapproved-type equipment. However, do-it-yourself installers and the less reputable installers may not choose to install approved equipment. This standard provides employers who are purchasing or contracting for the installation of overhead or sliding doors with some guidelines for determining a safe, approved installation.

Several commenters suggested that the standard apply only to new installations to prevent the need for employers to retrofit existing doors. This suggestion has not been adopted since older doors are generally the ones without this protection. However, a delayed effective date has been included in the standard to allow time for employers to come into compliance with the standard and provide the required safety mechanism on overhead or sliding doors.

In comments at the public hearing and in written comments submitted following the hearing, the Minnesota Department of Transportation indicated that this standard would require their employees to get in and out of their trucks or other vehicles in order to operate the constant pressure device. In addition, they indicated that a service door is provided immediately adjacent to the overhead door for employees to enter and/or exit the garage. This standard does not require the door opening device to be changed from what they presently have. Constant pressure switches are not required if they have a pressure relief, reversing switch, or safety edge. Although vehicle drivers do not have to leave their vehicles when entering the garage, other employees do walk through these doors while they are closing even when a service door is immediately adjacent to the overhead door. MNDOT's concern about drivers slipping and falling if they are required to leave their vehicles as they enter or leave the garage facility is the same concern Minnesota OSHA has for employees who enter or leave the facility through an overhead door while it is closing.

Timothy Gangnon, Loss Prevention and Security Manager for Land O'Lakes, and David E. Kohner, General Counsel for Liberty Diversified Industries, are concerned that manually operated doors would be included in this standard even though the potential for injury in the workplace is minimal. Manually operated doors are not covered by this standard.

Donald F. Pauley, Clerk-Administrator for the City of Mounds View, questioned whether or not manhole covers would be covered by this standard. Generally, manhole covers are removed and are not propped up which takes them out of the realm of this standard. However, if the manhole covers are propped up rather than removed, they must be secured, fastened or blocked in some manner to prevent them from accidentally falling on an employee.

Darrel Neely, Associate Corporate Safety Director for ConAgra, Inc., opposed the standard on the basis that it does not clarify what a cover is or how much weight is required to cause a crushing injury. The amended standard, which separates covers and overhead doors into two separate subparts, is sufficiently clear to indicate what types of covers are meant to be included in this standard. The proposed standard refers to "all covers of sufficient weight or pressure to cause crushing injury . . ." Minnesota OSHA does not believe further clarification is necessary. Mr. Neely further asked that the phrase "sufficient weight or pressure" be quantified; the standard must be interpreted with respect to each situation since even a light cover could be a hazard if it has a sharp edge. The standard included a reference to "pressure" since the weight of a door alone may not be the cause of injury. However, we agree with Mr. Neely that "pressure" is not an adequate term to describe what is meant. Therefore, the standard has been reworded to replace "pressure" with "closing force" which clarifies the intent of this standard.

Mr. Neely is also concerned that since the standard applies to "all overhead or sliding doors," their horizontal sliding fire doors which are released when a fusible link is melted and a weight attached to the door pushes it shut would be covered by this standard. The doors are quite heavy and designed to close with force. Mr. Neely suggests that the installation of any of the suggested abatement methods would defeat the purpose of these fire doors. This type of fire door is not covered by this standard if there is no hazard associated with their closing (i.e., employees can safely evacuate the area before the doors close). In addition, these doors are usually counterweighted to prevent their closing with a sudden force. However, if these doors do close with sudden force and an employee

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could be caught between them, the closing speed must be retarded in some manner. Fire doors that are intended to provide protection from fire are not safe if an employee could be caught between the closing doors. Frequency of use is not a factor since the possibility of injury exists from even one use.

5205.0710 and 5207.0720—ALTERATION OF TOOLS AND EQUIPMENT

These standards are intended to prohibit changes in equipment that create a hazard and compromise employee safety. The standards, as originally proposed in May 1987, allowed modification of tools and equipment only with the manufacturer's written approval. However, as commenters pointed out, manufacturers are often reluctant to approve modifications to their products even if those modifications are necessary to improve the safety of the product. Since it is sometimes necessary for an employer to modify a tool or piece of equipment in order to make it less hazardous, these standards prohibit the employer from making that change unless the manufacturer approves.

A more reasonable approach is allowed in the proposed revision of this standard that was presented at the public hearing; namely, modifications to tools and equipment may be made under two circumstances: (1) if the manufacturer has given written approval of the modification; or (2) if the modification is done under the direction of a competent person in accordance with accepted engineering practices and requirements. Intelligent engineering will reduce the possibility that another hazard will be created by the modification. Numerous injuries have occurred when tools or equipment were modified in a manner that is inconsistent with the manufacturer's intended use of the tool or piece of equipment or in conformance with recognized safe engineering practices. This standard is intended to eliminate hazardous modifications to tools and equipment.

David E. Kohner, General Counsel for Liberty Diversified Industries, is concerned that this standard could be extended to require written permission to run the same part made of a different material; i.e., would the use of aircraft-grade aluminum in automobiles be prohibited or would it prohibit the use of an air cylinder as a shock absorber or a gas spring in a special machine? The intent of the standard is to assure that tools or equipment designed and intended for a particular purpose are not modified for use in a manner that creates additional hazards. It is not intended to cover replacing parts or repairing equipment with equivalent materials nor would it prohibit the use of aircraft-grade aluminum for automobiles or anything else since this is a product that can be used for many purposes; it is not a tool or piece of equipment that has been designed for a particular use.

Darrel Neely, Associate Corporate Safety Director for ConAgra, Inc., opposed the adoption of the standard on the grounds that the standard should be narrowed; i.e., often a maintenance employee has needed a wrench that was a little shorter than the one they normally carry, so they cut one end off and complete the work. Mr. Neely is concerned that this would be prohibited under this standard. Shortening a wrench will not increase the hazard of using it as long as it is still used as a wrench. This standard is intended to prevent the modification of tools and equipment to the extent that additional hazards are created. Mr. Neely also asked that a definition for "competent person" be included in this standard. That term is defined in other OSHA Standards and has not been repeated in this standard.

5205.0865 and 5207.0620—MACHINE CONTROLS AND EQUIPMENT

These standards are intended to ensure that machine operators will be able to shut off the power to the machines they are working on without leaving the point of operation or leaving their work station. The standards, as proposed in May 1987, were amended prior to the public hearing to clarify the intent. The restriction to electrical or mechanical power controls was eliminated so that the standard now allows any type of control that the employer deems appropriate for the machine or operation which allows the employee to disconnect power to the machine. The standards were proposed because field safety investigators had observed potential hazards with machine operators having to leave the work station or having to reach quite far to shut off a machine, oftentimes at risk of injury or entrapment by the machine. The hazards addressed by this standard are recognized hazards as evidenced by the standards and recommendations that have been issued by safety and health organizations. National consensus standards, as well as some OSHA standards, include similar requirements for machines with identical hazards; however, these standards apply only to the specific machines for which they were written. This generic standard provides for the same protection for all machine operators.

The Minnesota Department of Transportation objected to the rule stating that 29 CFR 1910.212 provides that all points of risk be guarded making it unnecessary for operators to have a shut-off control within reach. Mr. Kohner, Liberty Diversified Industries, voiced a similar objection stating that no reference is made to the presence of, or lack of, guarding. In addition, he was concerned that these standards might require emergency stop buttons every two feet, both vertically and horizontally. Guarding of the machine is not addressed by this standard since guards oftentimes are out of adjustment, have been removed, or employees have found a way of working around the guard. In situations such as these, the employee must be able to shut off the unit if a problem arises. In addition, if the unit becomes jammed or doesn't function properly, the employee will be more likely to shut off the machine before trying to unjam it if the shut-off control is within reach. Also, having the control within reach (and sight) of the operator prevents an accidental startup by another employee without the operator's knowledge. The standard only requires that the operator be able to reach a shut-off control from the normal operating position; it does not require emergency stop buttons every few feet.

5205.0880 and 5207.0610—MOTOR START BUTTON

These standards are intended to prevent the accidental start-up of a machine while the operator is in a position that may result in injury. The standards, as originally published in May 1987, caused some confusion among commenters who interpreted the proposal to require the start button of all machines to be protected regardless of whether or not a hazard existed. The intent is to require protection of motor start buttons on machines where the operator is exposed to the hazards of nip points, points of operation, or pinch points. It was never meant to apply to machines where no possibility of bumping or accidentally tripping the start controls existed. Modifications were made prior to the public hearing to reflect this intention.

Comments received prior to the public hearing objected to the need to retrofit existing machines. Old machines are exactly the machines that need to be protected; newer machines in many cases have such protective devices already in place. The standard allows the employer to design an appropriate protector or have one fabricated by an outside manufacturer or installer. The cost of retrofitting unsafe machines to protect the start control will be far less than the cost of a serious injury.

The Department of Transportation commented that the rule was too vague and could be interpreted to require a "deadman switch" which MNDOT could not comply with on certain machines. The standard does not refer to a deadman switch; it only requires guarding of the start control switch or button to prevent accidental startup of the machine.

No other comments were filed concerning these standards.

5205.1000 to 5205.1040 and 5207.0300—CONFINED SPACES

The "Confined Spaces" Standard generated the most response. Numerous comments and recommendations were received in response to the proposed standard as well as during the public hearing process.

This standard was proposed because, at the present time, existing standards cover confined space entry only in specific industrial activities, such as open surface tanks, welding, pulp and paper, and shipping industries. Existing standards address safety in confined spaces in over fifty different sections of the standard; in these standards, there are over 140 references to safe work practices. This proposal is designed to bring requirements for safe entry into confined spaces in all industries not covered by a vertical standard into one comprehensive standard.

The hazards of confined space entry are well-recognized as evidenced by proposed standards and guidelines that have been published by national consensus organizations. For example, the National Institute for Occupational Safety and Health (NIOSH) proposed a confined space entry standard in December 1979; this standard was outlined in the Department of Health, Education, and Welfare Publication Number 80-106, "Working in Confined Spaces, Criteria for a Recommended Standard." In 1986, NIOSH published an alert which requested the assistance of managers, supervisors, and workers in the prevention of deaths that unnecessarily occur in confined spaces. Federal OSHA published a draft standard in 1985 dealing with confined space entry. After much intra-OSHA discussion, this standard has not yet been published as a final standard; no publication date has been scheduled. The American National Standards Institute (ANSI) published guidelines for confined space operations in 1977, ANSI Z117.1-1977 "Safety Requirements for Working in Tanks and Other Confined Spaces."

Workers who enter and work in confined spaces are confronted with many potentially hazardous conditions. The hazards can range from an oxygen-deficient atmosphere or a toxic agent to mechanical equipment accidentally energized. The hazardous atmospheres that can be encountered in a confined space are flammable, toxic, irritant and/or corrosive, and asphyxiant. Atmospheric conditions are responsible for most of the deaths or injuries in confined spaces. The U. S. Department of Labor found that 90% of confined space fatalities were due to a toxic atmosphere which occurred because of five problems: carbon monoxide, carbon dioxide, combustible gases, hydrogen sulfide, and oxygen-deficient atmospheres. Approximately 35% of the fatalities occurred after a confined space was declared safe at the start of work in the confined space; 50% of all fatalities occurred to rescue workers attempting to remove workers overcome in confined spaces. NIOSH estimates that millions of workers may be exposed to hazards in confined spaces each year and that about 300 die each year. A study of 173 confined space fatalities investigated by Federal OSHA from 1974 to 1982 revealed that 46% were due to toxic contaminations, 35% were due to oxygen deficiency, and 19% were due to other hazards. Rescue workers accounted for 24% of these fatalities.

After reviewing all available data, several problem areas were identified that indicated a need for further standards development:

(1) there were repeated failures to make tests of the atmosphere for toxic gases or oxygen deficiency before entry and work in confined spaces;

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(2) workers failed to follow all safety procedures that applied to the conditions present, or safety programs for confined space entry were inadequate or did not exist, including the wearing of proper personal-protective equipment, use of safety harnesses and lifelines, and standby persons on the outside assigned to attend workers.

Minnesota Rules 5205.1000 to 5205.1040 and 5207.0300 address these hazards and provide guidelines for employers and employees when work in confined spaces is necessary. The standard, as originally proposed in May 1987, was revised prior to the public hearing to clarify provisions of the standard and to incorporate appropriate recommendations from commenters.

All comments submitted during, and following, the public hearing have been carefully reviewed and evaluated. Many commenters presented excellent suggestions for improving the standard; those recommendations have been incorporated into the standard where appropriate. Comments that could not be completely satisfied by changes to the standard are discussed below.

Several commenters (Steel Plate Fabricators Association, Inc.; Arrow Tank and Engineering Company; DCI, Inc.; Polar Tank Trailer, Inc.; and Sterner Industries, Inc.), all of whom are involved in tank manufacturing, were concerned about the application of the confined space standard to tanks while they are under construction and the adverse effect it may have on the tank fabricating industry in Minnesota. They suggested that a tank under construction should not be considered a confined space and the exemption allowed under the American National Standards Institute standard, ANSI Z117.1-1977 "Safety Requirements for Working in Tanks and Other Confined Spaces," should be incorporated into this standard. Minnesota OSHA agrees and appropriate revisions were made in 5205.1000 indicating that "a tank or other vessel under construction may not meet the definition of 'confined space' until it is completely enclosed."

Edward Stegman, Vice-President of Operations for Sterner Industries, Inc., also indicated that the major hazard encountered in the manufacture of tanks and equipment they manufacture results from welding in the confined spaces and that OSHA already has regulations governing welding in confined spaces. He suggested that these regulations do not require special permits nor do they require a "watcher" when the only source of air pollution results from the welding itself. This interpretation of the welding requirements is incorrect. Section 1910.252(f)(4)(iv) does require an "outside helper" where welders and helpers are provided with hose masks, hose masks with blowers, or self-contained breathing equipment while working in a confined space. (This would be considered a Class III entry under the Confined Spaces Standard.) In addition, Mr. Stegman is concerned that it will be necessary to complete a permit for each confined space entry, even if it is a Class I low-hazard type of entry. Wording changes in the requirements for Class I entry make it clear that during this type of entry a permit for each entry, or each confined space, falls into this category, and separate permits are not required.

Several comments were submitted suggesting revisions to 5205.1010 "Definitions." The definition of "confined spaces" has been changed to more clearly identify the types of spaces that are covered. Some commenters (Liberty Diversified Industries; ConAgra, Inc.; and Minnesota Power) suggested that a "confined space" should be defined by the dimensions of the space, the means of egress from the space, whether egress is difficult or restricted, and whether immediate danger of severe injury by mechanical means exists. Although many confined spaces are very recognizable due to the difficulty of entering the space and the size of the opening into the space, this cannot be the *only* criteria because some confined spaces, such as vapor degreasers, are easy to enter and exit but can be very dangerous due to the nature of the chemicals used in the degreaser. Vapor degreasers typically measure three feet by six feet with a depth of about four feet. This space is easy to exit but can be a deadly confined space. The normal solvents used in vapor degreasers are chlorinated solvents like trichloro-ethylene or a fluorocarbon. These solvents in a gaseous state are very heavy compared to air (normally five to six times heavier) and can accumulate in very high concentrations inside the vapor degreaser. If a worker is cleaning the vapor degreaser and lowers his/her face into the space without proper testing, ventilation, or respiratory protection, a fatality can occur; three fatalities have occurred in Minnesota in this type of situation in recent years. The definition of confined spaces, therefore, must be very broad.

Subpart 2 of 5205.1010 defines "confined space entry" as "... any action resulting in any part of the workers' face breaking the plane of any opening of the confined space, and includes any ensuing work activities inside the confined space." Since most fatalities are caused by toxic or asphyxiating atmospheres which are inhaled, this standard considers that entry occurs when the face (or breathing zone) enters the confined space. Darrel Neely, Associate Corporate Safety Director for ConAgra, Inc., commented that workers placing their faces inside of confined spaces should not be considered to be making a confined space entry. Many fatalities, including some in Minnesota, have occurred when workers have placed only their faces in confined spaces without first performing proper testing. Richard Anderson, Director of Safety for the Minnesota Department of Transportation, was concerned that this definition would prohibit a person from remaining outside a manhole, lying down and merely looking into the opening. Workers who remain outside a confined space and just look in are not considered to have entered a confined space; the worker must put his/her face inside the space to be considered a confined space entry. This definition defines exactly when a worker is considered to have "entered" a confined space.

Several comments were received concerning the definition of "dangerous air contamination." D. E. Frigon, Director of Safety and Claims for Minnesota Power, recommended that the definition for dangerous air contamination due to the flammability of a gas or vapor be defined as an atmosphere containing the gas or vapor at a concentration less than its lower explosive limit rather than

greater than 10% of its lower explosive (lower flammable) limit. Mr. Frigon indicates that when testing or sampling for a flammable or combustible gas or vapor is conducted, the instruments available will always alarm below the lower explosive limit but not necessarily at a level "greater than 10% of the LEL." This change has not been adopted because setting the dangerous air concentration due to the flammability of a gas or vapor at the lower explosive limit for the gas or vapor does not allow any margin of safety in the confined space due to possible instrument error or to pocketing of the gas in the space.

Richard Anderson, Director of Safety for the Minnesota Department of Transportation, objected to the 10% factor relative to the lower explosive limit (LEL). Mr. Anderson stated that at 10% of the LEL there is virtually no risk at all to personnel. Every major manufacturer of testing equipment to measure air sampling has a factor of 20-25% as a minimum threshold. Mr. Anderson believes that 10% of the LEL is almost non-detectable, making the standard unworkable and unenforceable. There were several reasons for setting 10% of the LEL as the level of concern. Use of the 10% level will provide a safety margin for people using the wrong combustible gas meter for the flammable gases in the space. It has been observed over and over again that workers have assumed that a combustible gas meter reads actual %LEL regardless of the type of gas present in the confined space and the type of calibration gas used with the combustible gas meter. The most common problem has been that general industry workers use a combustible gas meter designed and calibrated for use in underground mines. Combustible gas meters used in underground mines are calibrated with methane (or natural gas). If this meter is used to measure combustible gases and the combustible gases present in the space are common solvent vapors such as gasoline, toluene, hexane, etc., erroneous readings will occur. For example, if a Bacharach TLV Sniffer combustible gas meter calibrated to read %LEL of methane is used to measure xylene (a common paint solvent), it will read the xylene vapors, if present at the LEL for xylene, at only 20 percent of the LEL. The reverse of this also occurs; i.e., a xylene calibrated meter is used to measure for natural gas. This, however, is not a safety problem since it happens to add a safety factor of five.

Using 10 percent of the LEL also gives a good margin of safety to cover concerns about sampling in a less hazardous location within the confined space. For example, gasoline vapors are heavier than air and tend to accumulate near the bottom of a space. Gases such as natural gas and methane are lighter than air and tend to accumulate near the top of a space.

James Pineault, Manager of Occupational Safety and Health for Northern States Power Company, stated that, in their experience, a 10 percent concentration of a combustible particulate (5205.1010, subp. 3.B.), is not reasonably possible to determine. Minnesota OSHA agrees that it is very difficult to determine the minimum explosive concentration of particulates in a confined space. Minnesota OSHA is not aware of any direct reading instruments which can make such a determination. The only method available for determination of heavy dust concentrations is to collect the particulates on a membrane filter and then gravimetrically determine the concentration of particulates in the space. This is a very time-consuming process. It has been said that the standard should state that if the worker cannot see his/her feet while in the space then the concentration of particulates is too high and there is danger of explosion with a source of ignition. This is a very subjective type of evaluation and very difficult to enforce as a regulation.

David E. Kohner, General Counsel for Liberty Diversified Industries, questioned whether "dangerous air contamination," as defined in 5205.1010, subpart 3.D. (dangerous air contamination that presents an acute illness hazard represents an atmosphere concentration immediately dangerous to life and health—IDLH), could vary from person to person according to allergies, etc., invoking severe enough reactions to manifest acute clinical signs of reaction? This definition of IDLH is widely used and understood by professionals and organizations in the field of occupational health and safety. It is expected that employers will consult with these professionals and organizations in determining what this level is for chemicals which are not regulated directly by OSHA.

Section 5205.1020 "Operating Procedures and Worker Training," includes the general requirements for entry permits, training, and operating procedures for confined space entry. D. E. Frigon of Minnesota Power suggested that subpart 3.E., which requires listing the names of workers assigned to enter the confined space on the entry permit, should be omitted since it appears that there is little or no value to such a list. This provision requires a list of employees who will be entering the confined space. An annual permit needs to contain all the names of employees trained to enter confined spaces which meet the criteria of Class I entry. This assures that only authorized, properly trained employees are allowed to enter a confined space.

Richard Anderson of the Minnesota Department of Transportation questioned whether they would be required to have two different entry permits for staggered workshifts, i.e., some employees start work at 7:30 a.m., others at 10:00 a.m., etc. There is no problem with workers coming and going in the confined space as long as the person in charge is present. A new permit must be completed each time the person in charge of the entry is changed.

The Department of Labor and Industry's Boiler Advisory Task Force recommended that employers be required to provide proper

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training to all employees and that lockout procedures be required for all classes of entry. Subpart 6 of 5205.1020 requires that employers provide proper training to all employees who enter confined spaces regardless of the class of entry. Lockout procedures are outlined in 5205.1030, subpart 2, and apply to all classes of entry.

Section 5205.1030 outlines pre-entry procedures that must be followed. Comments and questions concerning this portion of the standard included the Minnesota Department of Transportation's concern that they cannot disconnect, lock out, or block off lines when they are required to enter sewers, lift stations, and tunnels to maintain certain motors. This concern is addressed in subpart 2 of 5205.1030 which states: "This subpart does not require blocking of all laterals to sewers or storm drains."

The Minnesota Pollution Control Agency was concerned that 5205.1030 does not require mechanical or electrical isolation of moving parts that could be hazardous to the worker. Mechanical or electrical isolation is required by subpart 2 of 5205.1030 which requires lockout devices as outlined in *Minnesota Rule 5205.0680*.

James Pineault of Northern States Power Company suggested that the employee representative should have the right to witness all testing, as required in subpart 4 of 5205.1030, performed in confined spaces. This is unnecessary since this data is required to be given to the employee representative upon request and most of the time this monitoring is performed by the workers entering the confined space. If this is an area of concern to an employee representative, the ability to witness this type of monitoring could be set up in relation to an OSHA complaint inspection of the employer involved in confined space entry.

Mr. Pineault also suggested that smoking be banned in a Class II and Class III type of entry only. Minnesota OSHA agrees that enforcement of this rule on workers working alone in a confined space would be difficult. Smoking does create problems for confined space entry and one commentator requested that smoking be banned within ten feet of any opening of a confined space because of explosion hazards. Smoking can create elevated carbon monoxide exposures in some confined spaces and also increases readings on combustible gas meters in some cases. Subpart 11 of 5205.1030 prohibits smoking in confined spaces or within 20 feet of the opening of a confined space.

Donald J. Wodek, Director of Health and Safety for the Metropolitan Waste Control Commission, indicated that blocking all laterals may be possible in a small private operation; however, in a sewer system covering over 500 miles, this option is not possible. Any lateral of a sanitary sewer system could produce dangerous chemicals. It is not possible to block all laterals in their sewer network. Any blockage of sewer lines would also create an adverse effect on upstream users. Minnesota OSHA agrees that it is not feasible to block all laterals in the Metropolitan Waste Control Commission sewer network operations in most cases. This section of the standard is aimed primarily at small systems where this is possible.

Former subpart 3.1. of 5205.1040, which applies to confined spaces where corrosive substances are present in the space and exposure to materials is likely to occur, has been moved to Part 5205.1030, subpart 5. Several commenters requested clarification of what type of equipment must be provided to meet the intent of this section. Portable eyewash and shower units are available for almost all types of work environments. Most situations described by commenters require an eyewash and shower. A water hose used for clean-up of a given area does not meet the requirement of an eyewash and shower under this standard. Portable eyewashes are acceptable in many of these cases where only an eyewash is needed. The portable eyewash would need to have a flow of 0.4 gallons per minute for 15 minutes.

The most significant changes occurred in 5205.1040. Minnesota OSHA recognized the difficulty in identifying various types of confined spaces and how each space would be categorized under this standard. Section 5205.1040 was revised to more clearly define the three classes of confined space work and the requirements for each.

Subpart 1 of 5205.1040 describes the requirements for Class I confined spaces; i.e., those confined spaces where an atmosphere with dangerous air contamination or oxygen deficiency is unlikely to develop. The requirements of this subpart recognize that filling out an entry permit, performing air testing, and having a standby worker before allowing confined space entries under all conditions is not necessary and that under some conditions, entry should be allowed without these three requirements. These special conditions are covered in two separate sections of this subpart. Section A deals with repetitive entry into low hazard chambers such as boilers, vaults, vessels, tanks, bins, and vats where no risk of engulfment can exist and where the atmosphere cannot develop a dangerous air contaminant; this type of entry does not require an entry permit for each entry, nor does it require a standby worker or air testing (if proper ventilation is provided to the space). This type of space must be ventilated or tested to assure that oxygen deficiency is not a hazard in the space. Section B deals with repetitive entry into confined spaces where entry permits are required and that are unlikely to develop a dangerous air contaminant or oxygen deficiency and have no potential for an engulfment condition; this type of entry does not require an entry permit for each entry or a standby worker. This type of entry does not require an entry permit for each entry or a standby worker. This type of entry does require a minimum amount of ventilation and continuous monitoring for oxygen, combustible gas, and any potential toxic contaminants. This type of confined space, under normal conditions, is not hazardous but there is some potential that an inadvertent hazard could exist in the space.

Subpart 2 of 5205.1040 describes the requirements for Class II confined space entry; these confined spaces are those where an atmosphere free of dangerous air contamination or oxygen deficiency has been ensured. This class covers all types of confined space

entry which do not meet the requirements of Class I or Class III. When the procedures outlined in 5205.1020 and 5205.1030 are followed, entry into Class II spaces is not hazardous since testing for the expected problems and assurance that a hazardous air contamination or oxygen deficiency does not exist in the space must be done before entry is allowed. A permit is necessary for each entry and a standby worker is required to maintain communication with the worker inside the confined space.

Subpart 3 of 5205.1040 describes requirements for Class III confined space entry. Class III spaces are those where hazardous air contaminants or oxygen deficiency exist. This is the most hazardous type of entry and the one with the most requirements.

Most of the comments submitted relating to confined space entry concerned Part 5205.1040 "Entry Into and Work Within Confined Spaces" and the different classes of entry.

Ronald R. Rishavy, CSP, Manager-Safety for Northwestern Bell, requested that telephone utility holes be included in Subpart 1.A. which lists examples of Class I spaces. Telephone utility holes are considered to be vaults and under most conditions would be defined as Class IA confined spaces. If telephone utility holes have natural gas lines passing through them, the telephone utility hole would be a Class IB confined space. The wording of 5205.1040, subpart 1, has been changed to clarify that a separate permit is not required for each confined space and/or each confined space entry under this part if established entry practices and procedures are in effect as outlined in this standard.

Douglas W. Streiber, Environmental Technician with Pace Laboratories, Inc., requested a clearer interpretation concerning the differences between the various classes of entry and the conditions under which a hoisting device must be used while entering confined spaces. Section 5205.1040 has been extensively revised to clarify and define the different classes of entry. Under a Class III entry, a hoisting device or other effective means must be provided for lifting workers out of the confined space (5205.1040, subpart 3.E.(2)) if entry must be made through a top opening. There is no requirement that this be provided under a Class I entry. Under a Class II entry, training and a rescue plan must be provided to workers entering the confined space and to the standby worker. There is no requirement that a hoisting device or other effective means for lifting workers out of the confined space be immediately available at the entrance to the confined space but a plan for doing this must be available. An emergency response team such as the fire department or other trained rescue workers can be a part of this rescue plan.

D. E. Frigon from Minnesota Power recommended that subpart 1.A.3.(a) of 5205.1040 be revised to read: "The space has been properly ventilated prior to entry and ventilation continues throughout the period of occupancy." Mr. Frigon suggested this change because the space may be ventilated by means other than mechanical equipment; and, in addition, the ventilating device may not include a nomograph. The amount of ventilation required needs to be specified during this type of entry because no testing of the air in the confined space is required. Any enclosed unventilated confined space has the potential for oxygen deficiency. Changing the standard to read as suggested leaves it open to interpretation since "proper ventilation" is not quantified. A ventilation nomograph uses the volume of the confined space and the amount of ventilation supplied to the confined space to determine when sufficient oxygen would be in the space with the assumption that there is no oxygen to begin with.

The Metropolitan Waste Control Commission expressed a similar concern about the availability of a ventilation nomograph since many ventilation devices may exist in a system the size of theirs and it is not practical to prepare a ventilation nomograph for each one. Mr. Wodek suggested that 5205.1040, 1.A.3.(a) be revised to read: "... the space has been ventilated prior to entry using a mechanically powered ventilator and that ventilation continues throughout the entry." If this change was incorporated into the standard, the first question that would be asked is "how much ventilation is required?" This question is addressed in sections (a) and (b) of subpart 1.A.3. In (a) there is a requirement to ventilate until the oxygen level in the space is at least 19.5 percent of 95 percent of normal air. In order to accomplish this, 95 percent of the air in the space has to be replaced by the ventilator if zero oxygen is assumed at the start. If ideal mixing is assumed, the following equation can be used to determine how long the ventilator needs to operate before entry can occur: time equals three times the volume of the space divided by the flow rate of the ventilator. (Time is in minutes, volume of the space in cubic feet, and the flow rate of the ventilator in cubic feet per minute.) For example, if the confined space is 1500 cubic feet and the ventilator capacity is 1000 cubic feet per minute, this means the time of operation would be 3 times 1500 divided by 1000 which is equal to 4.5 minutes. Normally, it is recommended that a volume equal to five times the confined space volume be ventilated to take into account not having ideal mixing in the confined space.

The Metropolitan Waste Control Commission also requested clarification of "approved hoisting device" as used in 5205.1040, subpart 3.E.(2). An approved device is one with UL (Underwriters' Laboratories) or ANSI (American National Standards Institute) approval. The tripod is approved for a 500 pound load by UL. The Commission also requested clarification of what constitutes approved lighting. Lighting used in confined spaces when the combustible gas level is greater than 10 percent of the LEL must meet the requirements of 29 CFR 1910.307.

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Barbara J. Loida, Civil Engineer with Twin City Testing Corporation, and Mark Sather, City Manager of the City of White Bear Lake, expressed similar concerns about the classification level for sewers or wastewater lift stations. Sewers or wastewater lift stations can fall under any of the classes of the Confined Space Standard except Class IA depending on the confined space conditions and how the entry is made. A lift station if properly ventilated (200 CFM or in spaces larger than 2000 cubic feet, 6 air changes per hour) and continuously monitored (hydrogen sulfide, oxygen, and combustible gas) could meet a Class IB entry. If this same space could not be ventilated properly but is monitored and the levels of hazardous gases (hydrogen sulfide, oxygen, and combustible gas) are acceptable, it could be considered a Class II confined space. If the levels of gases likely in the space are monitored and are not acceptable, this space would be a Class III entry. Under a Class IB entry, a separate permit for each entry is not required; however, under a Class II or III entry a separate permit for each entry would be required.

In addition, Mr. Sather requested clarification of the number of standby or additional employees that are required under the standard. Part 5205.1040 has been revised to make it clear that three workers on site during Class II or Class III confined space entry are not required.

Richard Anderson, Minnesota Department of Transportation, objected to the inclusion of the 1/2" diameter requirement for the line connected to the safety belt and harness. Mr. Anderson pointed out that as long as the line or cable is capable of the 2,000 lbs. test, the diameter requirement is not necessary. Minnesota OSHA agrees that the capacity of the line is the important factor; subpart 2.C. has been revised to reflect this point.

The Boiler Advisory Task Force recommended that subpart 3.C. be amended to require safety belts or harnesses where practical and feasible. Minnesota OSHA realizes that the use of an approved safety belt or harness with an attached line is not feasible and practical in all Class III entries. In cases where employers believe it is not feasible or practical to use this equipment, the employers will be required to ask for a variance from this requirement. These variances will be decided on a case-by-case basis depending on the acceptability of the alternate plan for equivalent employee protection.

The Minnesota Pollution Control Agency expressed concern about the need for annual permits and questioned whether MPCA engineers or inspectors, while performing an inspection of a facility, could be included on the owner's annual permit. There is no problem with the MPCA using annual permits written by employers who are being inspected by MPCA staff, assuming these permits meet the requirements of this standard. The training of MPCA staff on proper confined space entry procedures, however, must be done by the MPCA. This same practice applies to any inspection or enforcement agency whose employees may be required to enter confined spaces to accomplish their job assignments.

In addition, MPCA indicated that subpart 3 of 5205.1040 requires respiratory protection but does not clearly require supplied-air respirators except for the standby employee. They felt that, in a confined space where air contaminations or oxygen deficiency cannot be ensured, supplied-air respirators should be required; if the intent of subpart 3 is to allow air-purifying respirators, then continuous monitoring for oxygen deficiency should be required. Subpart 3.B. of 5205.1040 requires that approved respiratory equipment be used for Class III entries. The type of equipment required depends on the contaminant and oxygen levels in the space. NIOSH does not approve of the use of air purifying respirators when the oxygen level is less than 19.5 percent. In some Class III entries, workers inside the confined space would not be required to use respirators. An example of this would be a gas utility employee working in a confined space where the flammable gas level was above 10 percent of the LEL and the oxygen level was above 19.5 percent. Continuous or periodic monitoring for the oxygen level inside the confined space would be required in most cases while the confined space was occupied. An example of where monitoring for oxygen in the confined space would not be required is where Self-Contained Breathing Apparatus (SCBA) is used while in the confined space.

James R. Thill, Industrial Hygienist with Land O'Lakes, Inc. is concerned about the use of air monitoring equipment inside of milk and cheese tanks. This requirement was discussed with the Minneapolis Office of the FDA. They indicate that their concern about the use of small diffusion direct reading oxygen and carbon monoxide meters like the Neotronics Neotox or Exotox monitors inside of these containers is that the monitor or any of its parts may fall into the tank and be incorporated into the food product. Such equipment must be secured to the worker while inside the space. A Class I entry in situations where lack of oxygen is the only concern, and monitoring for oxygen is performed, can be made without a backup worker and without ventilation.

Andrew C. Olson, Vice President, Minnesota Operations Division, Minnegasco, requested an annual certification system for procedural and employee compliance in place of the permit system. Most entries into underground vaults by Minnegasco employees fall under the provisions of 5205.1040, subpart 1.B. Under this section of the standard confined space entry procedures must be established and employees must be trained on these procedures. There is no requirement that a permit be filled out for each underground vault that employees enter nor that a standby worker be stationed outside of the confined space under this section of the standard. If entry to an underground vault is necessary under conditions where the combustible gas level in the vault at the time of entry is greater than 10 percent of the LEL, entry must be made under Class III procedures. Under Class III procedures a permit is required to be filled out before entry and a standby worker is required on the outside of the space. Use of respiratory protective equipment by employees inside of the confined space would depend on the conditions in the space. It was indicated that at 70 percent of the LEL, Minnegasco employees evacuate the space and that work in the space would occur only at levels of combustible gas

below 70 percent of the LEL. Under these conditions, the use of respiratory protective equipment by workers in the underground vault should not be necessary because natural gas is a simple asphyxiant and the oxygen level would be above 19.5 percent. The natural gas level would be in excess of the LEL before the oxygen level would drop below 19.5 percent.

Representatives of the insurance industry (Western National Mutual Insurance Company, Continental Insurance Company, and Hartford Steam Boiler Inspection and Insurance Company) felt that internal inspection of boilers and pressure vessels are adequately described in I-300 Internal Inspections of Boilers—Power and Heating and I-500 Internal Inspections of Pressure Vessels in the National Board Inspection Code which is an American National Standard ANSI/NB-23 and that further regulation would be an unnecessary duplication. In addition, commenters noted that all preparations are performed by the owner or user, who should be the most qualified to determine the integrity of the vessel atmosphere using the appropriate detector type instruments.

The procedures in the National Board Inspection Code I-502 are very thorough and with some minor changes will meet the requirements of this standard. Cost of compliance should not be higher with the State confined space standard than with the National Board Inspection Code because those procedures in many cases go beyond the minimum requirements of the State standard.

In testimony given at the hearing, it was stated that confined spaces which contain only nonhazardous substances such as steam, water, air, milk, or similar materials should be exempt from this standard. There is no basis for this conclusion since many fatalities occur in confined spaces which contained these types of materials. Oxygen deficiency caused 35 percent of all fatalities in confined spaces investigated by Federal OSHA from 1974 to 1982. Oxygen deficiency in unventilated confined spaces can always be a hazard. Even rusting of iron can deplete the oxygen in an unventilated confined space.

Each employer is responsible for his/her own employee safety and health. Certain aspects of health and safety programs can be delegated to another employer or to a consultant (i.e., training). However, ultimate responsibility rests with the employer paying the employee. Inspectors can use the same entry permit used by the owner of a boiler for his/her workers to enter the boiler as long as these procedures comply with this standard. Inspectors would need to be assured that the permit was properly filled out. The standard has been revised slightly in that the words "worker" or "person" have been substituted for "employee" in the standard. There is no problem with the standby worker or the worker performing air tests in the confined space working for a different employer than the employee(s) working inside the confined space.

Several cities (City of Clearwater, City of Waseca, City of Mounds View, and the City of Deephaven) expressed concern about the impact of this standard on them. The burdens which would be placed on small cities throughout the State by this standard have been considered. Several sections of the proposed standard were changed to make the different classes of entry more understandable. It is expected that most types of confined space entry involving city employees can be upgraded to a Class I entry. Under the rules of a Class I entry a standby person is not required. This type of entry can also be made with an annual permit which eliminates the need for a permit form being filled out for each entry. The standard does require the employer to develop, implement and use an entry permit system. The actual permit that is filled out is to be used as a checklist for employees entering the confined space. Concerns about the number of workers and/or standby persons required for confined space entry has been addressed by changes in the standard.

Bruce W. Taylor, President of North Star Educational Consultants, Inc. suggested that subpart 4 of 5205.1040 which describes precautions for emergencies involving work in confined spaces refer to the requirements of the American Medical Association for CPR training. In checking with that Association, we learned that they do not have recommendations of their own for CPR training. Instead, they endorse the Standards and Guidelines for Cardiopulmonary Resuscitation and Emergency Cardiac Care of the American Heart Association which are also the same guidelines used by the American Red Cross. Therefore, reference to the American Heart Association and the American Red Cross have not been changed in the standard.

Lastly, Karen and Alvin Weber strongly encouraged the adoption of the Confined Spaces Standard. Their 16-year-old son was killed in an industrial accident where there was improper ventilation in his work area. If the guidelines in this standard had been followed, this fatality might have been avoided.

Rules as Adopted

5205.0116 CARBON MONOXIDE MONITORING.

Subpart 1. **Internal combustion engines engine powered industrial trucks.** The employer shall monitor environmental exposure of employees to carbon monoxide whenever internal combustion ~~engines~~ engine powered industrial trucks ~~as defined in Code of~~

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Federal Regulations, title 29, section 1910.178(a)(1) are operated indoors to ensure that carbon monoxide levels do not exceed those given in Code of Federal Regulations, title 29, section 1910.1000, Table Z-1. The air sampling monitoring shall be done at least ~~bimonthly~~ quarterly and represent exposures during a day of highest usage in the areas where employee carbon monoxide exposure is most likely.

Subp. 2. ~~Lift trucks~~ Tailpipe exhaust gas analysis. ~~Where the carbon monoxide source is lift trucks,~~ The employer shall ensure that powered industrial truck engine exhaust gases do not contain more than one percent carbon monoxide for propane fueled trucks or two percent carbon monoxide for gasoline fueled trucks measured at idle and at three-fourths throttle during final engine tuning in a regular maintenance program.

5205.0401 EFFECTIVE DATE APPLICATION.

Parts 5205.0400 to 5205.0590 apply to the construction, installation, alteration, and operation of all the installations listed in part 5205.0400; ~~which are constructed, installed, or altered within the limits of the state of Minnesota after the effective date of these codes.~~

5205.0675 COVERS AND OVERHEAD DOORS.

All covers and horizontal, sliding, and overhead doors of sufficient weight or pressure to cause crushing injury to employees in the event of their powered or unpowered closure shall be provided with a constant pressure closing switch, safety edge, or pressure relief mechanism.

Subpart 1. Covers. All covers of sufficient weight or pressure to cause crushing injury to employees in the event of their powered or unpowered closure shall be fastened, secured, or blocked to prevent their closing while employees may be in the path of travel during closure.

Subp. 2. Overhead doors. All overhead or sliding doors with sufficient weight or closing force to cause crushing injury to employees shall be provided with a constant-pressure closing switch, safety edge, pressure relief mechanism, or three-button control station meeting the specifications of Underwriters' Laboratories' Standard UL 325 (1987) "Standard for Door, Drapery, Gate, Louver, and Window Operators and Systems," paragraph 29.1C. This subpart is effective January 1, 1989.

5205.0710 ALTERATION OF TOOLS AND EQUIPMENT.

All tools and equipment, whether powered or manually operated, shall be used only for their intended purpose. Tools and equipment shall not be altered, modified, or used for other than their intended purpose without the manufacturer's written approval or unless under the direction of a competent person in accordance with accepted engineering requirements to prevent creating an additional hazard.

5205.0755 POLICE AND PATROL VEHICLES.

All police and patrol vehicles that are marked in accordance with Minnesota Statutes, section 169.98, that may be used to transport violators or offenders shall be provided with an effective barrier between the front and back seat to protect the officers from assault. The barrier may be retractable so as not to be a hindrance to officers when not transporting violators or offenders. This part is effective January 1, 1989.

5205.0865 MACHINE CONTROLS AND EQUIPMENT.

On machines with points of operation, pinch points, or nip points, ~~a mechanical or electrical power control shall be provided on each machine to make it~~ shall be equipped so it is possible for the operator to cut off the power from each machine without leaving the position at the point of operation.

5205.0880 MOTOR START BUTTON.

The motor start button on machines with exposed points of operation, pinch points, or nip points shall be physically protected against unintended operation.

CONFINED SPACES

5205.1000 SCOPE.

Parts 5205.1000 to 5205.1040 prescribe minimum standards for preventing ~~employee~~ worker exposure to dangerous air contamination ~~or~~ oxygen deficiency, or oxygen enrichment as defined by part 5205.1010, within such spaces as silos, tanks, vats, vessels, boilers, compartments, ducts, sewers, pipelines, vaults, bins, tubs, pits, and other similar spaces. A tank or other vessel under construction may not meet the definition of "confined space" until it is completely enclosed.

Parts 5205.1000 to 5205.1040 do not apply to underwater operations conducted in diving bells or other underwater devices or to supervised hyperbaric facilities.

5205.1010 DEFINITIONS.

Subpart 1. **Confined space.** “Confined space” is defined by the existence of the following conditions as a special configuration that could result in any of the following:

A. ~~dangerous air contamination or oxygen deficiency may exist or develop; or atmospheric condition — a condition in which a dangerous air contamination, oxygen deficiency, or oxygen enrichment may exist or develop;~~

B. ~~emergency removal of a suddenly disabled employee is difficult due to the location or size of the access opening entry/exit access — a condition where the emergency removal of a suddenly disabled person is difficult due to the location or size of the access opening; or~~

C. engulfment condition — a condition where the risk of engulfment exists or could develop.

Subp. 2. **Confined space entry.** “Confined space entry” means any action resulting in any part of the ~~employee’s~~ worker’s face breaking the plane of any opening of the confined space, and includes any ensuing work activities inside the confined space.

Subp. 3. **Dangerous air contamination.** “Dangerous air contamination” is an atmosphere presenting a threat of death ~~or~~ acute injury, illness, or disablement due to the presence of flammable, explosive, toxic, or otherwise injurious or incapacitating substances.

A. Dangerous air contamination due to the flammability of a gas or vapor is defined as an atmosphere containing the gas or vapor at a concentration greater than ten percent of its lower explosive (lower flammable) limit.

B. Dangerous air contamination due to a combustible particulate is defined as a concentration greater than ten percent of the minimum explosive concentration of the particulate.

C. Dangerous air contamination due to ~~atmospheric concentration of any~~ a toxic, corrosive, or asphyxiant substance listed in Code of Federal Regulations, title 29, part 1910, subpart Z, is defined as a concentration above the listed numerical value of the permissible exposure limit (PEL). In addition, an atmospheric concentration above the numerical limit listed on the Material Safety Data Sheet prepared for a hazardous substance in conformance with Code of Federal Regulations, title 29, section 1910.1200(g)(2)(vi) or the Minnesota Employee Right-to-Know Standards, chapter 5206.

D. Dangerous air contamination that presents an acute illness hazard represents an atmospheric concentration immediately dangerous to life and health (IDLH); for example, above a maximum concentration from which one could escape within 30 minutes or the length of time ~~an employee a worker~~ will be exposed, whichever is longer, without any escape-impairing symptoms or any immediate severe health effects. “Immediate severe health effect” means that an acute clinical sign of a serious, exposure-related reaction is manifested within 72 hours after exposure.

Subp. 4. **Engulfment.** “Engulfment” means the surrounding and effective capture of a person by finely divided particulate matter or a liquid.

Subp. 5. **Oxygen deficiency.** “Oxygen deficiency” is defined as an atmosphere containing oxygen at a concentration of less than 19.5 percent by volume.

Subp. 6. **Oxygen enrichment.** “Oxygen enrichment” is defined as an atmosphere containing oxygen at a concentration greater than 23 percent by volume.

5205.1020 OPERATING PROCEDURES AND EMPLOYEE WORKER TRAINING.

Subpart 1. **Implementation.** The employer shall implement the provisions of this part before any ~~employee~~ worker is allowed to enter a confined space.

Subp. 2. **Entry permit system.** The employer shall develop, implement, and use an entry permit system that includes a written permit procedure that provides all the means necessary to:

A. ~~determine and identify to employees the all~~ confined spaces ~~where entry permits are required and identify them to the workers~~ to prevent unauthorized entry;

B. determine the actual and potential hazards associated with the space at the time of entry so the employer can choose the appropriate means to execute a safe entry;

C. assure by appropriate testing that the control measures used are effective; and

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D. provide for preplanned emergency rescue;

~~E.~~ identify by job title those persons who must sign the entry permit and the duties of each, including the person in charge of entry; and

~~F.~~ assure proper calibration of testing and monitoring equipment.

Subp. 3. **Entry permit and checklists.** A written permit form must be completed before allowing an employee a worker to enter a confined space. The written permit must contain the following minimum specific information for each permit entry space:

A. date;

B. location;

C. time of ~~issue/expiration~~ issue;

D. time of expiration;

~~E.~~ names of ~~employees~~ workers assigned to enter and;

~~F.~~ the name and job title position of the person authorizing or in charge of the entry (~~employer's representative~~);

~~G.~~ G. description of the hazards known or reasonably expected to be present in the confined space;

~~F.~~ H. the atmospheric testing required to be done immediately before and during the entry period and;

I. the designated individual responsible for performing the tests;

~~G.~~ J. the personal protective equipment required, including respiratory protection, clothing, or harnesses required for entry and rescue;

~~H.~~ K. description of any additional hazards that may be reasonably expected to be generated by the entrants' activities in the space and;

L. identification of all special work practices or procedures to be followed; and

~~I.~~ M. specification of all means of isolation, cleaning, purging, or inerting to be done before entry to remove or control those hazards, or certification that these procedures have been done if a hazardous air contamination or oxygen deficiency condition exists.

Subp. 4. **Duration and retention of permit.** The maximum duration for which a permit form may be issued is one ~~day shift~~ except as indicated in part 5205.1040, subpart 1. Each written permit form for confined space entry must be retained for a minimum of 30 days and Permits shall be readily available to all workers before entering a confined space, and the permits shall remain at the work site as long as the work is being performed there.

Where atmospheric testing showed ~~unacceptable air quality~~ a dangerous air contamination, oxygen deficiency, or oxygen enrichment, the employer shall retain, ~~for a minimum of one year~~, the written permit form or record showing the results of the atmospheric testing for a minimum of one year.

Subp. 5. Operating procedures.

A. Written, understandable operating and rescue procedures shall be developed and provided to affected ~~employees~~ workers.

B. When respiratory protection is used, a respiratory protection program as outlined in Code of Federal Regulations, title 29, section 1910.134, shall be in place.

~~B.~~ C. Operating procedures shall conform to the applicable requirements of parts 5205.1030 and 5205.1040 and shall include provision for surveillance of the surrounding area to avoid hazards such as drifting vapors from ~~tanks, piping, and sewers~~ other work operations.

Subp. 6. **Employee Worker training.** ~~Employees, including~~

A. Workers who will enter the confined space and standby persons required by part 5205.1040, subparts 1, item A, and 3, item D, shall be trained in operating and rescue procedures, including instructions and on the hazards they may encounter. This training shall be conducted annually or before confined space entry.

B. Workers who will perform atmospheric monitoring in confined spaces shall be trained on the use of such equipment according to the manufacturers' instructions before confined space entry and then on an annual basis thereafter.

5205.1030 PRE-ENTRY PROCEDURES.

Subpart 1. **Application.** The applicable provisions of this part shall be implemented before entry into a confined space is permitted.

Subp. 2. **Disconnection of lines.** Lines that may convey flammable, explosive, toxic, or otherwise injurious or incapacitating

substances into the space shall be disconnected, blinded, locked out, or blocked off by other positive means to prevent the development of dangerous air contamination ~~or~~ oxygen deficiency, or oxygen enrichment within the space. The disconnection or blind shall be so located or done in such a manner that inadvertent reconnection of the line or removal of the blind is effectively prevented. Part 5205.0680 applies where lockout devices are required.

This subpart does not apply to public utility gas distribution or gas transmission systems.

This subpart does not require blocking of all laterals to sewers or storm drains. Where experience or knowledge of industrial use indicates materials resulting in dangerous air contamination may be dumped into an occupied sewer or storm drain, all such laterals shall be blocked.

Subp. 3. **Purging of contaminants.** ~~The space shall be emptied, flushed, or otherwise purged of flammable, explosive, toxic, or otherwise injurious or incapacitating substances.~~

~~Subp. 4.~~ **Calibration of testing and monitoring equipment.** Air testing and monitoring equipment shall be maintained and calibrated according to manufacturers' instructions. This equipment shall be periodically calibrated with an appropriate test gas to assure proper operation. Records of such calibration and field tests shall be maintained for a minimum of one year. Calibration and field test information, including type of test required, date tests were due, and date tests were completed, shall be affixed to the instrument or be readily available at the time of use.

~~Subp. 5.~~ **4. Air tests.** The air in confined spaces shall be tested with an appropriate device or method to determine whether dangerous air contamination ~~or~~ oxygen deficiency, or oxygen enrichment exists, and before entry is made. While occupied, additional continuous or periodic monitoring for dangerous air contamination, oxygen deficiency, or oxygen enrichment shall be done. A written record of the testing results shall be made and kept at the work site for the duration of the work. Affected ~~employees~~ workers or their representatives shall be afforded an opportunity to review and record the testing results.

Subp. 5. Injurious corrosive substances. Workers in confined spaces that have last contained injurious or corrosive substances to the eyes or body shall be provided with, and shall be required to wear, appropriate personal protective clothing or devices in accordance with Code of Federal Regulations, title 29, section 1910.132. In addition, an eyewash and safety shower as required by Code of Federal Regulations, title 29, section 1910.151 shall be provided within the work area outside of the confined space for immediate emergency use.

Subp. 6. **Interconnected spaces.** Where interconnected spaces are ~~blinded~~ blocked off as a unit, each space shall be tested and the results recorded in accordance with subpart ~~5~~ 4. The most hazardous condition found shall govern procedures to be followed.

Subp. 7. **Ventilation.** Where the existence of dangerous air contamination ~~or~~ oxygen deficiency, or oxygen enrichment is demonstrated by tests performed under subpart ~~5~~ 4, existing ventilation shall be augmented by appropriate means if practical and feasible.

When additional ventilation provided in accordance with this subpart has removed dangerous air contamination ~~or~~ oxygen deficiency, or oxygen enrichment as demonstrated by additional testing conducted and recorded under subpart ~~5~~ 4, entry into and work within the space may proceed subject to part 5205.1040.

Subp. 8. **Ignition sources.** No sources of ignition may be introduced into the space until implementation of appropriate provisions of this section has ensured that dangerous air contamination due to flammable or explosive substances does not exist.

Subp. 9. **Oxygen-consuming equipment.** Whenever oxygen-consuming equipment is to be used, measures shall be taken to ensure adequate combustion air and exhaust gas venting.

Subp. 10. **Ready access Oxygen-enrichment condition or use of oxygen-enrichment equipment.** Provision shall be made to permit ready entry and exit from confined spaces. Whenever oxygen enrichment is possible due to conditions within the space, or oxygen enrichment equipment is to be used, measures shall be taken to ensure that the oxygen level does not exceed 23 percent in the confined space. If tests indicate the oxygen level to be greater than 23 percent, hot work is prohibited until ventilating techniques have reduced the oxygen level to less than 23 percent.

Subp. 11. Smoking. Smoking shall not be allowed in confined spaces or within 20 feet of a confined space opening.

Subp. 12. Automatic fire protection systems. Where there is no ready exit from spaces equipped with automatic fire suppression systems employing harmful design concentrations of toxic or oxygen-displacing gases, or total foam flooding, such systems must be deactivated. When it is not practical or safe to deactivate such systems, the provisions of part 5205.1040 ~~related to the use of respiratory protective equipment, subpart 3,~~ shall apply during entry into and work within the spaces.

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5205.1040 ENTRY INTO AND WORK WITHIN CONFINED SPACE OPERATIONS SPACES.

Subpart 1. Entry into and work within confined spaces where an atmosphere free of dangerous air contamination or oxygen deficiency has been ensured Class I; confined spaces where an atmosphere with dangerous air contamination, oxygen deficiency, or oxygen enrichment is unlikely to develop. The requirements of this part apply, except as outlined in subpart 2, to entry into and work within a confined space where dangerous air contamination or oxygen deficiency does not exist.

A. At least one employee shall stand by on the outside of the confined space ready to give assistance in case of emergency. At least one additional employee who may have other duties shall be within sight or call of the standby employee.

B. Communications (visual, voice, or signal line) shall be maintained between all individuals in the confined space and the standby employee.

C. The standby employee shall not enter the confined space without alerting at least one additional employee of the intent to enter the confined space. Entry shall only occur after proper tests have been performed to show that a dangerous air contaminant or oxygen deficiency does not exist or the standby employee is protected as prescribed in subpart 3, items C and D, subitem (1).

Subp. 2. Special entry permits and practices. The entry permit practices described in items A and B are applicable only for the restricted circumstances and conditions described.

A. Employers whose operations require workers to perform routine repetitive entry into low hazard chambers such as boilers, vaults, vessels, tanks, bins, and vats, where no risk of engulfment can exist, and where the atmosphere cannot develop a dangerous air contaminant or oxygen enrichment, and where all known sources of hazard are positively controlled, may issue an annual permit for this type of entry instead of separate permits for each space, if established entry practices and procedures are in effect as outlined below. The employer may, at its discretion, allow entry by one or more workers without a standby person when work under the following conditions is performed:

(1) Establish specific entry practices and procedures as required in part 5205.1020, subpart 3, items A, B, and D to I, that must be followed for entry by annual permit before any worker may be authorized to make an entry.

(2) Train workers in the practices and procedures required for such entries.

(3) Assure that one or more of the following requirements are met:

(a) the space has been ventilated before entry using a mechanically powered ventilator for not less than is specified in the ventilation nomograph prepared for that ventilator, and that ventilation continues throughout the entry;

(b) all areas of the confined space are continuously and effectively ventilated; such ventilation shall provide positive ventilation of clean air at a rate of at least 200 cubic feet per minute per occupant, or in confined spaces larger than 2,000 cubic feet, six air changes of the confined space volume per hour; or

(c) there is no effective ventilation, but appropriate continuous oxygen monitoring is performed to assure that permit conditions are maintained.

(4) Revoke the permit whenever any tests performed during confined space occupancy show deviation from acceptable conditions to a hazardous condition. In these circumstances, entry may be made only by an entry procedure as outlined in subpart 2 or 3.

B. Employers whose operations require employees workers to perform routine repetitive entry into confined spaces where entry permits are required and that are unlikely to develop a dangerous air contaminant or oxygen deficiency, or oxygen enrichment and have no potential for an engulfment condition, may issue an annual permit for this type of entry instead of a separate permit permits for each entry space if established entry practices and procedures are in effect as outlined below. When work in a permit entry space is to be done under an annual permit, the employer shall The employer may, at its discretion, allow entry by one or more workers without a standby person when work under the following conditions is performed:

(1) Establish specific entry practices and procedures as required in part 5205.1020, subpart 3, items A, B, and D to I, that must be followed for entry by annual permit before any employee worker may be authorized to make an entry.

(2) Train employees workers in the practices and procedures required for such entries.

(3) Assure that whenever entry into a confined space is to be made, employees workers test the atmosphere before entry using an appropriate direct reading instrument (or other device capable of quantitatively identifying anticipated contaminants) with a remote sampling probe, testing for the following conditions and in the following order: oxygen concentration, combustible gas, and suspected toxic material, if any. While occupied, additional continuous monitoring for these gases or vapors shall be done during the entry period to assure that a potentially dangerous atmosphere does not develop in the confined space.

(4) Allow, at the employer's discretion, entry by one or more workers without a standby employee where continuous, Assure that continuous and effective positive ventilation is provided to the confined space at a minimum rate of 200 cubic feet per

minute of clean air and/or sufficient ventilation to maintain the atmosphere within established permit conditions is provided to the confined space per occupant or, in confined spaces larger than 2,000 cubic feet, an exchange of six air changes of the confined space volume per hour.

(5) Revoke the permit whenever any test done pursuant to this item shows tests performed during confined space occupancy show deviation from permit acceptable conditions to more a hazardous conditions condition. In these circumstances, entry may be made only by an entry permit procedure as outlined in part 5205.1020 subpart 2 or 3.

B. Employers whose operations require employees to perform routine repetitive entry into low hazard below ground chambers where no risk of engulfment can exist, and where the atmosphere cannot develop a dangerous air contaminant or oxygen deficiency, and where all known sources of hazard are positively controlled, may issue an annual permit instead of a separate permit for each entry. When work under these conditions is performed, the employer shall:

(1) Establish specific entry practices and procedures that must be followed for entry by annual permit before any employee may be authorized to make an entry.

(2) Train employees in the practices and procedures required for such entries.

(3) Allow, at the employer's discretion, entry by one or more workers without a standby employee when there is assurance that one or more of the following requirements are met:

(a) the space has been ventilated before entry using a mechanically powered ventilator for not less than is specified in the ventilation nomograph prepared for that ventilator, and that ventilation continues throughout the entry;

(b) the confined space is continuously ventilated, such mechanical ventilation shall provide positive ventilation of clean air at a rate of at least 200 cubic feet per minute per occupant and/or six air changes of the confined space volume per hour; or

(c) there is no mechanically powered ventilation but appropriate continuous atmospheric monitoring or frequent atmospheric testing is performed to assure that permit conditions are maintained.

(4) Revoke the permit whenever any test done pursuant to this item shows deviation from permit conditions to more hazardous conditions. In these circumstances, entry may be made only by an entry permit as outlined in part 5205.1020.

Subp. 2. Class II; confined spaces where an atmosphere free of dangerous air contamination, oxygen deficiency, or oxygen enrichment has been verified.

A. At least one person shall stand by on the outside of the confined space ready to give assistance in case of emergency.

B. Visual, voice, or signal line communications shall be maintained between all individuals in the confined space and the standby person.

C. An approved safety belt or harness with an attached line shall be used where practical and feasible. The free end of the line shall be secured outside the entry opening. The line shall be at least 2,000 pounds test.

D. The standby person shall not enter the confined space without alerting an emergency response team such as the fire department or other trained rescue workers of the intent to enter the confined space. Entry shall only occur after proper tests have been performed to show that a dangerous air contaminant, oxygen deficiency, or oxygen enrichment does not exist or the standby person is protected as prescribed in subpart 3, items C and D, subitem (1).

Subp. 3. **Entry into and work within Class III; confined spaces whenever where an atmosphere free of dangerous air contamination or, oxygen deficiency, or oxygen enrichment cannot be ensured verified.** The requirements of this part apply to entry into and work within a confined space whenever an atmosphere free of dangerous air contamination or, oxygen deficiency, or oxygen enrichment cannot be ensured verified through the implementation of the applicable provisions of part 5205.1030, or whenever due to an emergency, dangerous air contamination or an, oxygen deficiency, or oxygen enrichment cannot be prevented through the implementation of the applicable provisions of part 5205.1030.

A. Tanks, vessels, or other confined spaces with side and top openings shall be entered from side openings when practicable. For the purposes of this part, side openings are those within 42 inches of the bottom.

B. Appropriate, approved respiratory protective equipment, in accordance with Code of Federal Regulations, title 29, section 1910.134, shall be provided and worn.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. **Strike outs** indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. **Strike outs** indicate deletions from proposed rule language.

Adopted Rules

C. An approved safety belt or harness with an attached line must be used. The free end of the line shall be secured outside the entry opening. The line shall be at least ~~one-half inch diameter and~~ 2,000 pounds test.

D. At least one ~~employee person~~ shall stand by on the outside of the confined space ready to give assistance in case of emergency. ~~At least one additional employee who may have other duties shall be within sight or call of the standby employee.~~

(1) The standby ~~employee person~~ shall have appropriate, approved, respiratory protective equipment, including an independent source of breathing air that conforms with Code of Federal Regulations, title 29, section 1910.134(d), available for immediate use.

(2) A standby ~~employee person~~ protected as prescribed by items C and D may enter the confined space, but only in case of emergency and only after alerting at least one additional employee outside of the confined space of the emergency and of the standby employee's intent donning the required personal protective equipment and alerting an emergency response team such as the fire department or other trained rescue workers of their intention to enter the confined space.

(3) Visual, voice, or signal line communications shall be maintained between all individuals in the confined space and the standby person.

E. When entry must be made through a top opening, the following requirements also apply.

(1) The safety ~~belt~~ harness shall be of the ~~harness~~ type that suspends a person in an upright position.

(2) An approved hoisting device or other effective means shall be provided for lifting ~~employees~~ workers out of the space.

F. Work involving the use of flame, arc, spark, or other source of ignition is prohibited within a confined space (or any adjacent space having common walls, floor, or ceiling with the confined space) that contains, or is likely to develop, dangerous air contamination due to flammable or explosive substances.

G. Whenever gases such as nitrogen are used to provide an inert atmosphere for preventing the ignition of flammable gases or vapors, no flame, arc, spark, or other source of ignition may be permitted unless the oxygen concentration is maintained at less than 20 percent of the concentration that will support combustion.

(1) Testing of the oxygen content shall be conducted with sufficient frequency to ensure conformance with this ~~item~~ requirement.

(2) A written record of the results of such testing shall be made and kept at the work site for the duration of the work.

(3) ~~Affected employees or their representatives shall be provided an opportunity to review and record the testing results.~~

H. Only approved lighting and electrical equipment may be used in confined spaces subject to dangerous air contamination by flammable or explosive substances.

~~I. Employees working in confined spaces that have last contained substances corrosive to the skin or substances that can be absorbed through the skin shall be provided with, and shall be required to wear, appropriate personal protective clothing or devices in accordance with Code of Federal Regulations, title 29, section 1910.132.~~

Subp. 4. Precautions for emergencies involving work in confined spaces.

~~A. At least one person trained in first aid and cardiopulmonary resuscitation (CPR) shall be immediately available whenever the use of respiratory protective equipment is required by this part. Standards for CPR training shall follow the principles of the American Heart Association or the American Red Cross.~~

~~B. An effective means of communication between employees inside a confined space and a standby employee shall be provided and used whenever the provisions of this part require the use of respiratory protective equipment or whenever employees inside a confined space are out of sight of the standby employee. All affected employees shall be trained to use the communication system. The system must be tested before each use to confirm its effective operation.~~

5207.0300 CONFINED SPACES.

Subpart 1. **Scope.** This subpart prescribes minimum safeguards for preventing employee exposure to dangerous air contamination or oxygen deficiency within such spaces as silos, tanks, vats, vessels, boilers, compartments, ducts, sewers, pipelines, vaults, bins, tubs, pits, and other similar spaces. This subpart does not apply to underwater operations conducted in diving bells or other underwater devices or to supervised hyperbaric facilities.

Subp. 2. **General requirements.** Work in confined spaces on construction sites shall meet the requirements of parts 5205.1000 to 5205.1040.

5207.0310 CARBON MONOXIDE MONITORING.

~~Subpart 1. Internal combustion engines.~~ The employer shall monitor environmental exposure of employees to carbon monoxide whenever internal combustion engines discharge engine exhaust gases indoors or unvented space heaters are operated indoors to

ensure that carbon monoxide levels do not exceed those given in Code of Federal Regulations, title 29, section 1910.1000, Table Z-1. The air ~~sampling~~ monitoring shall be done during initial operation and at least ~~bimonthly~~ quarterly thereafter and during a period representing highest usage in areas where carbon monoxide exposure is most likely.

~~Subp. 2. Lift trucks. Where the carbon monoxide source is lift trucks, the employer shall ensure that exhaust gases do not contain more than one percent carbon monoxide for propane fueled trucks or two percent carbon monoxide for gasoline fueled trucks.~~

5207.0610 MOTOR START BUTTON.

The motor start button on machines with exposed points of operation, pinch points, or nip points shall be physically protected against unintended operation.

5207.0620 MACHINE CONTROLS AND EQUIPMENT.

On machines with points of operation, pinch points, or nip points, ~~a mechanical or electrical power control shall be provided on each machine to make it~~ shall be equipped so it is possible for the operator to cut off the power ~~from~~ to each machine without leaving the position at the point of operation.

5207.0720 ALTERATION OF TOOLS AND EQUIPMENT.

All tools and equipment, whether powered or manually operated, shall be used only for their intended purpose. Tools and equipment shall not be altered, modified, or used for other than their intended purpose without the manufacturer's written approval, or unless under the direction of a competent person in accordance with accepted engineering requirements to prevent creating an additional hazard.

Board of Optometry

Adopted Permanent Rules Relating to Fees

The rules proposed and published at *State Register*, Volume 12, Number 13, pages 560-561, September 28, 1987 (12 S.R. 560) and Volume 12, Number 22, pages 1146-1147, November 30, 1987 (12 S.R. 1146) are adopted as proposed.

Official Notices

Pursuant to the provisions of Minnesota Statutes § 14.10, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Minnesota Housing Finance Agency

Public Hearing on Bond Issue

The Minnesota Housing Finance Agency will hold a public hearing pursuant to Section 147(f) of the *Internal Revenue Code* of 1986 as amended, on March 9, 1988, at 9:30 o'clock a.m., 3rd floor, 400 Sibley Street, Saint Paul, Minnesota 55101, on a proposed issue of Housing Development Bonds in an aggregate principal amount not to exceed \$11 million for the purpose of refunding, in advance of their maturity, the outstanding \$7,930,000 principal amount of Housing Development Bonds, 1982 Series C, of the Agency. The 1982 Series C Bonds were issued to finance a 231 unit elderly housing facility located at 1509 10th Avenue South in the City of Minneapolis, Minnesota, and owned and operated by Augustana Home of Minneapolis, a Minnesota non-profit corporation. A copy of the Preliminary Official Statement for the issue may be obtained from Jack Jenkins at 296-9828. All persons desiring to comment on the issuance of said Bonds will be heard at the time and place set forth above, or may file written comments with the undersigned, which comments will be read at said hearing.

Dated: 11 February 1988

James J. Solem, Commissioner

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Official Notices

State Board of Investment

Notice of Meetings of the State Board of Investment and the Investment Advisory Council

The State Board of Investment will meet on Wednesday, March 2, 1988 at 8:00 a.m. in Room 118, State Capitol, Saint Paul, MN.

The Investment Advisory Council will meet on Tuesday, March 1, 1988 at 2:00 p.m. in Conference Room "A", MEA Building, 41 Sherburne Avenue, Saint Paul, MN.

Board of Water and Soil Resources

The Board of Water and Soil Resources will hold their February 24, 1988 meeting at the Sheraton North West, Brooklyn Park, Minnesota. The Board of Water and Soil Resources will resume their regular location, 90 W. Plato Blvd., St. Paul, at their March 23, 1988 meeting.

State Contracts and Advertised Bids

Pursuant to the provisions of Minn. Stat. § 14.10, an agency must make reasonable effort to publicize the availability of any services contract or professional and technical services contract which has an estimated cost of over \$2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over \$10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal. Certain quasi-state agencies are exempted from some of the provisions of this statute.

Commodities contracts with an estimated value of \$15,000 or more are listed under the Procurement Division, Department of Administration. All bids are open for 7-10 days before bidding deadline. For bid specifics, time lines, and other general information, contact the appropriate buyers whose initials appear in parentheses next to the commodity for bid, by calling (612) 296-6152.

Department of Administration: Materials Management Division

Contracts and Requisitions Open for Bid

Call 296-2600 for information on a specific bid, or to request a specific bid. Buyer's initials are listed next to each commodity.

Commodity: Snowmobile half track
Contact: B.T.
Bid due date at 2pm: February 24
Agency: Natural Resources
Deliver to: Grand Rapids
Requisition #: 29000 49409

Commodity: Microfilm reader/printer
Contact: D.R.T.
Bid due date at 2pm: February 24
Agency: Transportation
Deliver to: St. Paul
Requisition #: 79000 83857

Commodity: Steel shelving and supplies
Contact: D.R.T.
Bid due date at 2pm: February 24
Agency: Plant Mgmt.
Deliver to: St. Paul
Requisition #: 02310 15904

Commodity: Dump trucks—rebid
Contact: D.M.
Bid due date at 2pm: February 25
Agency: Transportation
Deliver to: Central Shop, St. Paul
Requisition #: 79382 01319

Commodity: A.B. Dick K627A or Xerox 1065 Copier
Contact: T.R.
Bid due date at 2pm: February 25
Agency: Comm. College
Deliver to: Worthington
Requisition #: 27146 88063

Commodity: Vans
Contact: D.M.
Bid due date at 2pm: February 25
Agency: Correctional Facility
Deliver to: Lino Lakes
Requisition #: 78550 05767

Commodity: Software for personal computers
Contact: D.O.
Bid due date at 2pm: February 26
Agency: Various
Deliver to: Various
Requisition #: Price Contract

Commodity: Lounge area furniture
Contact: L.P.
Bid due date at 2pm: February 26
Agency: Faribault Reg. Human Srv. Ctr.
Deliver to: Faribault
Requisition #: 55303 12347

Commodity: Rental of Xerox 1065 or A.B. Dick K627A
Contact: T.R.
Bid due date at 2pm: February 26
Agency: Employee Relations
Deliver to: St. Paul
Requisition #: 24000 80149

State Contracts and Advertised Bids

Commodity: Printing papers—
addendum #1
Bid due date at 2pm: February 29
Agency: State Print Shops

Deliver to: Various
Requisition #: Price Contract

Commodity: Automated offset
duplicator

Contact: J.D.
Bid due date at 2pm: March 1
Agency: State University
Deliver to: Winona
Requisition #: 26074 12104

Department of Administration: Printing & Mailing Services

Printing vendors for the following printing contracts must review contract specifications in printing buyers office at 117 University Avenue, Room 134-B, St. Paul, MN.

Commodity: Drivers license mailing
envelope with poly window
Contact: Printing Buyer's Office
Bid due date at 2pm: February 25
Agency: Public Safety
Deliver to: St. Paul
Requisition #: 4852

Bid due date at 2pm: February 25
Agency: Public Safety
Deliver to: St. Paul
Requisition #: 5086

Commodity: 7M 2-page brochure,
camera ready, 2-color on one side, 3
folds unequal panel widths
Contact: Printing Buyer's Office
Bid due date at 2pm: February 26
Agency: Community College
Deliver to: Brooklyn Park
Requisition #: 5219

Commodity: 200M envelopes, 3⁷/₈" ×
8⁷/₈", type to be set, 2-sided, 24#
white wove
Contact: Printing Buyer's Office
Bid due date at 2pm: February 25
Agency: Federal Surplus Property
Deliver to: New Brighton
Requisition #: 5042

Commodity: 50M booklets, 26 pages
plus cover, finished size 3¹/₂" × 6³/₄",
4-color photos, type to be set
Contact: Printing Buyer's Office
Bid due date at 2pm: February 25
Agency: Natural Resources
Deliver to: St. Paul
Requisition #: 5125

Commodity: Composition for 1988 state
telephone directory, 2-column format,
same as 1987 directory, approx. 250
pages, 8¹/₂" × 11"
Contact: Printing Buyer's Office
Bid due date at 2pm: February 26
Agency: Administration
Deliver to: St. Paul
Requisition #: 5181

Commodity: 250M 2-part form, camera
ready, 2-sided, 7³/₈" × 4¹/₄" finished
size
Contact: Printing Buyer's Office

Commodity: 125M + tickets/passes,
3¹/₂" × 1¹/₂", type to be set, 1-sided
Contact: Printing Buyer's Office
Bid due date at 2pm: February 25
Agency: Iron World USA
Deliver to: Chisholm
Requisition #: 5099-5102

State Designer Selection Board

Request for Proposal for Two Projects at the University of Minnesota

To Registered Professionals in Minnesota:

The State Designer Selection Board has been requested to select designer for **two projects at the University of Minnesota**. Design firms who wish to be considered for this project should submit proposals on or before 4:00 p.m., **March 15, 1988**, to George Iwan, Executive Secretary, State Designer Selection Board, Room G-10, Administration Building, St. Paul, Minnesota 55155-1495.

The proposal must conform to the following:

1. Six copies of the proposal will be required.
2. All data must be on 8¹/₂" × 11" sheets, soft bound.
3. The cover sheet of the proposal must be clearly labeled with the project number, as listed in number 8 below, together with the designer's firm name, address, telephone number and the name of the contact person.

4. Mandatory Proposal contents in sequence:

- a) Identity of firm and an indication of its legal status, i.e. corporation, partnership, etc. If the response is from a joint venture, this information must be provided for firms comprising the joint venture.

State Contracts and Advertised Bids

b) Names of the persons who would be directly responsible for the major elements of the work, including consultants, together with brief descriptions of their qualifications. If desired, identify roles that such persons played in projects which are relevant to the project at hand.

c) A commitment to enter the work promptly, if selected, by engaging the consultants, and assigning the persons named 4b above along with adequate staff to meet the requirements of work.

d) A list of State and University of Minnesota current and past commissions under contract or awarded to the prime firm(s) submitting this proposal during the three (3) years immediately preceding the date of this request for proposal. The prime firm(s) shall **list and total** all fees associated with these projects whether or not the fees have been received or are anticipated. In addition, the prime firm(s) shall indicate the amount of fees listed which were paid directly to engineers or other specialty consultants employed on the projects listed pursuant to the above.

e) A section containing graphic material (photos, plans, drawings, etc.) as evidence of the firm's qualification for the work. The graphic material must be identified. It must be work in which the personnel listed in "c" have had significant participation and their roles must be clearly described. It must be noted if the personnel named were, at the time of the work, employed by other than their present firms.

The proposal shall consist of no more than twenty (20) pages. **Proposals not conforming to the parameters set forth in this request will be disqualified and discarded without further examination.**

5. Statutory Proposal Requirements:

In accordance with the provisions of *Minnesota Statutes*, 1981 Supplement, Section 363.073; for all contracts estimated to be in excess of \$50,000.00, all responders having more than 20 full-time employees at any time during the previous 12 months must have an affirmative action plan approved by the Commissioner of Human Rights before a proposal may be accepted. **The proposal will not be accepted unless it includes one of the following:**

- a) A copy of your firm's current certificate of compliance issued by the Commissioner of Human Rights; or
- b) A statement certifying that firm has a current certificate of compliance issued by the Commissioner of Human Rights; or
- c) A statement certifying that the firm has not had more than 20 full-time employees in Minnesota at any time during the previous 12 months; or
- d) A statement certifying that the firm has an application pending for a certificate of compliance.

6. In accordance with the provisions of *Minnesota Statutes* 16B.19, Subdivision 6, at least 10% of the amount of any contract in excess of \$200,000.00 must be subcontracted to certified small businesses owned and operated by S/E/D persons as defined by *Minnesota Statutes* 645.445. Alternatively, the requirement may be met by purchasing materials or supplies from S/E/D businesses. Any combination of subcontracting and purchasing that meets the 10% requirements is acceptable. If there are no S/E/D persons able to perform subcontracting or provide supplies and materials, other small businesses as defined are to be utilized instead of small businesses owned and operated by S/E/D persons.

7. Design firms wishing to have their proposals returned after the Board's review must follow one of the following procedures:

- a) Enclose a self-addressed stamped postal card with the proposals. Design firms will be notified when material is ready to be picked up. Design firms will have two (2) weeks to pick up their proposals, after which time the proposals will be discarded; or
- b) Enclose a self-addressed stamped mailing envelope with the proposals. When the Board has completed its review, proposals will be returned using this envelope.

In accordance with existing statute, the Board will retain one copy of each proposal submitted.

Any questions concerning the Board's procedures or their schedule for the project herein described may be referred to George Iwan at (612) 296-4656.

8a) PROJECT—4-88

Remodeling Mayo Tower and
Variety Club Heart and Research Center
University of Minnesota
Minneapolis, Minnesota

"The University of Minnesota plans to remodel major portions of the Variety Club Heart and Research Center and a small portion of the Mayo Tower located on the East Bank of Minneapolis campus. The five story Variety Club Heart and Research Center remodeling will consist of 44,760 gsf, with 27,680 asf office, research, and support spaces.

The major components of the project consist of:

Floor 1 —Office/Office Support/Computer Facility

6,310 asf

State Contracts and Advertised Bids

Floor 2	—Modular Research Laboratories (70%) —Cold Rooms and Laboratory Support (3%) —Office/Support (27%)	6,751 asf
Floor 3	—Office/Conference Meeting Rooms/Related Space	2,485 asf
Floors 4 & 5	—Research Laboratories (70%) —Cold Rooms and Lab Support (3%) —Office/Support (27%)	12,135 asf

The remodeled facilities will house the University of Minnesota Heart and Lung Institute, Cardiovascular and Pulmonary program, and Neurosciences program. Both basic and applied Bio-Medical Research will take place. Experience in design of medical research facilities and the handling of radioisotopes is highly desirable.

The project will also include approximately 3,000 gsf of remodeling on the Third Floor of the Mayo Tower in the vicinity of the former Coffee Shop. This area will serve the Health Sciences Public Relations Office.

The estimated construction budget is approximately \$6,180,000.00

All work must be designed to meet the functional and aesthetic needs and comply with the financial restrictions established for the project.

8b) PROJECT—5-88

Utilities Systems Study
University of Minnesota
Twin Cities Campus
Funds Available: \$300,000.00

In 1980, the University entered into the Integrated Community Energy System (GRID ICES) as a way of providing the required steam and electrical energy for the campus in a cost effective and environmentally sensitive way.

Since 1980, a number of the internal and external factors on which GRID ICES was originally based have changed. Owing to the aging of equipment and the capital building program, demands on University steam generating capacity have increased to the point where there is no generating reserve or standby capacity.

The objective of this project is to provide the technical and managerial framework on which immediate and long-range decisions can be based that will insure that the University has efficient, reliable, and adequate utilities, with a forward view to the year 2000 and beyond.

SCOPE OF PROJECT

This study and report encompasses the University's entire steam generating facilities (equipment, distribution system, the energy environment and associated regulatory issues) plus campus sewer and water requirements. It also includes University Management interface with Northern States Power Company for the purchase and distribution of all electrical energy.

CONSULTANT'S QUALIFICATIONS

The consultant selected for this project must have extensive background and experience in the following areas:

1. Design, construction, and operation of high pressure steam generating facilities.
2. High pressure steam, high temperature hot water, and chilled water distribution systems.
3. Fossil fuels as energy source and the environmental control of emission from the use of fossil fuels.
4. Co-generation of steam and electricity.
5. High voltage wide area electrical grid systems.
6. Electrical rate structures.
7. High voltage electrical distribution systems.
8. Reserve funding for emergency maintenance and capital improvements to generating and distribution facilities.
9. Price structure for sale of steam to commercial and institutional customers.
10. Sewer and water requirements.
11. Financial analysis between University production of steam and large capital investment versus the purchases of steam from available sources with the best option for the University, both short- and long-term.

Questions concerning this project may be referred to Clint Hewitt at (612) 625-7355.

Damon Farber, Chairman
State Designer Selection Board

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Department of Health

Office of Health Systems Development

Notice of Intent to Solicit Outside Opinions Concerning a Request for a Waiver of HMO Statutes and Rule by NWNL Health Network, Inc.

Notice is hereby given that the Department of Health is seeking opinions and comments pertaining to a request by NWNL Health Network, Inc. (formerly Senior Health Plan) for a waiver of HMO statutes and rules regarding its General Assistance Medical Care plan in Ramsey county. Such waivers are authorized for demonstration projects by *Minnesota Statutes* § 62D.30.

The request submitted by NWNL Health Network, Inc. is available for inspection during normal business hours at the following location:

Alternative Delivery Systems
Room 456
Minnesota Department of Health
Minneapolis, Minnesota 55440
(612) 623-5365

Comments on the request must be received by February 26, 1988.

Department of Public Service

Request for Proposals for Generic Advertising for Energy Conservation Projects

The Department of Public Service (DPS) is seeking a contractor to develop camera-ready generic advertising options for a direct marketing campaign for energy conservation projects implemented by various communities across the state.

The duties of the contractor are as follows:

1. To prepare two direct mail pieces for each of the following target audiences: middle income households, senior citizen households, and small business owners.
2. To prepare two direct response advertisements for use in either local newspapers and/or organizational newsletters for each of the following target audiences: middle income households, senior citizen households, and small business owners.

For each target audience, there must be at least two different artwork and headline options. However, body copy can remain the same within each direct marketing option, i.e., direct mail and direct response.

The financial contribution from DPS towards this project described in this RFP will not exceed \$5,000 (five thousand dollars).

DPS reserves the right to not award any contract, to negotiate modifications with the selected contractor, and to limit funding.

Inquiries and requests for copies of the RFP should be directed to either:

Susan R. Moore (612-296-1848) or
Mark Schoenbaum (612-297-3602)
Energy Division
Department of Public Service
900 American Center Building
150 East Kellogg Boulevard
St. Paul, MN 55101

All proposals must be received by no later than 2:00 p.m. on March 15, 1988.

State Board of Vocational Technical Education

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing the Rules for Licensure of Postsecondary Technical Education Personnel

Notice is hereby given that the State Board of Vocational Technical Education is seeking information or opinions from sources outside the agency in preparing to amend Chapter Thirty-Five: Rules for Licensure of Vocational Technical Education Personnel and specifically in emergency rules for Artificial Intelligence, Environmental Technician, Radiologic Technology, Student Financial Aid Assistant, Microcomputer Specialist, Activity Director/Assistant, Professional Nanny, Franchise Restaurant Management, Super-

Non-State Public Contracts

visory Management, and Electronic Service/Sales Representative. The promulgation of these rules is authorized by *Minnesota Statutes* § 136C.04, subd. 9 and 125.185 subd. 4.

The State Board of Vocational Technical Education requests information and comments concerning the subject matter of these rules. Interested or affected persons may submit written statements of information or comment orally. Written comments should be addressed to:

Ms. Glenda Moyers
State Board of Vocational Technical Education
522 Capital Square Bldg.
550 Cedar Street
St. Paul, MN 55101
(612) 296-9444

Ms. Georgia Pomroy
State Board of Vocational Technical Education
520 Capital Square Bldg.
550 Cedar Street
St. Paul, MN 55101
(612) 296-3929

Oral statements will be received during regular business hours over the telephone at (612) 296-3929 or in person at the above address.

All statements of information and comments shall be accepted until 4:30 p.m., Tuesday, March 22, 1988. Any written material received by the State Board of Vocational Technical Education shall become part of the record in the event that the rules are amended.

Dated: 22 February 1988

Helen Henrie, Deputy Director
State Board of Vocational
Technical Education

Non-State Public Contracts

The *State Register* also serves as a central marketplace for contracts let out on bid by the public sector. The *Register* meets state and federal guidelines for statewide circulation of public notices. Any tax-supported institution or government jurisdiction may advertise contracts and requests for proposals from the private sector.

It is recommended that contracts and RFPs include the following: 1) name of contact person; 2) institution name, address, and telephone number; 3) brief description of project and tasks; 4) cost estimate; and 5) final submission date of completed contract proposal. Allow at least three weeks from publication date (four weeks from date article is submitted for publication). Surveys show that subscribers are interested in hearing about contracts for estimates as low as \$1,000. Contact the editor for further details.

Lawyer Trust Account Board

Request for Proposals for Programs for Legal Services for the Poor, Legal Education for the Public and Administrative Enhancement

The Lawyer Trust Account Board invites proposals for programs in the areas of legal services for the poor, law-related education for the public and the enhancement of the administration of justice which will be funded by interest on lawyers' trust accounts.

The Board has characterized these programs as follows:

- (1) Legal Services for the Poor establish an attorney client relationship, provide legal advice or representation and accept clients based on financial eligibility criteria.
- (2) Law-related Education Programs deliver timely, accurate information in various areas of law to members of the public relating to individual situations, legal policy questions or questions about how the legal system functions.
- (3) Programs to Enhance the Administration of Justice provide administrative, programmatic, and/or training support to multiple legal service, advocacy or alternative dispute resolution programs or are pilot programs in innovative areas to reduce or help solve court related problems and/or improve access to justice.

Inquiries regarding proposal requests should be directed to:

Executive Director
Lawyer Trust Account Board
318A State Capitol
St. Paul, MN 55155
(612) 296-6822

Application Deadline: March 15, 1988

Supreme Court Decisions

Decisions Filed Friday 19 February 1988

C6-86-2087 Larry I. Charson, petitioner, Appellant v. Temple Israel. Court of Appeals.

In ruling on a motion to vacate a final order of dismissal entered pursuant to Fourth Judicial District Rule 4.03, the trial court should analyze the motion pursuant to Minn. R. Civ. P. 60.02.

Application of the Minn. R. Civ. P. 60.02 analysis results in reversal of the trial court's denial of a motion to vacate a dismissal order entered pursuant to Fourth Judicial District Rule 4.03 and in reversal of a judgment entered with prejudice.

Reversed and remanded. Kelley, J.

C6-86-1599 Leon L. Wittmer, et al v. Norbert J. Ruegemer, d.b.a. Norco Construction, Chester Kottke, and The City of Corcoran, petitioner, Appellant. Court of Appeals.

The two-year limitations period provided in *Minnesota Statutes*, 541.051, subd. 1 (1984) commences when the injured party discovers, or, by exercising reasonable diligence, should have discovered, the defective and unsafe condition of the improvement which is the cause of injury or damage.

Affirmed in part, reversed in part and remanded. Coyne, J.

Tax Court

Pursuant to Minn. Stat. § 271.06, subd. 1, an appeal to the tax court may be taken from any official order of the Commissioner of Revenue regarding any tax, fee or assessment, or any matter concerning the tax laws listed in § 271.01, subd. 5, by an interested or affected person, by any political subdivision of the state, by the Attorney General in behalf of the state, or by any resident taxpayer of the state in behalf of the state in case the Attorney General, upon request, shall refuse to appeal. Decisions of the tax court are printed in the *State Register*, except in the case of appeals dealing with property valuation, assessment, or taxation for property tax purposes.

Tax Court—Regular Division: Docket No. 4926—Dated: December 31, 1987

Rametco, Inc. Appellant, vs. Commissioner of Revenue, Appellee.

The above-entitled matter was heard by the Minnesota Tax Court on December 17, 1987, at the County Courthouse, Red Wing, Minnesota, the Honorable Earl B. Gustafson, Chief Judge, presiding.

Ralph W. Nelson, Sr., President, and Robert J. Irvin, Vice President, appeared for appellant.

James W. Neher, Special Assistant Attorney General, appeared for appellee.

The Court, having heard and considered the arguments of the parties, and upon all of the files and records herein, now makes the following:

Findings of Fact

1. Rametco, Inc. is a Minnesota corporation.
2. At all times relevant herein Rametco, Inc. was conducting business within the State of Minnesota.
3. On March 16, 1984, appellant filed its corporate excise tax returns for the years 1978, 1979, 1980, 1981, 1982 and 1983.
4. On March 11, 1985, appellant filed its corporate excise tax returns for 1984.
5. On March 13, 1986, appellant filed its corporate excise tax return for 1985.
6. By his Order dated April 2, 1987, the Commissioner of Revenue assessed additional tax, penalties, and interest for the years 1978 through 1985 in the amount of \$6,376.87. Included in this assessment were the following late filing penalties: 1978—\$25.00, 1979—\$25.00, 1980—\$169.25; 1982—\$144.25. Appellant had previously paid a late filing penalty for 1981 in the amount of \$465.71. That amount was paid on May 24, 1984.
7. On June 3, 1987, appellant entered into a closing agreement with the Department of Revenue, resolving the issues raised in the Commissioner's Order dated April 2, 1987. The Closing Agreement did not include the 1981 late filing penalty of \$465.71 because that penalty had not been included in the Commissioner's Order.
8. On September 11, 1987, appellant filed its Notice of Appeal herein, asserting that it was entitled to a refund of the 1981 late filing penalty of \$465.71.
9. Shortly after filing appellee's Answer to the Notice of Appeal, counsel for appellee orally offered to abate the 1981 late filing

penalty in full, and to send appellant a refund thereof, with statutory interest. Appellant rejected this offer, contending that it was entitled to costs and disbursements in addition to refund of the penalty amount.

10. By letter dated November 24, 1987, appellant was again notified of the Commissioner's willingness to abate the 1981 penalty.

11. At the hearing on December 17, 1987, appellant asserted that it was entitled to costs, disbursements, and damages. Abatement of the 1981 late filing penalty was not in issue.

Conclusions of Law

1. Appellant will receive a refund of the 1981 late filing penalty in the amount of \$465.71, with statutory interest, in accordance with the Commissioner's offer made prior to the hearing in this matter.

2. Appellant is not entitled to costs, disbursements, or damages in any amount.

LET JUDGMENT BE ENTERED ACCORDINGLY. A STAY OF 15 DAYS IS HEREBY ORDERED.

Dated: 31 December 1987

BY THE COURT,

Earl B. Gustafson, Chief Judge
Minnesota Tax Court

Tax Court—Regular Division: Docket No. 4733—Dated: January 6, 1988

Otto F. Ringle, Appellant, vs. Commissioner of Revenue, Appellee.

The above-entitled matter came on for hearing before the Honorable Arthur C. Roemer, Judge of the Minnesota Tax Court, on December 9, 1987 at the Cass County District Courthouse in Walker, Minnesota.

The appellant, Otto F. Ringle, appeared pro se.

The appellee was represented by James W. Neher, Special Assistant Attorney General.

The Court, having heard and considered the evidence adduced at the hearing and upon all of the files and records herein, now makes the following:

Findings of Fact

1. The Commissioner of Revenue, on November 14, 1986, issued his order determining that the fair market value of the property at issue as set by the County Board of Equalization was not excessive, and denied appellant's request for a lower valuation.

2. The appellant is the owner of the following described property: Lots 19, 20 and 21, Block 14, Original Plat of the Village of Walker, Cass County, Minnesota (Parcel Numbers 0180010-514190 and 0180010-514210).

3. The subject property, commonly referred to as the mini-mall, consists of eight commercial rental units, seven on the ground floor and one in the basement. In addition there are eight apartments on the second floor, comprised of one two-bedroom apartment, six one-bedroom apartments and one efficiency apartment.

4. The subject property, which is about 40 years old, is in good condition, a substantial portion having been rebuilt following a fire, the rebuilding having been completed in mid-1985.

5. Lots 19 and 20 were purchased by the appellant in May, 1984 for \$250,000. Lot 21, the corner lot adjoining Lots 19 and 20, was purchased by the appellant in May, 1985, for \$96,547.

6. The eight commercial units were all rented for the major portion of 1986 (seven units were rented all year, the basement unit being rented commencing February, 1986).

7. Several of the residential units were occupied by relatives of the appellant with no rent being charged.

8. The assessor's estimated market value of the subject property is as follows:

January 2, 1985	\$163,500
January 2, 1986	\$252,800

9. The property is for sale, the asking price being \$700,000, but the appellant indicated that he will accept \$450,000 to \$500,000.

10. The appellant contends that he is unfairly assessed as compared with comparable property, particularly the Lampert building across the street.

11. The appellant is not unfairly assessed. The assessment/sales ratio study indicates the level of assessment of commercial property in Cass County in the January 2, 1986 assessment exceeds 90% of market value.

Tax Court

12. The Court finds the fair market value of the subject property as of January 2, 1986 is \$300,000.

Conclusions of Law

1. The assessor's estimated market value for the subject property as of January 2, 1986 shall be increased on the books and records of Cass County from \$252,800 to \$300,000.

2. Real estate taxes due and payable in 1987 shall be recomputed accordingly based upon the respective uses of the property, and any additional amounts shall be paid by the appellant upon receipt of the corrected tax statement.

LET JUDGMENT BE ENTERED ACCORDINGLY. A STAY OF 15 DAYS IS HEREBY ORDERED.

Dated: 6 January 1988

BY THE COURT,
Arthur C. Roemer, Judge
Minnesota Tax Court

Tax Court—Regular Division: Docket No. 4773—Dated: January 7, 1988

Franciscan Sisters of Little Falls, Minnesota, Appellant, vs. Commissioner of Revenue, Appellee.

The above-entitled matter came on for hearing before the Honorable Arthur C. Roemer, Judge of the Minnesota Tax Court, on August 20 and 21, 1987, at the Morrison County Courthouse in Little Falls, Minnesota.

John R. Kenefick and David Greening, of the law firm of Briggs and Morgan, appeared on behalf of appellant.

James W. Neher, Special Assistant Attorney General, represented the appellee.

At the conclusion of the trial on August 21, 1987, the Court, along with counsel for both parties, visited the premises. Post trial briefs were filed and the case was submitted to the Court for decision on November 2, 1987.

The Court, having heard and considered the evidence adduced at the hearing and upon all of the files and records herein, now makes the following:

Findings of Fact

1. Petitioner has sufficient interest in the property to maintain its petition; all statutory and jurisdictional requirements have been complied with, and the Court has jurisdiction over the subject matter of the action and the parties hereto.

2. These Findings of Fact, Conclusions of Law, and Order for Judgment are applicable to both the above-captioned appeal and the petition filed by appellant in Morrison County District Court pursuant to *Minnesota Statutes*, Ch. 278, identified as File No. C3-87-395.

3. Appellant, Franciscan Sisters of Little Falls, Minnesota, was founded in the late 1800's as a community of Roman Catholic Sisters. It has been incorporated as a Minnesota non-profit corporation since approximately 1894. On January 5, 1970, its Articles were amended and the religious order changed its name to Franciscan Sisters of Little Falls, Minnesota.

4. The purposes of the corporation are exclusively charitable, educational and religious. Within the scope of those purposes, the corporation establishes, owns, maintains and operates public hospitals and institutions for the care of the sick and inform; owns, maintains and operates schools and academies; provides care for the aged, infants and orphans; owns and operates convents for its members; and aids and assists the Catholic Church in furthering and carrying out its religious charitable, educational and benevolent purposes.

5. The corporation does not afford pecuniary gain, incidental or otherwise, to any of its members.

6. The corporation is not operated for profit, rather it is operated exclusively for charitable, educational and religious purposes.

7. No part of the net earnings of the corporation inure to the benefit of any member, director or officer of the corporation or any private individual.

8. No member, director or officer of the corporation or any private individual is entitled to share in the distribution of the corporation's assets on dissolution, but instead those assets are distributable on dissolution to the religious congregation known as Franciscan Sisters of Little Falls, Minnesota, or if the congregation is not then in existence, to some other tax exempt entity.

9. Membership in appellant is restricted to persons who are members of the religious congregation of the Roman Catholic Church known as Franciscan Sisters of Little Falls, Minnesota. In addition, the directors must be members of the said religious congregation.

10. Appellant is exempt from the payment of federal income tax under Section 501(c)(3) of the Internal Revenue Code.

11. Appellant has been granted exemption from the Minnesota Sales and Use Tax under Chapter 297A of the *Minnesota Statutes*, and has been recognized as exempt from the corporate excise tax under Chapter 290 of the *Minnesota Statutes*.

12. Appellant is the owner of a parcel of real property identified as Parcel No. 49-1151, located in Little Falls, Morrison County, Minnesota.

13. Parcel No. 49-1151 has been exempt from the payment of real estate taxes for many years, but as to the January 2, 1986 assessment, for taxes payable in 1987, the county assessor included a portion of the parcel on the tax rolls. This portion relates to health and recreation facilities known as the St. Francis Health and Recreation Center.

14. Upon petition of the appellant, the Boards of Equalization of Little Falls and Morrison County both ruled that the Health and Recreation Center property was exempt from taxation. However, on November 14, 1986, the Commissioner of Revenue determined that the property was subject to taxation for that assessment year, thereby reversing the local and county Boards' determination. This appeal followed.

15. In furtherance of its mission, appellant acquired a 35-acre campus in Little Falls, Minnesota, and over the years erected several structures on campus, including a convent, a hospital, a nursing home and the St. Francis High School, which was a boarding school for young women.

16. St. Francis High School was located in one of appellant's buildings and contained excellent health and recreation facilities including a swimming pool, a gymnasium, locker and shower areas, an exercise room and outdoor tennis courts.

17. Appellant operated the high school for more than fifty years, but declining enrollment and financial concerns forced its closure in 1977.

18. Subsequent to closure of the high school, appellant converted a portion of those facilities into the St. Francis Health and Recreation Center at issue herein, including the swimming pool, gymnasium, exercise room, and locker and shower areas.

19. At about this same time, the St. Francis Center developed the following complement of integrated programs which it continues to administer on campus:

- A. St. Clair Resource Center—a library.
- B. St. Francis Christian Development Center—a youth oriented program.
- C. St. Francis Health and Recreation Center—health and recreation programs.
- D. St. Francis Hospitality Services—providing rooms, meals and hospitality services to persons using the other programs.
- E. St. Francis Music Center—providing music lessons to youth and adults.
- F. The Dwelling Place—a retreat program for groups.
- G. The Hermitage—a retreat program in an isolated cabin for one or two persons.
- H. Wholistic Growth Resources—a 9-month development program for Sisters of appellant and other religious orders.

20. The St. Francis Health and Recreation Center program is thus one of several outreach programs maintained on the campus at Little Falls and utilizing certain health and recreation facilities.

21. The Health and Recreation Center program is an integral part of the larger umbrella program called St. Francis Center.

22. The mission of St. Francis Center is to "serve spiritual, educational, health, social and aesthetic needs of persons in a wholistic Christian manner with flexible programming that will allow for residential, on-site or outreach activities and content that meets changing needs."

23. The dominant purpose of the Health and Recreation Center is to help members of the community maintain or improve their health. There is no expectation of any material reward to appellant.

24. The Health and Recreation Center was developed by appellant to promote its wholistic philosophy.

25. Operation of the Health and Recreation Center program is in accord with appellant's charitable purposes as stated in its Bylaws and Articles of Incorporation.

26. The Health and Recreation Center is open about sixty hours each week, is accessible to the physically handicapped, and does not discriminate on the basis of race, color or creed.

27. The beneficiaries of the Health and Recreation Center are unrestricted. They include the following persons:

- A. Sisters of appellant who are living on campus or in Little Falls.
- B. Persons who are on campus participating in one of the outreach programs of St. Francis Center.
- C. Group users, including a mentally retarded group that uses the facilities each week under supervision.
- D. Members of the public who pay a user fee for use of the athletic and recreation facilities.
- E. Members of the public who use the facilities without payment of any fees.

Tax Court

28. The primary emphasis of the program is for adults, yet the facilities are open to various youth groups and to children during off hours. In addition there is a family swim program on Sundays.

29. Appellant's operations are funded in part by donations and receipts from outside sources. These contributions total \$90,766 in 1984, \$85,275 in 1985, \$45,118 in 1986, and \$57,219 to date (September) in 1987, comprising about 1% of appellant's revenue from investments. These contributions are used by the appellant to assist in their charitable activities, one of which is the Health and Recreation Center, the deficit of which is paid from other resources (including the contributions) of the appellant.

30. Appellant also uses income from investments and income that is donated by its members (the individual Sisters, who contribute their salaries to the religious order pursuant to a vow of poverty) to finance its activities, including the Health and Recreation Center.

31. In addition to its four named revenue sources (donations, fees, earnings on investments, and income donated by its members), appellant is supported by the contributed services of its members and through the efforts of lay volunteers.

32. The staff at the Health and Recreation Center includes a Sister who donates her services as a massage therapist on a full-time basis. Charges of \$20.00 per hour are made for her services.

33. Lay persons have also volunteered their services to the Health and Recreation Center. The weight lifting instructor spends many hours each week working with people without compensation. The family swim program on Sundays is administered by lay persons without compensation. A charge of \$1.50 is made.

34. The stations for a fitness trail were purchased by means of a grant from the O'Neill Foundation in the amount of \$6,000. Mr. Engholm, the Executive Director of St. Francis Center, is seeking other grants from foundations to assist in the Health and Recreation Center programs.

35. The Health and Recreation Center does charge usage fees to members of the public and to persons participating in St. Francis Center programs, for use of the athletic facilities.

36. The fees charged for use of many of the athletic facilities are nominal on their face and are generally less than the fees charged by a commercial facility in Little Falls, considering the facilities provided.

37. The user fees are not designed to make a profit for the Center, but are simply intended to defray substantial operating costs.

38. There is no charge for use of the outdoor tennis courts. Even though this part of the facility remains exempt, it is an integral part of the Health and Recreation Center program.

39. Even though fees are generally charged to members of the public and to program participants, it is the policy and practice of appellant to offer use of its facilities to all persons regardless of financial circumstances. Two recent free programs have included a program for farm women and farm couples for purposes of counselling, use of the athletic facilities and a break from farm chores for a weekend. This program was funded by a grant from Franciscan Sisters Health Care, Inc., and was totally free to the participants.

40. There have been situations where the police will deliver a transient to the Health and Recreation Center for purposes of taking a shower and cleaning up. Also the Center has been open to other persons on a totally free basis to use the shower facilities.

41. In its history the Health and Recreation Center has never made a profit. In the last few years the yearly operating loss has been about \$60,000.

42. The operating losses do not include the salary of the Executive Director and his secretary because they are accounted under a separate budget; hence the operating losses would be even larger were a pro rata portion of the salaries of the Executive Director and his secretary included in the statement of expenses.

43. A portion of the expenses of operating the Center includes an overhead factor of approximately \$3.40 per square foot. This overhead factor is calculated on a square footage basis, comparing all overhead costs such as insurance, utilities and maintenance, to all of the properties of appellant on its campus with the exception of the hospital and nursing home buildings.

44. The Health and Recreation Center facilities, even though privately owned, serve a public purpose. There are no other comparable facilities in Morrison County for large meetings or community services. The Center with its recreation facilities and a large meeting room (gymnasium) together with the available sleeping rooms, is an ideal place for community development activities. One of these activities occurred in the summer of 1987 when a large Lindbergh celebration was held at the facilities.

45. Appellant's Health and Recreation Center is being used partly for church purposes as set forth in the Mission Statement of appellant and in the St. Francis Center Statement of Purpose, but primarily as an institution of purely public charity, serving the people of the Little Falls area.

46. Appellant's Health and Recreation Center is devoted to its charitable and religious mission.

47. Appellant's Health and Recreation Center is an integral part of appellant's mission to develop the whole person.

48. The physical proximity of the Health and Recreation Center to appellant's other outreach programs enhances the appellant's religious mission.

49. The attached memorandum is hereby made a part of these Findings of Fact.

Conclusions of Law

1. The St. Francis Health and Recreation Center is an integral part of Franciscan Sisters of Little Falls, Minnesota, and is an institution of purely public charity within the purview of *Minnesota Statutes*, § 272.02.

2. The subject property is exempt from real property taxation as an institution of purely public charity under *Minnesota Statutes*, § 272.02, subd. 1(6), and Article X, Section 1 of the Minnesota Constitution.

3. The St. Francis Health and Recreation Center is an integral part of Franciscan Sisters of Little Falls and is used partly for church purposes within the purview of *Minnesota Statutes* § 272.02.

4. Real estate taxes due and payable in 1987 relating to the January 2, 1986 assessment shall be abated and to the extent paid shall be refunded to the appellant, together with interest from the date of original payment.

LET JUDGMENT BE ENTERED ACCORDINGLY. A STAY OF 15 DAYS IS HEREBY ORDERED.

Dated: 7 January 1988

BY THE COURT,

Arthur C. Roemer, Judge
Minnesota Tax Court

Tax Court—Regular Division: Docket No. 4615—Dated: January 27, 1988

Fridlund Securities Co. and Scott Fridlund, Appellants, vs. Commissioner of Revenue, Appellee.

The above-entitled came on for hearing before the Honorable Earl B. Gustafson, Chief Judge of the Minnesota Tax Court, on January 21, 1988 at the Courtroom of the Tax Court, 520 Lafayette Road, St. Paul, Minnesota, upon appellants' motion for Amended Findings of Fact and Conclusions of Law of the Court's decision dated December 7, 1987.

Steven T. Hetland, of Holmes and Graven, Chartered, Attorneys at Law, appeared for appellants.

James W. Neher, Special Assistant Attorney General, appeared for appellee.

The Court, having heard and considered the arguments of counsel and upon all of the files and records herein, NOW MAKES THE FOLLOWING ORDER amending its decision of December 7, 1987:

1. The Findings of Fact are hereby amended as follows:

A. Finding of Fact No. 5 is amended to read:

5. Sales tax for these periods has been assessed by the Commissioner against both Fridlund and Scott Fridlund, individually, in the amount of \$65,480.18, plus penalty and interest in the respective amounts of \$15,591.43 and \$46,221.46.

B. Finding of Fact No. 7(j) is amended to read:

[7.] (j) Upon arrival of the precious metal in Moorhead, generally a Fridlund employee picked it up at either the bank or the post office. The customer was then informed that his order had arrived, and he either picked it up at Fridlund's office in Moorhead, or it was delivered to him by a Fridlund employee.

C. An additional Finding of Fact, No. 10, is added which reads:

10. That on September 17, 1987, appellants and appellee entered into a Security Payment Agreement in which appellants paid \$15,194.30 of the assessed sales tax in return for appellee's removal of a lien on real estate owned by appellants. In the Agreement, the parties agreed that interest on the assessed sales tax, to the extent of the aforementioned payment, would stop accruing.

D. An additional Finding of Fact, No. 11, is added which reads:

11. Appellants initially had reasonable cause to believe that the courts might determine that no sales tax was due on the transactions that have become the subject of this litigation.

2. The Court further amends the Conclusions of Law as follows:

A. Conclusion of Law No. 3 is amended to read:

3. The Order of the Commissioner of Revenue dated March 26, 1986, assessing sales tax liability in the amount of \$65,480.18 (plus interest) is hereby affirmed.

Tax Court

B. An additional Conclusion of Law, No. 4, is added which reads:

4. That portion of the Order of the Commissioner of Revenue dated March 26, 1986 assessing penalty in the amount of \$15,591.43 is abated in full.

C. An additional Conclusion of Law, No. 5, is added which reads:

5. That portion of interest based on appellants' \$15,194.30 payment of a portion of the assessed sales tax is abated from and after September 17, 1987, the date of the payment.

3. The motion of appellants is in all other respects denied. IT IS SO ORDERED.

Dated: 27 January 1988

BY THE COURT,

Earl B. Gustafson, Chief Judge
Minnesota Tax Court

Announcements

Environmental Quality Board: Comments are due on projects requiring the following Environmental Assessment Worksheets (EAWs) on March 9 at the regional governing units listed: Lake Prairie Egg #4 and 5, Nicollet County; Calhoun Beach Apartments Project, City of Minneapolis; The Lochs of Edinburgh/City Interceptor Sewer Extension, City of Brooklyn Park; and Plymouth Interceptor Improvements, MPCA (Pollution Control Agency). A petition has been received for an EAW on Meadowood on Marcott by the City of Inver Grove Heights claiming it will be a hazard to private septic systems. The City of Edina has a draft EIS (Environmental Impact Statement) available for comment until March 15 on the Hedberg Mixed Unit Development. A meeting is scheduled for 9 a.m.-12 noon on March 1 at the Edina City Hall, 4801 West 50th Street. The MPCA will hold a meeting on the Koch Refining Company's New Land Treatment Facility on Thursday 3 March at the Rosemount City Hall Council Chambers, 2875 145th Street West, Rosemount from 7-9 p.m. Comment period for that project's supplemental EIS ends March 18. A supplemental EIS scoping period on the Hennepin County Resource Recovery Project Transfer Stations at South Minneapolis and Plymouth will end March 9 with a meeting scheduled February 29 at 7 p.m. in the auditorium of the Hennepin County Gov't Ctr. Contact *EQB Monitor* editor Gregg Downing at 296-8253 for more information on the above.

Free Tax Help Available at 400 Sites Throughout State: Free tax assistance is available at more than 400 sites throughout the state to Minnesotans who are disabled, are senior citizens, have low incomes or do not speak English fluently. Trained volunteers will help taxpayers complete both state and federal income tax forms and schedules in addition to the Minnesota homeowner and renter property tax refund forms. Help is available during both day and evening hours at many libraries, government offices, colleges, senior citizen complexes and community centers. To find the nearest location, in St. Paul, call 297-3724; in Minneapolis, call 297-3725; in suburban Minneapolis, call 297-3726; outside the Twin Cities, call toll free 1-800-652-9094. Appointments are necessary at some locations. Taxpayers will need to bring all necessary forms and records to complete their returns. This includes W-2 forms, pension statements, interest statements, medical expense records, contribution records, Certificate of Rent Paid (CRP) forms, property tax statements and copies of last year's (1986) state and federal income tax returns and property tax refund applications. Those unable to travel to a tax center because of a disability can arrange to have a volunteer visit their home to fill out the tax returns. Call 296-3781 in the Twin Cities and toll free 1-800-652-9094 outside the metro area. Individuals with hearing impairments and access to a TDD machine can receive help with their Minnesota tax forms by calling 297-2196 or toll free 1-800-428-4732 for assistance with their federal returns.

City of Red Wing, Polk County Receive Grants from Waste Management Board: The City of Red Wing and Polk County received separate grants for their respective waste-to-energy projects from the Minnesota Waste Management Board (WMB) at its January meeting. Red Wing's award of \$14,875 will help partially fund that Goodhue County seat community's purchase of continuous emissions monitoring (CEM) equipment for the city-owned 72-tons-per-day facility. Total equipment cost is \$59,500. Polk County will use its \$82,180 grant from the WMB for air emissions testing at its 80-tons-per-day plant, which opened in Fosston last December. The grant covers all testing costs. Both CEM equipment and tests are required by the Minnesota Pollution Control Agency guidelines to maintain operating permits.

International Agribusiness Trade Conference: The second annual International Agribusiness Trade Conference is scheduled on Tuesday, March 8, 1988 at the Holiday Inn Downtown in Mankato, beginning with registration at 8:00 a.m. **Jim Nichols**, Minnesota Commissioner of Agriculture, will open the conference with an address on "Agribusiness Trade Issues." **John Blackwood**, Consul General of Canada, will be the keynote luncheon speaker discussing "U.S.-

Canadian Trade Relations and the Impact on Agriculture." Other speakers include **David Speer**, Commissioner of Trade and Economic Development, whose topic is "The Role of International Trade in Rural Minnesota's Agribusiness;" **Pat Henderson**, Vice President of Public Relations at The Grain Exchange, discussing "Basics of the International Ag Marketing Process;" and **Noor Doja**, Executive Director of the Minnesota Export Finance Authority, speaking on "Government Export Financial Assistance Programs." Members of a panel covering Export Marketing Channels are **Jim Palmer**, Executive Director, Minnesota Soybean Growers Association, **Otto Schmidt**, President of P & T International, **Paul Hanson**, Senior Ag Trade Representative of the Minnesota Trade Office, and **Dr. Hafiz Siddiqi**, Professor of International Business at Mankato State University. The keynote closing address will be delivered by **Terry Montgomery**, President of the Greater Minnesota Corporation, speaking on "The Role of the Greater Minnesota Corporation in the Development of Agribusiness in Rural Minnesota." A reception hosted by the Minnesota Soybean Growers Association will take place at the Holiday Inn poolside at 4:30 p.m. Registration, beginning at 8:00 a.m., is \$20.00 per person and will include luncheon and materials. Registration information is available from Basil Janavaras, Conference Director, International Business Institute, College of Business, Mankato State University, Box 14, Mankato, MN 56001; phone (507) 389-1600.

Lawyers to Explain New Farm Credit Bill: New federal farm credit legislation could mean millions of dollars to Minnesota farmers. Lawyers from the Minnesota Family Farm Law Project in St. Paul will be explaining how farmers can take advantage of the new laws in four seminars to be presented in early March. The seminars are being co-sponsored by the Minnesota Family Farm Law Project, Minnesota Department of Agriculture and the Minnesota Attorney General's Office. They will be free and open to the public. The four sessions will be held at the following locations: March 1, 1988: **Thief River Falls**, Northland Community College, The Auditorium—Highway 1 East, 1:00-4:00 p.m.; March 3, 1988: **Freeport, Minnesota**, Charlie's Cafe, just off I-94, 1:00-4:00 p.m.; March 9, 1988: **Rochester, Minnesota**, St. Francis of Assisi Heights, N. side of Rochester on Highway 52, 1:00-4:00 p.m.; March 11, 1988: **Marshall, Minnesota**, Holy Redeemer Church, Carlin Hall—503 W. Lyon, 1:00-4:00 p.m. On January 6th, the President signed the new law, bringing many financial benefits to Minnesota farmers who have loans with Farm Credit Services (FCS) and the Farmers Home Administration (FmHA). Now, both FCS and FmHA are required to restructure a farmer's debt if it would be cheaper than forced liquidation or foreclosure. Farmers have won expanded access to documents and must be provided with all loan documents in lender files, including appraisals. FCS borrowers have new rights to lease or repurchase farm property acquired from them by FCS lenders. FmHA borrowers also have the first option to lease or purchase all or part of their farm lost to FmHA. At the seminars, a representative of the Attorney General's staff will explain how the new law will affect Minnesota farm credit programs, including mediation. Farmers or others with questions should call the Minnesota Family Farm Law Project, 1-800-233-4534 for further information.

Artists Wanted for School Residencies: The Minnesota State Arts Board Artists in Education (AIE) Program is now accepting applications for the Roster of Artists. The AIE roster is a juried list of individual artists who are experienced and qualified to conduct school residencies of one week or longer. Artists from all disciplines may apply: music, theater, dance, creative writing, media, visual arts, and folk arts. The Arts Board is particularly seeking artists from greater Minnesota, minority artists, and artists with diverse approaches to literary, visual, and performing arts. **The application deadline is April 22, 1988.** All artists, including those who have previously been listed on the roster, or who have worked through an Arts Board AIE grant, must apply by the deadline date. Review will take place during the summer of 1988. Schools are encouraged to select an artist from this roster when applying for AIE School Support grants to finance residencies during the 1989-90 and 1990-91 school years. The roster book is both a resource guide for educators and a promotional tool for artists. The roster will be distributed across the state in the fall of 1988. To receive an application, or for further information, contact Elizabeth M. Childs, AIE Program Associate, Minnesota State Arts Board, 432 Summit Avenue, Saint Paul, Minnesota 55102, (612) 297-2603, or toll-free from greater Minnesota at (800) 652-9747.

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TO ORDER: Send to Minnesota Documents Division, 117 University Avenue, St. Paul, MN 55155, (612) 297-3000, or toll-free in Minnesota: 1-800-652-9747 and ask for "DOCUMENTS." Please include 6% sales tax, and \$1.50 postage and handling. Prepayment required. Please include daytime phone. VISA/MasterCard orders accepted over phone.

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Human Services Laws and Rules

Human Services Laws 1986

An extract from the statutes. Includes legislative amendments and additions from the most recent session. Code No. 2-56. \$20.00

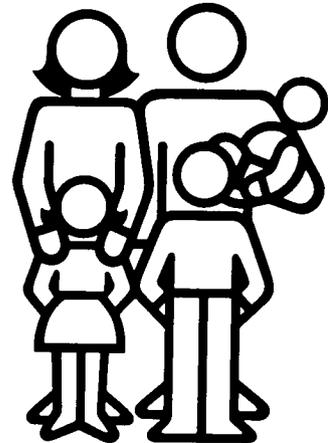
Human Services Rules as in effect July 7, 1986

Rules governing assistance programs, eligibility grant amounts, AFDC and residence requirements. MN Rules Chapter 9500-9580. Code No. 3-95. \$24.95.

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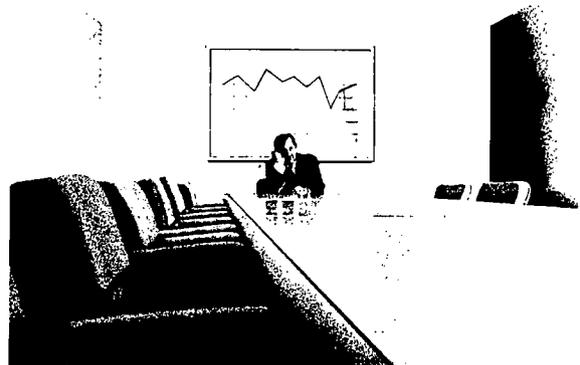
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